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Presidential Documents

Title 3—

The President

Proclamation 9973 of December 16, 2019

Wright Brothers Day, 2019

By the President of the United States of America

A Proclamation

On December 17, 1903, two visionaries, brothers from Dayton, Ohio, ushered in the dawn of the age of aviation on a wind-swept beach in Kitty Hawk, North Carolina. Wilbur and Orville Wright changed the course of history with the successful maiden flight of a manned, engine-powered aircraft. On Wright Brothers Day, we honor this remarkable achievement, commend the brothers' ingenuity, innovation, passion, and determination, and celebrate the incalculable contributions of aviation to our Nation and the world.

When the Wright Flyer safely landed near Kill Devil Hills, it marked the first step of an aviation journey of countless American pioneers to conquer the skies. In the 116 years since this groundbreaking flight, we have made revolutionary strides in aviation, such as Amelia Earhart crossing the Atlantic and Wiley Post circling the globe. This same fearless American spirit eventually propelled us beyond Earth's atmosphere into space and even placed humans onto the surface of the Moon in an ongoing pursuit of discovery and exploration. Earlier this year, our Nation commemorated the 50th anniversary of the Apollo 11 mission and remembered the triumphant courage and patriotism displayed by those intrepid astronauts. On that remarkable voyage, Commander Neil Armstrong carried a small patch of fabric from the wing of the Wright Brothers' 1903 ''Flyer.''

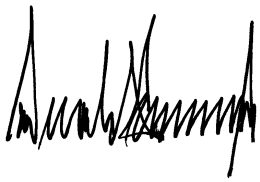
The progress and success of aviation are among our country's greatest achievements. Aviation connects people, commerce, and industry, not merely across the country but across oceans and continents. The economic, strategic, and social benefits of aviation are critical to our national security and prosperity. That is why my Administration is committed to ensuring that the United States remains the world leader in aviation and aerospace innovation. We are improving the design of supersonic jets, for example, and preparing for their reintroduction to civilian flight while also embracing the growth and potential of unmanned aircraft. By working with leaders in the industry, we are advancing the exploratory and commercial capabilities of space technology and cultivating ideas that could revolutionize the future of transportation, enhance national security and defense, and increase efficiency in commerce and emergency management.

Throughout our history, our Republic has been characterized by great men and women, like Wilbur and Orville, who dared to push boundaries, challenge traditional thinking, explore unchartered paths, and embrace the power of possibility. The Wright Brothers' airborne adventure into the North Carolina sky is one of our Nation's seminal milestones and a shining example of the power of the indomitable American spirit, which continues to fuel the next chapter of our history at sea, on land, and in the skies and beyond.

The Congress, by a joint resolution approved December 17, 1963, as amended (77 Stat. 402; 36 U.S.C. 143), has designated December 17 of each year as ''Wright Brothers Day'' and has authorized and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, do hereby proclaim December 17, 2019, as Wright Brothers Day.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of December, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-fourth.



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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0613; Airspace Docket No. 19–ASW–9]

RIN 2120–AA66

Revocation and Amendment of the Class E Airspace; Lafayette, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class E airspace designated as an extension to a Class C surface area at Lafayette Regional Airport/Paul Fournet Field, Lafayette, LA; amends the Class E airspace designated as a surface area at Lafayette Regional Airport/Paul Fournet Field; and amends the Class E airspace extending upward from 700 feet above the surface at Lafayette Regional Airport/Paul Fournet Field and Acadiana Regional Airport, New Iberia, LA, which is contained within the Lafayette, LA, airspace legal description. This action is due to an airspace review caused by the decommissioning of the Acadi non-directional beacon (NDB), which provided navigation information for the instrument procedures at Acadiana Regional Airport, and the development of new instrument procedures at Lafayette Regional Airport/Paul Fournet Field. The geographic coordinates of the Lafayette Regional Airport/Paul Fournet Field and the names of Lafayette Regional Airport/Paul Fournet Field, Acadiana Regional Airport, and Abbeville Chris Crusta Memorial Airport, Abbeville, LA, which is contained within the Lafayette, LA, airspace legal description, are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, March 26, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it revokes the Class E airspace designated as an extension to a Class C surface area at Lafayette Regional Airport/Paul Fournet Field, Lafayette, LA, and amends the Class E airspace extending upward from 700 feet above the surface at Lafayette Regional Airport/Paul Fournet Field and Acadiana Regional Airport, New Iberia, LA, to support instrument flight rule operations at these airports.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 43089; August 20, 2019) for Docket No. FAA–2019–0613 to revoke the Class E airspace designated as an extension to a Class C surface area at Lafayette Regional Airport/Paul Fournet Field, Lafayette, LA, and amend the Class E airspace extending upward from 700 feet above the surface at Lafayette Regional Airport/Paul Fournet Field and Acadiana Regional Airport, New Iberia, LA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6002, 6003, and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

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

Differences From the NPRM

Subsequent to publication of the NPRM, the FAA discovered that the name and geographic coordinates of Lafayette Regional Airport/Paul Fournet Field needed to be updated in the Class E airspace designated as a surface area for Lafayette, LA, which had been inadvertently omitted from the NPRM. As these changes are administrative in nature and do not amend the airspace itself, the amendment to the Class E airspace designated as a surface area for Lafayette, LA, is included in this action.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71:

Removes the Class E airspace designated as an extension to a Class C surface area at Lafayette Regional Airport/Paul Fournet Field, Lafayette, LA, as it is no longer required;

Amends the Class E airspace designated as a surface area at Lafayette Regional Airport/Paul Fournet Field by amending the header of the airspace legal description from ''Lafayette Regional Airport, LA'' to ''Lafayette, LA'' to comply with FAA Order 7400.2M, Procedures for Handling Airspace Matters; updating the name and geographic coordinates of Lafayette Regional Airport/Paul Fournet Field (previously Lafayette Regional Airport) to coincide with the FAA's aeronautical database; and updating the outdated term ''Airport/Facility Directory'' with ''Chart Supplement'';

And amends the Class E airspace extending upward from 700 feet above the surface to within a 7.5-mile radius (decreased from a 7.7-mile radius) of the Lafayette Regional Airport/Paul Fournet Field; within a 6.7-mile radius (decreased from a 6.9-mile radius) of Acadiana Regional Airport, New Iberia, LA; updates the names of Lafayette Regional Airport/Paul Fournet Field (previously Lafayette Regional Airport), Abbeville Chris Crusta Memorial Airport (previously Abbeville Municipal Airport), and Acadiana Regional Airport (previously Acadiana Regional) to coincide with the FAA's aeronautical database; and updates the geographic coordinates of Lafayette Regional Airport/Paul Fournet Field to coincide with the FAA's aeronautical database; and removes the city associated with the Acadiana Regional Airport from the airspace legal description to comply with a change to FAA Order 7400.2M, Procedures for Handling Airspace Matters.

This action is the result of an airspace review caused by the decommissioning of the Acadi NDB, which provided navigation information for the instrument procedures at Acadiana Regional Airport and the development of new instrument procedures at Lafayette Regional Airport/Paul Fournet Field.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ASW LA E2 Lafayette, LA [Amended]

Lafayette Regional Airport/Paul Fournet Field, LA
(Lat. 30°12′18″ N, long. 91°59′16″ W)

Within a 5-mile radius of the Lafayette Regional Airport/Paul Fournet Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6003 Class E Airspace Areas Designated as an Extension to a Class C Surface Area.

* * * * *

ASW LA E3 Lafayette, LA [Removed]

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

* * * * *

ASW LA E5 Lafayette, LA [Amended]

Lafayette Regional Airport/Paul Fournet Field, LA
(Lat. 30°12′18″ N, long. 91°59′16″ W)
Abbeville Chris Crusta Memorial Airport, LA
(Lat. 29°58′33″ N, long. 92°05′03″ W)
Acadiana Regional Airport, LA
(Lat. 30°02′16″ N, long. 91°53′02″ W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Lafayette Regional Airport/Paul Fournet Field, and within a 6.4-mile radius of Abbeville Chris Crusta Memorial Airport, and within a 6.7-mile radius of Acadiana Regional Airport.

Issued in Fort Worth, Texas, on December 11, 2019.

Steve Szukala,

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

[FR Doc. 2019–27276 Filed 12–18–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA–2018–C–4464]

Listing of Color Additives Exempt From Certification; Soy Leghemoglobin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; response to objections and denial of public hearing requests; removal of administrative stay.

SUMMARY: The Food and Drug Administration (FDA or we) is responding to objections that it received from the Center for Food Safety on the final rule entitled ''Listing of Color Additives Exempt from Certification; Soy Leghemoglobin,'' which published on August 1, 2019. The final rule amended the color additive regulations to provide for the safe use of soy leghemoglobin as a color additive in ground beef analogue products. After reviewing the objections, FDA has

concluded that the objections do not raise issues of material fact that justify a hearing or otherwise provide a basis for revoking the amendment to the regulations. We are also providing notice that the administrative stay of the effective date for this color additive regulation is now lifted.

DATES: The final rule that published in the **Federal Register** of August 1, 2019 (84 FR 37573) with an effective date of September 4, 2019, was administratively stayed by the filing of objections under section 701(e)(2) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 371(e)(2)) as of September 3, 2019. FDA lifts the administrative stay as of December 19, 2019.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this final rule into the ''Search'' box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ellen Anderson, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740–3835, 240–402–1309.

SUPPLEMENTARY INFORMATION:

I. Background

In a notification published in the **Federal Register** of December 13, 2018 (83 FR 64045), we announced that we filed a color additive petition (CAP 9C0314) submitted by Impossible Foods, Inc., c/o Exponent, Inc., 1150 Connecticut Avenue NW, Suite 1100, Washington, DC 20036. The petition proposed to amend the color additive regulations in part 73 (21 CFR part 73), ''Listing of Color Additives Exempt from Certification,'' to provide for the safe use of soy leghemoglobin as a color additive in ground beef analogue products such that the amount of soy leghemoglobin protein does not exceed 0.8 percent by weight of the uncooked ground beef analogue product.

Additionally, in the **Federal Register** of August 1, 2019 (84 FR 37573), FDA issued a final rule entitled ''Listing of Color Additives Exempt from Certification; Soy Leghemoglobin,'' amending the color additive regulations to provide for the safe use of soy leghemoglobin in ground beef analogue products. Specifically, the final rule added § 73.520 (21 CFR 73.520), entitled ''Soy leghemoglobin,'' which set forth the identity, specifications, uses and restrictions, labeling, and exemption from batch certification for the color additive. We gave interested persons until September 3, 2019, to file objections and requests for a hearing on the final rule.

II. Objections and Requests for Hearings

Sections 701(e)(2) and 721(d) of the FD&C Act (21 U.S.C. 371(e)(2) and 379e(d)) collectively provide that, within 30 days after publication of an order relating to a color additive regulation, any person adversely affected by such an order may file objections, specifying with particularity the provisions of the order deemed objectionable, stating the grounds therefor, and requesting a public hearing upon such objections. FDA may deny a hearing request if the objections to the regulation do not raise genuine and substantial issues of fact that can be resolved at a hearing (see § 12.24(b)(1) (21 CFR 12.24(b)(1)); see also *Community Nutrition Institute* v. *Young,* 773 F.2d 1356, 1364 (D.C. Cir. 1985)).

Objections and requests for a hearing are governed by part 12 (21 CFR part 12) of FDA's regulations. Under § 12.22(a) (21 CFR 12.22(a)), each objection must meet the following conditions: (1) Must be submitted on or before the 30th day after the date of publication of the final rule; (2) must be separately numbered; (3) must specify with particularity the provision of the regulation or proposed order objected to; (4) must specifically state the provision of the regulation or proposed order on which a hearing is requested (failure to request a hearing on an objection constitutes a waiver of the right to a hearing on that objection); and (5) must include a detailed description and analysis of the factual information to be presented in support of the objection if a hearing is requested (failure to include a description and analysis for an objection constitutes a waiver of the right to a hearing on that objection).

Following the publication of the final rule for the safe use of soy leghemoglobin as a color additive in ground beef analogue products, we received a submission from the Center for Food Safety providing objections and requesting a hearing on each objection. The objections are as follows:

Objection 1: FDA should not have approved this product to be used in ground beef analogues that are not plant-based without additional safety testing and public comment.

Objection 2: FDA should require labeling of this color additive as ''soy leghemoglobin/*P[ichia] pastoris* yeast protein.'' [1]

Objection 3: FDA should have required additional testing of the raw product.

Objection 4: FDA improperly relied on Impossible Foods' Generally Recognized As Safe (GRAS) Notice 737 instead of independently verifying the safety of soy leghemoglobin for use as a color additive.

Objection 5: FDA should have required separate testing of *P. pastoris* because it is genetically engineered.

Objection 6: FDA violated the National Environmental Policy Act (NEPA) by failing to prepare an environmental assessment or environmental impact statement.

See submission from Jaydee Hanson, Policy Director, and Ryan Talbot, Staff Attorney, Center for Food Safety, to the Dockets Management Staff, Food and Drug Administration, dated September 3, 2019, at pages 1–2, 6–12 (referred to hereinafter as the ''submission'').

III. Standards for Granting a Hearing

Specific criteria for determining whether to grant or deny a request for a hearing are set out in § 12.24(b). Under that regulation, a hearing will be granted if the material submitted by the requester shows, among other things, that: (1) There is a genuine and substantial factual issue for resolution at a hearing (a hearing will not be granted on issues of policy or law); (2) the factual issue can be resolved by available and specifically identified reliable evidence (a hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions); (3) the data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the requester (a hearing will be denied if the data and information submitted are insufficient to justify the factual determination urged, even if accurate); (4) resolution of the factual issue in the way sought by the person is adequate to justify the action requested (a hearing will not be granted on factual issues that are not determinative with respect to the action requested, *e.g.,* if the action would be the same even if the factual issue were resolved in the way sought); (5) the action requested is not inconsistent with any provision in the

[1] *Pichia pastoris* (*P. pastoris*) is a non-pathogenic and non-toxicogenic strain of yeast that is genetically engineered to express soy leghemoglobin and *P. pastoris* yeast proteins. Soy leghemoglobin protein is the principal coloring agent in the color additive. (See 84 FR 37573 at 37574.)

FD&C Act or any regulation particularizing statutory standards (the proper procedure in those circumstances is for the person requesting the hearing to petition for an amendment or waiver of the regulation involved); and (6) the requirements in other applicable regulations, *e.g.,* 21 CFR 10.20, 12.21, 12.22, 314.200, 514.200, and 601.7(a), and in the notice issuing the final regulation or the notice of opportunity for a hearing are met.

A party seeking a hearing must meet a ''threshold burden of tendering evidence suggesting the need for a hearing'' (*Costle* v. *Pacific Legal Foundation,* 445 U.S. 198, 214–215 (1980), citing *Weinberger* v. *Hynson, Westcott & Dunning, Inc.,* 412 U.S. 609, 620–621 (1973)). An allegation that a hearing is necessary to ''sharpen the issues'' or to ''fully develop the facts'' does not meet this test (*Georgia Pacific Corp.* v. *EPA,* 671 F.2d 1235, 1241 (9th Cir. 1982)). If a hearing request fails to identify any factual evidence that would be the subject of a hearing, there is no point in holding one. In judicial proceedings, a court is authorized to issue summary judgment without an evidentiary hearing whenever it finds that there are no genuine issues of material fact in dispute, and a party is entitled to judgment as a matter of law (see *Rule 56, Federal Rules of Civil Procedure*). The same principle applies to administrative proceedings (see § 12.28).

A hearing request must not only contain evidence, but that evidence should raise a material issue of fact ''concerning which a meaningful hearing might be held'' (*Pineapple Growers Ass'n* v. *FDA,* 673 F.2d 1083, 1085 (9th Cir. 1982)). Where the issues raised in the objection are, even if true, legally insufficient to alter the decision, an Agency need not grant a hearing (see *Dyestuffs and Chemicals, Inc.* v. *Flemming,* 271 F.2d 281, 286 (8th Cir. 1959)). A hearing is justified only if the objections are made in good faith and if they ''draw in question in a material way the underpinnings of the regulation at issue'' (*Pactra Industries* v. *CPSC,* 555 F.2d 677, 684 (9th Cir. 1977)). A hearing need not be held to resolve questions of law or policy (see *Citizens for Allegan County., Inc.* v. *FPC,* 414 F.2d 1125, 1128 (D.C. Cir. 1969); *Sun Oil Co.* v. *FPC,* 256 F.2d 233, 240 (5th Cir. 1958)).

Even if the objections raise material issues of fact, FDA need not grant a hearing if those same issues were adequately raised and considered in an earlier proceeding. Once an issue has been so raised and considered, a party is estopped from raising that same issue in a later proceeding without new evidence. The various judicial doctrines dealing with finality, such as collateral estoppel, can be validly applied to the administrative process (see *Pacific Seafarers, Inc.* v. *Pacific Far East Line, Inc.,* 404 F.2d 804, 809 (D.C. Cir. 1968)). In explaining why these principles ought to apply to an Agency proceeding, the U.S. Court of Appeals for the District of Columbia Circuit wrote: ''The underlying concept is as simple as this: justice requires that a party have a fair chance to present his position. But overall interests of administration do not require or generally contemplate that he will be given more than a fair opportunity'' (*Retail Clerks Union, Local 1401* v. *NLRB,* 463 F.2d 316, 322 (D.C. Cir. 1972); see also *Costle* v. *Pacific Legal Foundation,* 445 U.S. at 215–17).

IV. Analysis of Objections and Response to Hearing Requests

The submission from the Center for Food Safety contains six numbered objections and requests a hearing on each of them. We address each objection below, as well as the evidence and information filed in support of each, comparing each objection and the information submitted in support of it to the standards for granting a hearing in § 12.24(b).

A. Objection 1

The first objection asserts that FDA should not have approved soy leghemoglobin as a color additive to be used in ''. . . *all* ground beef analogue products, not just in plant-based ground beef analogue products'' without additional safety testing and public comment.[2] The objection asserts that Impossible Foods' safety testing of soy leghemoglobin ''was based on its use with the company's *soy*-based ground beef analogue and that is the extent to which FDA's review and approval should go.'' (See page 6 of the submission.) Moreover, the objection claims that the use of soy leghemoglobin in ''all ground beef analogue products requires additional testing for allergenicity.'' (See page 6 of the submission.) The Center for Food Safety provided no scientific data to support its objection.

We clarify that the safety testing conducted by Impossible Foods and described in CAP 9C0314 was not based on the use of the color additive with a soy-based ground beef analogue, as claimed in the objection. The petitioner used a weight-of-evidence approach to address the safety of soy leghemoglobin protein and *P. pastoris* proteins that comprise the color additive. The weight-of-evidence approach, which is a widely used method for assessing protein safety by experts in the scientific community, is based on several elements such as the known function of the protein and its history of exposure, whether the protein is from a toxigenic or allergenic source, the digestibility of the protein, and bioinformatic analysis of the protein to determine if it is structurally similar to known allergens or toxins (*i.e.,* amino acid sequence homology) (Ref 1). In our review of CAP 9C0314, we confirmed that Impossible Foods thoroughly addressed the safety of soy leghemoglobin, including any potential allergenicity, using the weight-of-evidence approach.

Furthermore, we are not aware of any scientific evidence that suggests a food matrix, whether plant-based or animal-based, would modify the structure, function, or safety of soy leghemoglobin under the conditions of its intended use.

The objection failed to include any new information or data that would refute our findings about the safety of soy leghemoglobin in food matrices other than plant-based products. The objection merely alleges that there is a potential for harm, without providing any scientific basis. A hearing will not be granted on the basis of mere allegations or general descriptions of positions and contentions (§ 12.24(b)(2)). The objector must, at a minimum, raise a material issue concerning which a meaningful hearing might be held. Therefore, we are denying the request for a hearing on this objection.

B. Objection 2

The second objection asserts that FDA should require labeling of this color additive as ''soy leghemoglobin/*P. pastoris* yeast protein.'' (See page 6 of the submission.) The Center for Food Safety alleges that the ''labeling approved by FDA does not provide 'sufficient information' about Impossible Foods' product.'' (See page 6 of the submission.) Additionally, the objection states that both soy leghemoglobin and *P. pastoris* proteins should be identified in labeling for consumers who ''believe that they have allergies to either soy products or yeast products.'' (See page 7 of the submission.)

FDA acknowledges that the color additive soy leghemoglobin contains residual amounts of *P. pastoris* yeast

[2] We note that we specifically stated in the final rule, ''For the purposes of this final rule, the term ''ground beef analogue products'' refers to plant-based or other non-animal derived ground beef-like food products.'' See 84 FR 37573. Therefore, if a firm wanted to use soy leghemoglobin as a color additive in animal-derived products, that use would require authorization through the color additive petition process.

protein in addition to the principal coloring component, soy leghemoglobin protein. The allergenicity of soy leghemoglobin protein and residual yeast proteins was addressed in safety studies that included digestibility assays in simulated gastric fluid, bioinformatic analyses, and animal feeding studies. The totality of evidence presented in the color additive petition indicated that there is a reasonable certainty that soy leghemoglobin protein and *P. pastoris* yeast proteins do not pose any unique allergenicity risks when consumed.

Furthermore, under the Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA), which added section 403(w) to the FD&C Act (21 U.S.C. 343(w)), the label of a food that contains an ingredient that is or contains protein from a ''major food allergen'' must declare the presence of the allergen in the manner described by the law. As stated in the findings of FALCPA in section 202(2)(A), the major food allergens identified in the FD&C Act account for over 90 percent of all documented food allergies in the United States and represent foods that are likely to result in life-threatening reactions. Because soybeans are identified as a major food allergen, foods that contain soy leghemoglobin must be labeled accordingly. Yeast protein has not been identified as a major food allergen. The objection provided no scientific data on the prevalence or severity of yeast protein allergy to support its objection.

The Center for Food Safety failed to provide any new information or data that would refute our findings about the potential for allergenicity to yeast proteins. The objection merely alleges that there is a potential for harm, without providing any evidence that we have not considered previously. A hearing will not be granted on the basis of mere allegations or general descriptions of positions and contentions (§ 12.24(b)(2)). The objection must, at a minimum, raise a material issue concerning which a meaningful hearing might be held. Therefore, we are denying the request for a hearing on this objection.

C. Objection 3

The third objection asserts that FDA should have required additional testing of the raw color additive product. The objection states, ''[s]ince it is reasonably foreseeable that many consumers will not fully cook this analogue product, FDA should have required additional allergenicity testing of preparation as present in the rare or raw product.'' (See page 7 of the submission.) The objection failed to include any new information or data to support this assertion.

We note that the safety studies submitted in support of Impossible Foods' color additive petition for soy leghemoglobin were conducted using ''raw'' soy leghemoglobin preparation. This fact is indicated in the color additive petition as well as in the supporting publications. (See pages 32, 34, and 37 of CAP 9C0314). The Center for Food Safety failed to include any new information or data that would refute our findings about the safety of the ''raw'' soy leghemoglobin preparation, which was considered in our evaluation. A hearing will not be granted on the basis of mere allegations or general descriptions of positions and contentions (§ 12.24(b)(2)). The objector must, at a minimum, raise a material issue concerning which a meaningful hearing might be held. Therefore, we are denying the request for a hearing on this objection.

D. Objection 4

The fourth objection asserts that FDA's reliance on Impossible Foods' GRAS Notice 737 violates the definition of ''safe'' in § 70.3(i) (21 CFR. 70.3(i)). The objection claims ''that FDA relied heavily on Impossible Foods' GRAS Notice filed in a separate proceeding (and under a separate statutory provision) instead of independently verifying the safety of SLH [soy leghemoglobin] for use as a color additive.'' (See page 7 of the submission.) Furthermore, the objection asserts that FDA's reliance on safety studies conducted by Impossible Foods' employees or consultants ''undermines the integrity of the color additive petition process.'' (See page 8 of the submission.)

FDA disagrees with the Center for Food Safety's assertion that our approval of soy leghemoglobin as a color additive in ground beef analogue products is in violation of § 70.3(i), which defines ''safe'' to mean there is convincing evidence that establishes with reasonably certainty that no harm will result from the intended use of the color additive. Impossible Foods submitted CAP 9C0314, a regulatory submission for a color additive petition distinct from GRAS notice 737, seeking approval for the use of soy leghemoglobin as a color additive in ground beef analogue products. FDA acknowledges that the subject of GRAS notice 737, soy leghemoglobin preparation, is the same substance that is the subject of CAP 9C0314. FDA also acknowledges that the safety studies conducted in support of GRAS notice 737 were submitted in support of CAP 9C0314. In addition to evaluating the safety of soy leghemoglobin in response to GRAS notice 737, FDA specifically evaluated its safety as a color additive in response to CAP 9C0314. Furthermore, although the regulatory programs are distinct, the standard of safety—a reasonable certainty of no harm from the intended use—is the same for food additives, color additives, and GRAS substances.

As we stated in the final rule (84 FR 37573 at 37574), our safety evaluation for a color additive considers the additive's manufacturing; its stability; the projected human dietary exposure to the additive and any impurities resulting from the petitioned use of the additive; the additive's toxicological data; and other relevant information (such as published literature) available to us. In establishing that soy leghemoglobin is safe for use as a color additive, we considered the petitioner's weight-of-evidence approach based on: (1) The history of consumption of soy, soy leghemoglobin protein, and *P. pastoris;* (2) the safety of the genetically engineered *P. pastoris* production strain; (3) 14-day and 28-day feeding studies of soy leghemoglobin preparation in rats; (4) mutagenicity and genotoxicity studies of soy leghemoglobin preparation; and (5) an allergenicity assessment of soy leghemoglobin and *P. pastoris* proteins present in the soy leghemoglobin preparation. The objection did not contain any additional information that we did not already consider in our evaluation of the color additive petition, nor did the Center for Food Safety identify any reliable evidence that contradicts FDA's safety determination.

We disagree with the Center for Food Safety's assertion that we must conduct our own safety studies rather than rely on studies conducted or funded by the petitioner to adequately evaluate the safe use of soy leghemoglobin. Studies needed to demonstrate the safety of food ingredients are mostly conducted by the manufacturer or their paid contract laboratories. The FD&C Act and our implementing regulations in 21 CFR parts 70 and 71 do not require us to perform safety studies related to color additives; rather, the burden is on petitioners to provide safety data as part of their petition (21 CFR 71.1). FDA's responsibility is to evaluate the data contained in the petition, as well as other information available to us, to determine if the petitioned use is safe. FDA provides guidance documents (Ref. 2) that specifically describe the type of data that we expect petitioners to generate or rely upon for safety decisions on food ingredients.

We note that the objection criticized two peer-reviewed studies published in

scientific journals because they are co-authored by Impossible Foods' employees and/or their consultants. The utility of such publications is that the journal's peer review process can promote scientific rigor and the entire scientific community can review the studies. This transparency allows others to conduct further studies to test and verify the results and conclusions, if warranted.

FDA disagrees with the Center for Food Safety's assertion that a 90-day feeding study, rather than a 28-day feeding study, with soy leghemoglobin was appropriate because the digestibility studies in simulated gastric fluid showed that the soy leghemoglobin protein and *P. pastoris* proteins were mostly digested in 0.5 minutes and could not be detected beyond 2 minutes under the conditions of the study. These data indicate that both soy leghemoglobin protein and *P. pastoris* proteins are expected to be rapidly digested in the stomach, and these proteins would no longer be available intact following oral administration in either a 28-day or 90-day study. Moreover, sequence analysis of the soy leghemoglobin protein and *P. pastoris* proteins and their known functions suggest that the intact proteins or any fragments thereof are not likely to cause any adverse effects. Therefore, a 90-day study, compared to a 28-day study, has no added utility for demonstrating the safety of this ingredient, as the proteins will be digested rapidly in the stomach just like any other consumed proteins.

Regarding the statistical differences noted in the study and that the objection quotes as ''potentially adverse effects'' (see page 9 of the submission), observed effects that are deemed statistically significant are not necessarily toxicologically relevant. For an observed effect to be toxicologically relevant (*i.e.,* potentially adverse), a clear dose-response should be seen (*e.g.,* increasing the dose of a test substance causes an increase in the observed effect in the test subjects), and the observed effect should occur in both sexes of test species. If the structure and metabolism of the test substance is known, it may be possible to develop a hypothesis on the potential mechanism of adverse effects or lack thereof. The available information on the structure and function of soy leghemoglobin and its fate in the body following consumption do not lend support to the Center for Food Safety's claim that the statistically significant differences reported in the study are indicative of potentially adverse effects in humans.

The objection cites an online report by Robinson and Antoniou (2019)[3] asserting that feeding soy leghemoglobin to rats resulted in statistically significant changes in some clinical chemistry parameters compared to controls. The examples cited are changes in blood chemistry, blood clotting ability, and blood globulin values. The Center for Food Safety surmises that such statistically significant differences could mean potentially adverse effects and are reason for concern. However, differences in observed clinical chemistry parameters, even if statistically significant, do not necessarily mean that treatment-related differences exist. There are numerous accounts of historical control data that demonstrate the extent of inter-animal variability observed in rat strains commonly used in toxicological studies (Refs. 3 to 8). These data show that certain clinical chemistry parameters may have a wide range of normal values in experimental control animals, such that statistical differences seen between control animals and treatment animals due to small changes in the value of the parameter are not likely to be of biological or toxicological significance. Importantly, the changes observed for these parameters in Impossible Food's 28-day study were within historical ranges of control values, did not show a dose-response relationship, and did not occur in both sexes, indicating that the statistically significant differences were incidental and not treatment-related. The objection is based purely on statistical significance and not biological significance or toxicological relevance.

The objection failed to include any new information or data that would refute our conclusion that the data provided in the petition was adequate to establish safety. A hearing will not be granted on the basis of general descriptions of positions and contentions (§ 12.24(b)(2)). The objector must, at a minimum, raise a material issue concerning which a meaningful hearing might be held. Therefore, we are denying the request for a hearing on this objection.

E. Objection 5

The fifth objection asserts that FDA should have required separate testing of *P. pastoris* because it is genetically engineered. The objection states that the use of *P. pastoris* should ''require separate testing for allergenicity as the genetically-engineered yeast proteins are present in the final 'soy leghemoglobin/*P. pastoris* preparation.' '' (See page 9 of the submission.)

Soy leghemoglobin was produced by genetic engineering of *P. pastoris* to express specific and targeted proteins with known functions. The fermentation process used to produce soy leghemoglobin is performed under controlled conditions and good manufacturing practices. Quality control tests are in place to ensure there is no residual *P. pastoris* production strain in the final product. The *P. pastoris* proteins and the soy leghemoglobin protein comprise the final soy leghemoglobin color additive that is the subject of this rulemaking. All safety studies were conducted using the soy leghemoglobin preparation that contained both the soy leghemoglobin protein and the *P. pastoris* proteins. Therefore, the safety of both the soy leghemoglobin protein and the *P. pastoris* proteins were considered in FDA's evaluation. Consequently, there is no scientific basis to conduct additional testing of a *P. pastoris* strain simply because of the methods used to develop the strain. In any event, as previously stated, the studies contained in the color additive petition demonstrated both types of proteins were safe. The objection provided no scientific evidence to support its claim that separate safety testing of the genetically engineered *P. pastoris* yeast is warranted.

The objection failed to include any new information or data to support their contention that separate allergenicity testing is needed for *P. Pastoris* yeast. A hearing will not be granted on the basis of general descriptions of positions and contentions (§ 12.24(b)(2)). The objector must, at a minimum, raise a material issue concerning which a meaningful hearing might be held. Therefore, we are denying the request for a hearing on this objection.

F. Objection 6

The sixth and last objection asserts that FDA violated NEPA by failing to prepare an environmental assessment or environmental impact statement. The objection states that ''FDA failed to consider whether there may be indirect and cumulative adverse effects to threatened and endangered species or their critical habitat as a result of its approval of Impossible Foods' petition.'' (See page 10 of the submission.) The objection alleges that the use of genetically engineered soybeans as a source of soy protein to formulate ground beef analogues may increase the

[3] Available at: *https://www.gmoscience.org/rat-feeding-studies-suggest-the-impossible-burger-may-not-be-safe-to-eat/.*

use of soybeans derived from genetically engineered soy varieties and compete with the livestock industry for feedstock. (See page 11 of the submission.) Furthermore, the Center for Food Safety suggests that the use of dicamba, a pesticide commonly used on certain crops engineered to be resistant to the pesticide, will increase due to increased reliance on soy protein as an ingredient in the ground beef analogue products. As such, the objection claims that FDA should have considered the potential indirect and cumulative effects of increased pesticide application on genetically engineered soybean crops and should have required an environmental assessment or an environmental impact statement related to CAP 9C0314.

We do not agree that we violated NEPA by failing to prepare an environmental assessment or an environmental impact statement. Furthermore, we do not agree that we failed to consider whether there may be indirect or cumulative adverse effects to threatened and endangered species or their critical habitat resulting from the approval of Impossible Foods' color additive petition that would constitute extraordinary circumstances within the meaning of § 25.21(b) (21 CFR 25.21(b)).

As discussed in the filing notice for the petition (83 FR 64045; December 13, 2018), Impossible Foods claimed that the categorical exclusion in § 25.32(k) (21 CFR 25.32(k)) applied to the proposed use of soy leghemoglobin because the substance would be added directly to food and is intended to remain in food through ingestion by consumers and is not intended to replace macronutrients in food. Under § 25.21, FDA requires at least an environmental assessment for any specific action that ordinarily would be excluded if extraordinary circumstances indicate that the specific proposed action may significantly affect the quality of the human environment. As discussed in the filing notice published in the **Federal Register** of December 13, 2018, Impossible Foods stated that, to their knowledge, no extraordinary circumstances exist regarding the proposed use of soy leghemoglobin. In our analysis of the applicability of the categorical exclusion under § 25.32(k), we focused on soy leghemoglobin production and potential waste products (*i.e.,* food waste and/or excretion products) and identified no extraordinary circumstances related to production, use, or disposal of soy leghemoglobin. In the final rule (84 FR 37573), we stated that we did not receive any new information or comments regarding this claim of categorical exclusion, and therefore determined that the proposed action is categorically excluded under § 25.32(k).

No data or information was provided to support the Center for Food Safety's contention that the approval of soy leghemoglobin as a color additive would result in an increase in the cultivation of genetically engineered soybeans, that such cultivation would lead to an increase in pesticide use such as dicamba, or that such cultivation would result in significant adverse impacts to threatened or endangered species or their critical habitat, requiring the preparation of an environmental assessment or an environmental impact statement. Furthermore, the objection focuses on increased cultivation of genetically engineered soybeans and use of pesticides such as dicamba. The objection does not consider that Impossible Foods' soy leghemoglobin ingredient, the substance that is the subject of the color additive petition, is not grown or derived from genetically engineered soybean plants. Instead, the substance is produced by a strain of genetically engineered yeast; production occurs in vats rather than on a farm and does not require the use of pesticides such as dicamba.

The objection cites a 2019 *Forbes* article [4] as support for the assertion that Impossible Foods ''switch[ed] from wheat to GM soy.'' (See page 11 of the submission.) However, the *Forbes* article discusses the plant-based raw material that forms the burger itself, not the ingredient soy leghemoglobin that is the subject of FDA's action. Thus, the Center for Food Safety's reliance on this article for the proposition that FDA approval of soy leghemoglobin for use as a color additive will lead to an increase in genetically engineered soybean cultivation is misplaced. Because Impossible Foods' soy leghemoglobin ingredient is not derived from genetically engineered soybeans, there is no basis on which to conclude that FDA's approval of soy leghemoglobin for use as a color additive will result in increased cultivation of genetically engineered soybeans and/or an increased use of pesticides in domestic agriculture.[5] To the extent the Center for Food Safety is arguing that FDA's approval of the petition may have an indirect effect on the production of genetically engineered soy by facilitating an overall increase in Impossible Foods' burger production, we note that this argument is speculative and the Center for Food Safety has not identified any evidence that FDA's approval of the petition will have a meaningful effect of this nature.

The objection failed to include any new information or data that would change our findings with respect to the applicability of the categorical exclusion in § 25.32(k). The request for a hearing does not provide any evidence to support its claims. A hearing will not be granted on the basis of mere allegations or general descriptions of positions and contentions (§ 12.24(b)(2)). The objections must, at a minimum, raise a material issue concerning which a meaningful hearing might be held. Therefore, we are denying the request for a hearing on this objection.

V. Summary and Conclusions

Section 721 of the FD&C Act requires that a color additive be shown to be safe prior to marketing. Under § 70.3(i), a color additive is safe if there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use. In the final rule authorizing the use of soy leghemoglobin, we concluded that the data presented by the petitioner demonstrate that soy leghemoglobin is safe for its intended use in ground beef analogue products.

The petitioner has the burden to demonstrate the safety of the additive to gain FDA approval. Once we make a finding of safety, the burden shifts to an objector, who must come forward with evidence that calls into question our conclusion (see section 701(e)(2) of the FD&C Act).

Despite its allegations, the Center for Food Safety has not established that we have overlooked significant information contained within the record in reaching our conclusion that the use of soy leghemoglobin in ground beef analogue products is safe. In such circumstances, we have determined that the objections do not raise any genuine and substantial issue of fact that can be resolved by an evidentiary hearing (§ 12.24(b)). Accordingly, we are denying the requests for a hearing. Furthermore, after evaluating the objections, we have concluded that the objections do not provide any basis for us to reconsider our decision to issue the final rule authorizing the use of soy leghemoglobin in ground beef analogue products. Accordingly, we are not

[4] Available at: *https://www.forbes.com/sites/louisaburwoodtaylor/2019/07/31/impossible-in-full-scale-up-mode-with-new-burger-manufacturing-deal--fda-approval/.*

[5] We note that, based on publicly available information from the United States Department of Agriculture, approximately 94 percent of the soybean acres planted in 2019 in the United States were genetically engineered varieties (*https://www.ers.usda.gov/topics/farm-practices-management/biotechnology/*).

making any changes in response to the objections.

The filing of the objections served to stay automatically the effectiveness of § 73.520. Section 701(e)(2) of the FD&C Act states that, until final action upon such objections is taken by the Secretary, the filing of such objections operates to stay the effectiveness of those provisions of the order to which the objections are made. Section 701(e)(3) of the FD&C Act further stipulates that, as soon as practicable, the Secretary shall by order act upon such objections and make such order public. We have completed our evaluation of the objections and conclude that a continuation of the stay of § 73.520 is not warranted.

In the absence of any other objections and requests for a hearing, we conclude that this document constitutes final action on the objections received in response to the regulation as prescribed in section 701(e)(2) of the FD&C Act. Therefore, we are ending the administrative stay of the regulation as of December 19, 2019 for the § 73.520 listing soy leghemoglobin as a color additive for use in ground beef analogue products.

VI. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Ladics, G.S., ''Current Codex Guidelines for Assessment of Potential Protein Allergenicity.'' *Food and Chemical Toxicology,* 46: S20–S23, 2008.
2. *FDA. ''Redbook 2000 Guidance for Industry and Other Stakeholders; Toxicological Principles for the Safety Assessment of Food Ingredients,'' 2007. Retrieved from *https://www.fda.gov/media/79074/download.*
3. Giknis, M.L.A. and C.B. Clifford, ''Clinical Laboratory Parameters for Crl:CD(SD) Rats,'' 2006. Retrieved from *https://www.crj.co.jp/cms/pdf/info_common/50/8250933/rm_rm_r_clinical_parameters_cd_rat_06.pdf.*
4. Giknis, M.L.A. and C.B. Clifford, ''Clinical Laboratory Parameters for Crl:WI(Han),'' 2008. Retrieved from *https://www.criver.com/sites/default/files/resources/rm_rm_r_Wistar_Han_clin_lab_parameters_08.pdf.*
5. Matsuzawa, T., M. Nomura, and T. Unno, ''Clinical Pathology Reference Ranges of Laboratory Animals. Working Group II, Nonclinical Safety Evaluation Subcommittee of the Japan Pharmaceutical Manufacturers Association.'' *Journal of Veterinary Medical Science,* 55(3): 351–362, 1993.
6. Pettersen, J.C., R.L. Morrissey, D. R. Saunders, et al., ''A 2-Year Comparison Study of Crl:CD BR and Hsd:Sprague-Dawley SD Rats.'' *Fundamental and Applied Toxicology,* 33: 196–211, 1996.
7. Petterino, C. and A. Argentino-Storino, ''Clinical Chemistry and Haematology Historical Data in Control Sprague-Dawley Rats From Pre-clinical Toxicity Studies.'' *Experimental and Toxicologic Pathology,* 57: 213–219, 2006.
8. Seibel, J., K. Bodié, S. Weber, et al., ''Comparison of Haematology, Coagulation and Clinical Chemistry Parameters in Blood Samples From the Sublingual Vein and Vena Cava in Sprague-Dawley Rats.'' *Laboratory Animals,* 44: 344–351, 2010.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Foods, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e) and under authority delegated to the Commissioner of Food and Drugs (section 1410.10 of the FDA Staff Manual Guide), notice is given that the objections and requests for hearings were filed in response to the August 1, 2019, final rule. Notice is also given that FDA is denying these objections and requests for hearings. Accordingly, the administrative stay on the effective date of the amendments is lifted as of December 19, 2019.

Dated: December 12, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–27173 Filed 12–17–19; 11:15 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA–R01–UST–2019–0421; FRL–10003–06–Region 1]

New Hampshire: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction.

SUMMARY: The Environmental Protection Agency (EPA) is correcting a direct final rule that appeared in the **Federal Register** on November 1, 2019. The document is taking direct final action to approve revisions to the State of New Hampshire's Underground Storage Tank (UST) program submitted by the New Hampshire Department of Environmental Services (NHDES). This action also codifies EPA's approval of New Hampshire's state program and incorporates by reference those provisions of the State regulations that meet the requirements for approval.

DATES: This rule is effective December 31, 2019, unless EPA received adverse comment by December 2, 2019. If EPA received adverse comments, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of December 31, 2019, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

FOR FURTHER INFORMATION CONTACT: Susan Hanamoto, RCRA Waste Management, UST, and Pesticides Section; Land, Chemicals, and Redevelopment Division; EPA Region 1, 5 Post Office Square, Suite 100, (Mail Code 07–1), Boston, MA 02109–3912.

SUPPLEMENTARY INFORMATION: In FR Doc. 2019–23709 appearing on pages 58627 and 58631 in the **Federal Register** of Friday, November 1, 2019, the following corrections are made:

1. On page 58627, in the heading of the document, the agency heading is corrected to read ''ENVIRONMENTAL PROTECTION AGENCY'' and in the AGENCY caption, the agency is corrected to read ''Environmental Protection Agency (EPA)''.

2. On page 58627, in the first sentence of the SUMMARY, ''Environmental Services Agency'' is corrected to read ''Environmental Protection Agency''.

3. On page 58631, middle column, in the List of Subjects in 40 CFR part 282, ''Environmental Services'' is corrected to read ''Environmental Protection''.

Dated: November 5, 2019.

Nancy Barmakian,

Acting Director of Land, Chemicals, and Redevelopment Division.

[FR Doc. 2019–26690 Filed 12–18–19; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 536, and 552

[GSAR Case 2015–G506; Docket No. GSAR–2018–0013; Sequence No. 1]

RIN 3090–AJ64

General Services Administration Acquisition Regulation (GSAR); Adoption of Construction Project Delivery Method Involving Early Industry Engagement—Construction Manager as Constructor (CMc)

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing a final rule amending the General Services Administration Acquisition Regulation (GSAR) to adopt an additional project delivery method for construction, known as ''construction manager as constructor'' (CMc). The private sector commonly uses a similar construction project delivery method, which allows for early industry engagement by the construction contractor to enable reduced cost growth, reduced schedule growth, and administrative savings. The current Federal Acquisition Regulation (FAR) lacks coverage of the CMc project delivery method. GSA has previously issued policies on CMc through other means. Incorporating CMc into the GSAR provides centralized guidance to industry and ensures consistent application of construction project principles across GSA. Additionally, integrating these requirements into the GSAR allowed for revision and improvement of the requirements through public comments in the rulemaking process.

DATES: *Effective Date:* This final rule is effective on January 21, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Christina Mullins, General Services Acquisition Policy Division, Procurement Analyst, by email at *gsarpolicy@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division by mail at 1800 F Street NW, Washington, DC 20405, or by phone at 202–501–4755.

SUPPLEMENTARY INFORMATION:

I. Background

CMc refers to a project management and contracting technique that is one of three predominant methods used for acquiring construction services by GSA. The other two methods are design-bid-build and design-build. The CMc model used by GSA follows many industry best practices and has worked well for numerous GSA construction procurements. While there is ample guidance on traditional and design-build procurements in the FAR, there is no guidance on CMc procurement. By providing specific contracting guidance on CMc, GSA is adopting a major project delivery method that is similar to one commonly used by the private sector and is fundamentally updating the practice of buying construction services within the Federal Government. This move supports the Government's shift toward category management by providing a more robust playbook framework for efficient procurement of construction services. Additionally, incorporating CMc into the GSAR provides centralized guidance to industry that makes it easier to do business with the Government and ensures consistent application of construction project principles across GSA that provides for greater compliance with requirements.

II. Discussion and Analysis

The GSAR Case 2015–G506 proposed rule was published in the **Federal Register** at 83 FR 55838 on November 8, 2018 and provided details on how GSA is amending the General GSAR to revise sections of GSAR Part 536, Construction and Architect-Engineer Contracts, and corresponding clauses in GSAR Part 552, Solicitation Provisions and Contract Clauses to incorporate CMc contracting. The proposed rule clarified, updated, and incorporated existing CMc guidance previously implemented through internal Public Building Service (PBS) policies.

Bringing this existing CMc policy into the GSAR allows for greater transparency and provided an opportunity for the public to comment on these long-standing procedures. In addition, bringing CMc policies into one location ensures clarity and consistency that will make it easier for companies to do business with the Government and will provide better guidance to contracting officers.

The CMc project delivery method is similar to project delivery models used extensively in the private sector for large complex construction projects. The CMc method engages the construction contractor during the design phase of the project and establishes a ceiling on the eventual construction price (*i.e.,* the guaranteed maximum price (GMP)) before construction documents are prepared. The CMc method emphasizes technical qualifications for contractor selection, and includes price competition of the GMP before initial contract award and provides more detail on the GMP elements. The CMc project delivery method creates value through early collaboration between the architect and constructor. In addition to the benefits of design phase services, which include constructability reviews and cost estimating validation by the constructor, CMc offers the opportunity to begin construction prior to full completion of the design which reduces the total project schedule. GSA also provides a cost incentive through shared savings that are split between the constructor and the Government under CMc contracts which promotes constructor innovation and efficiencies to reduce costs through the construction phase of the project, see GSAR 536.7105–5.

A. Summary of Significant Changes

The General Services Administration has reviewed all comments submitted in the development of this final rule.

This final rule makes the following two significant changes from the proposed rule:

1. CMc Contingency Allowance (CCA)

The definition at 536.7102 for CCA was revised to include scheduling error costs. The description in 536.7105–2 subparagraph (a)(3)(iii) regarding design errors and omissions has been deleted to more closely align with the definition provided for CCA in 536.7102. The text at 536.7105–2 was also revised to clarify that the CCA may be adjusted through negotiation at the time of GMP option exercise, and to provide additional CCA flexibility up to 5 percent with HCA approval.

2. Fee for Construction Work

The definition at 536.7102 of ''Fee'' was revised to clarify that this definition encompasses solely profit and home office overhead costs. The description at 536.7105–2 was revised to allow adjustment to the Fee for scope changes and Government-caused delays. Additionally, GSA revised the definition of cost to mean all allowable costs per FAR Part 31, removing the limitation for direct cost only.

A full discussion of all the comments received and the changes made to the rule as a result of those comments is provided below.

B. Analysis of Public Comments

GSA received comments on the proposed rule from five respondents. Comments are grouped into categories in order to provide clarification and to better respond to the issues raised.

1. Economic Impact

i. *Comment:* As a supporting statement, an industry group representing general contractors recognized that many aspects of the

CMc project delivery method are aligned with the private sector, including early collaboration between the construction contractor and the architect, early work packages for things like demolition, and the use of shared savings incentives. The commenter noted that further alignment of CMc to the private sector model can increase interest and competition from the market for Government projects. They further explained that deviations from private sector models, especially those that are punitive in nature, such as audit requirements, can have the opposite effect and outcome.

Response: GSA recognizes that there are differences between CMc and the private sector, and believes that the CMc model as presented in the rule strikes the right balance of adopting industry best practices for construction while adhering to the constraints of Government statutory requirements and ensuring appropriate risk management in the best interests of the Government. No changes were made to the proposed rule as a result of these comments.

ii. Comment: As a supporting statement, an industry group representing general contractors suggested changes to the text to clarify that a reduction in specific sunk costs is attributable to lower costs associated with the solicitation process.

Response: The final rule was revised to clarify that sunk costs associated with price proposal preparation efforts may be lower with CMc as compared with the design-build.

iii. Comment: An industry group representing architects noted that the CMc method as drafted did not take into account the increased time and effort expended by the architect-engineer contractor in design reviews and cost saving option reviews under a CMc project that goes above and beyond ''normal'' responsibilities.

Response: GSA does not believe that design reviews and cost saving option reviews under a CMc project are beyond normal responsibilities of a typical architect-engineer contract. As such, no additional costs need to be taken into account. Design reviews are not unique to the CMc project delivery method and any early collaboration under CMc should only result in cost saving options being identified earlier in the project when such options are more easily addressed.

2. Miscellaneous

i. Comment: A model building code industry respondent provided comments to the proposed rule specifically commenting on building code requirements and application to this rule. The respondent noted that they take no position on the proposed rule language, but make general notes regarding compliance provisions, and whether those provisions should be codified in the CFR.

Response: The GSA PBS P–100 Guide provides considerable details on implementing building code compliance, and is incorporated in GSA construction contracts. Codifying building codes in the CFR is beyond the scope of this rule. No changes were made to the proposed rule as a result of these comments.

ii. Comment: An industry group representing general contractors suggested that GSA should mandate collaboration between the architect-engineer and CMc contractors during the design phase.

Response: The final rule further clarifies the expectation that the architect-engineer and CMc contractor must collaborate during the design phase. The final rule clarifies at GSAR 536.7105–1(d), that ''During the design phase, the architect-engineer contractor and the construction contractor shall collaborate on the design and constructability issues''.

iii. *Comment:* An industry group representing design-build contractors recommends the use of the progressive design-build project delivery method.

Response: The design-build project delivery method is already addressed in the FAR (see FAR 36.3) and is beyond the scope of this rule. No changes were made to the proposed rule as a result of this comment.

iv. Comment: A few other suggestions and comments were made by industry groups representing architects and general contractors, including: 1. Suggestion to allow conversion to FFP after 75 percent versus 100 percent of the construction documents were completed, 2. Comment that the use of alternates across clauses is inconsistent and may be confusing, 3. Comment that the order of precedence is not consistent with typical practice, and 4. Suggestion to review an industry organization's CMc contracts more specifically.

Response: GSA considered allowing conversion to FFP after 75 percent completion of the construction documents, but concluded that to more effectively protect taxpayer dollars, 100 percent as presented in the proposed rule was more appropriate. Prior to 100 percent construction documents, a GMP type contract allocates risk more appropriately between the Government and contractor since the design is not complete and details may still change that materially affect the price, limiting the ability to establish good firm prices. GSA believes the structure of alternates for clauses is appropriate. Andy any differences between industry models or typical practices and the GSA CMc model were driven by unique statutory or regulatory requirements, including the Competition in Contracting Act of 1984 (CICA), 41 U.S.C. 3301. No changes were made to the proposed rule as a result of these comments.

3. Value Engineering

Comment: An industry association representing general contractors provided a comment on value engineering. The comment notes that value engineering is a key component of the CMc contract method. It is the main tool the CMc offers through its design phase owner consultation to assist in aligning the scope with the target ECW. Incorporation of efficiencies, innovation, fast-tracked scheduling and economical materials/systems are critical to the best value approach.

Additionally, an industry group representing general contractors suggested that when exercising the GMP option, if the ECW, CCA and Fee exceed the GMP, then the ECW should be reduced through value engineering and/or scope modifications.

Response: While the CMc may suggest the incorporation of efficiencies, innovation, fast-tracked scheduling and economical materials/systems, value engineering is a formal technique described at FAR Part 48, and is different from the design phase services contracted from a general contractor under CMc. In accordance with FAR 48.202, the clause at FAR 52.248–3 Value Engineering—Construction, shall not be included in incentive-type construction contracts. Accordingly, value engineering shall not apply to the CMc project delivery method described in this subpart. No changes were made to the proposed rule as a result of this comment. Additionally, GSAR 536.7105–2(c)(3) has been revised to state that ''If the sum of the final ECW, CCA, and fee for the construction work is greater than the GMP as established at contract award or as adjusted in accordance with FAR Part 43, then the contracting officer should work with the contractor to identify measures to reduce the overall GMP. Such measures may include reducing the CCA, reducing the fee, or as a last resort, reducing the scope of the project.

4. Managing Risks

Comment: An industry group representing general contractors provided comments related to managing risk. They provided suggestions to significantly reduce or eliminate

liquidated damages, to remove reimbursement of certain audit costs, and to remove the ability to withhold 10 percent of payment requests if the contractor fails to comply with GSAR 552.236–80, Accounting Records and Progress Payments. The respondent noted that these elements are not in alignment with this delivery method.

Response: While CMc is viewed more as a partnership between GSA and CMc contractor, GSA maintains that additional audit and accountability risk management measures are appropriate to manage risk or are required by existing laws and regulations. Similar to other government delivery methods, CMc includes these measures to protect the Government and its partners. Liquidated damages and other risk management tools are used to appropriately mitigate issues and concerns that could arise. Similarly, the Government provides remedies for contractors to collect equitable adjustments for changes that could arise. GSA maintains the text at 552.236–80 regarding audits and retainage as appropriate risk management. This clause provides clear details on how the audit and retainage requirements apply.

5. Procurement Timing

Comment: Three respondents provided comments regarding procurement timing. An industry group representing general contractors commented that CMc should be procured as early as possible in the design phase, ideally prior to the concept design. A construction industry commenter recommended that GSA require, at a minimum, the programming, schematics and concepts be complete. An industry group representing architects commented that when the CMc is not brought on early enough, the architect is then forced to adjust when the design is over budget. They affirmed that the request for proposal should be issued early in the design phase, preferably during concept design to allow early cost savings suggestions from the CMc.

Response: The rule includes flexible language so that each project can individually balance the goal of early collaboration with the ability to permit meaningful price competition (see GSAR 536.7103(a)).

6. A/E Role and Compensation

Comment: An industry group representing architects provided comments related to the role and compensation of the architect/engineer under a CMc project. The respondent commented that CMc increases the time and effort expended by the architect-engineer contractor in design reviews and cost saving options. Also, the respondent noted that clarity is needed to ensure the architect/engineer retains control of the design decision making. The industry group representing architects noted that GSA should inform the architect/engineer of the construction project delivery method prior to design fee negotiations, so that the architect-engineer can prepare appropriately. The industry group representing architects also commented that there is no defined liability for who is responsible for design changes that are due to constructor contractor issues. Additionally, a construction industry commenter recommended that GSA should consider adding a provision requiring the designer to design to the Target ECW that the CMc proposes.

Response: GSA reviewed and appreciates the comments provided. The rule is written to provide sufficient guidance on CMc and coordination with the architect/engineer. GSA believes that informing the architect/engineer of the construction project delivery method prior to design fee negotiations, when possible, is a good practice. GSA believes the existing architect/engineer contract clauses appropriately detail the responsibilities and requirements for changes. The clause at FAR 52.243–1, Changes—Fixed-Price (Alternate III), provides a mechanism for the A/E to request an equitable adjustment, if appropriate. GSA's Design Excellence policy is still applicable and Government personnel should be involved in all design decision making. Lastly, the A/E contract is established prior to CMc offerors proposing a Target ECW. However, the A/E contract already contains the clause at FAR 52.236–22, Design Within Funding Limitations. No changes to the regulatory text were made as a result of these comments.

7. Accounting and Auditing Requirements

Comment: An industry group representing general contractors provided comments to adjusting the text at 536.7105–3 Accounting and Auditing Requirements. Several suggestions are provided to revise the GSAR text provided in the proposed rule noting that ''Audits are not applicable in this contracting and procurement method. This auditing requirement should be removed from this rule.''

*Respon*se: GSA did not adopt suggested changes to the text in the proposed rule. GSA maintains that open book accounting and audit requirements are appropriate in this procurement method. For example, the amount, if any, of the shared savings incentive, is determined by the difference between the final GMP and the final cost of performance (see 536.7105–5(a)). To protect the public interest, an audit of the CMc's costs is required before determining the amount of shared savings, if any.

8. Cost Accounting Standards (CAS)

Comment: Two respondents provided a comment on the application of CAS and its applicability to CMc. An industry organization representing general contractors noted that modified CAS should be applied and do away with open book accounting, and an industry construction commenter noted that full CAS should be applied as it is currently noted and referenced in FAR Part 30.

Response: GSA has determined that the application of open book accounting and auditing requirements provides the Government the best flexibility to review and maintain cost elements. The requirements allow for maximum competition amongst all qualified contractors looking to service the Government through CMc contracting. Based on the variation in comments provided, GSA is confident that the requirements in FAR Subpart 30.2 [1] for full CAS compliance for applicable negotiated contracts over $50 million, modified CAS compliance for applicable negotiated contracts below $50 million, and open book accounting practices are appropriate for CMc contracting.

9. Incentives

Comment: Two respondents provided comments on performance incentives and the element of shared savings. An industry group representing general contractors provided suggestions for early completion bonuses or successive targets. Both the industry group representing general contractors and an industry group representing architects suggested that GSA include a shared savings incentive for the architect/engineer.

Response: GSA reviewed and appreciates the comments provided. Regarding an early completion bonus for the CMc, the CMc contract already contains a shared savings incentive (see GSAR 536.7105–5). Early completion

[1] FAR 30.201 states that ''Title 48 CFR 9903.201–1 (FAR Appendix) describes the rules for determining whether a proposed contract or subcontract is exempt from CAS. Negotiated contracts not exempt in accordance with 48 CFR 9903.201–1(b) shall be subject to CAS. A CAS-covered contract may be subject to either full or modified coverage. The rules for determining whether full or modified coverage applies are in 48 CFR 9903.201–2 (FAR Appendix).''

may be one way the CMc is able to reduce costs and increase the potential for shared savings. Regarding an incentive for the architect/engineer, GSA does not believe that is necessary to successfully implement and experience the benefits of CMc. No changes to the regulatory text were made as a result of these comments.

10. Contingency Allowance (CCA)

Comments: An industry group representing general contractors suggested adjustment to the definition of CCA provided at 536.7102 by including the word ''scheduling'' as an included cost element. They also suggested that GSA set the minimum CCA at 3 percent. A commenter from the construction industry questioned the CCA's purpose and whether the CCA is meant to be a true ''allowance''. This same industry commenter noted that CCAs should not include design errors and omissions.

Response: GSA adopted the suggestion to adjust the definition of CCA at 536.7102. GSA adopted the suggestion for proper alignment with 536.7102 by deleting 536.7105–2(a)(3)(iii) regarding design errors and omissions. GSA also provided additional CCA flexibility up to 5 percent with HCA approval.

11. Fee for Construction Work

i. Comment: Two respondents provided comments on the structure and definition of ''Fee for Construction Work''. An industry group representing general contractors noted that the Fee cannot include all of the contractor's indirect costs. Some indirect costs are a function of the ECW as a percentage. Therefore, they fluctuate with increases and decreases in price. They also add, there needs to be a clarification between the industry defined general conditions (staffing related costs) and general requirements (indirect costs such as hoisting, cranes, field engineering, etc.). A construction industry commenter believes that GSA's proposed fee structure raises several issues. First, they note that general conditions typically are not part of a contractor's fee, but instead, are actual costs. Thus, including them as part of the fee will create confusion during an audit. Second, they note that the definition's reference to overhead is unclear as it does not specify whether ''overhead'' means field office overhead or home office overhead.

Response: GSA has revised the definition of fee to specifically mean profit and home office overhead costs. GSA revised fee guidance to allow adjustment to the fee for scope changes and Government-caused delays. Additionally, GSA revised the definition of cost.

ii. Comment: An industry group representing general contractors noted that the ''proposal form typically includes a proposed rate (%) for Overhead (Corp G&A), profit and commission for scope changes. This should be used in all CMc RFP's to establish these rates ''up-front''. The price proposal forms used by the Government are not aligned with the mark-up percent provisions of 552.243–71 Equitable Adjustments. Either the pricing form should be changed to include the provisions (especially subparagraph (h)), or the GSAR equitable adjustments mark-ups should be modified to a ''flat'' rate as currently modeled by the Government's price proposal form.''

Response: The rule provides flexibility by not providing a ''required proposal form'', however, GSAR 536.7105–2(a)(4)(iv), notes that ''The limitations of GSAR 552.243–71, especially markups, still apply for any changes.''

12. Guaranteed Maximum Price

i. Comment: An industry group representing general contractors and a construction contractor provided comments on the GMP guidance at 536.7105–2. These comments included a suggestion that GSA adjust the language to say GMP ''may'' be modified downward for deletions during the design phase. They provided further suggested adjustments to the language to allow for an increase to the GMP for ''no fault of CMc'' issues. Another comment requests GSA provide additional guidance on how the various evaluation criteria must be weighted and expressed concern that the pricing structure effectively incentivizes contractors to submit an artificially low price and further assumes that the lowest price proposal will be selected absent a compelling reason to select a higher priced proposal. Lastly, they noted that the evaluation should consider contractor approach to maximize the project within the GMP.

Response: GSA has reviewed and appreciates the comments provided. GSA has adopted the suggestion to provide greater flexibility for GMP modifications for deletions during the design phase. GSA notes that the GMP is subject to adjustment under various standard contract clauses, including the changes clause, differing site conditions clause, and suspensions clause. GSAR 536.7103(b)(1)(i) provides that the technical evaluation factors, when combined, shall be considered significantly more important than cost or price. The rule provides flexibility by not establishing required technical evaluation factors or specific weights for technical evaluation factors. Additionally, the commenter's assumption that the lowest price proposal will always be selected is not consistent with the flexibility provided by FAR 15.101–1, Tradeoff Process. Regarding the concern that that the pricing structure effectively incentivizes contractors to submit an artificially low price, see GSAR 536.7103(b)(2), which states that a price realism analysis is required ''for the purpose of assessing, among others, whether an offeror's price reflects a lack of understanding of the contract requirements or risk inherent in an offeror's proposal.''

ii. Comment: An industry group representing general contractors commented that the target ECW is not bonded and that while the CMc can advise the Owner and its design team on changes to make to adhere the target ECW, the CMc has no control over the outcome, quality, coordination and/or completeness of the design.

Response: As stated in GSAR 536.7105–1(d), ''During the design phase, the architect-engineer contractor and the construction contractor shall collaborate on the design and constructability issues. The goal of this collaboration is to establish a final ECW that does not exceed the original target ECW.'' No changes to the regulatory text were made as a result of this comment.

iii. Comment: An industry group representing general contractors commented that each of the Owner's contractors should validate program requirements with the project prospectus prior to advancing from one design phase to the next and certainly before exercising the construction phase.

Response: GSA appreciates the comment. Under CMc, the Government has flexibility to adopt appropriate project management techniques. No changes to the regulatory text were made as a result of this comment.

III. Expected Economic Impact of This Rule

All three predominant construction project delivery methods, Design-Bid-Build (D–B–B), Design/Build (D–B), and Construction Manager as Constructor (CMc), have merit. CMc specifically allows for early industry engagement by the construction contractor that can provide a net economic burden reduction compared with the other project delivery methods. An Economic Impact Analysis (EIA) reflecting the data and benefits of CMc has been prepared

consistent with the principles of OMB Circular A–4 and is summarized as follows:

A study by the Pankow Foundation [2] as well as GSA's own data analysis, further detailed herein, have shown that early engagement by the construction contractor under a CMc project can provide reduced cost growth, reduced schedule growth and administrative savings, resulting in a net economic burden reduction compared with other project delivery methods.

All economic impact estimate calculations were based on discussions with GSA subject matter experts from the PBS Office of Design and Construction and PBS Office of Acquisition Management, and the following data. Historic data was gathered and analyzed from GSA's Electronic Planning Module (ePM),[3] an internal system which was mandated as a project management tool for construction starting in 2009. Historic data was also gathered and analyzed from the Federal Procurement Data System (FPDS),[4] the authoritative source for government wide contract award data.

The results of the analysis showed this rule will provide a net deregulatory savings of 9,405 hours ($659,011), or ($488,710) when annualized at a 7 percent discount. These savings are a result of the following elements:

A. *Reduced Schedule Growth:* Under a CMc project delivery method, the general contractor (GC) for construction work is engaged through a separate contract during the design phase of the project, sometimes as early as 30 percent design completion. By comparison, under a design-bid-build (D–B–B) project delivery method, the GC is not engaged through a separate contract until the design is 100 percent complete. Under a design-build (D/B) project delivery method, the GC and the architect are part of the same contract with the Government. The early engagement of the GC under CMc may create collaboration between the architect and the GC. This early engagement also offers the opportunity to begin advanced work on certain elements of the project while the design is finalized. For example, an early work package may be definitized to allow for demolition work to be done, which is not typically impacted by the final touches of a design. Similarly, site preparation work to clear the land for a project may be started. This concurrent work while the design is completed can result in meaningful schedule savings. Analysis of the GSA capital construction project data from ePM showed that on average the reduced schedule growth potential for CMc projects is 75 days. This allows for increased efficiency for a senior project manager (PM), senior CO, and journeyman CS. Based on subject matter expertise, the PM would save 6 hours per day, the CO would save 2.5 hours per day, and the CS would save 5 hours per day. Based on the historic ePM data, GSA estimated that 10 capital projects funded annually would use the CMc method. Given this population, the total annual savings to the Government is 10,125 hours ($701,343). Similar savings to the public may be realized and may be reflected as direct cost savings in the contract, but cannot be quantified.

B. *Final GMP Proposal:* For CMc projects, the contract begins as a fixed price incentive contract type where the guaranteed maximum price (GMP) negotiated at the outset is the price ceiling for the contract. This contract type is necessary because the design is not complete and all the costs for the construction work cannot be determined. However, once the design for a project is completed, the final GMP for the construction work can be established and the contract can be converted to a firm fixed price (FFP) contract type. This may be attractive to both industry and Government. A conversion to FFP allows the contractor to end cost accounting standard (CAS) compliance efforts. Conversion to FFP also allows the Government to further mitigate risk by placing the full responsibility for all costs on the contractor. In order to execute this conversion, the contractor must submit a revised proposal for the final GMP. Based on subject matter expertise within GSA, it is assumed that the contractor will require 40 hours of effort to obtain subcontractor quotes, adjust costs and submit a new proposal for the final GMP element. It is assumed that the Government will require 20 hours of effort to review and negotiate the final GMP. The total annual burden to the public is 400 hours ($22,076) and to the Government is 200 hours ($11,038).

C. *Regulation Familiarization:* GSA Class Deviation SPE–2012–04–02 has been in place for several years and provides the existing policies and procedures for CMc construction projects. GSAR Case 2015–G506 essentially incorporates these existing policies and procedures. However, there are some clarifications and updates to these policies that reflect on lessons learned and best practices over the years. These changes include: clarification on the level of design development required for CMc procurement competition, further details as to what is included in the fee for construction work, and guidance for establishing separate allowance items. The rule contains minimal changes from existing policies and procedures for CMc methods, and thus, should result in minimal burden to understand new requirements. Based on subject matter expertise within GSA, it is assumed that industry and Government alike will require two additional hours during the solicitation phase to review and understand the differences between the existing policy and this rule in order to provide a representative proposal. Based on the historic FPDS data, GSA estimated that 5 offers would be received for each CMc project. Given this population, the total annual burden to the public is 100 hours ($7,755) and to the Government is 20 hours ($1,464).

D. *Unquantified Benefits:* There are several economic benefits specific to CMc that are expected to reduce burden that are difficult to quantify. Although not easily quantifiable they collectively represent additional meaningful savings to qualify this rule as deregulatory.

1. Direct cost savings may result from potential reduced schedule growth for CMc projects. Construction projects include general conditions and other costs that are calculated by a daily rate. If a CMc project finishes earlier, the total direct costs will be lower.

2. Early collaboration between the CMc and architect allows for (a) innovation during design that leads to fewer change orders during construction, and (b) identification of conflicts or errors before work investments are made.

3. As compared with design-build projects, CMc projects will reduce sunk costs associated with price proposal preparation efforts and lower barriers to entry for industry to submit proposals and compete in this space. Design-build project solicitations often require a detailed concept level design submission as part of the proposal. Offerors must partner with an architecture-engineering firm at great expense to obtain these design concepts in order to prepare and submit an offer to the Government.

4. Early work packages under CMc allow for advanced execution of certain elements while the design is finalized, such as demolition or site preparation work, which are not typically impacted by the final touches of a design. These early work package elements can be removed from the GMP and converted to separate firm-fixed-price (FFP) line items. Conversion to a FFP may allow the Government to lock-in lower prices and allow the CMc to subcontract labor trades earlier. In a tight labor or material market, this may translate to meaningful cost and schedule savings.

Interested parties may obtain a copy of the complete EIA from the Regulatory Secretariat Division.

IV. Executive Orders 12866 and 13563

Executive Orders (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 supplements E.O. 12866 and emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory

[2] Leicht, R.M., Molenaar, K.R., Messner, J.I., Franz, B.W., and Esmaeili, B. (2015). Maximizing Success in Integrated Projects: An Owner's Guide. Version 0.9, May. Available at *http://bim.psu.edu/delivery*.

[3] A total of 124 GSA capital construction contracts (*i.e.* over prospectus) were completed between 2009 and 2016. Capital construction contracts were selected as they were determined to be the most likely to be suitable for the CMc project delivery method.

[4] A total of 283 construction contracts (*i.e.* PSC of Y1xx or Z2xx) over the current prospectus threshold of $3M were awarded by GSA between 2009 and 2016. On average 4.4 offers were received for each solicitation. Of the total population, 125 (44%) were large business awards and 158 (56%) were small business awards.

Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is considered an E.O. 13771 deregulatory action. Details on the estimated savings of this final rule can be found in the rule's economic impact analysis detailed in Section III.

VI. Executive Order 13777

This rule has been identified by GSA's Regulatory Reform Task Force as a rule that improves efficiency by eliminating procedures with costs that exceed the benefits as described in Section III.

VII. Regulatory Flexibility Act

GSA does not expect this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, at 5 U.S.C. 601, *et seq.*, because the rule will incorporate clauses that are currently in use in GSA construction solicitations and contracts and contractors are familiar with and are currently complying with these practices. However, a Final Regulatory Flexibility Analysis (FRFA) has been prepared. There were no comments submitted in response to the initial regulatory flexibility analysis provided in the proposed rule. The FRFA has been prepared consistent with the criteria of 5 U.S.C. 604 and is summarized as follows:

The final rule amends the General Services Administration Acquisition Regulation (GSAR) coverage on construction contracts, including clauses for solicitations and resultant contracts, to clarify, update, and incorporate existing guidance on the construction manager as constructor (CMc) project delivery method.

There were no comments submitted and therefore no significant issues raised by the public in response to the initial regulatory flexibility analysis provided in the proposed rule.

The final rule changes will apply to approximately 10 GSA construction contracts per year. Of these, approximately 6 (60 percent) contracts may be held by small businesses. The final rule is unlikely to affect small businesses awarded GSA CMc construction contracts as it implements clauses currently in use in CMc solicitations and contracts. The final rule does not pose any new reporting, recordkeeping or other compliance requirements.

The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division.

VIII. Paperwork Reduction Act

There are two information collection requests associated with this rule.

First, this rule requires contractors to keep all relevant documents for a period of three years after the final payment. This requirement is currently covered by existing OMB Control Number 9000–0034, titled: Examination of Records by Comptroller General and Contract Audit; Sections Affected: FAR 52.215–2; FAR 52.212–5; FAR 52.214–26.

Second, this rule requires contractors to submit revised proposals and negotiate contract modifications during contract administration. OMB has cleared this information collection requirement [5] under OMB Control Number 3090–0320, titled: Construction Manager as Constructor (CMc); GSAR Section Affected: 552.236–79, in the amount of 400 burden hours. No comments were received on the information collection requirement that was provided in the proposed rule; however, due to the use of more current data to calculate the burden, revisions were made to the burden estimate associated with the collection.

List of Subjects in 48 CFR Parts 501, 536, and 552

Government procurement.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, GSA amends 48 CFR parts 501, 536, and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 501, 536, and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

■ 2. Amend section 501.106 by adding to the table, in numerical order, GSAR references ''552.236–79'' and ''552.236–80'' and their corresponding OMB control numbers ''3090–0320'' and ''9000–0034'' to read as follows:

501.106 OMB approval under the Paperwork Reduction Act.

GSAR reference	OMB control No.
* * * * *	
552.236–79	3090–0320
552.236–80	9000–0034

[5] The 30-day **Federal Register** Notice associated with IC 3090–0320 was published at 84 FR 42917 on August 19, 2019.

GSAR reference	OMB control No.
* * * * *	

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 3. Add section 536.102 to read as follows:

536.102 Definitions.

Construction-Manager-as-Constructor (CMc) means the project delivery method where design and construction are contracted concurrently through two separate contracts and two separate contractors. Unlike the traditional design-bid-build delivery method, under the CMc delivery method, the Government awards a separate contract to a designer (*i.e.,* architect-engineer contractor) and to a construction contractor (*i.e.,* CMc contractor) prior to the completion of the design documents. The Government retains the CMc contractor during design to work with the architect-engineer contractor to provide constructability reviews and cost estimating validation. The CMc contract includes design phase services at a firm-fixed-price and an option for construction at a guaranteed maximum price.

■ 4. Amend section 536.515 by—

■ a. Removing from the introductory text ''Use the clause—'' and adding ''Use the clause:'' in its place;

■ b. Removing from paragraph (a) ''will be followed; or'' and adding ''will be followed.'' in its place; and

■ c. Adding paragraph (c) to read as follows:

536.515 Schedules for construction contracts.

* * * * *

(c) With its Alternate III when the contract amount is expected to be above the simplified acquisition threshold and a construction-manager-as-constructor project delivery method will be followed.

■ 5. Revise section 536.521 to read as follows:

536.521 Specifications and drawings for construction.

Insert the clause at 552.236–21, Specifications and Drawings for Construction, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated. Use the clause:

(a) With its Alternate I when a design-build project delivery method will be followed.

(b) With its Alternate II when a construction-manager-as-constructor

project delivery method will be followed.

■ 6. Revise section 536.571 to read as follows:

536.571 Contractor responsibilities.

Insert the clause at 552.236–71, Contractor Responsibilities, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated. Use the clause:

(a) With its Alternate I when a design-build project delivery method will be followed.

(b) With its Alternate II when a construction-manager-as-constructor project delivery method will be followed.

Subpart 536.70—[Reserved]

■ 7. Add and reserve Subpart 536.70.

■ 8. Add subpart 536.71 to read as follows:

Subpart 536.71—Construction-Manager-as-Constructor Contracting

Sec.
536.7101 Scope of subpart.
536.7102 Definitions.
536.7103 Construction contract solicitation procedures.
536.7104 Construction contract award.
536.7105 Construction contract administration.
536.7105–1 Responsibilities.
536.7105–2 Guaranteed maximum price.
536.7105–3 Accounting and auditing requirements.
536.7105–4 Value engineering.
536.7105–5 Shared savings incentive.
536.7105–6 Allowances.
536.7105–7 Early work packages.
536.7105–8 Conversion to firm-fixed-price.
536.7106 Construction contract closeout.
536.7107 Contract clauses.

536.7101 Scope of subpart.

This subpart describes policies and procedures for the use of the CMc project delivery method.

536.7102 Definitions.

As used in this subpart—

CMc Contingency Allowance (CCA) means an allowance for the exclusive use of the construction contractor to cover reimbursable costs during construction that are not the basis of a change order. These costs could include estimating, scheduling, and planning errors in the final Estimated Cost of the Work (ECW) or other contractor errors.

Cost means allowable costs in accordance with FAR Part 31.

Cost of Performance means the final sum of cost of the construction work and fee for the construction work.

Early Work Package means a set of construction activities that can be clearly defined and separately performed from the remainder of the construction work. Demolition is an example of an early work package.

Estimated Cost of the Work (ECW) means the estimated cost of the construction work, not including home office overhead.

Fee for the Construction Work means the amount established in the construction contract for the contractor's profit and home office overhead costs, as described in FAR part 31, for the construction work.

Guaranteed Maximum Price (GMP) means the sum of the ECW, CCA, and the fee for the construction work.

536.7103 Construction contract solicitation procedures.

(a) *Procurement Timing.* The request for proposals should be issued only when the project design requirements have been developed to a sufficient degree of specificity to permit competition with meaningful pricing for the ECW. The contracting officer should obtain written documentation for the contract file from the project manager that the project design requirements satisfy the condition stated in this section.

(b) *Proposal Evaluation.*

(1) *Evaluation Factors.*

(i) Except as provided in paragraph (ii) of this section, the solicitation shall provide that the technical evaluation factors, when combined, shall be considered significantly more important than cost or price.

(ii) Subject to the approval of the HCA, the weighting of the technical evaluation factors and cost or price may be different than that required under paragraph (i) of this section. Any such written approval shall be documented in the contract file.

(2) *Price Realism.* The contracting officer shall provide for a price realism analysis in the solicitation for the purpose of assessing, among others, whether an offeror's price reflects a lack of understanding of the contract requirements or risk inherent in an offeror's proposal. The solicitation shall provide offerors with notice that the agency intends to perform a price realism analysis.

(3) *Total Evaluated Price.* For purposes of evaluation, the total evaluated price shall include the firm-fixed-price for design phase services, the construction work GMP option(s), and any other fixed-priced line items. If advance pricing elements such as extended overhead rates and daily delay rates are proposed, those shall also be evaluated as part of the total evaluated price.

(c) *Government Budget (e.g., Prospectus) Information.* Subject to the approval of the contracting director, the solicitation may include information contained or referenced within a prospectus submission to Congress for a project.

536.7104 Construction contract award.

In accordance with FAR 4.1001, the contracting officer shall use the SF 1442 to identify the services or items to be acquired as separately identified line items on a unit price or lump sum basis including the design phase services, the construction work GMP option(s), and any other work not included in the previously identified items.

536.7105 Construction contract administration.

536.7105–1 Responsibilities.

(a) During all phases of the project, the architect-engineer contractor that is providing design services under a separate contract with GSA is contractually responsible for the design in the same manner as under a traditional, design-bid-build project delivery method.

(b) The design phase services provided by the construction contractor can include, but are not limited to, scheduling, systems analysis, subcontractor involvement, cost-estimating, constructability reviews, cost-reconciliation services, and market analysis.

(c) The scope of work should task the construction contractor with reviewing the design documents and providing pricing information at various defined milestones during the design phase.

(d) During the design phase, the architect-engineer contractor and the construction contractor shall collaborate on the design and constructability issues. The goal of this collaboration is to establish a final ECW that does not exceed the original target ECW.

(e) No discussions between the architect-engineer contractor and the construction contractor shall be considered as a change to the construction contract or design contract unless incorporated by the contracting officer through a modification.

536.7105–2 Guaranteed Maximum Price.

(a) *General.*

(1) *GMP.*

(i) The GMP is the ceiling price described by FAR 16.403–2.

(ii) The GMP is established at contract award. The GMP may be established as one option or as multiple options through separate line items, with a separate GMP amount for each line item.

(iii) The GMP is subject to adjustment under various standard contract clauses, including the changes clause, differing site conditions clause, and suspensions clause.

(iv) The contract file shall contain all documents to support any scope changes including a separate analysis to document the rationale for any upward or downward adjustment to the GMP.

(2) *ECW.*

(i) The proposed ECW incorporated at construction contract award is the target ECW.

(ii) The final ECW should be established prior to completion of the design (*i.e.* 100 percent construction documents), generally no earlier than completion of 75 percent construction documents.

(iii) The contracting officer shall negotiate the final ECW and incorporate it into the construction contract through a bilateral modification prior to exercising the GMP option.

(3) *CCA.*

(i) The CCA type of allowance may only be used as part of the CMc project delivery method and should not be confused with other types of allowances that may be used with other construction project delivery methods.

(ii) The CCA provides for a contingency relative to a fixed percentage of the ECW, except for the requirements at paragraph (c)(3) of this section. The CCA at time of GMP option exercise is subject to negotiation between the contractor and the contracting officer and may be different than the amount at time of contract award.

(iii) The amount of the CCA will depend on the status of design and construction, as well as the complexity and uncertainties of the project. Early phase designs usually include less defined scope and, accordingly, may require a higher initial CCA at time of contract award. Later phase designs may remove uncertainties and reduce risk, allowing for a lower CCA at time of GMP option exercise.

(iv) The CCA shall not exceed 3 percent of the ECW, unless approved in writing by the HCA for a higher amount not to exceed 5 percent of the ECW.

(4) *Fee for the Construction Work.*

(i) The fee may be proposed per phase of construction if each phase is a separate option.

(ii) At time of proposal submission, the offeror shall submit a list of the items included within the offeror's home office overhead.

(iii) At time of proposal submission, the fee elements may be expressed as a percentage of the ECW, but shall be converted to a fixed amount prior to executing the GMP option.

(iv) The fee for the construction work is not increased or decreased based on fluctuations in the actual costs of the work. The fee may, however be adjusted for changes that are the basis for a change order, including scope changes, differing site conditions, and Government-caused delays.

(v) Any fee for the construction work associated with a change order shall not be driven by a fixed percentage. The contracting officer should determine whether the profit included, if any, in a contractor's proposal is reasonable, see FAR 15.404–4 for additional guidance. The limitations of GSAR 552.243–71, especially markups, still apply for any changes.

(b) *Design Phase.*

(1) The GMP may be bilaterally modified upward during the design phase only for approved additions to the scope of work.

(2) The GMP may be bilaterally modified downward during the design phase for deletions to the scope of work.

(c) *Exercising the GMP Option.*

(1) The GMP option shall not be exercised until the final ECW is established.

(2) If the sum of the final ECW, CCA, and fee for construction work is less than the GMP as established at contract award or as adjusted in accordance with FAR Part 43, then the contracting officer shall adjust the GMP downward accordingly through a bilateral modification to exercise the GMP option.

(3) If the sum of the final ECW, CCA, and fee for the construction work is greater than the GMP as established at contract award or as adjusted in accordance with FAR Part 43, then the contracting officer should work with the contractor to identify measures to reduce the overall GMP. Such measures may include reducing the CCA, reducing the fee, or as a last resort, reducing the scope of the project.

(4) The GMP option shall not be exercised if the final ECW, CCA, and fee for the construction work is greater than the GMP as established at contract award or as adjusted in accordance with FAR Part 43.

(d) *Construction Phase.*

(1) After award of the GMP option, changes in scope may be issued as an adjustment to the GMP or as a stand-alone firm-fixed-price line item.

(2) Any changes in scope after award of the GMP option shall be reflected by a written modification to the construction contract in accordance with FAR Part 43.

(e) *Early Work Package.* (1) Early work packages (see 536.7105–7) may be used in the procurement that are priced separately or included in the GMP option.

(2) If any early work package exercised reduces the scope of the construction services under the GMP option, the ECW shall be reduced, and the CCA, fee for the construction work, and GMP shall be adjusted accordingly.

(f) *GMP Adjustment.* (1) Any changes to the total GMP or individual parts of the GMP must be incorporated in the contract through a modification.

(2) Any modification that changes the GMP, including modifications for early work packages and fixed price conversions, must clearly state that it includes a change to the GMP and describe the changes to the individual parts of the GMP components in the modification.

(3) Any modification that changes the total GMP, or individual parts of the GMP, is subject to the requirement for a prenegotiation objectives memo and price negotiation memo, including fair and reasonable price determination, per FAR 15.406.

(4) The contracting officer should consult other members of the acquisition team, including the project manager, to analyze and justify any adjustments to the total GMP, or individual parts of the GMP.

536.7105–3 Accounting and auditing requirements.

(a) *Cost Accounting Standards.* (1) Except as provided in paragraph (a)(2) of this section or through an exemption at FAR 30.201–1, construction contracts under the CMc project delivery method are subject to the cost accounting standards (CAS) identified in FAR Part 30.

(2) The contracting officer may request a CAS waiver in accordance with the requirements at FAR 30.201–5 and 530.201–5.

(3) If CAS applies, the contract clauses identified at FAR 30.201–4 shall be included in the contract.

(4) If a CAS waiver is granted or if CAS does not apply, the contract clause identified at 536.7107(b) shall be included in the contract.

(b) *GMP Option Accounting.* (1) *Open Book Accounting.* Open book accounting shall be followed for financial tracking of all contract line items that are awarded on a GMP basis. Such financial tracking may be accomplished through an audit in accordance with paragraph (c) of this section.

(2) *Payments and Reconciliation.* All payments shall be reconciled with the

open book accounting records and the schedule of values adjusted, as appropriate. Reconciliation shall occur each month and should be coordinated with monthly progress payments. The reconciliation shall be documented in the contract file.

(c) *Auditing Requirements.* In accordance with GSAM 542.102(a), for any audit services required by this Subpart 536.71, the contracting officer shall first request such services be performed by or through the Assistant Inspector General for Auditing or the Regional Inspector General for Auditing. If the Office of Inspector General declines to perform such an audit, the contracting officer may obtain audit services from a certified public accountant.

536.7105–4 Value engineering.

In accordance with FAR 48.202, the clause at FAR 52.248–3 Value Engineering-Construction does not apply to incentive contracts. Accordingly, value engineering, as that term is used and described in FAR Part 48, shall not apply to the CMc project delivery method described in this subpart.

536.7105–5 Shared savings incentive.

(a) *General.* The incentive is a shared portion of the difference between the final GMP and the final cost of performance. Cost reductions may be realized by the construction contractor as a result of innovations and efficiencies during the construction phase, such as increased labor productivity or strong material subcontract negotiations.

(b) *Share Ratio.* (1) Except as provided in paragraph (2) of this section, the share ratio for the construction contractor shall range from 30 percent to 50 percent. The share ratio for the construction contractor shall not exceed 50 percent. The complexity of the project and the amount of risk to the construction contractor should be considered when determining the ratio. A project with greater risk to the construction contractor should reflect a greater share ratio for the construction contractor.

(2) Subject to the approval of the HCA, the share ratio may be different than that required under paragraph (b)(1) of this section. Any such written approval shall be documented in the contract file.

(c) *Incentive calculation.* The incentive amount is calculated in accordance with the clause at 552.236–79 Construction-Manager-As-Constructor.

536.7105–6 Allowances.

(a) Establishing a separate allowance in addition to the CCA is only permitted pursuant to a written determination approved by the contracting director supporting the use of any such allowance.

(b) The written determination for a separate allowance in addition to the CCA shall consider the following:

(1) Alternative contracting structures, such as a separate GMP line item or performing the work as part of the GMP option, and

(2) Ensuring conformance with all applicable rules and procedures relating to allowances, including FAR 11.702.

536.7105–7 Early work packages.

(a) Construction services for an early work package must be within the scope of the overall contract.

(b) Early work packages may be part of the initial procurement as a separately priced line item, or the Government and the construction contractor may agree to develop an early work package after award, typically identified toward the beginning of the project.

(c) *Early Work Packages Developed After Award.*

(1) The parties shall bilaterally agree to the scope, schedule, and pricing for any such early work package, and the contract shall be modified in accordance with FAR Part 43.

(2) If any such early work package reduces the scope of the construction services under the GMP option, the ECW shall be reduced, and the CCA, fee for the construction work, and GMP shall be adjusted accordingly.

(3) Any modification to the contract for an early work package is subject to the requirement for a prenegotiation objectives memo and price negotiation memo, including fair and reasonable price determination, per FAR 15.406.

(d) Early work packages that are firm-fixed-price are not subject to open book accounting, a shared savings incentive, or the need for determination of final settlement.

536.7105–8 Conversion to Firm-Fixed-Price.

(a) At any time after completion of 100 percent construction documents, the Government and the construction contractor may bilaterally convert the whole contract to firm-fixed-price.

(b) Conversion to firm-fixed-price may occur after the contingency risks, to be covered by the CCA, have been sufficiently reduced in the best interest of the Government. See FAR 16.103(b) for additional guidance for assessing risk management, profit motive, and timing considerations.

(c) Conversion to firm-fixed-price is only permitted pursuant to a written determination from the contracting officer to the contract file supporting the conversion. The contracting officer should consult other members of the acquisition team, including the project manager, to analyze and justify the conversion.

(d) The contracting officer shall not agree to a firm-fixed-price in excess of the GMP.

(e) In accordance with 536.7105–3(c), the contracting officer shall obtain an independent audit of the construction contractor's costs incurred in the performance of the contract to date.

(f) When evaluating the construction contractor's proposal for firm-fixed-price definitization, the contracting officer should compare the anticipated final cost to the firm-fixed-price being proposed. It may be reasonable for the construction contractor to include a contingency for assuming the risk associated with agreeing to the firm-fixed-price. The contracting officer should evaluate this contingency to ensure that the proposed amount reasonably reflects the remaining risks being assumed by the construction contractor. This evaluation may be informed by the history of the project, the balance of the CCA, and other factors.

(g) The modification to convert to a firm-fixed-price is subject to the requirement to obtain cost and pricing data unless one of the exceptions in FAR 15.403–1 applies.

(h) The modification to convert to a firm-fixed-price is subject to the requirement for a prenegotiation objectives memo and price negotiation memo, including fair and reasonable price determination, per FAR 15.406.

(i) Upon converting to a firm-fixed-price, the contract is no longer subject to open book accounting, a shared savings incentive, or the need for determination of final settlement.

536.7106 Construction contract closeout.

Unless the contract has been converted to a standard firm-fixed-price contract (see 536.7105–8)—

(a) The contracting officer shall ensure that the construction contractor's proposal for final settlement is accurate and reliable in accordance with the open book accounting practices of the contract.

(b) In accordance with 536.7105–3(c), the contracting officer shall obtain an independent audit of the construction contractor's costs.

536.7107 Contract clauses.

(a) Insert a clause substantially the same as the clause at 552.236–79, Construction-Manager-As-Constructor, in solicitations and contracts if construction, dismantling, or removal of improvements is contemplated when a CMc project delivery method will be followed. This clause is in lieu of the clause at FAR 52.216–17 Incentive Price Revision—Successive Targets.

(b) Insert a clause substantially the same as the clause at 552.236–80, Accounting Records and Progress Payments, in solicitations and contracts if construction, dismantling, or removal of improvements is contemplated when a CMc project delivery method will be followed and cost accounting standards do not apply. This clause is used when the clauses at FAR 52.230–2 Cost Accounting Standards, FAR 52.230–3 Disclosure and Consistency of Cost Accounting Practices, and FAR 52.230–6 Administration of Cost Accounting Standards do not apply.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 11. Amend section 552.236–15 by adding Alternate III to read as follows:

552.236–15 Schedules for Construction Contracts.

* * * * *

Alternate III (JAN 2020). As prescribed in 536.515(c), substitute the following paragraphs (c), (e), (h), and (i) for paragraphs (c), (e), (h), and (i) of the basic clause:

(c) *Submission.* (1) Within 30 calendar days of contract award, or such other time as may be specified in the contract, the Contractor shall submit the design phase project schedule.

(2) Within 30 calendar days after establishing the final estimated cost of work, the Contractor shall submit the construction phase project schedule, together with a written narrative describing the major work activities, activities on the critical path, and major constraints underlying the sequence and logic of the project schedule.

(e) *Activities.* (1) The design phase project schedule shall depict all activities necessary to complete the design work, including, as applicable, all submittal and submittal review activities, cost reconciliation, and establishing the estimated cost of work for the construction phase.

(2) The Contractor shall use a critical path method project schedule to plan, coordinate, and perform the construction phase work.

(3) The construction phase project schedule shall depict all activities necessary to complete the construction work, including, as applicable, all submittal and submittal review activities, all procurement activities, and all field activities, including mobilization, construction, start-up, testing, balancing, commissioning, and punchlist.

(4) Activities shall be sufficiently detailed and limited in duration to enable proper planning and coordination of the work, effective evaluation of the reasonableness and realism of the project schedule, accurate monitoring of progress, and reliable analysis of schedule impacts.

(5) Activity durations shall be based upon reasonable and realistic allocation of the resources required to complete each activity, given physical and logistical constraints on the performance of the work. All logic shall validly reflect physical or logistical constraints on relationships between activities. Except for the first and last activities in the project schedule, each activity shall have at least one predecessor and one successor relationship to form a logically connected network plan from notice to proceed to the contract completion date.

(h) *Revisions to the schedule.* (1) The Contractor should anticipate that the project schedule will be subject to review and may require revision. The Contractor shall devote sufficient resources for meetings, revisions, and resubmissions of the project schedule to address any exceptions taken. The Contractor understands and acknowledges that the purpose of the review and resolution of exceptions is to maximize the usefulness of the project schedule for contract performance.

(2) If the Contractor proposes a revision to the project schedule after initial approved submission, the Contractor shall provide in writing a narrative describing the substance of the revision, the rationale for the revision, and the impact of the revision on the projected substantial completion date and the available float for all activities.

(i) *Updates.* Unless a different period for updates is specified elsewhere, the Contractor shall update the project schedule monthly to reflect actual progress in completing the work, and submit the updated project schedule within 5 working days of the end of each month.

■ 12. Amend section 552.236–21 by adding Alternate II to read as follows:

552.236–21 Specifications and Drawings for Construction.

* * * * *

Alternate II (JAN 2020). As prescribed in 536.521(b), add the following paragraph to the basic clause:

(h) For the purposes of this clause, specifications and drawings refer only to the construction documents, meaning the 100 percent complete specifications and construction drawings developed during the design phase.

■ 13. Amend section 552.236–71 by adding Alternate II to read as follows:

552.236–71 Contractor Responsibilities.

* * * * *

Alternate II (JAN 2020). As prescribed in 536.571(b), delete paragraphs (d), (e), (f), and (g) of the basic clause, and insert paragraphs (d), (e), (f), (g), (h), (i), and (j) as follows:

(d) The Contractor shall be responsible for performing the design phase services in accordance with the statement of work. The Contractor shall submit all deliverables and reports in accordance with the statement of work.

(e) The Contractor shall be responsible to review all design information (*e.g.* draft specifications and drawings) provided. The Contractor shall be responsible for determining that the project as described in the design information is constructible using commercially practicable means and methods; that the construction work is described in the design documents with sufficient completeness to enable pricing of a complete project within the guaranteed maximum price; and that the manner of presentation and organization of information in the design documents enables accurate estimation of the cost of the work.

(f) Prior to establishment of the final estimated cost of work, the Contractor shall bring to the Contracting Officer's attention all instances that it has discovered or has been made aware of where design errors and omissions affect the Contractor's ability to accurately estimate the cost of the work.

(g) Where installation of separate work components as shown in the contract will result in conflict or interference between such components or with existing conditions, including allowable tolerances, it is the Contractor's responsibility to bring such conflict or interference to the attention of the Contracting Officer and seek direction before fabrication, construction, or installation of any affected work. If the Contractor fabricates, constructs, or installs any work prior to receiving such direction, the Contractor shall be responsible for all cost and time incurred to resolve or mitigate such conflict or interference.

(h) Where drawings show work without specific routing, dimensions,

locations, or position relative to other work or existing conditions, and such information is not specifically defined by reference to specifications or other information supplied in the contract, the Contractor is responsible for routing, dimensioning, and locating such work in coordination with other work or existing conditions in a manner consistent with contract requirements.

(i) It is not the Contractor's responsibility to ensure that the contract documents comply with applicable laws, statutes, building codes and regulations. If it comes to the attention of the Contractor that any of the contract documents do not comply with such requirements, the Contractor shall promptly notify the Contracting Officer in writing. If the Contractor performs any of the work prior to notifying and receiving direction from the Contracting Officer, the Contractor shall assume full responsibility for correction of such work, and any fees or penalties that may be assessed for non-compliance.

(j) The Contractor is responsible to construct the project in accordance with the drawings and specifications. The final Estimated Cost of the Construction Work (ECW) may be determined based upon incomplete design documents. In those instances in which the drawings and specifications are not complete at the time the final ECW is established, the Contractor shall exercise reasonable care and judgment to determine the intent of the design and shall calculate the final ECW on the basis of the quality of construction, materials, and finishes that can be reasonably inferred from the design documents or other specified sources.

■ 14. Add sections 552.236–79 and 552.236–80 to read as follows:

552.236–79 Construction-Manager-As-Constructor.

As prescribed in 536.7107(a), insert the following clause:

Construction-Manager-As-Constructor (JAN 2020)

(a) *General.* Pricing for the Guaranteed Maximum Price (GMP) for the option for construction services shall be subject to the requirements below.

(b) *Definitions.* The following definitions shall apply to this clause:

Construction-Manager-as-Constructor (CMc) Contingency Allowance (CCA) means an allowance for the exclusive use of the construction contractor to cover reimbursable costs during construction that are not the basis of a change order. These costs could include estimating, scheduling, and planning errors in the final Estimated Cost of the Work (ECW) or other contractor errors.

Cost means allowable costs in accordance with FAR Part 31.

Cost of Performance means the final sum of cost of the construction work and fee for the construction work.

Early Work Package means a set of construction activities that can be clearly defined and separately performed from the remainder of the construction work. Demolition is an example of an early work package.

Estimated Cost of the Work (ECW) means the estimated cost of the construction work, not including home office overhead.

Fee for the Construction Work means the amount established for the contractor's profit and home office overhead costs, as described in FAR Part 31, for the construction work.

Guaranteed Maximum Price (GMP) means the sum of the ECW, CCA, and the fee for the construction work.

(c) *Guaranteed Maximum Price.* This contract at award includes a GMP.

(d) *Estimated Cost of the Work.* The proposed ECW incorporated into the contract at award is a target ECW. A final ECW is negotiated during the design phase and is incorporated into the contract prior to exercise of the GMP option.

(e) *Final Estimated Cost of the Work.*

(1) *Submission Requirements for Final ECW Proposal.* During the design phase, and at a time agreed by the Contracting Officer, the Contractor shall submit the following:

(i) A detailed statement of all construction costs, including early work packages in the performance of the construction work to date;

(ii) A detailed breakdown of home office overhead costs and a statement that the accounting practices used for the allocation of home office overhead on this contract is in accordance with the Contractor's established cost accounting practices;

(iii) A proposed final ECW;

(iv) Sufficient data to support the accuracy and reliability of the estimate;

(v) An explanation of the difference between the proposed final ECW and the target ECW used to establish the GMP; and

(vi) The Contractor's affirmation that:

(A) The Contractor is satisfied that the project as described in the specifications and construction drawings is constructible using commercially practicable means and methods;

(B) The Contractor is satisfied that the construction work has been sufficiently described to enable it to estimate the cost of the work with reasonable accuracy;

(C) The Contractor has disclosed to the Contracting Officer all of its actual knowledge relating to design errors and omissions that may affect the cost of the work; and

(D) The Contractor acknowledges that the final ECW and time established for completion shall not be adjusted on account of cost or time attributable to known design errors and omissions disclosed by the Contractor pursuant to paragraph (e)(1)(v)(C) of this clause. Unknown design errors and omissions that form the basis for a change order may still be settled in accordance with GSAR 552.243–71 Equitable Adjustments.

(2) *Establishment of the Final ECW.* The parties shall negotiate a final ECW based on the data provided under paragraph (e)(1) of this clause. The final ECW shall be established and incorporated into the Contract by bilateral modification. The Contracting Officer will not accept a final ECW proposal that does not include the written affirmation described in this clause. The Contracting Officer will not exercise the GMP option for construction work unless the final ECW has been incorporated into the contract.

(f) *CMc Contingency Allowance.* The CCA shall be __ percent of the ECW [*Contracting Officer insert percentage amount*].

(g) *Shared Savings Incentive.* The Contractor shall be entitled to __percent of the difference between the final GMP and the final cost of performance [*Contracting Officer insert percentage amount*].

(h) *Adjustment of ECW and GMP.* The ECW and GMP shall be subject to adjustment for changes and any other conditions giving rise to entitlement to an adjustment under this contract. The ECW and GMP may be adjusted down for deletions to the scope of the construction services through a bilateral modification.

(i) *Adjustment of CCA.* If the sum of the final ECW, CCA, and fee for the construction work is greater than the GMP as established at contract award or as adjusted in accordance with FAR Part 43, then the Contractor should work with the Contracting Officer to identify measures to reduce the overall GMP, including reducing the CCA, reducing the fee, or as a last resort, reducing the scope of the project. At any time, the parties may agree to a different CCA than the amount expressed at time of contract award. Prior to the use of the CCA, the Contractor shall coordinate approval following the procedures identified in the contract. For approved CCA uses, the CCA shall be reduced and the ECW shall be adjusted accordingly.

(j) *Adjustment of the Fee for the Construction Work.* The fee for the construction work may be adjusted for changes that are the basis for a change order, including scope changes, differing site conditions, and Government-caused delays. The fee for the construction work associated with a change order shall not be driven by a fixed percentage. The fee for the construction work is not increased or decreased based on fluctuations in the actual costs of the work. At time of proposal submission, the fee elements may be expressed as a percentage of the ECW, but shall be converted to a fixed amount prior to executing the GMP option.

(k) *Conversion to Firm-Fixed-Price Prior to Final Settlement.*

(1) *Submission Requirements for Conversion to Firm-Fixed Price.* If the parties agree to negotiate and establish a firm-fixed-price for construction work prior to the exercise of the GMP option, or at the request of the Contracting Officer, the Contractor shall submit the following:

(i) A proposed firm-fixed-price proposal for the completion of the construction work, which shall include all markups, including profit.

(ii) A detailed statement of any costs incurred in the performance of the contract work to date.

(2) *Establishment of Firm-Fixed-Price.*

(i) *Prior to Exercise of GMP Option.* The parties may negotiate and establish a firm-fixed-price for construction work prior to the exercise of the GMP option based on the data provided under paragraph (k)(1) of this clause; provided that the firm-fixed-price shall not exceed the GMP. The Contracting Officer shall have the right, but not the obligation, to bilaterally exercise the GMP option at the firm-fixed-price within 120 calendar days of the establishment of such price.

(ii) *After Exercise of the GMP Option.* At any time prior to final settlement, the Contracting Officer may request that the Contractor provide a firm-fixed-price proposal for the completion of construction work in accordance with paragraph (k)(1) of this clause. Within 60 calendar days of such request, the Contractor shall provide such data. Within 60 calendar days of receipt of the Contractor's proposal, the Contracting Officer shall have the right, but not the obligation, to convert the contract to a firm-fixed-price contract through a bilateral modification at the proposed fixed-price or as otherwise negotiated by the parties; provided that the firm-fixed-price, plus any costs incurred in the performance of the construction work, shall not exceed the GMP.

(iii) If any portion of the contract is converted to a firm-fixed-price, then that portion of the contract is no longer subject to open book accounting, a shared savings incentive, or the need for final settlement. If the contract is not converted to a firm-fixed-price contract, then the final settlement of the Contractor's compensation shall be determined in accordance with paragraph (l) of this clause.

(3) *Payments.* If this contract is converted to a firm-fixed-price contract, the Contractor shall submit a revised schedule of values for the construction work allocating the unpaid balance of the fixed price to the itemized work activities remaining uncompleted, which shall be the basis for remaining progress payments.

(l) *Final Settlement.* The final settlement amount shall consist of the cost of performance and the Contractor's shared savings incentive, if any, provided that in no event shall the final settlement exceed the GMP. The final settlement amount shall be the Contractor's total compensation due under the contract.

(1) *Submission Requirements for Final Settlement Proposal.* The Contractor shall submit a final settlement proposal within 120 days of substantial completion to determine the cost of the construction work, which shall include the following:

(i) A detailed statement of all costs incurred by the Contractor in performing the construction work;

(ii) A firm-fixed-price proposal for the performance of the remaining work, if any, that may be necessary to complete performance of the construction work;

(iii) An executed release of claims, which shall describe any and all exceptions, including a description of any outstanding claims; and

(iv) Any other relevant data that the Contracting Officer may reasonably require.

(2) *Determination of the Cost of the Work.* The cost of the construction work shall be the sum of all costs incurred by the Contractor in performing the construction work, the proposed fixed price for performance of remaining work, if any, less the residual value of any Contractor retained inventory. In order to determine the cost of the construction work, the Contractor shall be subject to an audit of the Contractor's records and/or the Contractor's proposal. Establishment of the cost of the construction work shall be subject to negotiation between the Government and the Contractor. In the event that the parties are unable to reach agreement, the Contracting Officer may unilaterally determine the cost of the construction work, and such determination shall be subject to FAR Clause 52.233–1 Disputes.

(3) *Determination of the Shared Savings Incentive.* If the final cost of performance is equal to or greater than the final GMP, the Contractor is not entitled to any additional compensation. If the final cost of performance is less than the final GMP, the Contractor is entitled to the percentage specified in paragraph (g) of this clause, of the difference between the final GMP and the final cost of performance, as the shared savings incentive.

(m) *Subcontracts.* No subcontract placed under this contract may provide for cost-plus-a-percentage of cost. Any costs incurred by the Contractor as a result of such a subcontract shall not be included in the cost of the construction work or the final settlement.

(n) *Open Book Access.* (1) At any time prior to converting to firm-fixed-price, the Government and its representatives, including designated auditors and accountants, shall have the right, but not the obligation, to attend any and all project meetings and shall have access to any and all records maintained by the Contractor relating to the contract. The Contractor shall include this requirement for open book access by the Government in its subcontracts for the contract.

(2) After converting to firm-fixed-price, the Government maintains the right to examine records under GSAR Clause 552.215–70.

(o) *Termination.* If this Contract is terminated, the Contractor shall not be entitled to a shared savings incentive.

(p) The contractor agrees to incorporate the substance of this clause in all subcontracts under this contract.

(End of Clause)

552.236–80 Accounting Records and Progress Payments.

As prescribed in 536.7107(b), insert the following clause:

Accounting Records and Progress Payments (JAN 2020)

(a) The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this contract. The Contractor's accounting and control systems shall meet Generally Accepted Accounting Principles (GAAP) and provide for the following:

(1) There is proper segregation of direct costs and indirect costs.

(2) There is proper identification and accumulation of direct costs by contract.

(3) There is a labor time distribution system that charges direct and indirect labor appropriately.

(b) The Contractor shall afford access to and shall permit any authorized representatives of the Government to audit, examine and copy any records, documents, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to this contract. Records subject to audit, examination, and copying shall include those records necessary to evaluate and verify all direct and indirect costs, including overhead and payroll tax and fringe benefit allocations, as they may apply to costs associated with the contract. The Contractor shall preserve these records for a period of three years after the final payment, or for such longer period as may be required by law.

(c) The records identified in paragraphs (b) of this clause shall be subject to inspection and audit by the Government or its authorized representative for, but not limited to, evaluating and verifying:

(1) Contractor compliance with contract requirements;

(2) Compliance with pricing change orders, invoices, applications for payment, or claims submitted by the contractor or any of its subcontractors at any tier, including vendors and suppliers.

(d) If requested by the Government, the Contractor shall promptly deliver to the Government or its designee copies of all records related to the contract, in a form acceptable to the Government. The Contractor shall provide to the Government or its authorized representative such records maintained in an electronic format in a computer readable format on data disks or suitable alternative computer data exchange formats.

(e) The Government shall have access to the Contractor's facilities, shall be allowed to interview all current and former employees to discuss matters pertinent to the contract, and shall be provided adequate work space, in order to conduct audits and examinations.

(f) If any audit or examination of the Contractor's records discloses total findings resulting in overpricing or overcharges by the Contractor to the Government in excess of one-quarter percent of the total contract billings, the Contractor shall immediately reimburse the Government for the overcharges. The Contractor shall also reimburse the Government for the costs of the audit unless otherwise agreed to by the Government and the Contractor.

(g) The Government shall be entitled to audit all modifications, including lump-sum modifications, to determine whether the proposed costs, as represented by the Contractor and any of its subcontractors, are in compliance with the contract. If it is determined that the costs proposed under a modification, including lump-sum modifications, are not in compliance with the contract, the Government reserves the right to adjust the amount previously approved and included in the modification.

(h) If the Contractor fails to comply with any conditions in this clause, the Contracting

Officer may retain a maximum of 10 percent of the amount of each payment request submitted until such deficiencies are corrected.

(i) These requirements regarding accounting records shall not mitigate, lessen nor change any other requirements in the contract regarding audits, payment submissions, records, or records retention.

(j) The contractor agrees to incorporate the substance of this clause in all subcontracts under this contract.

(End of Clause)

[FR Doc. 2019–26367 Filed 12–18–19; 8:45 am]

BILLING CODE 6820–21–P

Proposed Rules

Federal Register
Vol. 84, No. 244
Thursday, December 19, 2019

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

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

8 CFR Part 208

RIN 1615–AC41

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 1208

[EOIR Docket No. 18–0002; A.G. Order No. 4592–2019]

RIN 1125–AA87

Procedures for Asylum and Bars to Asylum Eligibility

AGENCY: Executive Office for Immigration Review, Department of Justice; U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Department of Justice and the Department of Homeland Security (collectively, ''the Departments'') propose to amend their respective regulations governing the bars to asylum eligibility. The Departments also propose to clarify the effect of criminal convictions and to remove their respective regulations governing the automatic reconsideration of discretionary denials of asylum applications.

DATES: Written or electronic comments must be submitted on or before January 21, 2020. Written comments postmarked on or before that date will be considered timely. The electronic Federal Docket Management System will accept comments prior to midnight eastern time at the end of that day.

ADDRESSES: You may submit comments, identified by EOIR Docket No. 18–0002, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041. To ensure proper handling, please reference EOIR Docket No. 18–0002 on your correspondence. This mailing address may be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041. Contact Telephone Number (703) 305–0289 (not a toll-free call).

FOR FURTHER INFORMATION CONTACT: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041, Contact Telephone Number (703) 305–0289 (not a toll-free call).

Maureen Dunn, Chief, Division of Humanitarian Affairs, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, U.S. Citizenship and Immigration Services (USCIS), DHS, 20 Massachusetts NW, Washington, DC 20529–2140; Contact Telephone Number (202) 272–8377 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule. The Departments also invite comments that relate to the economic, environmental, or federalism effects that might result from this rule. Comments must be submitted in English, or an English translation must be provided. To provide the most assistance to the Departments, comments should reference a specific portion of the rule; explain the reason for any recommended change; and include data, information, or authority that support the recommended change.

All comments submitted for this rulemaking should include the agency name and EOIR Docket No. 18–0002. Please note that all comments received are considered part of the public record and made available for public inspection at *www.regulations.gov.* Such information includes personally identifiable information (such as a person's name, address, or any other data that might personally identify that individual) that the commenter voluntarily submits. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to the Departments. The Departments may withhold information provided in comments from public viewing that they determine may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

If you want to submit personally identifiable information as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONALLY IDENTIFIABLE INFORMATION'' in the first paragraph of your comment and precisely and prominently identify the information for which you seek redaction.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment and precisely and prominently identify the confidential business information for which you seek redaction. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *www.regulations.gov.* Personally identifiable information and confidential business information provided as set forth above will be placed in EOIR's public docket file, but not posted online. To inspect the public docket file in person, you must make an appointment with EOIR. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph above for the contact information specific to this rule.

II. Background

Asylum is a discretionary immigration benefit that generally can be sought by eligible aliens who are physically present or arriving in the United States, irrespective of their status, as provided in section 208 of the Immigration and Nationality Act (''INA''), 8 U.S.C. 1158. Congress, however, has provided that certain

categories of aliens cannot receive asylum and has further delegated to the Attorney General and the Secretary of Homeland Security (''Secretary'') the authority to promulgate regulations establishing additional bars on eligibility to the extent consistent with the asylum statute, as well as the authority to establish ''any other conditions or limitations on the consideration of an application for asylum'' that are consistent with the INA. *See* INA 208(b)(2)(C), (d)(5)(B), 8 U.S.C. 1158(b)(2)(C), (d)(5)(B). This proposed rule will limit aliens' eligibility for this discretionary benefit if they fall within certain categories related to criminal behavior. The proposed rule will also eliminate a regulation concerning the automatic reconsideration of discretionary denials of asylum applications.

A. Joint Notice of Proposed Rulemaking

The Attorney General and the Acting Secretary of Homeland Security publish this joint notice of proposed rulemaking in the exercise of their respective authorities concerning asylum determinations.

The Homeland Security Act of 2002, Public Law 107–296, as amended (''the Act'' or ''the HSA''), transferred many functions related to the execution of federal immigration law to the newly created Department of Homeland Security (''DHS''). The Act charges the Secretary ''with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens,'' 8 U.S.C. 1103(a)(1), and grants the Secretary the power to take all actions ''necessary for carrying out'' the provisions of the immigration and nationality laws, *id.* 1103(a)(3). The Act also transferred to U.S. Citizenship and Immigration Services (''USCIS'') responsibility for affirmative asylum applications, *i.e.,* applications for asylum made outside the removal context. *See* 6 U.S.C. 271(b)(3). If an alien is not in removal proceedings or is an unaccompanied alien child, DHS asylum officers determine in the first instance whether an alien's asylum application should be granted. *See* 8 CFR 208.9.

At the same time, the Act retained for the Attorney General authority over certain individual immigration adjudications, including those related to asylum. These proceedings are conducted by the Department of Justice through the Executive Office for Immigration Review (''EOIR''), subject to the direction and regulation of the Attorney General. *See* 6 U.S.C. 521; 8 U.S.C. 1103(g). Accordingly, immigration judges within the Department of Justice continue to adjudicate all defensive asylum applications made by aliens during the removal process and review affirmative asylum applications referred by USCIS to the immigration courts. *See* 8 U.S.C. 1101(b)(4); 8 CFR 1208.2. *See generally Dhakal* v. *Sessions,* 895 F.3d 532, 536–37 (7th Cir. 2018) (describing affirmative and defensive asylum processes). The Board of Immigration Appeals within the Department of Justice, in turn, hears appeals from immigration judges' decisions. 8 CFR 1003.1. In addition, the HSA amended the INA to mandate ''[t]hat determination and ruling by the Attorney General with respect to all questions of law shall be controlling.'' 8 U.S.C. 1103(a)(1). This broad division of functions and authorities informs the background of this proposed rule.

B. Domestic Legal Framework for Asylum

Asylum is a form of discretionary relief under section 208 of the INA, 8 U.S.C. 1158, that precludes an alien from being subject to removal, creates a path to lawful permanent resident status and citizenship, and affords a variety of other ancillary benefits, such as allowing certain alien family members to obtain lawful immigration status derivatively. *See R–S–C* v. *Sessions,* 869 F.3d 1176, 1180 (10th Cir. 2017); *see also, e.g.,* INA 208(c)(1)(A), (C), 8 U.S.C. 1158(c)(1)(A), (C) (asylees cannot be removed and can travel abroad without prior consent); INA 208(b)(3), 8 U.S.C. 1158(b)(3) (allowing derivative asylum for asylee's spouse and unmarried children); INA 209(b), 8 U.S.C. 1159(b) (allowing the Attorney General or Secretary to adjust the status of an asylee to that of a lawful permanent resident); INA 316(a), 8 U.S.C. 1427(a) (describing requirements for naturalization of lawful permanent residents). Aliens who are granted asylum are authorized to work in the United States and to receive certain financial assistance from the Federal Government. *See* INA 208(c)(1)(B), (d)(2), 8 U.S.C. 1158(c)(1)(B), (d)(2); 8 U.S.C. 1612(a)(2)(A), (b)(2)(A); 8 U.S.C. 1613(b)(1); 8 CFR 274a.12(a)(5); *see also* 8 CFR 274a.12(c)(8) (providing that asylum applicants may seek employment authorization 150 days after filing a complete application for asylum).

In 1980, the Attorney General, in his discretion, established several mandatory bars to asylum eligibility. *See* 8 CFR 208.8(f) (1980); Aliens and Nationality; Refugee and Asylum Procedures, 45 FR 37392, 37392 (June 2, 1980). In 1990, the Attorney General substantially amended the asylum regulations, but exercised his discretion to retain the mandatory bars to asylum eligibility related to persecution of others on account of a protected ground, conviction of a particularly serious crime in the United States, firm resettlement in another country, and the existence of reasonable grounds to regard the alien as a danger to the security of the United States. *See* Aliens and Nationality; Asylum and Withholding of Deportation Procedures, 55 FR 30674–01, 30678, 30683 (July 27, 1990); *see also Yang* v. *INS,* 79 F.3d 932, 936–39 (9th Cir. 1996) (upholding firm resettlement bar); *Komarenko* v. *INS,* 35 F.3d 432, 436 (9th Cir. 1994) (upholding particularly serious crime bar), *abrogated on other grounds by Abebe* v. *Mukasey,* 554 F.3d 1203 (9th Cir. 2009) (en banc). In 1990, Congress added another mandatory bar for those with aggravated felony convictions. Immigration Act of 1990, Public Law 101–649, sec. 515, 104 Stat. 4987.

With the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (''IIRIRA'') in 1996, Congress added three more categorical bars on the ability to apply for asylum, for: (1) Aliens who can be removed to a safe third country pursuant to a bilateral or multilateral agreement; (2) aliens who failed to apply for asylum within one year of arriving in the United States; and (3) aliens who have previously applied for asylum and had the application denied. Public Law 104–208, div. C, sec. 604. Congress also adopted six mandatory bars to asylum eligibility that largely reflected the pre-existing, discretionary bars set forth in the Attorney General's existing asylum regulations. These bars cover (1) aliens who ''ordered, incited, or otherwise participated'' in the persecution of others; (2) aliens convicted of a ''particularly serious crime'' in the United States; (3) aliens who committed a ''serious nonpolitical crime outside the United States'' before arriving in the United States; (4) aliens who are a ''danger to the security of the United States;'' (5) aliens who are inadmissible or removable under a set of specified grounds relating to terrorist activity; and (6) aliens who were ''firmly resettled'' in another country prior to arriving in the United States. *Id.* (codified at 8 U.S.C. 1158(b)(2) (1997)). Congress further added that aggravated felonies, defined in 8 U.S.C. 1101(a)(43), would be considered ''particularly serious crime[s].'' *Id.* (codified at 8 U.S.C. 1158(b)(2)(B)(i) (1997)).

Although Congress has enacted specific asylum eligibility bars, that statutory list is not exhaustive. Congress, in IIRIRA, further provided

the Attorney General with the authority to establish by regulation ''any other conditions or limitations on the consideration of an application for asylum,'' so long as those limitations are ''not inconsistent with this chapter.'' INA 208(d)(5)(B), 8 U.S.C. 1158(d)(5)(B); *see also* INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C). Aliens who apply for asylum must satisfy two criteria. They must establish that they (1) are statutorily eligible for asylum; and (2) merit a favorable exercise of discretion. INA 208(b)(1)(A), 240(c)(4)(A), 8 U.S.C. 1158(b)(1)(A), 1229a(c)(4)(A); *Matter of A–B–,* 27 I&N Dec. 316, 345 n.12 (A.G. 2018), *abrogated on other grounds by Grace* v. *Whitaker,* 344 F. Supp. 3d 96, 140 (D.D.C. 2018); *see also, e.g., Fisenko* v. *Lynch,* 826 F.3d 287, 291 (6th Cir. 2016); *Kouljinski* v. *Keisler,* 505 F.3d 534, 541–42 (6th Cir. 2007); *Gulla* v. *Gonzales,* 498 F.3d 911, 915 (9th Cir. 2007); *Dankam* v. *Gonzales,* 495 F.3d 113, 120 (4th Cir. 2007); *Krastev* v. *INS,* 292 F.3d 1268, 1270 (10th Cir. 2002). As the Attorney General recently observed, ''[a]sylum is a discretionary form of relief from removal, and an applicant bears the burden of proving not only statutory eligibility for asylum but that he also merits asylum as a matter of discretion.'' *Matter of A–B–,* 27 I&N Dec. at 345 n.12; *see also Moncrieffe* v. *Holder,* 569 U.S. 184, 187 (2013) (describing asylum as a form of ''discretionary relief from removal''); *Delgado* v. *Mukasey,* 508 F.3d 702, 705 (2d Cir. 2007) (''Asylum is a discretionary form of relief . . . . Once an applicant has established eligibility . . . , it remains within the Attorney General's discretion to deny asylum.'').

With respect to eligibility for asylum, section 208 of the INA provides that an applicant must (1) be ''physically present'' or ''arrive[ ]'' in the United States, INA 208(a)(1), 8 U.S.C. 1158(a)(1); (2) meet the statutory definition of a ''refugee,'' INA 208(b)(1)(A), 8 U.S.C. 1158(b)(1)(A); and (3) otherwise be eligible for asylum, INA 208(b)(2), 8 U.S.C. 1158(b)(2); 8 CFR 1240.8(d).

In general, a refugee is someone who is outside of his country of nationality and who is unable or unwilling to return to that country ''because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.'' INA 101(a)(42)(A), 8 U.S.C. 1101(a)(42)(A). The alien bears the burden of proof to establish that he meets eligibility criteria, including that he qualifies as a refugee. INA 208(b)(1)(B)(i), 8 U.S.C. 1158(b)(1)(B)(i).

Aliens must also establish that they are otherwise eligible for asylum, meaning that they are not subject to one of the statutory bars to asylum or any ''additional limitations and conditions . . . under which an alien shall be ineligible for asylum'' established by regulation. *See* INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C). The INA currently bars from asylum eligibility any alien who (1) ''ordered, incited, assisted, or otherwise participated in the persecution of any person on account of'' a protected ground; (2) ''having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;'' (3) ''has committed a serious nonpolitical crime outside the United States'' prior to arrival in the United States; (4) constitutes ''a danger to the security of the United States;'' (5) is described in the terrorism-related inadmissibility grounds, with limited exception; or (6) ''was firmly resettled in another country prior to arriving in the United States.'' INA 208(b)(2)(A)(i)–(vi), 8 U.S.C. 1158(b)(2)(A)(i)–(vi).

Aliens who fall within one of these bars are subject to mandatory denial of asylum. Where there is evidence that ''one or more of the grounds for mandatory denial of the application for relief may apply,'' the applicant in immigration court proceedings bears the burden of establishing that the bar at issue does not apply. 8 CFR 1240.8(d); *see also, e.g., Rendon* v. *Mukasey,* 520 F.3d 967, 973 (9th Cir. 2008) (applying 8 CFR 1240.8(d) in the context of the aggravated felony bar to asylum); *Su Qing Chen* v. *U.S. Att'y Gen.,* 513 F.3d 1255, 1257 (11th Cir. 2008) (applying 8 CFR 1240.8 in the context of the persecutor bar); *Xu Sheng Gao* v. *U.S. Att'y Gen.,* 500 F.3d 93, 98 (2d Cir. 2007) (same).

Because asylum is a discretionary benefit, aliens who are eligible for asylum are not automatically entitled to it. Rather, after demonstrating eligibility, aliens must further meet their burden of showing that the Attorney General or Secretary should exercise his or her discretion to grant asylum. *See* INA 208(b)(1)(A), 8 U.S.C. 1158(b)(1)(A) (the ''Secretary of Homeland Security or the Attorney General *may* grant asylum to an alien'' who applies in accordance with the required procedures and meets the definition of a refugee (emphasis added)); *Matter of A–B–,* 27 I&N Dec. at 345 n.12; *Matter of Pula,* 19 I&N Dec. 467, 474 (BIA 1987).

Additionally, aliens whose asylum applications are denied may nonetheless be able to obtain protection from removal under other provisions of the immigration laws. A defensive application for asylum that is submitted by an alien in removal proceedings is also automatically deemed an application for statutory withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3). *See* 8 CFR 1208.3(b). An immigration judge may also consider an alien's eligibility for withholding and deferral of removal under regulations implementing U.S. obligations under Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (''CAT''), which were issued pursuant to section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105–277 (8 U.S.C. 1231 note). *See* 8 CFR 1208.13(c)(1); *see also* 8 CFR 1208.16(c) through 1208.18.

These forms of protection prohibit removal to any country where the alien would more likely than not be persecuted on account of a protected ground or tortured. Applying the relevant standard, if an alien proves that it is more likely than not that the alien's life or freedom would be threatened on account of a protected ground, but is denied asylum for some other reason—for instance, because of an eligibility bar or a discretionary denial of asylum—the alien may be entitled to statutory withholding of removal if not otherwise statutorily barred. INA 241(b)(3)(A), 8 U.S.C. 1231(b)(3)(A); 8 CFR 208.16, 1208.16; *see also Garcia* v. *Sessions,* 856 F.3d 27, 40 (1st Cir. 2017) (''[W]ithholding of removal has long been understood to be a mandatory protection that must be given to certain qualifying aliens, while asylum has never been so understood.''). Likewise, an alien who establishes that it is more likely than not that he or she would be tortured if removed to the proposed country of removal will qualify for CAT protection. *See* 8 CFR 1208.16(c) through 1208.18. But, unlike asylum, statutory withholding and CAT protection do not (1) prohibit the Government from removing the alien to a third country where the alien does not face persecution or torture, regardless of whether the country is a party to a bilateral or multilateral agreement specifically authorizing such removal, *contra* 8 U.S.C. 1158(a)(2)(A) (denying eligibility to apply for asylum ''if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a [third] country''); (2) create a path to lawful permanent resident status and citizenship; or (3) afford the same ancillary benefits (such as derivative protection for family members). *See R–S–C,* 869 F.3d at 1180.

C. Bars to Eligibility for Asylum

Eligibility for asylum has long been qualified both by statutory bars and by the discretion of the Attorney General and the Secretary to create additional bars. Those bars have developed over time in a back-and-forth process between Congress and the Attorney General. The original asylum provisions, as set out in the Refugee Act of 1980, Public Law 96–212, simply directed the Attorney General to ''establish a procedure for an alien physically present in the United States or at a land border or port of entry, irrespective of such alien's status, to apply for asylum,'' and provided that ''the alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee'' within the meaning of the title. 8 U.S.C. 1158(a) (1994); *see also INS* v. *Cardoza-Fonseca,* 480 U.S. 421, 427–29 (1987) (describing the 1980 provisions).

In the 1980 implementing regulations, the Attorney General, in his discretion, established several mandatory bars to asylum eligibility that were modeled on the mandatory bars to eligibility for withholding of deportation under the existing section 243(h) of the INA. *See* 8 CFR 208.8(f) (1980); 45 FR at 37392 (''The application will be denied if the alien does not come within the definition of refugee under the Act, is firmly resettled in a third country, or is within one of the undesirable groups described in section 243(h) of the Act, *e.g.,* having been convicted of a serious crime, constitutes a danger to the United States.''). Those regulations required denial of an asylum application if it was determined that (1) the alien was not a refugee within the meaning of section 101(a)(42) of the INA; (2) the alien was firmly resettled in a foreign country before arriving in the United States; (3) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular group, or political opinion; (4) the alien had been convicted by a final judgment of a particularly serious crime and therefore constituted a danger to the community of the United States; (5) there were serious reasons for considering that the alien has committed a serious non-political crime outside the United States prior to the arrival of the alien in the United States; or (6) there were reasonable grounds for regarding the alien as a danger to the security of the United States. 45 FR at 37394–95.

In 1990, the Attorney General substantially amended the asylum regulations, but exercised his discretion to retain the mandatory bars to asylum eligibility for persecution of others on account of a protected ground, conviction of a particularly serious crime in the United States, firm resettlement in another country, and reasonable grounds to regard the alien as a danger to the security of the United States. *See* 55 FR at 30683; *see also Yang,* 79 F.3d at 936–39 (upholding firm resettlement bar); *Komarenko,* 35 F.3d at 436 (upholding particularly serious crime bar). In the Immigration Act of 1990, Congress added an additional mandatory bar to eligibility to apply for or be granted asylum for ''an[y] alien who has been convicted of an aggravated felony.'' Public Law 101–649, sec. 515, 104 Stat. 4987.

In 1996, with the passage of IIRIRA and the Antiterrorism and Effective Death Penalty Act of 1996, Public Law 104–132, Congress amended the asylum provisions in section 208 of the INA, 8 U.S.C. 1158. Among other amendments, Congress created three categories of aliens who are barred from applying for asylum: (1) Aliens who can be removed to a safe third country pursuant to bilateral or multilateral agreement; (2) aliens who failed to apply for asylum within one year of arriving in the United States; and (3) aliens who have previously applied for asylum and had the application denied. Public Law 104–208, div. C, sec. 604.

Congress also adopted six mandatory bars to asylum eligibility that largely reflected the pre-existing, discretionary bars set forth in the Attorney General's existing asylum regulations. These bars cover (1) aliens who ''ordered, incited, or otherwise participated'' in the persecution of others; (2) aliens convicted of a ''particularly serious crime'' in the United States; (3) aliens who committed a ''serious nonpolitical crime outside the United States'' before arriving in the United States; (4) aliens who are a ''danger to the security of the United States;'' (5) aliens who are inadmissible or removable under a set of specified grounds relating to terrorist activity; and (6) aliens who were ''firmly resettled'' in another country prior to arriving in the United States. *Id.* (codified at 8 U.S.C. 1158(b)(2) (1997)). Congress further added that aggravated felonies, defined in 8 U.S.C. 1101(a)(43), would be considered ''particularly serious crime[s].'' *Id.* (codified at 8 U.S.C. 1158(b)(2)(B)(i) (1997)).

Although Congress has enacted specific asylum eligibility bars, that statutory list is not exhaustive. Congress, in IIRIRA, expressly authorized the Attorney General to expand upon two bars to asylum eligibility—the bars for ''particularly serious crimes'' and ''serious nonpolitical offenses.'' *See id.* Although Congress prescribed that all aggravated felonies constitute particularly serious crimes, Congress further provided that the Attorney General may ''designate by regulation offenses that will be considered'' a ''particularly serious crime,'' by reason of which the offender ''constitutes a danger to the community of the United States.'' INA 208(b)(2)(A)(ii), (B)(ii), 8 U.S.C. 1158(b)(2)(A)(iii), (B)(ii). Courts and the Board of Immigration Appeals (''Board'') have long held that this grant of authority also authorizes the Board to identify additional particularly serious crimes (beyond aggravated felonies) through case-by-case adjudication. *See, e.g., Delgado* v. *Holder,* 648 F.3d 1095, 1106 (9th Cir. 2011) (en banc); *Ali* v. *Achim,* 468 F.3d 462, 468–69 (7th Cir. 2006). Congress likewise authorized the Attorney General to designate by regulation offenses that constitute ''a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States.'' INA 208(b)(2)(A)(iii), (B)(ii), 8 U.S.C. 1158(b)(2)(A)(iii), (B)(ii).[1]

In addition to authorizing the discretionary expansion of crimes that would constitute particularly serious crimes or serious nonpolitical offenses, Congress further provided the Attorney General with the authority to establish by regulation ''any other conditions or limitations on the consideration of an application for asylum,'' so long as those limitations are ''not inconsistent with this chapter.'' INA 208(d)(5)(B), 8 U.S.C. 1158(d)(5)(B); *see also* INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C) (allowing for the establishment by regulation of ''additional limitations and conditions, consistent with this section, under which an alien shall be ineligible for asylum''). As the Tenth Circuit has recognized, ''[t]his delegation of authority means that Congress was prepared to accept administrative dilution of the asylum guarantee in § 1158(a)(1),'' given that ''the statute clearly empowers'' the Attorney General and the Secretary to ''adopt[ ] further limitations'' on asylum eligibility. *R–S–C,* 869 F.3d at 1187 & n.9. In providing for ''additional limitations and conditions,'' the statute gives the Attorney General and the Secretary broad authority in determining what the ''limitations and conditions'' should be—*e.g.,* based on non-criminal or procedural grounds like the existing

[1] Although these provisions continue to refer only to the Attorney General, those authorities also lie with the Secretary by operation of the HSA.

exceptions for firm resettlement, INA 208(b)(2)(A)(vi), 8 U.S.C. 1158(b)(2)(A)(vi), or based on filing time limits, INA 208(a)(2)(B), 8 U.S.C. 1158(a)(2)(B), or based on certain criminal activity, INA 208(b)(2)(A)(ii), 8 U.S.C. 1158(b)(2)(A)(ii). The additional limitations on eligibility must simply be established ''by regulation,'' and must be ''consistent with'' the rest of 8 U.S.C. 1158.

Thus, the Attorney General in the past has invoked section 208(b)(2)(C) of the INA to limit eligibility for asylum based on a ''fundamental change in circumstances'' and on the ability of an applicant to safely relocate internally within a country. *See* Asylum Procedures, 65 FR 76121, 76127 (Dec. 6, 2000) (codified at 8 CFR 208.13(b)(1)(i)(A) and (B)). The courts have also viewed this provision as a broad authority, and have suggested that ineligibility based on fraud would be authorized under it. *See Nijjar* v. *Holder,* 689 F.3d 1077, 1082 (9th Cir. 2012) (noting that fraud can be ''one of the 'additional limitations . . . under which an alien shall be ineligible for asylum' that the Attorney General is authorized to establish by regulation'').

The current statutory framework accordingly leaves the Attorney General (and, after the HSA, the Secretary) significant discretion to adopt additional bars to asylum eligibility. Congress has expressly identified one class of particularly serious crimes—aggravated felonies—so that aliens who commit such offenses are categorically ineligible for asylum and there is no discretion to grant such aliens asylum under any circumstances. Congress has left the task of further defining particularly serious crimes or serious nonpolitical offenses to the discretion of the Attorney General and the Secretary.[2] And Congress has provided the Attorney General and Secretary with additional discretion to establish by regulation additional limitations or conditions on eligibility for asylum. Those limitations may involve other types of crimes or non-criminal conduct, so long as the limitations are consistent with other aspects of the asylum statute.

D. United States Laws Implementing International Treaty Obligations

The proposed rule is consistent with U.S. obligations under the 1967 Protocol relating to the Status of Refugees (''Refugee Protocol'') (incorporating Articles 2 through 34 of the 1951 Convention relating to the Status of Refugees (''Refugee Convention'')) and the CAT. Neither the 1967 Refugee Protocol nor the CAT is self-executing. *See Khan* v. *Holder,* 584 F.3d 773, 783 (9th Cir. 2009) ('[T]he [1967 Refugee] Protocol is not self-executing.''); *Auguste* v. *Ridge,* 395 F.3d 123, 132 (3d Cir. 2005) (the CAT ''was not self-executing''). Therefore, these treaties are not directly enforceable in U.S. law, but some of the obligations they contain have been implemented by domestic legislation. For example, the United States has implemented the non-refoulement provisions of these treaties—*i.e.,* provisions prohibiting the return of an individual to a country where he or she would face persecution or torture—through the withholding of removal provisions at section 241(b)(3) of the INA and the CAT regulations, not through the asylum provisions at section 208 of the INA. *See Cardoza-Fonseca,* 480 U.S. at 440–41. The proposed rule is consistent with those obligations because it affects only eligibility for asylum. It does not affect grants of the statutory withholding of removal or protection under the CAT regulations. *See R–S–C,* 869 F.3d at 1188 n. 11; *Cazun* v. *Att'y Gen.,* 856 F.3d 249, 257 (3d Cir. 2017); *Ramirez-Mejia* v. *Lynch,* 813 F.3d 240, 241 (5th Cir. 2016).

Limitations on eligibility for asylum are also consistent with Article 34 of the 1951 Refugee Convention, concerning assimilation of refugees, as implemented by 8 U.S.C. 1158. Section 1158 reflects that Article 34 is precatory and not mandatory, and accordingly does not provide that all refugees shall receive asylum. *See Cardoza-Fonseca,* 480 U.S. at 441; *R–S–C,* 869 F.3d at 1188; *Mejia* v. *Sessions,* 866 F.3d 573, 588 (4th Cir. 2017); *Garcia,* 856 F.3d at 42; *Cazun,* 856 F.3d at 257 & n.16; *Ramirez-Mejia,* 813 F.3d at 241. Moreover, the state parties to the Refugee Convention sought to ''deny admission to their territories of criminals who would present a danger to security and public order.'' United Nations High Comm'r for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees ¶ 148 (1979) (edited Jan. 1992). Accordingly, the Refugee Convention incorporated exclusion clauses, including a bar to refugee status for those who committed serious nonpolitical crimes outside the country of refuge prior to their entry into the country of refuge that sought ''to protect the community of a receiving country from the danger of admitting a refugee who has committed a serious common crime.'' *Id.* ¶ 151. As noted above, Congress has long recognized this principle in U.S. law by imposing various statutory bars to eligibility for asylum and by authorizing the creation of new bars to eligibility through regulation.[3]

III. Regulatory Changes

The Departments now propose to (1) establish additional bars to eligibility for asylum for aliens with certain criminal convictions; (2) clarify the effect of criminal convictions; and (3) remove the regulations regarding reconsideration of discretionary denials of asylum.

The Attorney General possesses general authority under section 103(g)(2) of the INA, 8 U.S.C. 1103(g)(2), to ''establish such regulations . . . as the Attorney General determines to be necessary for carrying out this section.'' *See Tamenut* v. *Mukasey,* 521 F.3d 1000, 1004 (8th Cir. 2008) (en banc) (per curiam) (describing section 1103(g)(2) as ''a general grant of regulatory authority''). Similarly, Congress has conferred upon the Secretary the authority to ''establish such regulations . . . as he deems necessary for carrying out his authority under the provisions of [the INA].'' INA 103(a)(1), (3), 8 U.S.C. 1103(a)(1), (3).

Additionally, the Attorney General and the Secretary have authority to promulgate this proposed rule under sections 208(b)(2)(B)(ii) and (C) of the INA, 8 U.S.C. 1158(b)(2)(B)(ii) and (C). Under section 208(b)(2)(B)(ii), ''[t]he Attorney General may designate by regulation offenses that will be considered to be a ''particularly serious crime'' under INA 208(b)(2)(A)(ii), 8 U.S.C. 1158(b)(2)(A)(ii), or a ''serious nonpolitical crime'' under INA 208(b)(2)(A)(iii), 8 U.S.C.

[2] ''[A]n alien who has been convicted of an aggravated felony (or felonies) for which the alien has been sentenced to an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime. The previous sentence shall not preclude the Attorney General from determining that, notwithstanding the length of sentence imposed, an alien has been convicted of a particularly serious crime.'' H.R. Rep No. 104–863, at 616 (1996).

[3] Courts have likewise rejected arguments that other provisions of the Refugee Convention require every refugee to receive asylum. Courts have held, in the context of upholding the bar on eligibility for asylum in reinstatement proceedings under section 241(a)(5) of the INA, 8 U.S.C. 1231(a)(5), that limiting the ability to apply for asylum does not constitute a prohibited ''penalty'' under Article 31(1) of the Refugee Convention. *Mejia,* 866 F.3d at 588; *Cazun,* 856 F.3d at 257 n.16. Courts have also rejected the argument that Article 28 of the Refugee Convention, governing issuance of international travel documents for refugees ''lawfully staying'' in a country's territory, mandates that every person who might qualify for withholding must also be granted asylum. *R–S–C,* 869 F.3d at 1188; *Garcia,* 856 F.3d at 42.

1158(b)(2)(A)(iii). Under INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C), the Attorney General may ''by regulation establish additional limitations and conditions, consistent with [8 U.S.C. 1158], under which an alien shall be ineligible for asylum under'' INA 208(b)(1).

A. Additional Limitations on Eligibility for Asylum

The Departments propose to revise 8 CFR 208.13 and 1208.13 by adding paragraphs (c)(6) through (8) to add bars on eligibility for asylum for certain aliens. First, the regulations would add bars on eligibility for asylum for aliens who commit certain offenses in the United States after entering the country. Those bars would apply to aliens who are convicted of (1) a felony under federal or state law; (2) an offense under 8 U.S.C. 1324(a)(1)(A) or 1324(a)(1)(2) (Alien Smuggling or Harboring); (3) an offense under 8 U.S.C. 1326 (Illegal Reentry); (4) a federal, state, tribal, or local crime involving criminal street gang activity; (5) certain federal, state, tribal, or local offenses concerning the operation of a motor vehicle while under the influence of an intoxicant; (6) a federal, state, tribal, or local domestic violence offense, or who are found by an adjudicator to have engaged in acts of battery or extreme cruelty in a domestic context, even if no conviction resulted; and (7) certain misdemeanors under federal or state law for offenses related to false identification; the unlawful receipt of public benefits from a federal, state, tribal, or local entity; or the possession or trafficking of a controlled substance or controlled-substance paraphernalia. The Departments intend that the criminal ineligibility bars would be limited only to aliens with convictions and—with a narrow exception in the domestic violence context [4]—not based only on criminal conduct for which the alien has not been convicted. In addition, although 8 U.S.C. 1101(a)(43) provides for the application of the aggravated felony definition to offenses in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years, this proposal is not intended to cover such foreign convictions.

[4] A conviction would not be required in certain situations involving battery or extreme cruelty. That conduct-specific inquiry is essentially identical to the inquiry already undertaken in situations in which an alien seeks to obtain immigration benefits based on domestic violence that does not necessarily result in a conviction. *See, e.g.,* INA 240A(b)(2)(A), 8 U.S.C. 1229b(b)(2)(A); 8 CFR 204.2(c)(1)(i)(E), (c)(1)(vi), (c)(2)(iv), (e)(1)(i)(E), (e)(1)(vi), and (e)(2)(iv).

1. Aliens Convicted of a Felony Under Federal, State, Tribal, or Local Law

The Departments are proposing to implement a new bar on eligibility for asylum for felony convictions. *See* 8 U.S.C. 1158(b)(2)(B)(ii) and (C). Felonies are defined in the proposed rule as crimes designated as felonies by the relevant jurisdiction or crimes punishable by more than one year's imprisonment.

In the first instance, the Attorney General and the Secretary could reasonably exercise their discretion to classify felony offenses as particularly serious crimes for purposes of 8 U.S.C. 1158(b)(2)(B)(ii). Congress defined ''particularly serious crimes'' in the asylum statute to expressly encompass all aggravated felonies. *See* INA 208(b)(2)(B)(i), 8 U.S.C. 1158(b)(2)(B)(i). At present, the INA defines an aggravated felony by reference to an enumerated list of 21 types of convictions. INA 101(a)(43), 8 U.S.C. 1101(a)(43). But Congress did not limit the definition of particularly serious crimes to aggravated felonies. Rather, Congress expressly authorized the Attorney General to designate additional particularly serious crimes through regulation or by case-by-case adjudication. INA 208(b)(2)(B)(ii), 8 U.S.C. 1158(b)(2)(B)(ii); *Delgado,* 648 F.3d at 1106 (''[t]here is little question that [the asylum] provision permits the Attorney General, by regulation, to make particular crimes categorically particularly serious'' (emphasis omitted)); *Gao* v. *Holder,* 595 F.3d 549, 556 (4th Cir. 2010) (''we think that [s]ection 1158(b)(2)(B)(ii) . . . empowers the Attorney General to designate offenses which, like aggravated felonies, will be considered per se particularly serious''). By defining ''particularly serious crimes'' to include all ''aggravated felonies,'' but then giving the Attorney General the discretion to ''designate by regulation offenses that will be considered'' a ''particularly serious crime,'' Congress made clear that the bar on asylum eligibility for particularly serious crimes necessarily includes, but is not limited to, aggravated felonies. *See* INA 208(b)(2)(A)(ii), (B)(ii), 8 U.S.C. 1158(b)(2)(A)(ii), (B)(ii); *Delgado,* 648 F.3d at 1105–06 (explaining that the asylum statute specifies two categories of crimes that are per se particularly serious—aggravated felonies, and those that the Attorney General designates by regulation).

To date, the Attorney General has not used the above-described authority to promulgate regulations identifying additional categories of particularly serious crimes. The Board has engaged in case-by-case adjudication to identify some particularly serious crimes, but this approach imposes significant interpretive difficulties and costs, while producing unpredictable results. The Supreme Court has employed the so-called ''categorical'' approach, established in *Taylor* v. *United States,* 495 U.S. 575 (1990), and its progeny such as *Mathis* v. *United States,* 136 S. Ct. 2243 (2016), and *Descamps* v. *United States,* 133 S. Ct. 2276 (2013), to determine when an offense constitutes an aggravated felony. Under that approach, courts must compare the elements of the statutory crime for which an alien was convicted with the generic elements of the specified federal aggravated felony. As a general matter, any mismatch between the elements means that the crime of conviction is not an aggravated felony (unless the statute of conviction is divisible and the alien was convicted of a particular offense within the statute that would satisfy the generic definition of the relevant aggravated felony).

Courts, however, have repeatedly expressed frustration with the complexity of applying this approach. *See, e.g., United States* v. *Aguila-Montes de Oca,* 655 F.3d 915, 917 (9th Cir. 2011), *overruled by Descamps,* 570 U.S. 254 (''In the twenty years since *Taylor,* we have struggled to understand the contours of the Supreme Court's framework. Indeed, over the past decade, perhaps no other area of the law has demanded more of our resources.''); *see also Quarles* v. *United States,* 139 S. Ct. 1872, 1880 (2019) (Thomas, J., concurring); *Williams* v. *United States,* 927 F.3d 427, 446 (6th Cir. 2019) (Merritt, J., concurring); *Lowe* v. *United States,* 920 F.3d 414, 420 (6th Cir. 2019) (Thapar, J., concurring) (''in the categorical-approach world, we cannot call rape what it is . . . . [I]t is time for Congress to revisit the categorical approach so we do not have to live in a fictional world where we call a violent rape non-violent''); *United States* v. *Evans,* 924 F.3d 21, 31 (2d Cir. 2019) (observing that, although the court may resolve only an actual case or controversy, ''the categorical approach paradoxically instructs courts resolving such cases to embark on an intellectual enterprise grounded in the facts of *other* cases not before them, or even *imagined* scenarios'' (emphases in original)); *United States* v. *Chapman,* 866 F.3d 129, 136–39 (3d Cir. 2017) (Jordan, J., concurring); *United States* v. *Faust,* 853 F.3d 39, 60–61 (1st Cir. 2017) (Lynch, J., concurring).

Application of the categorical approach has resulted in anomalous

decisions in which aliens convicted of a serious criminal offense have been found not to have been convicted of an aggravated felony. *See, e.g., Harbin* v. *Sessions,* 860 F.3d 58 (2d Cir. 2017) (holding that a New York controlled substance law was not written in a way that allowed it to be used as the basis for establishing that a convicted alien was removable under the INA for drug trafficking); *Larios-Reyes* v. *Lynch,* 843 F.3d 146, 149–50 (4th Cir. 2016) (alien's conviction under Maryland law for sexual abuse of a victim under the age of 14 did not amount to the aggravated felony of ''sexual abuse of a minor''). The Board has rectified some anomalies by determining that certain crimes, though not aggravated felonies, are of a sufficiently pernicious nature that they should facially constitute particularly serious crimes that would disqualify aliens from eligibility for asylum or withholding of removal. *See Sopo* v. *U.S. Att'y Gen.,* 739 F. App'x 554, 558 (11th Cir. 2018) (the Board and immigration judges ''may focus solely on the elements of the offense'' to determine whether an offense is a ''particularly serious crime''); *In re N–A–M–,* 24 I&N Dec. 336, 343 (BIA 2007) (explaining that ''the proper focus for determining whether a crime is particularly serious is on the nature of the crime,'' and that its elements alone may be dispositive); *see also, e.g., Ahmetovic* v. *INS,* 62 F.3d 48, 52 (2d Cir. 1995) (upholding the Board's determination that first-degree manslaughter, while not an aggravated felony, is per se ''particularly serious'' for asylum purposes). Furthermore, the Board has looked at the individual circumstances of a crime to conclude that an even wider range of offenses can be considered particularly serious crimes on an as-applied basis. *See, e.g., Vaskovska* v. *Lynch,* 655 F. App'x 880, 884 (2d Cir. 2016) (the Board did not err in its individualized determination that an alien's conviction for drug possession was a particularly serious crime); *Arbid* v. *Holder,* 700 F.3d 379, 381 (9th Cir. 2012) (the Board did not err in determining that an alien's mail fraud conviction was particularly serious even if not an aggravated felony). Even in the withholding context—where an alien is deemed to have committed a particularly serious crime if he has been convicted of an aggravated felony (or felonies) for which the sentence was an aggregate term of imprisonment of at least 5 years, *see* 8 U.S.C. 1231(b)(3)(B)—courts have routinely concluded that crimes that are not aggravated felonies may be particularly serious. *See, e.g., Valerio-Ramirez* v. *Sessions,* 882 F.3d 289, 291, 296 (1st Cir. 2018) (the Board did not err in determining that an alien's identity theft conviction was particularly serious even though it was not an aggravated felony); *Hamama* v. *INS,* 78 F.3d 233, 240 (6th Cir. 1996) (the Board had power to declare certain firearm possession crimes ''facially'' particularly serious without an individualized evaluation of the alien's case, even if such crimes are not always aggravated felonies); *In re N–A–M–,* 24 I&N Dec. at 338–39 (felony menacing is a particularly serious crime based on its elements, though not an aggravated felony).

Nonetheless, this mix of case-by-case adjudication and per se rules is an inefficient means of identifying categories of offenses that should constitute particularly serious crimes. The Board has only rarely exercised its authority to designate categories of offenses as facially or per se particularly serious, and instead typically looks to a wide and variable range of evidence in making an individualized determination of a crime's seriousness. *See In re N–A–M–,* 24 I&N Dec. at 343–44; *Matter of L–S–,* 22 I&N Dec. 645, 651 (BIA 1999). This case-by-case adjudication means that aliens convicted of the exact same offense can receive different asylum treatment. For certain crimes—*i.e.,* those described in this notice of proposed rulemaking—the Attorney General and the Secretary have determined that the possibility of such inconsistency is not desirable and that a rule-based approach is instead warranted in this specific context.

The proposed rule would eliminate the inefficiencies described above by providing that all felonies would constitute particularly serious crimes. The determination of whether a crime would be a felony for purposes of asylum eligibility would depend on whether the relevant jurisdiction defines the crime as a felony or whether the statute of conviction allows for a sentence of more than one year. Convictions for which sentences are longer tend to be associated with crimes of a more consequential nature. For example, an offender's ''criminal history category'' for the purposes of sentencing for federal crimes ''serves as [a] proxy for the need to protect the public from further crimes of the defendant.'' *United States* v. *Hayes,* 762 F.3d 1300, 1314 n.8 (11th Cir. 2014); *see also id.* (''In other words, it is a proxy for recidivism.''). And the criminal history category, in turn, is ''based on the maximum term imposed in previous sentences rather than on other measures, such as whether the conviction was designated a felony or misdemeanor.'' U.S. Sentencing Guidelines Manual § 4A1.2 cmt. background (U.S. Sentencing Comm'n 2018). This calculation thus reflects a recognition that crimes with the potential for longer sentences tend to indicate that the offenders who commit such crimes are greater dangers to the community.

In addition, defining a felony to include such offenses would also be consistent with the definition of felonies in other federal statutes. For instance, convictions for crimes that states designated as felonies may serve as predicate ''prior felony conviction[s]'' under the federal career offender statute. *See United States* v. *Beasley,* 12 F.3d 280, 282–84 (1st Cir. 1993); *United States* v. *Rivera,* 996 F.2d 993, 994–97 (9th Cir. 1993).

Furthermore, defining felonies to include crimes that involve a possible sentence of more than one year in prison would be generally consistent with the way that federal law defines felonies. *See, e.g.,* 5 U.S.C. 7313(b) (''For the purposes of this section, 'felony' means any offense for which imprisonment is authorized for a term exceeding one year''); *cf.* U.S.S.G. 2L1.2 cmt. n.2 (''Felony' means any federal, state, or local offense punishable by imprisonment for a term exceeding one year.''). The Model Penal Code and most states likewise define a felony as a crime with a possible sentence in ''excess of one year.'' Model Penal Code § 1.04(2); *see* 1 Wharton's Criminal Law § 19 & n.23 (15th ed.) (surveying state laws). Finally, relying on the possibility of a sentence in excess of one year—rather than on the actual sentence imposed—would be consistent with Board precedents adjudicating whether a crime qualifies as ''particularly serious'' for purposes of asylum or withholding eligibility. In that context, ''the sentence imposed is not a dominant factor in determining whether a conviction is for a particularly serious crime'' because the sentence actually imposed often depends on factors such as offender characteristics that ''may operate to reduce a sentence but do not diminish the gravity of [the] crime.'' *In re N–A–M–,* 24 I&N Dec. at 343.

Relying on the possibility of a sentence of over one year to define a felony would capture crimes of a particularly serious nature because the offenders who commit such crimes are—as a general matter—more likely to be dangerous to the community than those offenders whose crimes are punishable by shorter sentences. *See* 8 U.S.C. 1158(b)(2)(A)(ii) (tying the ''particularly serious crime'' determination to ''danger[ousness] to

the community''). In addition, by encompassing all crimes with a sentence of more than one year, regardless of whether the crimes are defined felonies by the relevant jurisdiction, the definition would create greater uniformity by accounting for possible variations in how different jurisdictions may label the same offense. Such a definition would also avoid anomalies in the asylum context that arise from the definition of ''aggravated felonies'' under 8 U.S.C. 1101(a)(43), which defines some qualifying offenses with reference to the length of the actual sentence ordered. *See United States* v. *Pacheco,* 225 F.3d 148, 153–54 (2d Cir. 2000) (agreeing that ordinarily the touchstone in the aggravated felony definition's reference to sentences is the actual term of imprisonment imposed). The proposed definition of a felony would also obviate the need for immigration adjudicators and courts to apply the categorical approach with respect to aggravated felonies. This proposal thus would offer a more streamlined and predictable approach to be applied in the asylum context.[5]

In addition to their authority under section 208(b)(2)(B)(ii) of the INA, 8 U.S.C. 1158(b)(2)(B)(ii), the Attorney General and the Secretary further propose relying on their respective authorities under section 208(b)(2)(C) of the INA, 8 U.S.C. 1158(b)(2)(C), to make all felony convictions disqualifying for purposes of asylum eligibility. Federal, state, tribal, or local felony convictions already carry a number of serious repercussions over and above the sentence imposed. Felons, including those who are U.S. citizens, may lose certain privileges, including the ability to apply for Government grants and live in public housing. *See Estep* v. *United States,* 327 U.S. 114, 122 & n.13 (1946) (explaining that ''[a] felon customarily suffers the loss of substantial rights''); *see also, e.g., Dist. of Columbia* v. *Heller,* 554 U.S. 570, 626–27 (2008) (the Second Amendment does not prohibit laws disallowing the possession of firearms by felons). Treating a felony conviction as disqualifying for purposes of obtaining the discretionary benefit of asylum would be consistent with the disabilities arising from felony convictions in these other contexts and would reflect the serious social cost of such crimes.

The Departments also seek public comment on whether (and, if so, how) to differentiate among crimes designated as felonies and among crimes punishable by more than one year of imprisonment. For example, are there crimes that are currently designated as felonies in one or more relevant jurisdictions in the United States that should not be categorical bars to asylum eligibility? Are there crimes that are currently punishable by more than one year's imprisonment in one or more relevant jurisdictions in the United States that should not be categorical bars to asylum? Should the definition of a felony depend instead on the term of imprisonment that was ordered by the court of jurisdiction? In addition to seeking public comment on whether the definition of felony in the proposed rule might be over-inclusive, the Departments also seek comment on whether it might be under-inclusive—*i.e.,* are there crimes that would not fall under the definition of felony in the proposed rule, and that do not otherwise constitute categorical bars to asylum eligibility, that should be made categorical bars? In sum, the Departments seek input on how the proposed definition of a felony might be modified. Further, the Departments seek comment on what measures, if any, are necessary to ensure that aliens who are victims of human trafficking, but also have convictions caused by or incident to victimization, are not subject to this bar. For instance, victims of severe forms of human trafficking may nevertheless receive a waiver of criminal grounds for inadmissibility in order to qualify for T nonimmigrant status pursuant to 8 CFR 212.16. *See* INA 101(a)(15)(T), 212(d)(13)(B), 8 U.S.C. 1101(a)(15)(T), 1182(d)(13)(B).

Regardless of whether the rule encompasses all felony convictions or some subset of such convictions, the Departments have identified specific types of offenses below that are proposed in this rule as grounds for ineligibility for asylum.

2. Federal Convictions for Harboring Aliens

The Attorney General and the Secretary propose to designate all offenses involving the federal crimes of bringing in or harboring certain aliens pursuant to sections 274(a)(1)(A) and (2) of the INA, 8 U.S.C. 1324(a)(1)(A), (2), as particularly serious crimes and, in all events, as discrete bases for ineligibility. *See* INA 208(b)(2)(B)(ii), (C), 8 U.S.C. 1158(b)(2)(B)(ii), (C). To convict a person of harboring an alien under sections 274(a)(1)(A) or (2) of the INA, the Government must establish that the defendant concealed, harbored, shielded from detection, or transported an alien, or attempted to do so. INA 274(a)(1)(A), (2), 8 U.S.C. 1324(a)(1)(A), (2). Penalties differ depending on whether the act was for commercial advantage or financial gain and on whether serious bodily injury or death occurred. INA 274(a)(1)(B), (2)(B), 8 U.S.C. 1324(a)(1)(B), (2)(B). Most of the prohibited acts carry a penalty of possible imprisonment of at least five years, INA 274(a)(1)(B)(i)–(iii), 8 U.S.C. 1324(a)(1)(B)(i)–(iii), and committing those acts in circumstances resulting in the death of another person can be punished by a sentence of death or life imprisonment, INA 274(a)(1)(B)(iv), 8 U.S.C. 1324(a)(1)(B)(iv). The only exception is for certain instances of the offense of bringing or attempting to bring in an alien who lacks official authorization to enter under section 274(a)(2) of the INA, 8 U.S.C. 1324(a)(2), which carries a possible penalty of imprisonment up to one year, INA 274(a)(2)(A), 8 U.S.C. 274(a)(2)(A).

Convictions under section 1324 are often aggravated felonies under section 101(a)(43)(N) of the INA, 8 U.S.C. 1101(a)(43)(N), which defines an aggravated felony as including ''an offense described in [INA 274(a)(1)(A) or (2)], except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent.'' *See Matter of Ruiz-Romero,* 22 I&N Dec. 486, 488, 492–93 (BIA 1999) (holding that an alien convicted of transporting an illegal alien committed an aggravated felony under section 101(a)(43)(N) of the INA and was thus deportable); *see also Patel* v. *Ashcroft,* 294 F.3d 465 (3d Cir. 2002) (holding that harboring an alien constitutes an aggravated felony); *Gavilan-Cuate* v. *Yetter,* 276 F.3d 418, 419–20 (8th Cir. 2002) (dismissing an appeal for lack of jurisdiction because the court had already determined on the petitioner's direct appeal that he had been convicted of the aggravated felony of transporting and harboring aliens); *United States* v. *Galindo-Gallegos,* 244 F.3d 728, 733–34 (9th Cir. 2001) (holding that transporting aliens under 8 U.S.C. 1324(a)(1)(A)(ii) is an aggravated felony for purposes of section 101(a)(43)(N) of the INA). Aliens convicted of such aggravated felonies would already be ineligible for asylum under section 208(b)(2)(B)(i) of the INA.

The proposed rule would broaden this bar so that first-time offenders who engage in illegal smuggling or harboring

[5] The Departments intend that this proposed provision would be limited to aliens with convictions and would not apply to criminal conduct for which the alien has not been convicted. Further, this provision would expand ineligibility for asylum based on offenses committed in the United States, not offenses committed abroad. This provision would thus leave unchanged the provision in 8 U.S.C. 1101(a)(43) that provides for application of the aggravated felony definition to offenses in violation of the law of a foreign country.

to aid certain family members, in violation of section 1324(a)(1)(A) or (2), are deemed to have committed particularly serious crimes. The *mens rea* required for a section 1324 conviction under subsection (a)(1)(A) is ''knowing,'' and under (a)(2) is ''knowing or in reckless disregard,'' meaning such a conviction displays a serious disregard for U.S. immigration law. In all events, conviction of a smuggling offense under section 1324(a)(1)(A) or (2) should also be disqualifying under section 1158(b)(2)(C), which gives the Attorney General and the Secretary additional discretion to identify grounds for ineligibility. Even first-time alien smuggling offenses involving immediate family members display a serious disregard for U.S. immigration law and pose a potential hazard to smuggled family members, which often include a vulnerable child or spouse. *See Arizona* v. *United States,* 567 U.S. 387, 396 (noting the ''danger'' posed by ''alien smugglers or aliens who commit a serious crime''); *United States* v. *Miguel,* 368 F.3d 1150, 1157 (9th Cir. 2004), *overruled on other grounds by United States* v. *Gasca-Ruiz,* 852 F.3d 1167 (9th Cir. 2017) (noting that ''young children [are] more susceptible to the criminal conduct because they [do] not fully appreciate the danger involved in illegal smuggling'').

3. Federal Convictions for Illegal Reentry

The Attorney General and the Secretary further propose to exercise their authority under sections 208(b)(2)(B)(ii) and 208(b)(2)(C) of the INA, 8 U.S.C. 1158(b)(2)(B)(ii) and (C), to designate a conviction for the federal crime of illegal reentry pursuant to section 276 of the INA, 8 U.S.C. 1326, as precluding asylum eligibility.

Under section 1326(a), aliens who were previously removed and reenter the United States are subject to fines and to a term of imprisonment of two years or less. 8 U.S.C. 1326(a). Section 1326(b) prescribes significantly higher penalties for certain removed aliens who reenter, such as aliens who were removed after being convicted for aggravated felonies and then reenter. 8 U.S.C. 1326(b) (authorizing sentences of imprisonment up to 20 years as possible penalties).

Some convictions under section 1326 already qualify as aggravated felonies under section 101(a)(43)(O) of the INA, 8 U.S.C. 1101(a)(43)(O), which defines an aggravated felony as including ''an offense described in section . . . 1326 . . . committed by an alien who was previously deported on the basis of a conviction for an [aggravated felony].'' Aliens who commit such offenses are thus already ineligible for asylum under section 208(b)(2)(B)(i) of the INA, 8 U.S.C. 1158(b)(2)(B)(i).

The proposed rule would broaden this bar so that all aliens convicted of illegal reentry under section 1326 would be considered to have committed an offense that disqualifies them from asylum eligibility. It would also harmonize the treatment of most aliens who have illegally reentered the United States after being removed, as such aliens who have a prior order of removal reinstated are already precluded from asylum eligibility. Section 1326 makes clear that all offenses relating to illegal reentry are quite serious; even the most basic illegal reentry offense is punishable by fine and by up to two years' imprisonment. 8 U.S.C. 1326(a). Illegal reentry also reflects a willingness to repeatedly disregard the immigration laws despite alternative means of presenting a claim of persecution. An alien seeking protection, even one who has previously been removed from the United States, may present himself or herself at a port of entry without illegally reentering the United States. An alien who chooses instead to again enter illegally has repeatedly chosen to flout immigration laws, and such recidivism suggests that the offense should be treated more severely. The fact that the alien has *repeatedly* engaged in criminal conduct suggests a tendency to engage in such conduct in the future, thus warranting a conclusion that the alien poses a danger to the community that makes the alien's crime particularly serious. *See* Mariel Alper et al., 2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005–2014) 17 (2018) (''Overall, excluding probation and parole violations, 82.4% of prisoners released in 30 states in 2005 were arrested within 9 years.''); U.S. Sentencing Comm'n, The Past Predicts the Future: Criminal History and Recidivism of Federal Offenders 14 (2017) (''Overall, an offender's total criminal history score is a strong predictor of recidivism. Rearrest rates range from a low of 30.2 percent of offenders with zero criminal history points to a high of 85.7 percent for offenders with 15 or more criminal history points. Each additional criminal history point is generally associated with a greater likelihood of recidivism.''); Nick Tilley, Analyzing and Responding to Repeat Offending 11 (2013) (''Once criminal careers are established and offenders are processed by the criminal justice system, recidivism rates become very high: Up to two-thirds of those who are incarcerated will reoffend within a few years.'').

Moreover, Congress, as noted above, has already designated certain crimes related to illegal reentry as aggravated felonies. *See* 8 U.S.C. 1101(a)(43)(O). This designation reflects a congressional decision that aliens who commit these crimes are dangers to the community, *see* 8 U.S.C. 1158(b)(2)(A)(ii) (tying the ''particularly serious crime'' determination to ''danger[ousness] to the community''), so aliens who commit similar crimes related to reentry are also likely be dangers to the community. Further, 63% of those convicted of illegal reentry had a prior criminal history, again suggesting that the offenders who commit these crimes pose an ongoing danger to others. *See* U.S. Sentencing Comm'n, Quick Facts: Illegal Reentry Offenses 1 (2019), *https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Illegal_Reentry_FY18.pdf.*

As a separate basis for this aspect of the proposed rule, the Attorney General and the Secretary propose making illegal reentry a ground for ineligibility under section 208(b)(2)(C) of the INA, 8 U.S.C. 1158(b)(2)(C). A regulation providing for the mandatory ineligibility for asylum based on convictions for illegal reentry of removed aliens, *see* INA 276, 8 U.S.C. 1326, would bear a close relationship to the statutory bar on applying for asylum when a previous order of removal is reinstated, *see* INA 241(a)(5), 8 U.S.C. 1231(a)(5). An alien subject to reinstatement of a prior removal order is not eligible to apply for any relief from removal, but may seek protection such as statutory withholding of removal and protection pursuant to the CAT regulations. *See, e.g., Cazun,* 856 F.3d at 254. The statutory bar on applying for asylum and other forms of relief when an order of removal is reinstated has been upheld by every circuit to consider the question. *See Garcia* v. *Sessions,* 873 F.3d 553, 557 (7th Cir. 2017), *cert. denied,* 138 S. Ct. 2648 (2018); *R–S–C,* 869 F.3d at 1189; *Mejia,* 866 F.3d at 587; *Garcia,* 856 F.3d at 30; *Cazun,* 856 F.3d at 260; *Perez-Guzman* v. *Lynch,* 835 F.3d 1066, 1082 (9th Cir. 2016); *Jimenez-Morales* v. *U.S. Att'y Gen.,* 821 F.3d 1307, 1310 (11th Cir. 2016); *Ramirez-Mejia* v. *Lynch,* 794 F.3d 485, 489–90 (5th Cir. 2015); *Herrera-Molina* v. *Holder,* 597 F.3d 128, 137–38 (2d Cir. 2010). That bar reflects legislators' apparent concerns that aliens who re-cross the border illegally after having been removed once should not be rewarded with benefits that the United States is not obliged to offer them. *See R–S–C,* 869 F.3d at 1179 &

n.2; H.R. Rep. No. 104–469, pt. 1, at 155 (1996) (''[T]he ability to cross into the United States over and over with no consequences undermines the credibility of our efforts to secure the border.''); H.R. Rep. No. 104–469, pt. 1, 113 (''One seemingly intractable problem is repeat border-crossings.'').

The existing statutory bar for reinstated removal orders and the proposed bar for aliens convicted of illegal reentry after being previously removed are not coterminous because not all persons with a conviction under section 276 of the INA, 8 U.S.C. 1326, have orders of removal reinstated. *See Lara-Aguilar* v. *Sessions,* 889 F.3d 134, 144 (4th Cir. 2018) (reinstatement of a prior removal order is neither automatic nor obligatory). Furthermore, not all persons with reinstated removal orders have been convicted under section 276 of the INA, 8 U.S.C 1326. However, the Departments believe that similar policy considerations support the barring of aliens convicted of illegal reentry under section 276 of the INA, 8 U.S.C. 1326, from eligibility for asylum.

Furthermore, although this proposed bar would render ineligible for asylum an alien whose threat of persecution arose after the initial removal and illegal reentry, such an alien could still seek other forms of protection, such as statutory withholding of removal and withholding or deferral of removal under the regulations implementing the CAT. The proposed rule is consistent, therefore, with U.S. treaty obligations under the Refugee Protocol (which incorporates Articles 2 through 34 of the Refugee Convention) and the CAT. U.S. asylum law implements Article 34 of the Refugee Convention, concerning assimilation of refugees, which is precatory and not mandatory. *See Cardoza-Fonseca,* 480 U.S. at 441. In accordance with the non-mandatory nature of Article 34, the asylum statute, INA 208, 8 U.S.C. 1158, was drawn to be discretionary; it does not require asylum to be granted to all refugees. *Id.* For the reasons outlined above, limitations like the ones proposed here do not violate Article 34. *See Garcia,* 856 F.3d at 42; *R–S–C,* 869 F.3d at 1188; *Mejia,* 866 F.3d at 588; *Cazun* , 856 F.3d at 257 & n.16; *Ramirez-Mejia,* 813 F.3d at 241. In contrast, the United States' non-refoulement obligations under Article 33(1) of the Refugee Convention and Article 3 of the CAT are mandatory to the extent provided by domestic law. They are implemented by statutory withholding of removal, a mandatory provision, and withholding or deferral of removal under the CAT regulations. Because the new limitations adopted here do not affect the availability of statutory withholding of removal, INA 241(b)(3)(A), 8 U.S.C. 1231(b)(3)(A), or protection under the regulations implementing the CAT, 8 CFR 1208.16(c) through 1208.18, the rule does not affect U.S. compliance with its obligations under Article 33(1) of the Refugee Convention or Article 3 of the CAT. *See R–S–C,* 869 F.3d at 1188 n.11; *Cazun,* 856 F.3d at 257; *Ramirez-Mejia,* 813 F.3d at 241.

Moreover, in rejecting any argument that the Refugee Convention and Refugee Protocol require that the U.S. must grant asylum to anyone who qualifies as a ''refugee,'' the Departments note that the Refugee Convention and Refugee Protocol are not self-executing. Rather, Congress implemented relevant U.S. obligations under the Refugee Protocol through the Refugee Act. *Matter of D–J–,* 23 I&N Dec. 572, 584 n.8 (A.G. 2003). The Refugee Act made asylum discretionary, meaning that Congress did not consider it obligatory to grant asylum to every refugee who qualifies. Public Law 96–212, sec. 208(a), 94 Stat. 102. Moreover, as noted earlier in footnote 3, courts have rejected arguments that other provisions of the Refugee Convention require every refugee to receive asylum. Courts have held, in the context of upholding the bar on eligibility for asylum in reinstatement proceedings under section 241(a)(5) of the INA, 8 U.S.C. 1231(a)(5), that limiting the ability to apply for asylum does not constitute a prohibited ''penalty'' under Article 31(1) of the Refugee Convention. *Mejia,* 866 F.3d at 588; *Cazun,* 856 F.3d at 257 n.16. Courts have also rejected the argument that Article 28 of the Refugee Convention, governing issuance of international travel documents for refugees ''lawfully staying'' in a country's territory, mandates that every person who might qualify for withholding must also be granted asylum. *Garcia,* 856 F.3d at 42; *R–S–C,* 869 F.3d at 1188. Thus, the Attorney General may render aliens ineligible for asylum if they enter illegally and are then convicted of unlawfully entering the country, and still remain faithful to U.S. obligations under the Refugee Protocol.

4. Federal, State, Tribal, or Local Convictions for Offenses Involving Criminal Street Gangs

The Departments are proposing to bar from asylum all those who are convicted of a crime involving criminal street gangs, regardless of whether that crime qualifies as a felony or as a misdemeanor. One approach the Attorney General and the Secretary are considering is to exercise their discretionary authority under sections 208(b)(2)(B)(ii) and (C) of the INA, 8 U.S.C. 1158(b)(2)(B)(ii) and (C), to exclude individuals convicted of federal, state, tribal, or local crimes committed in support, promotion, or furtherance of a criminal street gang as that term is defined in the convicting jurisdiction or under 18 U.S.C. 521(a). Specifically, the proposed rule would cover individuals convicted of federal, state, tribal, or local crimes in cases in which the adjudicator knows or has reason to believe the crime was committed in furtherance of criminal street gang activity.[6] The ''reason to believe'' standard is used elsewhere in the INA, *see* 8 U.S.C. 1182(a)(2)(C), and would allow for consideration of all reliable evidence, including any penalty enhancements, to determine whether the crime was committed for or related to criminal gang activities, *see Garces* v. *U.S. Att'y Gen.,* 611 F.3d 1337, 1350 (11th Cir. 2010); *Matter of Rico,* 16 I&N Dec. 181, 185–86 (BIA 1977). In addition, the Departments have concluded that it is appropriate to allow the adjudicator to determine whether a crime was in fact committed ''in furtherance'' of gang-related activity. The states, as noted above, have enacted numerous laws that address gang-related crimes, but they have not enacted a uniform definition of what constitutes activity taken ''in furtherance'' of a gang-related crime. It thus appropriately falls to immigration judges in the first instance to determine whether a person committed the type of crime that warrants withholding of the benefit of legal presence in our communities. Moreover, to the extent that allowing the adjudicator to undertake such an inquiry might raise concerns about inconsistent application of the proposed bar, the Departments note that the Board is capable of

[6] California enacted the first major anti-gang legislation in the country in 1988. *See* Cal. Penal. Code 186.22(a) (establishing a substantive criminal offense for ''[a]ny person who actively participates in any criminal street gang with knowledge that its members engage in, or have engaged in, a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang''). In the years since, 49 states, the District of Columbia, and the Federal Government have enacted legislation that provides for penalties (including sentence enhancements, fines, or damages) for gang-related criminal activity. National Gang Center, Highlights of Gang-Related Legislation (Dec. 31, 2018), *https://www.nationalgangcenter.gov/Legislation/Highlights* (last visited June 3, 2019); *see also, e.g.,* 18 U.S.C. 521 (providing a 10-year sentence enhancement for certain convictions regarding criminal street gang activity); Idaho Code Ann. 18–8503; Iowa Code Ann. 723A.2; Kan. Stat. Ann. 21–6314; La. Rev. Stat. 1403; Minn. Stat. Ann. 609.229; Mo. Rev. Stat. 578.423; Mont. Code Ann. 45–8–405; N.C. Gen. Stat. 14–50.17; Ohio Rev. Code Ann. 2923.42; Tenn. Code Ann. 40–35–121; Utah Code Ann. 76–9–903.

ensuring a uniform approach to the gang-related crimes inquiry. *See, e.g.,* 8 CFR 1003.1(e)(6)(i) (allowing for referral of cases to a three-member panel of the Board ''to settle inconsistencies among the rulings of different immigration judges'').

Some of the relevant criminal street gang-related offenses may already constitute aggravated felonies, such that aliens convicted of such offenses would already be ineligible for asylum. The most common criminal street gang crimes ''are street-level drug trafficking, assault, threats and intimidation, robbery, and large-scale drug trafficking.'' National Gang Intelligence Center, 2015 National Gang Report 12 (2015). Many convictions for such offenses could qualify as aggravated felonies. *See, e.g.,* 8 U.S.C. 1101(a)(43)(B) (defining drug trafficking crimes as aggravated felonies); *id.* 1101(a)(43)(F) (defining crimes of violence punishable by at least one year in prison as aggravated felonies).

Regardless, criminal street gang-related offenses—whether felonies or misdemeanors—could reasonably be designated as ''particularly serious crimes'' pursuant to 8 U.S.C. 1158(b)(2)(B)(ii). All criminal street gang-related offenses appear to be particularly serious because they are strong indicators of recidivism and ongoing, organized criminality within a community, thus implying that aliens who commit such crimes are likely to pose an ongoing danger to that community. For example, research suggests that criminal street gang members are responsible for 48 percent of violent crime in most U.S. jurisdictions. *See* National Gang Intelligence Center, National Gang Threat Assessment 15 (2011). Criminal street gang members are also more likely than nonmembers to be involved in selling drugs. *See* Dana Peterson, et al., *Gang Membership and Violent Victimization* 21 Just. Q. 793, 798 (2004). And the Federal Bureau of Investigation reports that more than 96 criminal street gangs conduct cross-border crimes such as cross-border drug trafficking. National Gang Intelligence Center, 2015 National Gang Report 9–10 (2015); *see also* J.C. Barnes et al., *Estimating the Effect of Gang Membership on Nonviolent and Violent Delinquency: A Counterfactual Analysis,* 36 Aggressive Behav. 437, 438 (2010) (studying the link between gang membership and crime, and reporting that gang members account for 86 percent of all ''serious delinquent acts''). In light of this well-documented link between gang membership and a range of crimes, the Departments believe that aliens who enter the United States and proceed to be convicted of crimes involving criminal street gang-related activity should be deemed to have committed particularly serious crimes that render them ineligible for asylum.

Further, some of the crimes in which gangs frequently engage—such as drug trafficking—are similar to the kinds of crimes that Congress has already classified as aggravated felonies. *See, e.g.,* 8 U.S.C. 1101(a)(43)(B) (defining aggravated felonies to include ''illicit trafficking in a controlled substance''). This classification reflects a congressional determination that such crimes pose a danger to the community, *see* 8 U.S.C. 1158(b)(2)(A)(ii), (b)(2)(B)(i), such that aliens involved in similar, gang-related crimes are also likely to pose a danger to the community. Indeed, the perpetrators of crimes that further gang activity are, by the very nature of the acts they commit, displaying a disregard for basic societal structures in preference of criminal activities that place other members of the community—even other gang members—in danger. Existing law in some cases thus already treats gang-related offenders more harshly than other offenders, *see, e.g.,* U.S. Sentencing Guidelines Manual § 5K2.18 (U.S. Sentencing Comm'n 2018) (allowing for upward departures ''to enhance the sentences of defendants who participate in groups, clubs, organizations, or associations that use violence to further their ends''), thereby confirming that these offenders are more likely to be dangerous to the community.

Moreover, even if 8 U.S.C. 1158(b)(2)(B)(ii) did not authorize the proposed bar, the Attorney General and the Secretary would propose designating criminal gang-related offenses as disqualifying under 8 U.S.C. 1158(b)(2)(C). Criminal gangs of all types—including local, regional, or national street gangs; outlaw motorcycle gangs; and prison gangs—are a significant threat to the security and safety of the American public. *See, e.g.,* National Gang Intelligence Center, 2015 National Gang Report 8 (2015) (explaining that ''each gang type poses a unique threat to the nation''). Transnational organized crime has also expanded in size, scope, and impact over the past several years.[7] In Executive Order 13773, Enforcing Federal Law With Respect to Transnational Criminal Organizations and Preventing International Trafficking, 82 FR 10691 (Feb. 9, 2017), the President emphasized the scourge of transnational criminal organizations and directed federal agencies to ''pursue and support additional efforts to prevent the operational success of transnational criminal organizations and subsidiary organizations within and beyond the United States.'' Aliens involved in gang-related criminal activity accordingly represent a threat to the safety and security of the United States, and barring aliens convicted of such activity from receiving the discretionary benefit of asylum is ''consistent with'' the asylum statute's current provisions specifying that aliens posing such a threat are not eligible for asylum. *See* 8 U.S.C. 1158(b)(2)(A)(ii), (iv).

Finally, the Departments solicit public comments on:

(1) What should be considered a sufficient link between an alien's underlying conviction and the gang-related activity in order to trigger the application of the proposed bar; and

(2) any other regulatory approaches to defining the type of gang-related activities that should render aliens ineligible for asylum.

5. Convictions for Offenses Involving Driving While Intoxicated or Impaired

The Attorney General and Secretary further propose that, pursuant to their authorities under 8 U.S.C. 1158(b)(2)(B)(ii) and (C), aliens convicted under federal, state, tribal, or local law of certain offenses involving driving while intoxicated or impaired (also known as driving under the influence (''DUI'')) should be ineligible for asylum. Specifically, aliens should be ineligible for asylum if they are convicted under federal, state, tribal, or local law of a second or subsequent offense of driving while intoxicated or impaired, or for a single such offense resulting in death or serious bodily injury. Whether a conviction involves driving while intoxicated or impaired would depend on the definition that the jurisdiction of conviction gives those terms. Such convictions would be disqualifying regardless of whether they constituted felonies or misdemeanors in the jurisdiction of conviction.

An alien convicted of DUI may remain eligible for asylum under current law, even when it is an alien's second or subsequent such conviction or when the DUI offense results in death or serious injury. Not all DUI offenses constitute aggravated felonies within the meaning of section 101(a)(43) of the INA, 8 U.S.C. 1101(a)(43), and thus these offenses may not automatically constitute ''particularly serious crimes'' for purposes of 8 U.S.C. 1158(b)(2)(B)(i).

[7] Office of the Dir. Of Nat'l Intelligence, Transnational Organized Crime, *https://www.dni.gov/files/documents/NIC_toc_foldout.pdf.*

Cf. Leocal v. *Ashcroft,* 543 U.S. 1, 13 (2004) (noting that DUI offenses in states whose relevant statutes ''do not require any mental state'' are not aggravated felony crimes of violence). However, the Board in the withholding of removal context has concluded that a number of DUI-related offenses involving death or serious injury constitute particularly serious crimes, and courts have upheld those determinations. *See, e.g., Avendano-Hernandez* v. *Lynch,* 800 F.3d 1072, 1076, 1076–78 (9th Cir. 2015) (affirming the Board's determination that a felony DUI conviction involving injury to another was a particularly serious crime for purposes of withholding of removal given the inherently dangerous nature of the offense, even though the alien was sentenced to less than one year's imprisonment); *Anaya-Ortiz* v. *Holder,* 594 F.3d 673, 675, 679–80 (9th Cir. 2010) (the Board applied the correct standard to conclude that an alien's actions in crashing ''into a house while driving drunk . . . [and] caus[ing] part of the house's sheetrock wall to collapse on an elderly woman who lived inside'' constituted a particularly serious crime); *Ursu* v. *INS,* 20 F. App'x 702, 705 (9th Cir. 2001) (upholding the Board's conclusion that a specific DUI offense was a particularly serious crime for withholding purposes because the alien ''caused the death of another human being'' while severely impaired). These holdings indicate that DUI offenses often have grave consequences, thus supporting a conclusion that they can reasonably be considered ''particularly serious'' for purposes of asylum eligibility. DUI laws exist, in part, to protect unknowing persons who are transiting through their communities from the dangerous persons who choose to willingly disregard common knowledge that their criminal acts endanger others.

As noted above, however, existing law does not clearly or categorically limit asylum eligibility for aliens convicted of serious DUI offenses, including those resulting in death or serious bodily injury. Establishing such a bar would be consistent with the Attorney General and the Secretary's statutory authority to designate by regulation ''particularly serious crimes'' that constitute a danger to the community and, thus, render aliens ineligible for asylum. INA 208(b)(2)(A)(ii), (B)(ii), 8 U.S.C. 1158(b)(2)(A)(ii), (B)(ii); *Delgado,* 648 F.3d at 1105–06; *Gao,* 595 F.3d at 555–56; *see also Matter of Carballe,* 19 I&N Dec. 357, 360 (BIA 1986) (an alien convicted of a particularly serious crime constitutes a danger to the community of the United States). The Fifth Circuit has noted that ''the very nature of the crime of [driving while intoxicated] presents a 'serious risk of physical injury' to others.'' *United States* v. *DeSantiago-Gonzalez,* 207 F.3d 261, 264 (5th Cir. 2000). These decisions in the withholding context underscore that DUI offenses involving serious bodily harm or death are routinely deemed ''particularly serious crimes'' in that context, and section 101(h)(3) of the INA, 8 U.S.C. 1101(h)(3), classifies driving under the influence as a ''serious criminal offense'' for purposes of the ground of inadmissibility at section 1182(a)(2)(E). Classifying DUI offenses that involve serious bodily harm or death as particularly serious crimes as a categorical matter would be reasonable given that all such offenses by definition involve a serious danger to the community. Likewise, categorically classifying repeat DUI offenses as particularly serious crimes would be a reasonable exercise of the Attorney General and the Secretary's discretion to designate particularly serious crimes because repeat offenders have already exhibited disregard for the safety of others as well as a likelihood of continuing to engage in extremely dangerous conduct.

Even if some of the proposed DUI-related bars could not be characterized as ''particularly serious crimes'' for purposes of section 1158(b)(2)(B)(ii), such bars would be within the Attorney General and the Secretary's authority to establish under 8 U.S.C. 1158(b)(2)(C). As the Supreme Court has recognized, ''[d]runk driving is an extremely dangerous crime'' as a general matter. *Begay* v. *United States,* 553 U.S. 137, 141 (2008), *abrogated on other grounds by Johnson* v. *United States,* 135 S. Ct. 2551 (2015). It takes ''a grisly toll on the Nation's roads, claiming thousands of lives, injuring many more victims, and inflicting billions of dollars in property damage every year.'' *Birchfield* v. *North Dakota,* 136 S. Ct. 2160, 2166 (2016); *see also Marmolejo-Campos* v. *Holder,* 558 F.3d 903, 913 (9th Cir. 2009) (noting that ''the dangers of drunk driving are well established''). Furthermore, federal courts have upheld the Board's determination that even if a particular DUI-related offense does not qualify as a ''particularly serious crime,'' such a conviction warrants a discretionary denial of asylum. *See, e.g., Kouljinski* v. *Keisler,* 505 F.3d 534, 543 (6th Cir. 2007) (holding that, regardless of whether driving under the influence of alcohol is a ''particularly serious crime,'' the immigration judge ''did not abuse his discretion in this case by basing his discretionary denial of asylum on [the petitioner's] three drunk-driving convictions''). These cases are consistent with the notion that the Attorney General and Secretary could, in their discretion, identify a subset of DUI convictions reflecting particularly dangerous conduct as grounds to deny eligibility for asylum.

6. Domestic Assault or Battery, Stalking, or Child Abuse

Relying on the authority under section 208(b)(2)(B)(ii) of the INA, the proposed regulation would also render aliens convicted of federal, state, tribal, or local offenses involving conduct amounting to domestic assault or battery, stalking, or child abuse in the domestic context ineligible for asylum, irrespective of whether those offenses qualify as felonies or misdemeanors. Relying solely on the Attorney General and the Secretary's authority under section 208(b)(2)(C) of the INA, the regulation would also render ineligible aliens who engaged in acts of battery and extreme cruelty in a domestic context in the United States, regardless of whether such conduct resulted in a criminal conviction. Notably, the asylum statute already contemplates that individuals who engage in certain harmful behavior will be ineligible, regardless of whether that behavior resulted in a conviction. 8 U.S.C. 1158(b)(2)(A)(i), (iii)–(v). Finally, the proposed regulation would except from the ineligibility bar aliens who have been battered or subjected to extreme cruelty and who were not the primary perpetrators of violence in their relationships.

Some of the offenses described above may already render an alien ineligible for asylum, to the extent that a particular conviction qualifies as an aggravated felony. For instance, aggravated felonies encompass ''murder, rape, or sexual abuse of a minor,'' 8 U.S.C. 1101(a)(43)(A), as well as any ''crime of violence . . . for which the term of imprisonment [is] at least one year,'' *id.* 1101(a)(43)(F). Convictions for such offenses automatically constitute ''particularly serious crimes'' for purposes of 8 U.S.C. 1158(b)(2)(A)(ii). *See* 8 U.S.C. 1158(b)(2)(B)(i). But, as noted, due to the application of the categorical approach, many state convictions that involve sexual abuse or domestic violence-related offenses may not qualify as aggravated felonies. *E.g., Larios-Reyes,* 843 F.3d at 149–50 (alien's conviction under Maryland law for sexual abuse of a victim under the age of 14 did not amount to the aggravated felony of ''sexual abuse of a minor''); *Ortega-Mendez* v. *Gonzales,* 450 F.3d

1010, 1021 (9th Cir. 2006) (holding that a conviction for battery under California Penal Code section 242 is not a ''crime of violence'' within the meaning of 18 U.S.C. 16(a) and thus is not a ''crime of domestic violence'' within the meaning of 8 U.S.C. 1227(a)(2)(E)(i)); *Tokatly* v. *Ashcroft,* 371 F.3d 613, 624 (9th Cir. 2004) (''Applying *Taylor,* a court may not look beyond the record of conviction to determine whether an alien's crime was one of 'violence,' or whether the violence was 'domestic' within the meaning of the provision.'').

The Board has routinely deemed some of the identified domestic violence offenses as particularly serious crimes, and many of those decisions have been upheld on appeal. *See Pervez* v. *Holder,* 546 F. App'x 157, 159 (4th Cir. 2013) (attempted indecent liberties with a child constituted a particularly serious crime even where ''no child was actually harmed''); *Lara-Perez* v. *Holder,* 517 F. App'x 255 (5th Cir. 2013) (lewd and lascivious acts with a child constituted particularly serious crime); *Uzoka* v. *Att'y Gen.,* 489 F. App'x 595 (3d Cir. 2012) (endangering welfare of a child constituted a particularly serious crime); *Sosa* v. *Holder,* 457 F. App'x 691 (9th Cir. 2011) (willful infliction of corporal injury on a spouse or cohabitant constituted a particularly serious crime); *Hernandez-Vasquez* v. *Holder,* 430 F. App'x 448 (6th Cir. 2011) (child endangerment constituted a particularly serious crime); *Matter of Singh,* 25 I&N Dec. 670, 670 (BIA 2012) (stalking offense constituted a crime of violence). But the Board's case-by-case assessment of each domestic violence conviction does not cover all of the offenses identified above, and it would not cover domestic violence that does not result in a conviction, as the proposed rule would.

The Attorney General and the Secretary propose classifying domestic violence convictions as particularly serious crimes under section 208(b)(2)(B)(ii) of the INA, 8 U.S.C. 1158(b)(2)(B)(ii), because violent conduct, or conduct creating a substantial risk of violence against the person, generally constitutes a particularly serious offense rendering an alien ineligible for asylum or withholding of removal. *Matter of E–A–,* 26 I&N Dec. 1, 9 n.3 (BIA 2012) (a ''serious'' crime involves ''a substantial risk of violence and harm to persons''); *Matter of Frentescu,* 18 I&N Dec. 244, 247 (BIA 1982) (''Crimes against persons are more likely to be categorized as 'particularly serious crimes.' '').

Even if all of the proposed domestic violence offenses would not qualify as particularly serious crimes, convictions for such offenses—as well as engaging in conduct involving domestic violence that does not result in a conviction—should be a basis for ineligibility for asylum under section 208(b)(2)(C) of the INA. Domestic violence is particularly reprehensible because the perpetrator takes advantage of an ''especially vulnerable'' victim. *Carrillo* v. *Holder,* 781 F.3d 1155, 1159 (9th Cir. 2015). Congress enacted grounds for removability for domestic violence offenses because ''[w]hen someone is an alien and has already shown a predisposition toward violence against women and children, we should get rid of them the first time.'' *See* 142 Cong. Rec. S4058–02, S4059 (daily ed. Apr. 24, 1996) (statement of Senator Dole on his amendment adding grounds for removability under subsection (E) to 8 U.S.C. 1227(a)(2)). Congress included stalking within the same statutory provision as domestic violence offenses that make an alien subject to removal because it is a ''vicious act:'' ''Of all the women killed in the United States by husbands or boyfriends, 90 percent were stalked before being murdered.'' *Id.* In addition, ''[s]talking behavior often leads to violence which may result in the serious injury or death of stalking victims.'' *Id.* Congress also included child abuse within the same statutory provision as domestic violence offenses, noting that child abuse includes a range of serious maltreatment, such as negligence, physical abuse, sexual abuse, emotional abuse, and medical negligence. *See id.* (statement of Senator Coverdale). ''[American] society will not tolerate crimes against women and children.'' *Id.* (statement of Senator Dole on his amendment to add subsection (E) to 8 U.S.C. 1227(a)(2)). The same rationale should render aliens who commit domestic violence in the United States ineligible for the discretionary benefit of asylum. Denying asylum eligibility to an alien who has engaged in domestic violence accords with the aim of ''send[ing] a message that we will protect our citizens against [domestic] assaults'' committed by aliens. *Id.*

The portions of the proposed regulation that require a conviction would permit the adjudicator to assess all reliable evidence in order to determine whether that conviction amounts to a domestic violence offense. In limited circumstances, a similar type of analysis already occurs in the removal context. Although the ground of removability at 8 U.S.C. 1227(a)(2)(E)(ii)—which applies to individuals who violate certain portions of a protective order—does not require a criminal conviction, it does require a judicial order. *See Garcia-Hernandez* v. *Boente,* 847 F.3d 869, 872 (7th Cir. 2017) (''The text of [8 U.S.C. 1227(a)(2)](E)(ii) does not depend on a criminal conviction but on what a court 'determines' about the alien's conduct.''). That ground of removability requires the immigration judge to consider ''the probative and reliable evidence regarding what a State court has determined about the alien's violation [of a protective order].'' *Matter of Medina-Jimenez,* 27 I&N Dec. 399, 401 (BIA 2018). And, under 8 U.S.C. 1227(a)(2)(E)(i), which requires a conviction, the immigration judge may still apply a circumstance-specific approach to determine whether the ''domestic relationship component'' of that removability ground is met. *Hernandez-Zavala* v. *Lynch,* 806 F.3d 259, 266–67 (4th Cir. 2015); *Matter of Estrada,* 26 I&N Dec. 749, 752–53 (BIA 2016) (''[T]he circumstance-specific approach is properly applied in analyzing the domestic nature of a conviction to determine if it is for a crime of domestic violence.''). Because some states may not have separate offenses for the different types of conduct recognized in federal law as domestic violence offenses, relying on such a factual inquiry would ''clos[e] the . . . loopholes'' where aliens might otherwise escape the immigration consequences due to the vagaries of states' laws. 142 Cong. Rec. S4058–02, S4059 (statement of Senator Dole).

For similar reasons, the portions of the proposed rule at 8 CFR 208.13(c)(6)(vii) and 1208.13(c)(6)(vii), which would not require a conviction to trigger ineligibility, allow the adjudicator to consider what conduct the alien engaged in to determine if the conduct amounts to a covered act of battery or extreme cruelty. There is precedent for such a conduct-specific inquiry in the asylum statute, *see* INA 208(b)(2)(A)(i), 8 U.S.C. 1158(b)(2)(A)(i), as well as in the removability context, *see* INA 237(a)(1)(E), 8 U.S.C. 1227(a)(1)(E); *see also Meng* v. *Holder,* 770 F.3d 1071, 1076 (2d Cir. 2014) (reviewing the record evidence to determine whether it supported the agency's finding that the applicant's conduct triggered section 1158(b)(2)(A)(i)'s persecutor bar); *Santiago-Rodriguez* v. *Holder,* 657 F.3d 820, 829 (9th Cir. 2011) (explaining that a factual admission may be sufficient to satisfy the Government's burden of demonstrating removability under section 1227(a)(1)(E)(i)). Moreover, this conduct-specific inquiry is materially similar to the inquiry already undertaken in situations in which an

alien seeks to obtain immigration benefits based on domestic violence actions that do not necessarily result in a conviction. *See, e.g.,* 8 U.S.C. 1229b(b)(2)(A); 8 CFR 204.2(c)(1)(i)(E), (c)(1)(vi), (c)(2)(iv), (e)(1)(i)(E), (e)(1)(vi), and (e)(2)(iv).

Finally, the proposed regulation would exempt from the ineligibility bar aliens who have been battered or subjected to extreme cruelty and who were not the primary perpetrators of violence in their relationships. These aliens are generally described in section 237(a)(7)(A) of the INA, 8 U.S.C. 1227(a)(7)(A), which provides a waiver of the domestic violence and stalking removability ground when it is determined that the alien (1) was acting in self-defense; (2) was found to have violated a protection order intended to protect the alien; or (3) committed, was arrested for, was convicted of, or pled guilty to committing a crime that did not result in serious bodily injury and where there was a connection between the crime and the alien's having been battered or subjected to extreme cruelty. Although section 237(a)(7)(A) of the INA, 8 U.S.C. 1227(a)(7)(A), excepts such aliens from removability only if they are granted a discretionary waiver, the proposed rule would except all aliens who satisfy the above criteria from the proposed asylum bar. Asylum officers or immigration judges could thus make factual determinations regarding whether an alien fit into this category, making the exception more administrable and uniform in the asylum context. The Departments believe that this exception would provide important protections for domestic violence victims.

7. Convictions for Certain Misdemeanor Offenses

The proposed regulation would also make certain misdemeanor offenses bars to asylum based on the authority to create new grounds for ineligibility in section 208(b)(2)(C) of the INA, 8 U.S.C. 1158(b)(2)(C). Other provisions of the INA render aliens ineligible for other benefits based on convictions for certain misdemeanors. *See, e.g.,* INA 244(c)(2)(B)(i), 8 U.S.C. 1254a(c)(2)(B)(i) (barring aliens from eligibility for temporary protected status if they have been convicted of two or more misdemeanors in the United States). The proposed rule would designate offenses involving the use of fraudulent documents, the receipt of public benefits under false pretenses, or the possession or trafficking of drugs as disqualifying for purposes of asylum, even if such offenses are misdemeanors rather than felonies. The proposed regulation would define a misdemeanor in this context as a crime defined as a misdemeanor by the jurisdiction of conviction, or that involves a potential penalty of one year or less in prison. Convictions for such misdemeanor offenses should be disqualifying because these offenses inherently undermine public safety or Government integrity.

The Departments also seek public comment on whether (and, if so, how) to differentiate among misdemeanor convictions that should warrant designation as grounds for ineligibility for asylum. Are there any additional misdemeanor convictions that should be bars to asylum eligibility? Conversely, should any of the below proposed misdemeanor bars be eliminated?

a. Fraudulent Document Offenses

The Departments propose to make aliens ineligible for asylum when they are convicted of a federal, state, tribal, or local misdemeanor for the possession or use, without lawful authority, of an identification document, authentication feature, or false identification document as defined in 18 U.S.C. 1028(d). Aliens convicted of falsifying passports or other identity documents where the term of imprisonment is at least a year are already ineligible for asylum (unless the conduct was a first-time offense for purposes of aiding a specified family member) because such conduct constitutes an aggravated felony under 8 U.S.C. 1101(a)(43)(P). Other felonies relating to fraudulent document offenses would be encompassed within the proposed eligibility bar for felony convictions.

The Attorney General and the Secretary believe that fraudulent document offenses pose such a significant affront to government integrity that even misdemeanor fraudulent document offenses should disqualify aliens from eligibility for asylum. Proper identity documentation is critical in the immigration context. *See Noriega-Perez* v. *United States,* 179 F.3d 1166, 1173–74 (9th Cir. 1999). Furthermore, as Congress acknowledged when it passed the REAL ID Act of 2005, Public Law 109–13, preserving the integrity of identity documents is critical for general national security and public safety reasons. The United States has taken concrete steps to protect all Government-issued identification documents by making the process to obtain identification documents more rigorous. *See, e.g.,* H.R. Rep. No. 109–72, at 179 (2005) (Conf. Rep.) (explaining that the REAL ID Act was passed in part to ''correct the chronic weakness among many of the states in the verification of identity'' for the purpose of issuing Government identification documents).

The use of fraudulent documents, especially involving the appropriation of someone else's identity, so strongly undermines government integrity that it would be inappropriate to allow an individual convicted of such an offense to obtain the discretionary benefit of asylum.

Despite the concerns articulated above, the proposed rule would provide an exception for the bar to asylum based on convictions for use or misuse of identification documents if the alien can show that the document was presented before boarding a common carrier for the purpose of coming to the United States, that the document relates to the alien's eligibility to enter the United States, that the alien used the document to depart a country in which the alien has claimed a fear of persecution, and that the alien claimed a fear of persecution without delay upon presenting himself or herself to an immigration officer upon arrival at a United States port of entry. This exception is consistent with distinctions regarding certain document-related offenses made in *Matter of Pula,* 19 I&N Dec. at 474–75, existing statutes, *see* INA 274C(a)(6) and (d)(7), 8 U.S.C. 1324c(a)(6) and (d)(7), and existing regulations, *see* 8 CFR 270.2(j) and 1270.2(j); *see also Matter of Kasinga,* 21 I&N Dec. 357, 368 (BIA 1996) (use of fraudulent passport to come to the United States was not a significant adverse factor where, upon arrival, applicant told the immigration inspector the truth). Other than this exception, aliens seeking to enter, remain, obtain employment, or obtain benefits and services who are convicted of using false or fraudulent documents should not be eligible for asylum.

b. Public Benefits Offenses

Many aliens are legally entitled to receive certain categories of federal public benefits. 8 U.S.C. 1611, 1641. The unlawful receipt of public benefits, however, burdens taxpayers and drains a system intended to assist lawful beneficiaries. The inherently pernicious nature of such conduct has previously led the Government to prioritize enforcement of the immigration laws against such offenders, *see* Enhancing Public Safety in the Interior of the United States, Exec. Order No. 13768, 82 FR 8799 (Jan. 25, 2017), and this pernicious conduct warrants the use of the Attorney General and the Secretary's authority to bar convicted individuals

from receiving the discretionary benefit of asylum.[8]

c. Controlled Substances Offenses

Relying on the authority in section 208(b)(2)(C) of the INA, 8 U.S.C. 1158(b)(2)(C), the Departments propose to make aliens ineligible for asylum when they are convicted of a federal, state, tribal, or local misdemeanor involving controlled-substances offenses. Specifically, the Departments propose that a conviction for possession or trafficking of a controlled substance or controlled-substance paraphernalia, other than a single offense involving possession for one's own use of 30 grams or less of marijuana, should disqualify an alien from eligibility for asylum.

Aliens who violate controlled substance laws may be removable, *see* INA 212(a)(2)(A)(i)(II), 237(a)(2)(B)(i), 8 U.S.C. 1182(a)(2)(A)(i)(II), 1227(a)(2)(B)(i), and they would already be barred from receiving asylum to the extent a controlled-substance offense constitutes an aggravated felony, *see* INA 208(b)(2)(B)(i), 8 U.S.C. 1158(b)(2)(B)(i); *see also* INA 101(a)(43)(B), 8 U.S.C. 1101(a)(43)(B); *United States* v. *Valdivia-Flores,* 876 F.3d 1201, 1206–07 (9th Cir. 2017) (controlled-substances offenses are aggravated felonies under the INA if they meet the definition of trafficking or involve state analogues to federal trafficking offenses). Furthermore, in cases that the courts of appeals have often upheld, the Board has concluded that various controlled-substances offenses can constitute particularly serious crimes even if they do not rise to the level of aggravated felonies. *See, e.g., Herrera-Davila* v. *Sessions,* 725 F. App'x 589, 590 (9th Cir. 2018) (the Board and immigration judge did not err in determining that an immigrant's conviction for drug possession constituted a particularly serious crime for both asylum and withholding of removal); *Vaskovska* v. *Lynch,* 655 F. App'x 880, 884 (2d Cir. 2016) (the Board did not err in determining that an alien's conviction for drug possession was ''a particularly serious crime rendering her ineligible for asylum and withholding of removal''); *Bertrand* v. *Holder,* 448 F. App'x 744, 745 (9th Cir. 2011) (the Board did not err in determining that an alien's conviction for selling cannabis constituted a particularly serious crime for purposes of both asylum and withholding of removal). Additionally, drug paraphernalia possession can include certain equipment associated with the use, manufacture, packaging, or sale of illegal drugs. *See, e.g.,* 21 U.S.C. 863(d). Under the proposed eligibility bar for felonies, all felony convictions relating to controlled substances would become a basis for ineligibility for asylum.

The Departments further propose to implement a new bar for asylum to include convictions for misdemeanors involving the trafficking or possession of controlled substances. Both possessors and traffickers of controlled substances pose a direct threat to the public health and safety interests of the United States, and they should not be entitled to the benefit of asylum. The harmful effects of controlled substance offenses have been recognized consistently by policymakers and courts. ''[F]ar more people die from the misuse of opioids in the United States each year than from road traffic accidents or violence.'' United Nations Office on Drugs and Crime, World Drug Report: Executive Summary, Conclusions, and Policy Implications 10 (2017). As Attorney General Ashcroft previously recognized in an immigration opinion, ''[t]he harmful effect to society from drug offenses has consistently been recognized by Congress in the clear distinctions and disparate statutory treatment it has drawn between drug offenses and other crimes.'' *Matter of Y–L-,* 23 I&N Dec. 270, 275 (A.G. 2002). He concluded that the ''unfortunate situation'' of drug abuse and related crime ''has reached epidemic proportions and . . . tears the very fabric of American society.'' *Id.* The federal courts have agreed that drug offenses are serious, and have noted that ''immigration laws clearly reflect strong congressional policy against lenient treatment of drug offenders.'' *Ayala-Chavez* v. *U.S. INS,* 944 F.2d 638 (9th Cir. 1991) (quoting *Blackwood* v. *INS,* 803 F.2d 1165, 1167 (11th Cir. 1988)); *see also Hazzard* v. *INS,* 951 F.2d 435, 438 (1st Cir. 1991); *cf. Mason* v. *Brooks,* 862 F.2d 190, 194 (9th Cir. 1988) (''Congress has forcefully expressed our national policy against persons who possess controlled substances by enacting laws . . . to exclude them from the United States if they are aliens.'').

For these reasons, the proposed bar on asylum eligibility is consistent with the INA's current treatment of controlled-substance offenses. Nevertheless, the Departments also propose a limited exception to the proposed bar for convictions involving a single offense involving possession for one's own use of 30 grams or less of marijuana. That exception would be consistent with an existing exception in the removability context: One who is convicted of a single offense of simple possession of marijuana is not automatically removable under the INA. *See* INA 237(a)(2)(B)(i), 8 U.S.C. 1227(a)(2)(B)(i). An alien with the same conviction would be inadmissible, but has a statutory right to request a waiver, which the Attorney General or the Secretary may grant in his or her discretion. *See* INA 212(a)(2)(A)(i)(II), (h), 8 U.S.C. 1182(a)(2)(A)(i)(II), (h); 8 CFR 212.7(d) and 1212.7(d); *see also* INA 103(a), 8 U.S.C. 1103(a).

The Departments seek public comment on how to differentiate among controlled substance offenses. Are there offenses that are currently designated as a controlled substance offense in one or more relevant jurisdictions in the United States that should not be categorical bars to asylum eligibility? In addition to seeking public comment on whether this proposed definition is over-inclusive, the Departments seek comment on whether it might be under-inclusive: Are there crimes that would not fall under this definition that should be made categorical bars?

B. Clarifying the Effect of Criminal Convictions

The proposed regulations governing ineligibility for asylum would also set forth criteria for determining whether a vacated, expunged, or modified conviction or sentence should be recognized for purposes of determining whether an alien is eligible for asylum. The proposed rule would apply the same set of principles to federal, state, tribal, or local convictions that are relevant to the eligibility bars described above. The rule would not apply to convictions that exist prior to the effective date of the proposed regulation. For convictions or sentences imposed thereafter, the proposed rule would provide that (1) vacated or expunged convictions, or modified convictions or sentences, remain valid for purposes of ascertaining eligibility for asylum if courts took such action for rehabilitative or immigration purposes; (2) an immigration judge or other adjudicator may look to evidence other than the order itself to determine whether the order was issued for rehabilitative or immigration purposes; (3) the alien bears the burden of establishing that the vacatur, expungement, or sentence modification was not for rehabilitative or immigration purposes; (4) the alien must further establish that the court had jurisdiction and authority to alter the relevant order;

[8] In Fiscal Year (''FY'') 2017, approximately 20 percent of Government benefits fraud offenders at the federal level were not U.S. citizens. *See* U.S. Sentencing Comm'n, Quick Facts, *https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Government_Benefits_Fraud_FY17.pdf.*

and (5) there exists a rebuttable presumption against the effectiveness, for immigration purposes, of the order vacating, expunging, or modifying a conviction or sentence if either (i) the order was entered after the initiation of any removal proceeding; or (ii) the alien moved for the order more than one year after the date of the original order of conviction or sentencing. The rule would thus ensure that aliens do not have their convictions vacated or modified for purported rehabilitative purposes that are, in fact, for immigration purposes.

The authority of the Attorney General and the Secretary to promulgate this proposed rule derives from sections 208(b)(2)(B)(ii) and (C) of the INA, 8 U.S.C. 1158(b)(2)(B)(ii) and (C). Prescribing the effect to be given to vacated, expunged, or modified convictions or sentences is an ancillary aspect of prescribing which criminal convictions should constitute ''particularly serious crimes'' for purposes of asylum ineligibility, as well as prescribing additional limitations or conditions on asylum eligibility. Additionally, the Attorney General possesses general authority under section 103(g)(2) of the INA, 8 U.S.C. 1103(g)(2), to ''establish such regulations . . . as the Attorney General determines to be necessary for carrying out this section.'' *See Tamenut,* 521 F.3d at 1004 (describing section 1103(g)(2) as ''a general grant of regulatory authority'').[9] Similarly, Congress has conferred upon the Secretary the authority to ''establish such regulations . . . as he deems necessary for carrying out his authority under the provisions of [the INA].'' INA 103(a)(1), (3), 8 U.S.C. 1103(a)(1), (3).

First, regarding the immigration effect of expungements, vacaturs, or sentence modifications, the rule would codify the principle set forth in *Matter of Thomas and Thompson,* 27 I&N Dec. 674 (A.G. 2019), that, if the underlying reason for the vacatur, expungement, or modification was for ''rehabilitation or immigration hardship,'' the conviction remains effective for immigration purposes. *Id.* at 680; *see also id.* (distinguishing between convictions vacated on the basis of a procedural or substantive defect in the underlying proceeding and those vacated because of post-conviction events, such as rehabilitation or immigration hardships); *Matter of Pickering,* 23 I&N Dec. 621 (BIA 2003) (finding that a conviction remains valid for immigration purposes if the conviction is vacated for reasons unrelated to the merits of the underlying criminal proceedings), *rev'd on other grounds by Pickering* v. *Gonzales,* 465 F.3d 263, 267–70 (6th Cir. 2006).

Courts of appeals have repeatedly accepted this principle. The Second Circuit deemed it ''reasonable'' for the Board to conclude in *Pickering* that convictions vacated for rehabilitative reasons are still effective for purposes of immigration consequences. *Saleh* v. *Gonzales,* 495 F.3d 17, 24 (2d Cir. 2007). That interpretation is ''entirely consistent with Congress's intent in enacting the 1996 amendments to broaden the definition of conviction and advances the two purposes earlier identified by the Board: It focuses on the original attachment of guilt (which only a vacatur based on some procedural or substantive defect would call into question) and imposes uniformity on the enforcement of immigration laws.'' *Id.; see also Pinho* v. *Gonzales,* 432 F.3d 193, 215 (3d Cir. 2005) (applying *Pickering* to conclude that a conviction was vacated ''based on a defect in the underlying criminal proceedings,'' not for rehabilitative or immigration purposes); *cf. Dickerson* v. *New Banner Inst., Inc.,* 460 U.S. 103, 120 (1983) (accepting that Congress need not ''be bound by post-conviction state actions . . . that vary widely from State to State and that provide less than positive assurance that the person in question no longer poses an unacceptable risk of dangerousness'').

For similar reasons, the rule would provide that court orders *modifying* criminal sentences for rehabilitative purposes should also have no effect on the alien's eligibility for asylum. *See Matter of Thomas and Thompson,* 27 I&N Dec. at 680 (explaining that ''the *Pickering* test should apply to state-court orders that modify, clarify, or otherwise alter the term of imprisonment or sentence associated with a state-court conviction'').

Second, to avoid gamesmanship and manipulation in the drafting of orders vacating a conviction or modifying a criminal sentence, the proposed regulations would allow an adjudicator to look beyond the face of the order to determine whether it was issued for rehabilitative or immigration purposes and to determine whether the other requirements of proposed 8 CFR 208.13(c)(7)(v) and 1208.13(c)(7)(v) have been met, notwithstanding the putative basis of the order on its face. This rule is largely consistent with existing precedent. *See Rodriguez* v. *U.S. Att'y Gen.,* 844 F.3d 392, 396–97 (3d Cir. 2016) (applying this approach and looking to court records absent a clear explanation for the basis of the order in the order itself); *see also Cruz* v. *Att'y Gen.,* 452 F.3d 240, 244, 248 (3d Cir. 2006) (holding that the Board could reasonably determine that a conviction was vacated to avoid immigration consequences where a state prosecutor's letter stipulating the terms of a settlement agreement explicitly stated that the petitioner's scheduled deportation was a reason for the state's support for vacating the conviction).

Third, the proposed rule would clarify that the alien bears the burden of establishing that the vacatur, expungement, or sentence modification was not for rehabilitative or immigration purposes. Therefore, if the record is inconclusive based on a standard of preponderance of the evidence, the order should not be given effect for immigration purposes. The burden of proof is on the alien because the INA places the overall burden to establish asylum eligibility on the alien. *See* INA 208(b)(1)(B)(i), 8 U.S.C. 1158(b)(1)(B)(i); *Marikasi* v. *Lynch,* 840 F.3d 281, 287 (6th Cir. 2016). Where there is evidence that ''one or more of the grounds for mandatory denial of the application for relief may apply,'' the applicant bears the burden of establishing that the bar at issue does not apply. 8 CFR 1240.8(d). Consistent with this principle, in an analogous context, the Eighth Circuit has held that, because the INA places the burden of proof on the alien to establish eligibility for cancellation of removal, a form of discretionary relief, the alien bears the burden to prove that he has no disqualifying convictions, including the burden to show that the vacatur of any disqualifying conviction was not for rehabilitative purposes. *Andrade-Zamora* v. *Lynch,* 814 F.3d 945, 949 (8th Cir. 2016).[10] This allocation of the

[9] The Attorney General has previously exercised his authorities to address related questions regarding what immigration effect should be given to expunged convictions. For example, in 1959, Attorney General Rogers concluded that certain narcotics convictions would survive subsequent expungement for purposes of the immigration laws. *Matter of A–F-,* 8 I&N Dec. 429, 445–46 (A.G. 1959). More recently, Attorney General Ashcroft held that, in light of the INA's definition of ''conviction,'' an alien whose firearms conviction was expunged pursuant to section 1203.4 of the California Penal Code remained ''convicted'' for immigration purposes. *Matter of Luviano-Rodriguez,* 23 I&N Dec. 718, 718 (A.G. 2005).

[10] In contrast, when DHS uses a criminal conviction to prove deportability of an admitted alien, some courts have held that the Government bears the burden of establishing that a subsequent vacatur of that conviction should not be recognized because the vacatur was granted for immigration purposes. *See Nath* v. *Gonzales,* 467 F.3d 1185, 1188–89 (9th Cir. 2006); *Pickering,* 465 F.3d at 268–69 & n.4. Unlike applications for asylum and other forms of relief, where the alien has the burden of proving eligibility, the Government bears the burden of establishing that an admitted alien is

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burden of proof makes sense because, as the Board and federal courts have noted, an alien is in the ''best position'' to present evidence on the issue. *Id.* at 950. The alien ''was a direct party to the criminal proceeding leading to the vacation of his conviction and is therefore in the best position to know why the conviction was vacated and to offer evidence related to the record of conviction.'' *Matter of Chavez-Martinez,* 24 I&N Dec. 272, 274 (BIA 2007); *see also Rumierz* v. *Gonzales,* 456 F.3d 31, 39 (1st Cir. 2006) (outlining several other reasons that placing the burden on the alien is rational, such as similar burden allocations in the context of criminal law and habeas petitions).

Fourth, the rule would provide that the alien must establish that the court issuing an order vacating or expunging a conviction or modifying a sentence had jurisdiction and authority to do so. This requirement would be consistent with Board precedent, which provides that facially valid orders can be disregarded based on a lack of jurisdiction. *See, e.g., Matter of F-,* 8 I&N Dec. 251 (BIA 1959) (''[T]he presumption of regularity and of jurisdiction [of a state court order] may be overcome by extrinsic evidence or by the record itself.''); *cf. Adam* v. *Saenger,* 303 U.S. 59, 62 (1938) (''If it appears on its face to be a record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself. . . . But in a suit upon the judgment of another state the jurisdiction of the court which rendered it is open to judicial inquiry . . . and when the matter of fact or law on which jurisdiction depends was not litigated in the original suit it is a matter to be adjudicated in the suit founded upon the judgment.'' (citations omitted)). In short, an order purporting to vacate, expunge, or otherwise modify a conviction or sentence is inoperative for purposes of immigration law if the state court lacked jurisdiction over the subject matter or the parties to the action.

Jurisdictional defects in court orders might arise in a number of ways. For example, in *United States* v. *Garza-Mendez,* 735 F.3d 1284 (11th Cir. 2013), a criminal sentencing case, the Eleventh Circuit refused to recognize a clarification order issued by a state judge after the sentencing judge had ordered the defendant to serve 12 months of confinement. The Eleventh Circuit rejected the ''subjective, interpretive clarification order,'' noting that it was obtained from a different judge, long after entry of the original sentence, for the purpose of preventing enhancement of the defendant's sentence for unlawful reentry in federal court. *Id.* at 1289; *cf. Herrera* v. *U.S. Att'y Gen.,* 811 F.3d 1298, 1299–1301 (11th Cir. 2016) (affirming a Board decision declining to give effect to orders clarifying that defendants were never sentenced to terms of confinement when the original sentencing orders clearly stated to the contrary). A jurisdictional defect could also arise where state law limits the court's authority to grant post-conviction relief in certain ways, such as by imposing a time limitation. *See Matter of Estrada,* 26 I&N Dec. at 756 (noting that section 17–10–1(f) of the Georgia Code Annotated imposes strict time limits with respect to a sentencing court's ability to change or ''modify'' a sentence).

Finally, the proposed rule creates a rebuttable presumption that the order vacating or expunging the conviction or modifying the sentence was issued for immigration purposes if either (1) the order was entered after the initiation of any proceeding to remove the alien from the United States; or (2) the alien moved for the order more than one year after the date of the original order of conviction or sentencing.

Precedents establish that the timing of such a process is relevant to whether the resulting order should be recognized for immigration purposes. The initiation of such a process after removal proceedings have commenced naturally raises an inference that the resulting order was issued for immigration or rehabilitative purposes. For instance, in *Andrade-Zamora,* the Eighth Circuit refused to credit a state court's vacatur of a conviction when the vacatur occurred two weeks after the Government commenced removal proceedings based on the conviction, and where the state court also modified the alien's sentence for a different conviction in an apparent attempt to fit the conviction within an exception to a criminal ground of removability. 814 F.3d at 949. The court affirmed the Board's refusal to recognize the vacatur and modification, reasoning: ''The timing and effect of the order . . . raise an inference the state court did not vacate the conviction on a substantive or procedural ground, but rather to avoid the immigration consequences of the conviction.'' *Id.* at 949–50.

Further, the rule would create a rebuttable presumption providing that if more than a year has passed between the original conviction and the alien's effort to seek a subsequent vacatur or expungement of a conviction, or the modification of sentence, the immigration adjudicator should weigh that fact against recognizing the vacatur or modification. It is reasonable to conclude that an alien who has a meritorious challenge to a criminal conviction based on a procedural or substantive defect is more likely to seek post-conviction relief sooner than an alien who is seeking relief on rehabilitative grounds, and who might delay such a challenge until DHS commences immigration proceedings or attempts to remove the alien. *See Rumierz,* 456 F.3d at 38 (affirming the Board's refusal to recognize a vacatur and the Board's reasoning that ''Rumierz could easily have sought to vacate the January 1994 Vermont conviction and have presented the vacated conviction to the [Board] in the six years before the [Board's] 2000 order''). This rule promotes finality in immigration proceedings by encouraging an alien to act diligently if there is a legitimate basis to challenge a conviction or sentence.

C. Reconsiderations of Discretionary Denials of Asylum

The proposed rule would remove the automatic review of a discretionary denial of an alien's asylum application by removing and reserving paragraph (e) in 8 CFR 208.16 and 1208.16. The present regulation provides that the denial of asylum shall be reconsidered in the event that an applicant is denied asylum solely in the exercise of discretion, and the applicant is subsequently granted withholding of deportation or removal under this section, thereby effectively precluding admission of the applicant's spouse or minor children following to join him or her. Factors to be considered include the reasons for the denial and reasonable alternatives available to the applicant such as reunification with his or her spouse or minor children in a third country. This provision, however, has proved confusing, inefficient, and unnecessary.

The courts of appeals have expressed ongoing confusion related to this provision. For example, the regulation states that when an asylum application is denied in the exercise of discretion, but withholding of removal is granted, ''the denial of asylum shall be reconsidered,'' but the regulation does not say who shall reconsider the denial, when the reconsideration shall occur, or how the reconsideration is to be initiated. *See Shantu* v. *Lynch,* 654 F. App'x 608, 613–14 (4th Cir. 2016) (discussing these ambiguities); *see also*

deportable by clear and convincing evidence. INA 240(c)(3)(A), 8 U.S.C. 1229a(c)(3)(A).

Huang v. *INS,* 436 F.3d 89, 93 (2d Cir. 2006). These ambiguities have not been ''definitively resolved,'' *Shantu,* 654 F. App'x at 614, and continued litigation on these questions would be an ongoing burden for applicants, the immigration system, and courts.

Further, mandating that the decision maker reevaluate the very issue just decided is an inefficient practice that, in the view of the Departments, grants insufficient deference to the original fact finding and exercise of discretion. The regulation also appears unnecessary given that other regulations provide multiple avenues to challenge or otherwise seek to change a discretionary denial of asylum coupled with a grant of withholding of removal.[11] First, an immigration judge may reconsider that decision upon his or her own motion. 8 CFR 1003.23(b)(1). Second, the alien may file a motion to reconsider. *Id.* Third, the alien may also appeal the decision to the Board. 8 CFR 1003.38. The existence of at least three alternative processes for altering a discretionary denial of asylum obviates the need for a mandatory fourth. Moreover, the objective of facilitating family reunification, *see Huang,* 436 F.3d at 93 (describing 8 CFR 1208.16(e) as ''manifestly a law designed to further family reunification''), can be fulfilled even in the absence of the existing reconsideration provision because the immigration judge (or other decision maker) already considers these factors when making a discretionary decision in the first instance, *see Fisenko* v. *Lynch,* 826 F.3d 287, 292 (6th Cir. 2016) (stating that ''a 'crucial factor in weighing asylum as a discretionary matter' is family reunification'' (internal quotation marks and citation omitted)).

IV. Regulatory Requirements

A. Regulatory Flexibility Act

The Departments have reviewed this proposed rule in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)) and have determined that this rule will not have a significant economic impact on a substantial number of small entities. The rule would not regulate ''small entities'' as that term is defined in 5 U.S.C. 601(6). Only individuals, rather than entities, are eligible to apply for asylum, and only individuals are eligible to apply for asylum or are otherwise placed in immigration proceedings.

[11] With respect to the DHS regulation at 8 CFR 208.16(e), if USCIS denies an individual's asylum application on discretionary grounds, USCIS does not have jurisdiction to consider withholding of removal eligibility because withholding of removal determinations are made by immigration judges and the Board.

B. Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1532(a).

C. Congressional Review Act

The Office of Information and Regulatory Affairs has determined that this proposed rule is not a major rule as defined by section 804 of the Congressional Review Act. 5 U.S.C. 804(2). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

D. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

The Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), has designated this rule a ''significant regulatory action'' under section 3(f)(4) of Executive Order 12866, but not an economically significant regulatory action. Accordingly, the rule has been submitted to OMB for review. The Departments certify that this rule has been drafted in accordance with the principles of Executive Order 12866, section 1(b), Executive Order 13563, and Executive Order 13771.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of using the best available methods to quantify costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Similarly, Executive Order 13771 requires agencies to manage both the public and private costs of regulatory actions.

The proposed regulation would provide seven additional mandatory bars to eligibility for asylum pursuant to the Attorney General and the Secretary's authorities under sections 208(b)(2)(B)(ii), 208(b)(2)(C), and 208(d)(5) of the INA.[12] The proposed rule would add bars on eligibility for aliens who commit certain offenses in the United States after entering the country. Those bars would apply to aliens who are convicted of (1) a felony under federal or state law; (2) an offense under 8 U.S.C. 1324(a)(1)(A) or 1324(a)(1)(2) (Alien Smuggling or Harboring); (3) an offense under 8 U.S.C. 1326 (Illegal Reentry); (4) a federal, state, tribal, or local crime involving criminal street gang activity; (5) certain federal, state, tribal, or local offenses concerning the operation of a motor vehicle while under the influence of an intoxicant; (6) a federal, state, tribal, or local domestic violence offense, or who are found by an adjudicator to have engaged in acts of battery or extreme cruelty in a domestic context, even if no conviction resulted; and (7) certain misdemeanors under federal or state law for offenses related to false identification; the unlawful receipt of public benefits from a federal, state, tribal, or local entity; or the possession or trafficking of a controlled substance or controlled-substance paraphernalia.

The seven proposed bars would be in addition to the existing mandatory bars relating to the persecution of others, convictions for particularly serious crimes, commission of serious nonpolitical crimes, security threats, terrorist activity, and firm resettlement in another country that are currently contained in the INA and its implementing regulations. *See* INA 208(b)(2); 8 CFR 208.13 and 1208.13. Under the current statutory and regulatory framework, asylum officers and immigration judges consider the applicability of mandatory bars to the relief of asylum in every proceeding involving an alien who has submitted an I–589 application for asylum. Although the proposed regulation would expand the mandatory bars to asylum, the proposed regulation does not change the nature or scope of the role of an immigration judge or an asylum officer during proceedings for consideration of asylum applications. Immigration judges and asylum officers are already trained to consider both an alien's previous conduct and criminal

[12] As discussed further below, the proposed regulation would not otherwise impact the ability of an alien who is denied asylum to receive the protection of withholding of removal under the INA or withholding of removal or deferral of removal under the CAT.

record to determine whether any immigration consequences result, and the proposed rule does not propose any adjudications that are more challenging than those that are already conducted. For example, immigration judges already consider the documentation of an alien's criminal record that is filed by the alien, the alien's representative, or the DHS representative in order to determine whether one of the mandatory bars applies and whether the alien warrants asylum as a matter of discretion. Because the proposed bars all relate to an alien's criminal convictions or other criminal conduct, adjudicators will conduct the same analysis to determine the applicability of the bars proposed by the rule.[13] The Departments do not expect the proposed additional mandatory bars to increase the adjudication time for immigration court proceedings involving asylum applications.

The Departments note that the proposed expansion of the mandatory bars for asylum would likely result in fewer asylum grants annually;[14] however, because asylum applications are inherently fact-specific, and because there may be multiple bases for denying an asylum application, neither the Department of Justice (''DOJ'') nor DHS can quantify precisely the expected decrease. An alien who would be barred from asylum as a result of the proposed rule may still be eligible to apply for the protection of withholding of removal under section 241(b)(3) of the INA or withholding of removal or deferral of removal under regulations implementing U.S. obligations under Article 3 of the CAT. *See* INA 241(b)(3), 8 U.S.C. 1231(b)(3); 8 CFR 208.16, 208.17 through 18, 1208.16, and 1208.17 through 18. For those aliens barred from asylum under this rule who would otherwise be positively adjudicated for asylum, it is possible they would qualify for withholding (provided a bar to withholding did not apply separate and apart from this rule).[15] To the extent there are any impacts of this rule, they would almost exclusively fall on that population.[16]

The full extent of the impacts on this population is unclear and would depend on the specific circumstances and personal characteristics of each alien, and neither DHS nor DOJ collects such data at such a level of granularity. Both asylum applicants and those who receive withholding of removal may obtain work authorization in the United States. Although asylees may apply for lawful permanent resident status and later citizenship, they are not required to do so, and some do not. Further, although asylees may bring certain family members to the United States, not all asylees have family members or family members that wish to leave their home countries. Moreover, family members of aliens granted withholding of removal may have valid asylum claims in their own right, which would provide them with a potential path to the United States as well. The only clear impact is that aliens granted withholding of removal generally may not travel outside the United States without executing their underlying order of removal and, thus, may not be allowed to return to the United States; however, even in that situation—depending on the destination of their travel—they may have a prima facie case for another grant of withholding of removal should they attempt to reenter. In short, there is no precise quantification available for the impact, if any, of this rule beyond the general notion that it will likely result in fewer grants of asylum on the whole.

Applications for withholding of removal typically require a similar amount of in-court time to complete as an asylum application due to a similar nucleus of facts. 8 CFR 1208.3(b) (an asylum application is deemed to be an application for withholding of removal). In addition, this proposed rule would not affect the eligibility of applicants for the employment authorization documents available to recipients of those protections and during the pendency of the consideration of the application in accordance with the current regulations and agency procedures. *See* 8 CFR 274a.12(c)(8) and (18), 208.7, and 1208.7.

The proposed rule would also remove the provision at 8 CFR 208.16(e) and 1208.16(e) regarding reconsideration of discretionary denials of asylum. This change would have no impact on DHS adjudicative operations because DHS does not adjudicate withholding requests. DOJ estimates that immigration judges nationwide must apply 8 CFR 1208.16(e) in approximately 800 cases per year on average.[17] The removal of the requirement to reconsider a discretionary denial would increase immigration court efficiencies and reduce any cost from the increased adjudication time by no longer requiring a second review of the same application by the same immigration judge. This impact, however, would likely be minor because of the small number of affected cases. Accordingly, DOJ assesses that removal of paragraphs 8 CFR 208.16(e) and 1208.16(e) would not increase any EOIR costs or operations, and would, if anything, result in a small increase in efficiency. The Departments note that removal of 8 CFR 208.16(e) and 1208.16(e) may have a marginal cost for aliens in immigration court proceedings by removing one avenue for an alien who would otherwise be denied asylum as a matter of discretion to be granted that relief. DOJ notes, however, that of the average of 800 aliens situated as such each year during the last ten years, an average of fewer than 150, or 0.4%, of the average 38,000 total asylum completions[18] each year filed an appeal in their case, so the affected population is very small and the overall impact would be nominal at most.[19] Moreover, such aliens would retain the ability to file a motion to reconsider in such a situation and, thus, would not actually

[13] The Departments note that one of the newly proposed bars, regarding whether or not the alien has ''engaged'' in certain acts of battery or extreme cruelty, does not necessarily require a criminal conviction. The Departments believe that a criminal arrest or conviction is the most likely evidence to be filed with the immigration court related to this bar, but even in cases where no such evidence is available, the analysis by immigration judges related to this proposed bar is not an expansion from the current analysis immigration judges may conduct during the course of removal proceedings. *See, e.g.,* INA 212(a)(2)(C) (providing that an alien is inadmissible if ''the Attorney General knows or has reason to believe'' that the alien is an illicit trafficker of a controlled substance, regardless of whether the alien has a controlled substance-related conviction).

[14] In FY 2018, DOJ's immigration courts granted 13,169 applications for asylum.

[15] Because statutory withholding of removal has a higher burden of proof, an alien granted such protection would necessarily also meet the statutory burden of proof for asylum, but would not be otherwise eligible for asylum due to a statutory bar or as a matter of discretion. Because asylum applications may be denied for multiple reasons and because the proposed bars do not have analogues in existing immigration law, there is no precise data on how many otherwise grantable asylum applications would be denied using these bars and, thus, there is no way to calculate precisely how many aliens would be granted withholding. Further, because the immigration judge would have to adjudicate the application in either case, there is no cost to DOJ.

[16] In FY 2018, DOJ's immigration courts completed 45,923 cases with an application for asylum on file. For the first three quarters of FY 2018, 622 applicants were denied asylum but granted withholding.

[17] This approximation is based on the number of initial case completions with an asylum application on file that had a denial of asylum but a grant of withholding during FYs 2009 through the third quarter of 2018.

[18] Thirty-eight thousand is the average of completions of cases with an asylum application on file from years FY 2008 through FY 2018. Completions consist of both initial case completions and subsequent case completions.

[19] Because each case may have multiple bases for appeal and appeal bases are not tracked to specific levels of granularity, it is not possible to quantify precisely how many appeals were successful on this particular issue.

lose the opportunity for reconsideration of a discretionary denial.

For the reasons explained above, the expected costs of this proposed rule are likely to be *de minimis.* This proposed rule is accordingly exempt from Executive Order 13771. *See* Office of Mgmt. & Budget, Guidance Implementing Executive Order 13771, Titled ''Reducing Regulation and Controlling Regulatory Costs'' (2017).

E. Executive Order 13132 (Federalism)

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

This rule does not propose new or revisions to existing ''collection[s] of information'' as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3501 *et seq.,* and its implementing regulations, 5 CFR part 1320.

List of Subjects in 8 CFR Parts 208 and 1208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Proposed Regulatory Amendments

DEPARTMENT OF HOMELAND SECURITY

Accordingly, for the reasons set forth in the preamble, the Acting Secretary of Homeland Security is proposing to amend 8 CFR part 208 as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Public Law 110–229, 8 CFR part 2.

■ 2. Section 208.13 is amended by adding paragraphs (c)(6) through (9) to read as follows:

§ 208.13 Establishing asylum eligibility.

* * * * *

(c) * * *

(6) Additional limitations on eligibility for asylum. For applications filed on or after [the effective date of the final rule], an alien shall be found ineligible for asylum if:

(i) The alien has been convicted on or after such date of an offense arising under sections 274(a)(1)(A), 274(a)(2), or 276 of the Act;

(ii) The alien has been convicted on or after such date of a Federal, State, tribal, or local crime that the Secretary knows or has reason to believe was committed in support, promotion, or furtherance of the activity of a criminal street gang as that term is defined either under the jurisdiction where the conviction occurred or in section 521(a) of title 18;

(iii) The alien has been convicted on or after such date of an offense for driving while intoxicated or impaired as those terms are defined under the jurisdiction where the conviction occurred (including a conviction for driving while under the influence of or impaired by alcohol or drugs) without regard to whether the conviction is classified as a misdemeanor or felony under Federal, State, tribal, or local law, in which such impaired driving was a cause of serious bodily injury or death of another person;

(iv)(A) The alien has been convicted on or after such date of a second or subsequent offense for driving while intoxicated or impaired as those terms are defined under the jurisdiction where the conviction occurred (including a conviction for driving while under the influence of or impaired by alcohol or drugs) without regard to whether the conviction is classified as a misdemeanor or felony under Federal, State, tribal, or local law;

(B) A finding under paragraph (c)(6)(iv)(A) of this section does not require the asylum officer to find the first conviction for driving while intoxicated or impaired (including a conviction for driving while under the influence of or impaired by alcohol or drugs) as a predicate offense. The asylum officer need only make a factual determination that the alien was previously convicted for driving while intoxicated or impaired as those terms are defined under the jurisdiction where the convictions occurred (including a conviction for driving while under the influence of or impaired by alcohol or drugs);

(v)(A) The alien has been convicted on or after such date of a crime that involves conduct amounting to a crime of stalking; or a crime of child abuse, child neglect, or child abandonment; or that involves conduct amounting to a domestic assault or battery offense, including a misdemeanor crime of domestic violence, as described in section 922(g)(9) of title 18, a misdemeanor crime of domestic violence as described in section 921(a)(33) of title 18, a crime of domestic violence as described in section 12291(a)(8) of title 34, or any crime based on conduct in which the alien harassed, coerced, intimidated, voluntarily or recklessly used (or threatened to use) force or violence against, or inflicted physical injury or physical pain, however slight, upon a person, and committed by:

(1) A current or former spouse of the person;

(2) An alien with whom the person shares a child in common;

(3) An alien who is cohabiting with or has cohabited with the person as a spouse;

(4) An alien similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs; or

(5) Any other alien against a person who is protected from that alien's acts under the domestic or family violence laws of the United States or any State, tribal government, or unit of local government.

(B) In making a determination under paragraph (c)(6)(v)(A) of this section, including in determining the existence of a domestic relationship between the alien and the victim, the underlying conduct of the crime may be considered and the asylum officer is not limited to facts found by the criminal court or provided in the underlying record of conviction;

(C) An alien who was convicted of offenses described in paragraph (c)(6)(v)(A) of this section is not subject to ineligibility for asylum on that basis if the alien would be described in section 237(a)(7)(A) of the Act were the crimes or conduct considered grounds for deportability under section 237(a)(2)(E)(i) through (ii) of the Act.

(vi) The alien has been convicted on or after such date of—

(A) Any felony under Federal, State, tribal, or local law;

(B) Any misdemeanor offense under Federal, State, tribal, or local law involving:

(1) The possession or use of an identification document, authentication feature, or false identification document without lawful authority, unless the alien can establish that the conviction resulted from circumstances showing that the document was presented before boarding a common carrier, that the

document related to the alien's eligibility to enter the United States, that the alien used the document to depart a country in which the alien has claimed a fear of persecution, and that the alien claimed a fear of persecution without delay upon presenting himself or herself to an immigration officer upon arrival at a United States port of entry;

(2) The receipt of Federal public benefits, as defined in 8 U.S.C. 1611(c), from a Federal entity, or the receipt of similar public benefits from a State, tribal, or local entity, without lawful authority; or

(3) Possession or trafficking of a controlled substance or controlled-substance paraphernalia, other than a single offense involving possession for one's own use of 30 grams or less of marijuana;

(vii) There are serious reasons for believing the alien has engaged on or after such date in acts of battery or extreme cruelty as defined in 8 CFR 204.2(c)(1)(vi), upon a person, and committed by:

(A) A current or former spouse of the person;

(B) An alien with whom the person shares a child in common;

(C) An alien who is cohabiting with or has cohabited with the person as a spouse;

(D) An alien similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs; or

(E) Any other alien against a person who is protected from that alien's acts under the domestic or family violence laws of the United States or any State, tribal government, or unit of local government, even if the acts did not result in a criminal conviction;

(F) Except that an alien who was convicted of offenses or engaged in conduct described in paragraph (c)(6)(vii) of this section is not subject to ineligibility for asylum on that basis if the alien would be described in section 237(a)(7)(A) of the Act were the crimes or conduct considered grounds for deportability under section 237(a)(2)(E)(i)–(ii) of the Act.

(7) For purposes of paragraph (c)(6) of this section:

(i) The term ''felony'' means any crime defined as a felony by the relevant jurisdiction (Federal, State, tribal, or local) of conviction, or any crime punishable by more than one year of imprisonment.

(ii) The term ''misdemeanor'' means any crime defined as a misdemeanor by the relevant jurisdiction (Federal, State, tribal, or local) of conviction, or any crime not punishable by more than one year of imprisonment.

(iii) Whether any activity or conviction also may constitute a basis for removability under the Act is immaterial to a determination of asylum eligibility.

(iv) All references to a criminal offense or criminal conviction shall be deemed to include any attempt, conspiracy, or solicitation to commit the offense or any other inchoate form of the offense.

(v) No order vacating a conviction, modifying a sentence, clarifying a sentence, or otherwise altering a conviction or sentence, shall have any effect unless the asylum officer determines that—

(A) The court issuing the order had jurisdiction and authority to do so; and

(B) The order was not entered for rehabilitative purposes or for purposes of ameliorating the immigration consequences of the conviction or sentence.

(8) For purposes of paragraph (c)(7)(v)(B) of this section, the order shall be presumed to be for the purpose of ameliorating immigration consequences if:

(i) The order was entered after the initiation of any proceeding to remove the alien from the United States; or

(ii) The alien moved for the order more than one year after the date of the original order of conviction or sentencing.

(9) An asylum officer is authorized to look beyond the face of any order purporting to vacate a conviction, modify a sentence, or clarify a sentence to determine whether the requirements of paragraph (c)(7)(v) of this section have been met in order to determine whether such order should be given any effect under this section.

§ 208.16 [Amended]

■ 3. In § 208.16, remove and reserve paragraph (e).

DEPARTMENT OF JUSTICE

Accordingly, for the reasons set forth in the preamble, the Attorney General proposes to amend 8 CFR part 1208 as follows:

PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 4. The authority citation for part 1208 continues to read as fol1ows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Public Law 110–229.

■ 5. Section 1208.13 is amended by adding paragraphs (c)(6) through (9) to read as follows:

§ 1208.13 Establishing asylum eligibility.

* * * * *

(c) * * *

(6) Additional limitations on eligibility for asylum. For applications filed on or after [the effective date of the final rule], an alien shall be found ineligible for asylum if:

(i) The alien has been convicted on or after such date of an offense arising under sections 274(a)(1)(A), 274(a)(2), or 276 of the Act;

(ii) The alien has been convicted on or after such date of a Federal, State, tribal, or local crime that the Attorney General or Secretary knows or has reason to believe was committed in support, promotion, or furtherance of the activity of a criminal street gang as that term is defined under the jurisdiction where the conviction occurred or in section 521(a) of title 18;

(iii) The alien has been convicted on or after such date of an offense for driving while intoxicated or impaired as those terms are defined under the jurisdiction where the conviction occurred (including a conviction for driving while under the influence of or impaired by alcohol or drugs) without regard to whether the conviction is classified as a misdemeanor or felony under Federal, State, tribal, or local law, in which such impaired driving was a cause of serious bodily injury or death of another person;

(iv)(A) The alien has been convicted on or after such date of a second or subsequent offense for driving while intoxicated or impaired as those terms are defined under the jurisdiction where the conviction occurred (including a conviction for driving while under the influence of or impaired by alcohol or drugs) without regard to whether the conviction is classified as a misdemeanor or felony under Federal, State, tribal, or local law;

(B) A finding under paragraph (c)(6)(iv)(A) of this section does not require the immigration judge to find the first conviction for driving while intoxicated or impaired (including a conviction for driving while under the influence of or impaired by alcohol or drugs) as a predicate offense. The immigration judge need only make a factual determination that the alien was previously convicted for driving while intoxicated or impaired as those terms are defined under the jurisdiction where the convictions occurred (including a conviction for driving while under the influence of or impaired by alcohol or drugs).

(v)(A) The alien has been convicted on or after such date of a crime that involves conduct amounting to a crime of stalking; or a crime of child abuse,

child neglect, or child abandonment; or that involves conduct amounting to a domestic assault or battery offense, including a misdemeanor crime of domestic violence, as described in section 922(g)(9) of title 18, a misdemeanor crime of domestic violence as described in section 921(a)(33) of title 18, a crime of domestic violence as described in section 12291(a)(8) of title 34, or any crime based on conduct in which the alien harassed, coerced, intimidated, voluntarily or recklessly used (or threatened to use) force or violence against, or inflicted physical injury or physical pain, however slight, upon a person, and committed by:

(*1*) A current or former spouse of the person;

(*2*) An alien with whom the person shares a child in common;

(*3*) An alien who is cohabiting with or has cohabited with the person as a spouse;

(*4*) An alien similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs; or

(*5*) Any other alien against a person who is protected from that alien's acts under the domestic or family violence laws of the United States or any State, tribal government, or unit of local government.

(B) In making a determination under paragraph (c)(6)(v) of this section, including in determining the existence of a domestic relationship between the alien and the victim, the underlying conduct of the crime may be considered and the adjudicator is not limited to facts found by the criminal court or provided in the underlying record of conviction.

(C) An alien who was convicted of offenses or engaged in conduct described in paragraph (c)(6)(v)(A) of this section is not subject to ineligibility for asylum on that basis if the alien would be described in section 237(a)(7)(A) of the Act were the crimes or conduct considered grounds for deportability under section 237(a)(2)(E)(i) through (ii) of the Act.

(vi) The alien has been convicted on or after such date of—

(A) Any felony under Federal, State, tribal, or local law;

(B) Any misdemeanor offense under Federal, State, tribal, or local law involving

(*1*) The possession or use of an identification document, authentication feature, or false identification document without lawful authority, unless the alien can establish that the conviction resulted from circumstances showing that the document was presented before boarding a common carrier, that the document related to the alien's eligibility to enter the United States, that the alien used the document to depart a country in which the alien has claimed a fear of persecution, and that the alien claimed a fear of persecution without delay upon presenting himself or herself to an immigration officer upon arrival at a United States port of entry;

(*2*) The receipt of Federal public benefits, as defined in 8 U.S.C. 1611(c), from a Federal entity, or the receipt of similar public benefits from a State, tribal, or local entity, without lawful authority; or

(*3*) Possession or trafficking of a controlled substance or controlled-substance paraphernalia, other than a single offense involving possession for one's own use of 30 grams or less of marijuana.

(vii) There are serious reasons for believing the alien has engaged on or after such date in acts of battery or extreme cruelty as defined in 8 CFR 204.2(c)(1)(vi), upon a person, and committed by:

(A) A current or former spouse of the person;

(B) An alien with whom the person shares a child in common;

(C) An alien who is cohabiting with or has cohabited with the person as a spouse;

(D) An alien similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs; or

(E) Any other alien against a person who is protected from that alien's acts under the domestic or family violence laws of the United States or any State, tribal government, or unit of local government, even if the acts did not result in a criminal conviction;

(F) Except that an alien who was convicted of offenses or engaged in conduct described in paragraph (c)(6)(vii) of this section is not subject to ineligibility for asylum on that basis if the alien would be described in section 237(a)(7)(A) of the Act were the crimes or conduct considered grounds for deportability under section 237(a)(2)(E)(i)–(ii) of the Act.

(7) For purposes of paragraph (c)(6) of this section:

(i) The term ''felony'' means any crime defined as a felony by the relevant jurisdiction (Federal, State, tribal, or local) of conviction, or any crime punishable by more than one year imprisonment.

(ii) The term ''misdemeanor'' means any crime defined as a misdemeanor by the relevant jurisdiction (Federal, State, tribal, or local) of conviction, or any crime not punishable by more than one year of imprisonment.

(iii) Whether any activity or convictions also may constitute a basis for removability under the Act is immaterial to a determination of asylum eligibility.

(iv) All references to a criminal offense or criminal conviction shall be deemed to include any attempt, conspiracy, or solicitation to commit the offense or any other inchoate form of the offense.

(v) No order vacating a conviction, modifying a sentence, clarifying a sentence, or otherwise altering a conviction or sentence, shall have any effect unless the asylum officer determines that—

(A) The court issuing the order had jurisdiction and authority to do so; and

(B) The order was not entered for rehabilitative purposes or for purposes of ameliorating the immigration consequences of the conviction or sentence.

(8) For purposes of paragraph (c)(7)(v)(B) of this section, the order shall be presumed to be for the purpose of ameliorating immigration consequences if:

(i) The order was entered after the initiation of any proceeding to remove the alien from the United States; or

(ii) The alien moved for the order more than one year after the date of the original order of conviction or sentencing.

(9) An immigration judge or other adjudicator is authorized to look beyond the face of any order purporting to vacate a conviction, modify a sentence, or clarify a sentence to determine whether the requirements of paragraph (c)(7)(v) of this section have been met in order to determine whether such order should be given any effect under this section.

§ 1208.16 [Amended]

■ 6. In § 1208.16, remove and reserve paragraph (e).

Dated: December 9, 2019.

Chad F. Wolf,

Acting Secretary of Homeland Security.

Dated: December 10, 2019.

William P. Barr,

Attorney General.

[FR Doc. 2019–27055 Filed 12–18–19; 8:45 am]

BILLING CODE 9111–97–P 4410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0985; Product Identifier 2019–NM–183–AD]

RIN 2120–AA64

Airworthiness Directives; ATR–GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain ATR–GIE Avions de Transport Régional Model ATR42–500 airplanes. This proposed AD was prompted by a report of interference between bonding braid screws and pitch tab control rods on the ATR final assembly line. This proposed AD would require an inspection of the bonding braid screws for proper installation, a detailed inspection for damage to the pitch tab control rods if necessary, and replacement of the pitch tab control rods if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by February 3, 2020.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For the material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0985.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0985; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0985; Product Identifier 2019–NM–183–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM based on those comments.

The FAA will post all comments, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact the agency receives about this NPRM.

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0262, dated October 22, 2019 (''EASA AD 2019–0262'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain ATR–GIE Avions de Transport Régional Model ATR42–500 airplanes.

This proposed AD was prompted by a report of interference between bonding braid screws and pitch tab control rods on the ATR final assembly line. The FAA is proposing this AD to address interference between bonding braid screws and pitch tab control rods, which could lead to failure of the rods and tab disconnection, possibly resulting in reduced control of the airplane. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0262 describes procedures for inspecting the bonding braid screws for proper installation, doing a detailed inspection for damage of the pitch tab control rods, and replacing the pitch tab control rods.

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

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0262 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD

2019–0262 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2019–0262 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2019–0262 that is required for compliance with EASA AD 2019–0262 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0985 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 3 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$255

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	$11,940	$12,025

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

ATR–GIE Avions de Transport Régional: Docket No. FAA–2019–0985; Product Identifier 2019–NM–183–AD.

(a) Comments Due Date

The FAA must receive comments by February 3, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to ATR–GIE Avions de Transport Régional Model ATR42–500 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2019–0262, dated October 22, 2019 (''EASA AD 2019–0262'').

(d) Subject

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

(e) Reason

This AD was prompted by a report of interference between bonding braid screws and pitch tab control rods on the ATR final assembly line. The FAA is issuing this AD to address interference between bonding braid screws and pitch tab control rods, which

could lead to failure of the rods and tab disconnection, possibly resulting in reduced control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0262.

(h) Exceptions to EASA AD 2019–0262

(1) Where EASA AD 2019–0262 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0262 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2019–0262 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(k) Related Information

(1) For information about EASA AD 2019–0262, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0985.

(2) For more information about this AD, contact Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220.

Issued in Des Moines, Washington, on December 12, 2019.

Suzanne Masterson,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–27318 Filed 12–18–19; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 23, and 140

RIN 3038–AD54

Capital Requirements of Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule; reopening of comment period; request for additional comment.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is re-opening the comment period and requesting additional comment (including potential modifications to proposed rule language) on proposed regulations and amendments to existing regulations to implement sections 4s(e) and (f) of the Commodity Exchange Act (''CEA''), as added by section 731 of the Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') previously published in 2011 and re-proposed in 2016. Section 4s(e) requires the Commission to adopt capital requirements for swap dealers (''SDs'') and major swap participants (''MSPs'') that are not subject to capital rules of a prudential regulator. Section 4s(f) requires the Commission to adopt financial reporting and recordkeeping requirements for SDs and MSPs. The Commission is reopening the comment period and soliciting further comment on all aspects of the SD and MSP capital and associated financial reporting proposal from 2016, as well as related proposed amendments to existing capital rules for futures commission merchants (''FCMs'') providing specific market risk and credit risk capital deductions for swaps and security-based swaps (''SBS'') entered into by FCMs.

DATES: Comments must be received on or before March 3, 2020.

ADDRESSES: You may submit comments, identified by RIN 3038–AD54 and ''Capital Requirements for Swap Dealers and Major Swap Participants'', by any of the following methods:

- *CFTC website, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the website.
- *Mail:* Send to Chris Kirkpatrick, Secretary, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one of these methods.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures set forth in Regulation 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Joshua Sterling, Director, 202–418–6056, *jsterling@cftc.gov;* Thomas Smith, Deputy Director, 202–418–5495, *tsmith@cftc.gov;* Joshua Beale, Associate Director, 202–418–5446, *jbeale@cftc.gov;* Jennifer C.P. Bauer, Special Counsel, 202–418–5472, *jbauer@cftc.gov;* Rafael Martinez, Senior Financial Risk Analyst, 202–418–5462, *rmartinez@cftc.gov,* Division of Swap Dealer and Intermediary Oversight; or Lihong McPhail, Research Economist, 202–418–5722, *lmchphail@cftc.gov,* Office of the Chief Economist; Commodity Futures Trading Commission, Three Lafayette Centre,

[1] Commission regulations referred to herein are found at 17 CFR Chapter 1. Commission regulations are accessible on the Commission's website, *http://www.cftc.gov.*

1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

Section 731 of the Dodd-Frank Act [2] amended the CEA [3] by adding section 4s(e), which requires the Commission to adopt rules establishing capital requirements for SDs and MSPs to help ensure their safety and soundness.[4] Section 4s(e) applies a bifurcated approach requiring each SD and MSP subject to the capital requirements of a prudential regulator to meet the capital requirements adopted by the applicable prudential regulator, and requiring each SD and MSP that is not subject to the capital requirements of a prudential regulator to meet the capital requirements adopted by the Commission.[5] Accordingly, SDs and MSPs that are not banking entities, including nonbank subsidiaries of bank holding companies regulated by the Federal Reserve Board, are subject to the Commission's capital requirements.[6] Further, Section 764 of the Dodd-Frank Act provides that the Securities and Exchange Commission (''SEC'') shall prescribe capital and margin requirements for security-based swap dealers (''SBSDs'') and major security-based swap participants (''MSBSPs''), and Section 4s(e)(3)(D) of the CEA provides that the CFTC, SEC, and prudential regulators shall, to the maximum extent practicable, establish and maintain comparable minimum capital requirements for SDs and MSPs.

In 2011, the Commission proposed capital and financial reporting requirements for SDs and MSPs, and proposed amendments to the capital requirements for FCMs to explicitly address swap and SBS transactions.[7] The Commission, however, elected to defer consideration of final capital and financial reporting rules until after the Commission adopted final margin rules for uncleared swaps, which were adopted in 2015.[8]

In 2016, the Commission re-proposed the capital and financial reporting requirements for SDs and MSPs, and re-proposed amendments to the existing capital requirements for FCMs.[9] The Commission drew on existing CFTC, prudential regulator, and SEC capital rules in developing the *2016 Capital Proposal.* Specifically, the *2016 Capital Proposal,* depending on the characteristics of the registered entity, would permit: (i) SDs to elect a capital requirement that is based on existing bank holding company capital rules adopted by the Federal Reserve Board (the ''Bank-Based Capital Approach''); (ii) SDs to elect a capital requirement that is based on the existing CFTC FCM capital rule, the existing SEC broker-dealer (''BD'') capital rule, and the SEC's proposed capital requirements for SBSDs, (the ''Net Liquid Assets Capital Approach''); or (iii) SDs that meet defined conditions designed to ensure that they are predominantly engaged in non-financial activities to compute their minimum regulatory capital based upon the firms' tangible net worth (the ''Tangible Net Worth Capital Approach'').

The Commission received comments from a broad spectrum of market participants, industry representatives, and other interested parties in response to the *2016 Capital Proposal.* The commenters raised several topics in the *2016 Capital Proposal* including the use of models by SDs and MSPs for computing market risk and credit risk capital charges, the need for the harmonization of the Commission's rules and requirements with the rules and the requirements of the prudential regulators and the SEC, and a desire for an additional opportunity to comment on the *2016 Capital Proposal* once the SEC finalized its SBSD and MSBSP capital and financial reporting requirements.

Since the *2016 Capital Proposal* was published in the **Federal Register**, the SEC in 2018 reopened its comment period and solicited further comment on its proposed capital, margin, and segregation requirements for BDs, SBSDs, and MSBSPs.[10] The SEC finalized these capital, margin, and segregation requirements in 2019.[11] The SEC also finalized its financial reporting requirements for SBSDs and MSBSPs in 2019.[12]

The Commission has carefully considered the comment letters to the *2016 Capital Proposal* and believes it is in the public interest to provide an additional opportunity for comment on the proposed capital and financial reporting rules. The Commission believes that it is particularly appropriate to reopen the comment period in light of the *SEC Comment Reopening* and the *SEC Final Capital Rule,* and in recognition that the *2016 Capital Proposal* includes significant components of the SEC's SBSD capital rules that were recently adopted as final in the *SEC's Final Capital Rule.* In addition, the Commission believes the public should have the opportunity to provide comment on the potential economic effects of the *2016 Capital Proposal* in light of regulatory and market developments since the *Proposal* was published. Accordingly, the Commission is reopening the comment period for 75 days and is seeking comment on all aspects of the *2016 Capital Proposal.* The Commission also is seeking specific comment on certain aspects of the *2016 Capital Proposal* where further information would be particularly helpful to the Commission. In particular, the Commission is seeking

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm.*

[3] 7 U.S.C. 1 *et seq.*

[4] *See* 7 U.S.C. 6s(e)(3)(A). Section 4s(e) also directs the Commission to adopt regulations for SDs and MSPs imposing initial and variation margin requirements on all swaps that are not cleared by a registered clearing organization. The Commission adopted final SD and MSP margin requirements for uncleared swap transactions on December 18, 2015. *See, Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants,* 81 FR 636 (Jan. 6, 2016).

[5] The term ''prudential regulator'' is defined in section 1a(39) of the CEA for purposes of the section 4s(e) capital requirements. Specifically, the term ''prudential regulator'' is defined to mean the Board of Governors of the Federal Reserve System (''Federal Reserve Board''); the Office of the Comptroller of the Currency (''OCC''); the Federal Deposit Insurance Corporation; the Farm Credit Administration; and the Federal Housing Finance Agency. All references to an ''SD'' or an ''MSP'' in this proposal will mean an SD or MSP that is subject to the Commission's capital rules, unless otherwise specified.

[6] The prudential regulators, including the Federal Reserve Board and OCC, that have capital responsibilities for SDs provisionally-registered with the Commission have adopted capital rules that incorporate capital requirements for swap and SBS transactions. In this regard, the Federal Reserve Board and OCC have adopted revised capital rules to incorporate Basel III capital adequacy requirements. *See, Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule,* 78 FR 62018 (Oct. 11, 2013).

[7] *See Capital Requirements of Swap Dealers and Major Swap Participants,* 76 FR 27802 (May 12, 2011).

[8] *See* 81 FR 636.

[9] *See Capital Requirements of Swap Dealers and Major Swap Participants,* 81 FR 91252 (Dec. 16, 2016) (the ''*2016 Capital Proposal*'' or the ''*Proposal*'').

[10] *See Capital, Margin and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 83 FR 53007 (Oct. 19, 2018) (''*SEC Comment Reopening*'').

[11] *See Capital, Margin and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers,* 84 FR 43872 (Aug. 22, 2019) (''*SEC Final Capital Rule*'').

[12] *See Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers,* publication in the **Federal Register** forthcoming. A prepublication version of the document can be found at *https://www.sec.gov/rules/final/2019/34-87005.pdf.*

comment on potential modifications contemplated in light of previously received comments as discussed herein and the *SEC Final Capital Rule,* and potential rule language that would modify rule text that was included in the *2016 Capital Proposal.* The modified rule language would be included in: Regulation 1.17(c)(5)(iii)(A), (B) and (C)(2); Regulation 23.102(c), (d) and (e); and, Regulation 23.105(d)(3) and (p)(2). Comment letters received by the Commission in response to the *2016 Capital Proposal* previously need not be re-submitted as they will continue to be a part of the public comment file for this rulemaking and considered by the Commission.

II. Request for Comment

The Commission renews its request for comment on all aspects of the *2016 Capital Proposal* and on the specific topics identified below. Commenters are requested to provide empirical data in support of any arguments and analyses. The Commission notes that comments are of the greatest assistance to rulemaking initiatives when accompanied by supporting data and analysis, and, if appropriate, accompanied by alternative approaches and suggested rule text language.

The Commission also requests comments and data on how the baseline of the economic analyses has changed since the publication of the *2016 Capital Proposal.* The swap market activity has experienced significant changes, in part due to the fact that participants in this market are now subject to various new rules. For example, the 2015 uncleared margin rules adopted by the prudential regulators and the Commission, which requires SDs to exchange variation margin, and in many cases initial margin, with financial end users and other SDs against uncleared swap positions, has been phased in for a significant number but not all participants. To comply with these margin rules, these entities in the uncleared swap markets have been exchanging margin. Additionally, as noted above the SEC has finalized capital, margin and segregation requirements for the SBSDs. Moreover, swap market participants also may be subject to other regulatory regimes, including foreign regulatory authorities. The Commission requests comments on how those changes in the baseline would impact the potential benefits and costs of capital requirements.

A. Capital

The *2016 Capital Proposal* included proposed minimum capital requirements for SDs and MSPs, and proposed amendments to the minimum capital requirements for FCMs. Proposed Regulation 23.101(a)(1)(i) would require an SD electing the Bank-Based Capital Approach [13] to maintain regulatory capital equal to or in excess of the highest of the following:

(1) Common equity tier 1 capital (''CET1 Capital'') of $20 million; [14]

(2) CET1 Capital equal to or greater than 8% of the SD's risk weighted assets; [15]

(3) CET1 Capital equal to or greater than 8% of the sum of:

(a) The amount of uncleared swap margin [16] for each uncleared swap position open on the books of the SD, computed on a counterparty by counterparty basis pursuant to the Commission's margin rules for uncleared swap transactions (CFTC Regulation 23.154);

(b) The amount of initial margin that would be required for each uncleared SBS position open on the books of the SD, computed on a counterparty by counterparty basis pursuant to SEC Rule 18a–3(c)(1)(i)(B) (17 CFR 240.18a–3(c)(1)(i)(B)) without regard to any initial margin exemptions or exclusions that the SEC rules may provide to such SBS positions; and

(c) The amount of initial margin required by clearing organizations for cleared proprietary futures, foreign futures, swaps, and SBS positions open on the books of the swap dealer; or,

(4) The amount of capital required by a registered futures association of which the SD is a member.[17]

Proposed Regulation 23.101(a)(1)(ii) would require an SD electing the Net Liquid Asset Capital Approach to maintain regulatory net capital equal to or in excess of the highest of the following:

(1) $20 million (and for SDs approved to use internal capital models, $100 million of tentative net capital and $20 million of net capital);

(2) Eight percent of the sum of:

(a) The amount of uncleared swap margin for each uncleared swap position open on the books of the SD, computed on a counterparty by counterparty basis pursuant to CFTC Regulation 23.154;

(b) The amount of initial margin that would be required for each uncleared SBS position open on the books of the SD, computed on a counterparty by counterparty basis pursuant to SEC Rule 18a–3(c)(1)(i)(B) (17 CFR 240.18a–3(c)(1)(i)(B)) without regard to any initial margin exemptions or exclusions that the rules of the SEC may provide to such SBS positions;

(c) The amount of ''risk margin'', as defined in Regulation 1.17(b)(8), required by a clearing organization for proprietary futures, swaps, and foreign futures positions open on the books of the SD; and

(d) The amount of initial margin required by a clearing organization for proprietary SBS open on the books of the SD; or

(3) The amount of capital required by a registered futures association of which the SD is a member.

The *2016 Capital Proposal* also included proposed amendments to the existing capital requirements applicable to FCMs that engage in swap and SBS transactions, and also would be applicable to entities dually-registered with the Commission as SDs and FCMs. The minimum capital requirements for FCMs and entities dually-registered as SDs and FCMs were proposed to be amended to require each entity to maintain adjusted net capital equal to or greater than the highest of the following;

(1) $20 million (and for FCMs, including entities dually-registered as FCM/SDs, approved to use internal capital models, $100 million of net capital and $20 million of adjusted net capital);

(2) The FCMs risk-based capital requirement, computed as 8% of the sum of:

[13] Proposed Regulation 23.101(a)(1)(i) permits an SD that elects the Bank-Based Capital Approach to use market risk and credit models approved by the Commission or a registered futures association, or to use the standardized market risk charges in Regulation 1.17 and the standardized credit risk charges in subpart D of 12 CFR part 217.

[14] For purposes of the *2016 Capital Proposal,* CET1 Capital is defined in the rules of the Federal Reserve Board, and generally represents the sum of a bank holding company's common stock instruments and any related surpluses, retained earnings, and accumulated other comprehensive income. *See* 12 CFR 217.20.

[15] *See 2016 Capital Proposal,* 81 FR at 91310; Proposed Regulation 23.101(a)(1)(i)(B). Risk-weighted assets would be defined and computed in accordance with rules of the Federal Reserve Board, 12 CFR part 217.

[16] *See 2016 Capital Proposal,* 81 FR at 91309–10. Proposed Regulation 23.100 would define the term ''uncleared swap margin'' to mean the amount of initial margin, computed in accordance with the CFTC's uncleared swap margin rules (Regulation 23.154), that an SD would be required to collect from each counterparty for each outstanding swap position of the SD. An SD would have to include all swap positions in the calculation of the uncleared swap margin amount, including swaps that are exempt from the scope of the Commission's uncleared swap margin rules. Furthermore, in computing the uncleared swap margin amount, an SD would not be able to exclude the ''Initial Margin Threshold Amount'' or the ''Minimum Transfer Amount'' as such terms are defined in Regulation 23.151.

[17] Currently, the National Futures Association (''NFA'') is the only registered futures association registered with the Commission under section 17 of the CEA.

(a) The FCM's or FCM/SD's total ''risk margin'' [18] requirement for cleared swap, futures and foreign futures positions carried by the FCM or FCM/SD in customer and noncustomer accounts;

(b) The total initial margin that the FCM or FCM/SD is required to post with a clearing agency or broker for cleared SBS positions carried in customer and noncustomer accounts;

(c) The total ''uncleared swaps margin'', as defined in Commission Regulation 23.100;

(d) The total initial margin that the FCM or FCM/SD is required to post with a broker or clearing organization for all proprietary cleared swaps positions carried by the FCM or FCM/SD;

(e) The total initial margin computed pursuant to SEC Rule 18a–3(c)(1)(i)(B) (17 CFR 240.18a–3(c)(1)(i)(B)) for all uncleared security-based swap positions carried by the FCM or FCM/SD without regard to any initial margin exemptions or exclusions that the SEC rules may provide to such SBS positions; and,

(f) The total initial margin that the FCM or FCM/SD is required to post with a broker or clearing agency for proprietary cleared SBS;

(3) The amount of adjusted net capital required by a registered futures association of which the FCM is a member; or

(4) For FCMs, including FCMs registered as SDs, that are registered with the SEC as securities brokers and dealers, the amount of net capital required by Rule 15c3–1(a) of the Securities and Exchange Commission (17 CFR 240.15c3–1(a)).

1. Swap Dealer Capital—8% Risk Margin Amount

The proposed SD capital requirement would require an SD to maintain regulatory capital equal to or greater than 8% of the initial margin associated with the SD's proprietary cleared and uncleared futures, foreign futures, swap, and SBS positions (*i.e.,* the ''risk margin amount''). The proposed minimum capital requirement was drawn from the Commission's experience with the ''risk-based'' capital requirements currently imposed on FCMs.[19] Under the existing FCM ''risk-based'' capital model, an FCM is required to maintain adjusted net capital equal to or greater than 8% of the aggregate of each customer's and non-customer's initial margin requirements associated with their respective portfolio of futures, foreign futures and cleared swaps positions.[20] Accordingly, an FCM's minimum capital requirement increases/decreases as the total initial margin for its customers' and noncustomers' portfolios increases/decreases.[21]

The SD 8% capital component of the *2016 Capital Proposal* also is consistent with the approach adopted by the SEC for BDs and SBSDs. The *SEC Final Capital Rule* established a minimum net capital requirement for BDs and SBSDs that incorporates a component based upon a percentage of the margin associated with a BD's or SBSD's customer cleared and uncleared SBS positions.[22] The *SEC Final Capital Rule* implemented this financial ratio as a lower percentage, with the possibility of a scalable requirement to be implemented and increased over a number of years, beginning with a 2% requirement, and possibly under SEC orders increasing to a 4% requirement and ultimately to a 8% percent requirement.[23]

One commenter strongly supported the *2016 Capital Proposal's* 8% risk margin amount threshold on a comprehensive basis, noting concern that basing capital requirements on models could be manipulated, and that the 8% floor based on all calculated initial margin was therefore appropriate as a counterbalance to ensure internal modelling does not reduce loss absorbency.[24]

Several commenters, however, raised concerns with the 8% risk margin amount contained in the Bank-Based Capital Approach and the Net Liquid Asset Capital Approach.[25] These commenters generally stated that the 8% risk margin amount was both too high of a percentage and over-inclusive of the various types of business activities engaged in by SDs.[26] Several of the commenters also stated that the proposed risk margin amount has a limited relationship to the actual risk of the SD's risk from swaps, SBS, futures, and foreign futures transactions.[27] Commenters also generally noted that under the *2016 Capital Proposal* the risk margin amount is computed on a counterparty-by-counterparty basis and not on the aggregate of all of the SD's positions across all counterparties, which may overstate the SD's risk by not taking into account offsetting positions across multiple counterparties, including hedging positions.[28]

A commenter also noted that the risk margin amount did not reflect the actual risk of a SD's proprietary cleared swap, SBS, futures and foreign futures positions as the risk margin amount is required to be computed on a clearing organization-by-clearing organization basis and, therefore, does not recognize hedging and risk-reducing portfolio margin across multiple clearing organizations.[29] Commenters further noted that under the Net Liquid Assets Capital Approach requiring net capital to exceed 8% of margin double counts the risks of various positions as these risks are counted once in the market and credit risk charges used to compute net capital and then again in computing the risk margin amount.[30]

Other commenters took exception to the inclusion of the 8% risk margin amount computation for SDs electing the Bank-Based Capital Approach in proposed Regulation 23.101(a)(1)(i). Commenters noted that the current bank holding company capital rules adopted

[18] The term ''risk margin'' is defined in Regulation 1.17(b) and generally means the level of maintenance margin or performance bond required for the customer or noncustomer positions by the applicable exchanges or clearing organizations.

[19] *See* Regulation 1.17(a)(1)(i)(B).

[20] The *2016 Capital Proposal* includes a proposal to revise the FCM ''risk-based'' capital requirement to further include 8% of customer and non-customer cleared SBS positions, proprietary cleared SBS positions, and proprietary uncleared swap and SBS initial margin. *See, 2016 Capital Proposal,* 81 FR at 91306.

[21] *See* CFTC Regulation 1.17(a)(1)(i)(B).

[22] *See SEC Final Capital Rule,* Rule 15c3–1(a)(7) (17 CFR 240.15c3–1(a)(7)) for BDs (including BDs dually-registered as SBSDs) approved to use internal capital models and Rule 15c3–1(a)(10) (17 CFR 240.15c3–1(a)(10)) for BDs dually-registered as SBSDs (84 FR at 44042), and Rule 18a–1(a)(2) (17 CFR 240.18a–1(a)(2)) for standalone SBSDs approved to use internal models (84 FR at 44052).

[23] *Id.*

[24] *See* Letter from Marcus Stanley, Americans for Financial Reform (May 15, 2017) (AFR 5/15/17 Letter). The comment letters for the *2016 Capital Proposal* are available at: *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=1769* (the public comment file).

[25] *See, e.g.,* Letter from Mary Kay Scucci, Securities Industry and Financial Markets Association (May 15, 2017) (SIFMA 5/15/17 Letter); Letter from Walt Lukken, Futures Industry Association (May 15, 2017) (FIA 5/15/17 Letter); Letter from Stephen John Berger, Citadel Securities (May 15, 2017) (Citadel 5/15/17 Letter); Letter from William Dunaway, INTL FCStone Markets, LLC (May 15, 2017) (IFM 5/15/17 Letter); Letter from Sebastien Crapanzano and Soo-Mi Lee, Morgan Stanley (May 15, 2017) (MS 5/15/17 Letter); Letter from Christine Stevenson, BP Energy Company (May 15, 2017) (BPE 5/15/17 Letter); Letter from Steven Kennedy, International Swaps and Derivatives Association (May 15, 2017) (ISDA 5/15/17 Letter); Letter from the Japanese Bankers Association (May 14, 2017) (JBA 5/14/17 Letter); and, Letter from Joanna Mallers, FIA Principal Traders Group (May 24, 2017) (FIA–PTG 5/24/17 Letter).

[26] *Id.*

[27] *Id.*

[28] *See, e.g.,* ISDA 5/15/17 Letter; JBA 5/14/17 Letter; SIFMA 5/15/17 Letter.

[29] *See* FIA–PTG 5/24/17 Letter.

[30] *See* SIFMA 5/15/17 Letter; ISDA 5/15/17 Letter; FIA 5/15/17 Letter; FIA PTG 5/24/17 Letter; JBA 5/14/17 Letter; Letter from Sunhil Cutinho, CME Group, Inc. (May 15, 2017) (CME 5/15/17 Letter); and Citadel 5/15/17 Letter.

by the Federal Reserve Board, and incorporated as one of the components of the Commission's proposed minimum capital requirements for SDs electing the Bank-Based Capital Approach, does not include the 8% risk margin amount requirement. One of the commenters stated that the inclusion of the 8% risk margin amount would exaggerate the actual risk of the SD's transactions, and would place the SD at a competitive disadvantage to a SD subject to the capital rules of a prudential regulator, which are not subject to the 8% risk margin amount.[31]

One commenter suggested that the Commission consider limiting the 8% risk margin amount solely to uncleared swaps subject to the uncleared margin rules[32] and another asked the Commission to reconsider the application of the 8% risk margin threshold to cleared swaps.[33]

Several commenters also requested that if the Commission were to retain a minimum capital requirement for SDs based upon a percentage of the risk margin amount as defined in the *2016 Capital Proposal,* that the Commission adjust the 8% to a lower multiplier, such as 2%, for a period of time to allow the Commission to gather empirical data in order to determine an appropriate level.[34]

As noted in the *2016 Capital Proposal,* capital serves as an overall financial resource for the SD and is intended to cover potential risks that are not adequately covered by other risk management programs (*i.e.,* ''residual risk'') including margin on uncleared swaps.[35] Therefore, the *Proposal* expanded the types of financial instruments included in the computation of the risk margin amount to include an SD's futures, foreign futures, swaps, and SBS positions, which is a more expansive list than the SEC imposed on SBSDs, as the Commission believed that it was appropriate for SDs to maintain a minimum level of capital that reflects the extent of the risks and activities posed by the full, broad range of the SD's proprietary positions.[36]

Commenters, however, have identified significant issues and raised important questions regarding the effect that the 8% risk margin amount may have on driving the minimum requirement and consequentially the funding and business activities of each SD. Therefore, the Commission is seeking further comments on the following areas in an attempt to ensure that the 8% risk margin amount is appropriately calibrated and consistent with the statutory mandate of helping to ensure the safety and soundness of the SDs subject to the Commission's capital requirements, or if another percentage or approach is more appropriate.[37] In this regard, the Commission invites comments on all aspects of the proposed risk margin amount, including comments regarding the possible increase or decrease of the risk margin percentage in coordination with the inclusion or exclusion of certain products in order to establish the most optimal capital requirement.

1–a. The Commission requests comment and supporting data on the quantification of the potential minimum capital requirements that would be required of SDs electing the Bank-Based Capital Approach, the Net Liquid Assets Capital Approach, or the Tangible Net Worth Capital Approach as a result of the proposed 8% risk margin amount threshold. How would the amount of potential minimum capital based upon the 8% risk margin requirement compare with the amount of capital currently maintained by entities that are provisionally registered as SDs? How would such amounts compare with the amounts of capital required of SBSDs under the *SEC Final Capital Rule*? Please provide data in support of comments provided.

1–b. The Commission requests comment on whether the proposed 8% risk margin amount should be modified for SDs electing the Bank-Based Capital Approach, the Net Liquid Assets Capital Approach, or the Tangible Net Worth Capital Approach to a lower percentage requirement, such as 4%. If so, is 4% risk margin properly calibrated to the inherent risk of an SD and the activities that it engages in? If not 4%, what percentage of the risk margin should the Commission consider including in the regulations, and why is the percentage an appropriate percentage properly calibrated to the inherent risk of an SD and the activities that it engages in? Please quantify the difference in the amount of capital that would be required of an SD pursuant to the proposed 8% risk margin amount and 4% or any other suggested lower percentage of risk margin amount. To the extent it is possible to model the impact of different percentages of risk margin on the minimum capital requirements for an actual or hypothetical portfolio of positions, please provide such information. How would the suggested modified risk margin amount percentage be appropriate and consistent with the statutory objective of establishing capital requirements designed to help ensure the safety and soundness of the SD? Are there differences in the products, size and activities between SDs subject to the CFTC's proposed capital rule, SDs subject to the prudential regulators' capital rules, and SBSDs subject to the SEC's capital rule, (such as trading strategies or market share) that lead to practical differences in the CFTC's capital rule? Please provide data and analysis in support of any suggested modified percentage of the risk margin amount.

1–c. The Commission requests comment on whether the proposed 8% risk margin amount should be modified to be harmonized with the approach adopted by the SEC for SBSDs in the *SEC Final Capital Rule.* Specifically, should the Commission modify the regulation to lower the risk margin amount percentage from 8% to 2%, and further modify the regulation to authorize the Commission by order to increase the risk margin amount percentage in stages from 2% to 4% or less, and from 4% to 8% or less based upon the Commission's future experience with SD capital levels after the implementation of the final regulations? In responding to this question, please address the significant differences in the size, complexity and scope of the swap products and markets as compared to the SBS products and markets.

1–d. The Commission requests comment on whether the types of derivatives positions included in the computation of the risk margin amount threshold for SDs should be modified. Should the Commission exclude any particular asset classes or positions from the computation of the risk margin amount? For example, should the Commission exclude cleared transactions from the risk margin amount? If so, explain why such asset classes or positions should be excluded, how such exclusion is consistent with the statutory objective of the safety and soundness of the SD, and quantify the impact on the proposed minimum capital requirement of excluding such asset classes or positions and the overall risk to the financial system. Should the Commission consider modifying a combination of the percentage of the risk margin amount and the products that are included in the computation? If so, please suggest how the Commission may determine an appropriate balance

[31] *See* SIFMA 5/15/17 Letter; ISDA 5/15/17 Letter; and JBA 5/14/17 Letter.

[32] *See* IFM 5/15/17 Letter.

[33] *See* ISDA 5/15/17 Letter.

[34] *See* SIFMA 5/15/17 Letter and MS 5/15/17 Letter.

[35] *See 2016 Capital Proposal,* 81 FR at 91259.

[36] *Id.*

[37] *Id.* at 91258.

between products and the risk margin percentage. Please provide data in support of any modified list of asset classes or positions included in the risk margin amount computation and the possible costs and benefits that may result in such a change.

1–e. If the Commission modifies the capital requirements by, for example, lowering the 8% risk margin amount to a lower level or by removing certain transactions from the risk margin amount computation, the Commission believes that this may result in a lower amount of required capital for SDs, which may increase the level of risk at some SDs. The Commission requests comment as to whether lowering the percentage of risk margin to a 4% level, the SEC's 2% level or a different level, or removing transactions from the risk margin amount computation would result in an SD not holding a sufficient level of capital to help ensure its safety and soundness. Specifically, given the size, breadth and complexity of the swaps market, does a 2% or 4% capital level serve the intended goals as established in the CEA? Alternatively, what percentage of risk margin would result in capital levels that were so high that certain current swaps and futures activities of the SD would become uneconomic? How does the capital requirement impact that ability of an SD to service certain types of clients, to provide liquidity to the marketplace, or otherwise impact the efficiency and competitiveness of the swaps market? The Commission further invites comments on the general costs and benefits of modifying the risk margin amount as discussed above. Please provide data with any comment or analysis.

1–f. The Commission requests comment on whether Regulation 23.101 should be modified by removing the minimum capital requirement based upon the 8% of risk margin amount calculation from the Bank-Based Capital Approach and the Net Liquid Assets Capital Approach. If the Commission were to modify Regulation 23.101 to remove the 8% risk margin amount from the Net Liquid Assets Capital Approach, SDs electing that capital approach would be required to maintain net capital equal to or in excess of $20 million and, if approved to use capital models, $100 million of tentative net capital and $20 million of net capital. Does this level of minimum regulatory capital provide adequate assurance that an SD can meet its obligations and is it consistent with the objective of helping to ensure that safety and soundness of the SD?

1–g. The *2016 Capital Proposal* did not include a leverage ratio requirement. The Commission requests comment on whether it would be appropriate, at a future date after notice and comment, to revise the capital requirements by adopting a leverage ratio for SDs in lieu of the proposed percentage of the risk margin amount if adopted as final. To assist the Commission in its assessment of this possible future action, the Commission requests comment on the cost, if any, in terms of additional required capital under each of the proposed capital methods and how the adoption of a leverage ratio requirement would affect the efficiency, competitiveness, integrity, safety and soundness, and price discovery of swap markets. Please provide any supporting data with your comment.

2. FCM Minimum Capital Requirement

The *2016 Capital Proposal* included a proposed revision to the FCM net capital requirement to require an FCM (or dually-registered FCM/SD) to include in its minimum capital requirement eight percent of the uncleared swaps margin for uncleared swaps and eight percent of the initial margin for uncleared SBS for which the FCM or FCM/SD was a counterparty, as well as eight percent of the total initial margin that the FCM or FCM/SD was required to post with a broker or clearing organization for all proprietary cleared swaps and proprietary cleared SBS. These proposals were contained at a proposed revised Regulation 1.17(a)(1)(i)(B). The Commission's general rationale for proposing such revisions was that an FCM's or FCM/SD's capital should reflect exposures to all swap counterparties, in order to promote safety and soundness.[38]

Several commenters focused their comments on the impact on FCMs. Several commenters stated that the proposed inclusion of an FCM's or FCM/SD's proprietary cleared swaps and SBS positions in the 8% risk margin amount would place an unnecessary financial burden on FCMs and would not properly recognize that the same proprietary positions are subject to an existing net capital charge based upon exchange or clearinghouse margin requirements under Regulation 1.17(c)(5)(x).[39] One commenter referred specifically to this as duplicative, and argued it would unnecessarily increase the amount of adjusted net capital an FCM would hold for swaps and SBS exposures which could burden smaller SD FCMs which are not BDs and threaten their ability to provide clearing services for swaps.[40] This commenter noted that the Commission had noted that such types of FCMs were often ones that may be willing to provide swaps markets in commodities to agricultural firms and smaller commercial end-users, and this commenter suggested that overburdening smaller SD FCMs in this manner could further exacerbate the concentration of clearing among larger FCMs. Considering these comments, specifically that existing net capital charges already apply to proprietary cleared swaps and SBS in Regulation 1.17, and that the Commission also proposed additional net capital market risk charges applicable to swaps and SBS in other parts of Regulation 1.17, the Commission is reconsidering the proposed FCM amendments to Regulation 1.17(a)(1)(i)(B) contained within the *2016 Capital Proposal.*

2–a. The Commission requests additional comment on the advisability of deleting the proposed changes to Regulation 1.17(a)(1)(i)(B) to the net capital requirement for all FCMs and dually-registered FCM/SDs, which would leave such section as currently in effect, instead of adopting the changes proposed within the *2016 Capital Proposal.*[41] The Commission would rely on net capital charges proposed and applicable to proprietary cleared and uncleared swaps and SBS to reflect the risks to FCMs (and dually-registered FCM/SDs) from swaps and SBS business, without any add-on minimum capital requirement for swap dealing, other than the higher minimum dollar threshold of $20 million, which the Commission still would retain from the *2016 Capital Proposal.* If the Commission adopts this change, the Commission believes that this would lower the amount of required capital under this *Proposal;* however, FCMs would still be required to deduct market risk charges for cleared and uncleared proprietary positions in computing their net capital and adjusted net capital, which is intended to provide a capital cushion to protect against future adverse price movements in the positions. Please provide comment on how this change would affect the overall costs and benefits of the *Proposal* and the efficiency, competitiveness, financial

[38] *See 2016 Capital Proposal,* 81 FR at 91266.

[39] *See* CME 5/15/17 Letter; FIA 5/15/17 Letter; Citadel 5/15/17 Letter; and the SIFMA 5/15/17 Letter.

[40] *See* CME 5/15/17 Letter.

[41] The modification to Regulation 1.17(a)(1)(i)(B) would result in the customer and noncustomer cleared swaps, futures, and foreign futures being included in the computation of the risk margin amount.

integrity, and price discovery of the swaps market?

3. Composition of Common Equity Tier 1 Capital

The *2016 Capital Proposal* would require SDs electing the Bank-Based Capital Approach to maintain a minimum level of regulatory capital of CET1 Capital equal to or in excess of the highest of: (1) $20 Million; (2) 8% of the SD's risk-weighted assets; or (3) 8% of the SD's risk margin amount.[42] For purposes of the *Proposal,* CET1 Capital is defined by rules of the Federal Reserve Board, and generally represents the sum of a bank holding company's common stock instruments and any related surpluses, retained earnings, and accumulated other comprehensive income.[43] The *2016 Capital Proposal* also would require an SD to file a notice with the Commission if its net capital was below 120% of the SD's minimum capital requirement (''Early Warning Notice'').[44]

As noted in the *2016 Capital Proposal,* the Commission proposed to limit the forms of capital that a SD electing the Bank-Based Capital Approach could recognize to CET1 capital as such capital is a more conservative form of capital than Additional Tier 1 capital or Tier 2 capital, particularly as it relates to the permanence of the capital and its availability to absorb unexpected losses.[45] Moreover, the Commission believed that limiting the capital to CET1 Capital was appropriate as the Commission did not propose to include several capital add-ons maintained in the rules of the Federal Reserve Board, including, for instance, the capital conservation buffer and the countercyclical capital buffer.[46]

The Commission received comments regarding the proposed requirement to limit regulatory capital to only CET1 Capital. One commenter supported the proposed requirement that an SD electing the Bank-Based Capital Approach must satisfy its capital requirement with only CET1 Capital.[47] This commenter stated that the more conservative CET1 Capital requirement is appropriate given that the *2016 Capital Proposal* does not contain all of the add-ons and supervisory safeguards that are set forth in the prudential regulators' capital framework.[48]

Other commenters stated that the proposed minimum capital requirement of CET1 Capital equal to or greater than 8% of risk-weighted assets would impose a capital requirement on SDs that is materially higher and more restrictive than the prudential regulators' capital requirement for banks and bank holding companies.[49] These commenters noted that the prudential regulators' minimum capital requirements provide that an entity is ''adequately capitalized'' if its CET1 Capital is equal to or greater than 4.5% of the SD's risk-weighted assets, and is ''well capitalized'' if its CET1 Capital is at least 6.5% of its risk-weighted assets.[50] These commenters further stated that the proposed Early Warning Notice requirement would effectively require SDs to maintain CET1 Capital equal to at least 9.6% (120% × 8%) of risk-weighted assets as entities subject to the Early Warning Notice requirements generally ensure that regulatory capital exceeds such requirements.[51] Another commenter stated that the *Proposal* may make it difficult for SDs subject to the CFTC capital rule to compete with SDs subject to the capital rules of a prudential regulator, and more generally would deviate from the more tailored risk-based approach taken by the prudential regulators.[52]

In addition, a commenter requested that the Commission revise its Bank-Based Capital Approach to recognize subordinated debt as capital in meeting the 8% of risk-weighted assets capital ratio.[53] This commenter noted that prudential regulators' capital requirements permit a bank or bank holding company to recognize certain subordinated debt as capital in meeting the 8% of risk-weighted assets capital ratio requirement.[54]

The Commission continues to support the concept of aligning, as appropriate, the requirements of the proposed Bank-Based Capital Approach with the capital requirements imposed on SDs subject to the prudential regulators' jurisdiction. Consistency between the Bank-Based Capital Approach requirements and the prudential regulators' requirements satisfies the Commission's objective of providing capital alternatives that are based upon existing bank requirements, while also providing market participants with greater certainty as to the operation of the capital requirements and regulations, and should assist in addressing potential competitive disadvantages that SDs subject to the CFTC Bank-Based Capital Approach may be subject to relative to prudentially regulated SDs. Accordingly, the Commission is considering adjusting the CET1 Capital approach based on comments received, particularly those which identified a possible competitive disadvantage to a SD under the CFTC's jurisdiction relative to a SD subject to the capital requirements of a prudential regulator.

3–a. The Commission requests comment on whether Regulation 23.101(a)(1)(i)(B) should be modified to permit SDs electing the Bank-Based Capital Approach to recognize capital other than CET1 Capital in meeting the 8% of risk-weighted assets ratio requirement. Should the proposed Regulation be modified to permit an SD to recognize Additional Tier 1 capital and/or Tier 2 capital (as such terms are defined in 12 CFR 217.20) in meeting its 8% of risk-weighted assets capital ratio requirement? If so, are there particular elements of Additional Tier 1 capital or Tier 2 capital that the Commission should prohibit or otherwise limit an SD from recognizing in meeting the 8% of risk-weighted assets capital ratio?

3–b. The Commission requests comment on whether Regulation 23.101(a)(1)(i)(B) should be modified such that an SD is required to maintain a CET1 Capital ratio of at least 6.5% of risk-weighted assets, with an additional 1.5% of risk-weighted assets permitted to be held in the form of Additional Tier 1 capital or Tier 2 capital? Should the Commission place any restrictions or conditions on the type of instruments that would qualify as Additional Tier 1 capital or Tier 2 capital in meeting the capital ratio?

3–c. The Commission requests comment on whether Regulation 23.101(a)(1)(i)(B) should be modified such that an SD is required to maintain a CET1 Capital ratio of 4.5% of risk-weighted assets, with the remaining 3.5% of risk-weighted assets permitted to be held in the form of Additional Tier 1 capital or Tier 2 capital? Should the Commission place any restrictions or conditions on the type of instruments that would qualify as Additional Tier 1 capital or Tier 2 capital?

3–d. The Commission recognizes that an FCM is permitted to exclude

[42] *See 2016 Capital Proposal,* 81 FR at 91310; Proposed Regulation 23.101(a)(1)(i). Risk-weighted assets would be defined and computed in accordance with rules of the Federal Reserve Board, 12 CFR part 217.

[43] *See* 12 CFR 217.20.

[44] *See 2016 Capital Proposal,* 81 FR at 91318; Proposed Regulation 23.105(c)(2).

[45] *Id.* at 91259–91260. Under the rules of the Federal Reserve Board, Additional Tier 1 capital includes certain types of non-cumulative preferred stock instruments and Tier 2 capital includes qualifying subordinated debt. (*See* 12 CFR 217.20).

[46] *Id.* at 91260, footnote 45.

[47] *See* AFR 5/15/17 Letter.

[48] *Id.*

[49] *See* ISDA 5/15/17 Letter; MS 5/15/17 Letter; SIFMA 5/15/17 Letter.

[50] *Id.*

[51] *Id.*

[52] JBA 5/15/17 Letter.

[53] SIFMA 5/15/17 Letter.

[54] *Id.*

subordinated debt that complies with the conditions set forth in Regulation 1.17 from its liabilities in computing its adjusted net capital.[55] In addition, an SD that elects the Net Liquid Assets Capital Approach also would be permitted to exclude subordinated debt that satisfies the conditions specified in SEC Rule 18a–1d (17 CFR 240.18a–1d) from its liabilities in computing its net capital.[56] The Commission requests comment on whether an SD that elects the Bank-Based Capital Approach should be permitted to include subordinated debt in computing the amount of capital available to meet the 8% of risk-weighted assets ratio requirement? If so, should the subordinated debt be subject to the same conditions as set forth in Regulation 1.17(h) and/or SEC Rule 18a–1d (17 CFR 240.18a–1d) for Satisfactory Subordination Agreements? Should the subordinated debt be classified as Tier 2 capital in the modified rule? Please suggest rule language to effect any modification to the Regulation.

3–e. The Commission requests comments and supporting data on how the various modifications to the CET1 discussed in questions 3–a through 3–d above would affect the capital adequacy of an SD. Would such modifications encourage regulatory arbitrage between SDs subject to the capital rules of a prudential regulator and SDS subject to the capital rules of the CFTC? What impact would the proposed modifications have on an SD's cost of capital. How would the various modifications affect efficiency, competitiveness, financial integrity, and price discovery of swaps market?

4. Standardized Market Risk Charges—Netting of Uncleared Currency and Commodity Swaps

The *2016 Capital Proposal* contained standardized market risk capital charges for uncleared swaps and uncleared SBS for FCMs and SDs not approved to use internal models.[57] The standardized market risk capital charges for swaps and SBS for FCMs and dually-registered FCM/SDs were proposed in revised Regulation 1.17(c)(5)(iii) and (iv), respectively.[58] The standardized capital charges for SDs that are not dually-registered as FCMs (*i.e.,* ''Standalone SDs'') are set forth in proposed Regulation 23.101(a)(1). Proposed Regulation 23.101(a)(1)(i)(B) sets forth the standardized capital charges for Standalone SDs that elect the Bank-Based Capital Approach and effectively imposes the same standardized capital charges as set forth in Regulation 1.17(c)(5)(iii) for FCMs and dually-registered FCM/SDs. Proposed Regulation 23.101(a)(1)(ii)(A) sets forth the standardized capital charges for Standalone SDs electing the Net Liquid Assets Capital Approach, and effectively imposes the same standardized capital charges as set forth in the *SEC's Final Capital Rule* for SBSDs.[59]

FCMs and SDs must maintain capital to cover the market risk of their swap portfolios. Standardized capital charges provide an option for FCMs and SDs to calculate the amount of capital necessary to cover the risk of their portfolios. Using standardized charges to measure risk capital is relatively easy and cheap to implement, compared to using internal models. Therefore, standardized charges reduce the operational cost of being an SD and potentially encourage more firms to enter the swap dealing business. However, simple standardized haircuts are less risk-sensitive than model-based charges and less likely to recognize appropriate netting for different portfolios. Netting is critical in managing risk of derivative portfolios and needs to account appropriately for different portfolios. Without a netting provision, standardized charges can be too high, particularly for uncleared swap portfolios made of long and short positions simultaneously, therefore netting/offsetting provisions are critical when standardized charges are used to measure risk capital for the swap dealing book. Due to these reasons, sometimes standardized charges may not be tailored appropriately to the risk of the relevant positions. To be a viable alternative to models for calculating risk capital for FCMs and SDs, the Commission recognizes that standardized charges need to recognize netting benefits and must be subject to recalibration and refinement.

Proposed Regulation 1.17(c)(5)(iii) sets forth the standardized market risk charges for uncleared credit default swaps (''CDS'') referencing broad-based securities indices, interest rate swaps, currency swaps, commodity swaps, and SBS. The standardized market risk charges for uncleared CDS referencing broad-based securities indices generally would be determined by multiplying the notional amount of the swap by a fixed percentage based upon the remaining length of the time to maturity of the swap and the current basis point spread of the swap. The proposed regulation would further provide for certain netting or offsetting of long and short uncleared CDS positions.[60]

The proposed standardized market risk charge for uncleared interest rate swap positions would be determined by multiplying the notional amount of the swap by a fixed percentage based upon the remaining term of the swap. The FCM or dually-registered FCM/SD also would be permitted to net or offset long and short uncleared interest rate swap positions that are in the same time to maturity groupings or categories, provided that the market risk capital charge deduction may not be less than 0.5% of the amount of the long positions netted against the short positions in each individual categories with a maturity of three months or more.[61]

Proposed Regulation 1.17(c)(5)(iii) would further require an FCM or dually-registered FCM/SD to incur standardized market risk charges for uncleared currency swaps and commodity swaps. The standardized market risk capital charges for uncleared currency swaps would be based upon a fixed percentage of the notional amount of the currency swaps.[62] The standardized market risk capital charge for uncleared commodity swaps would be based upon a fixed 20% of the market value of the commodity underlying the commodity swaps. Proposed Regulation 1.17(c)(5)(iii), however, did not include a provision that would provide for any netting or

[55] *See* Commission Regulation 1.17(h).

[56] *See* SEC Rule 18a-1(c)(1)(ii)(17 CFR 240.18a–1(c)(1)(ii)).

[57] FCMs or SDs may seek Commission approval to use internal models to compute market risk charges for proprietary positions. The internal models would have to meet certain qualitative and quantitative requirements set forth in proposed Regulation 23.102 and Appendix A to Regulation 23.102.

[58] *See 2016 Capital Proposal,* 81 FR at 91307.

[59] Proposed Regulation 23.101(a)(ii)(A), which applies to Standalone SDs electing the Net Liquid Assets Capital Approach, would incorporate the SEC's standardized market risk and credit risk capital charges as it provides that the Standalone SDs must compute regulatory capital in accordance with the SEC's capital rules as if the Standalone SDs were SBSD subject to the SEC's capital rules.

[60] *Id.*

[61] *Id.* Proposed Regulation 1.17(c)(5)(iii)(B) would provide that the capital charge for uncleared interest rate swaps would be determined by reference to SEC Regulation 15c3–1(c)(2)(vi)(A) (17 CFR 240.15c3–1(c)(2)(vi)(A)). The Commission had proposed a minimum standardized market risk capital charge on matched long and short interest rate swap positions equal to 0.5% of net notional amount in each grouping or category of swaps. The SEC proposed a minimum standardized market risk capital charge on matched long and short interest rate swaps equal to 1% of the net notional amount in each grouping or category of swaps. *See SEC Comment Reopening.*

[62] Proposed Regulation 1.17(c)(5)(iii)(C)(*1*)(*ii*) would provide that the standardized market risk capital charge for currency swap is 6% of the notional amount of currency swaps referencing euros, British pounds, Canadian dollars, Japanese yen, or Swiss francs, and 20% of the notional amount in the case of currency swaps referencing any other foreign currencies.

offsetting of the uncleared currency or uncleared commodity swaps positions in computing the standardized market risk charges. Proposed Regulation 1.17(c)(5)(iii) would require a standardized market risk charge equal to the sum of the standardized charge applicable to each long and short uncleared currency swap and each long and short uncleared commodity swap position.

The *SEC Final Capital Rule* included similar standardized market risk charges for uncleared swaps for BDs and SBSDs, however the SEC adopted a netting proviso applicable to both BDs and SBSDs, permitting a reduction of the resulting capital charge by an amount equal to any reduction recognized for a comparable long or short position in the reference asset or interest rate under Regulation 1.17 or SEC Rule 15c3–1 (17 CFR 240.15c3–1). This netting proviso is adopted in the *SEC Final Capital Rule* at Rule 15c3–1b(b)(2)(ii)(B) (17 CFR 240.15c3–1b(b)(2)(ii)(B) and Rule 18a–1b(b)(2)(ii)(B) (17 CFR 240.18a–1b(b)(2)(ii)(B)). The Commission intends to maintain consistency with the *SEC Final Capital Rule* with respect to the applicability of the standardized market risk charges for uncleared currency and commodity swaps, and therefore requests comment on including the same netting proviso appended to the proposed Regulation 1.17(c)(5)(iii)(C), which would provide that the deduction under Regulation 1.17(c)(5)(iii)(C)(*1*) may be reduced by an amount equal to any reduction recognized for a comparable long or short position in the reference asset under § 1.17 or 17 CFR 240.15c3–1.

4–a. The Commission requests comment and supporting data on the potential modification to the standardized market risk charges as proposed, through new rule text that would be appended to the proposed Regulation 1.17(c)(5)(iii)(C), that would provide for the netting or offsetting of currency swaps and commodity swaps as discussed above. How would various changes regarding netting or offsetting provisions affect an FCM's or SD's risk management, liquidity provision, and capacity to serve end users in commodity swap and currency swap markets? How would various changes affect efficiency, competitiveness, integrity, and price discovery in commodity swap and currency swap markets?

4–b. Would rule language as described above affect this potential modification to the rule text in the *2016 Capital Proposal*? If not, please explain why and suggest alternative rule language.

4–c. The Commission notes that the Federal Reserve Board's current capital framework does not include a standardized calculation for market risk which recognizes offsets across commodity positions. The Basel III framework, however, does include provisions for such offsets.[63] While it is anticipated that the prudential regulators will adopt a standardized market risk calculation based on Basel III, they have not done so to date.

The Commission requests comments on whether Regulation 1.17(c)(5)(iii) should be modified to include the Basel III simplified standardized approach of market risk for commodity swaps.[64] If the Commission were to modify Regulation 1.17(c)(5)(iii) consistent with the current Basel III framework for the simplified standardized approach for computing market risk, should the Commission consider amending Regulation 1.17(c)(5)(iii) with the objective of maintaining a harmonized approach with the prudential regulators if and when they adopt the corresponding aspect of the Basel III framework? How would such revisions impact FCMs or SDs that are dually-regulated as BDs or SBSDs? While the intent of the Commission would be to limit the incorporation of the Basel III approach only to those sections that describe allowable netting within the commodities class, it may be that the fusion of these sections or concepts into the rest of the Commission's proposed rule present additional challenges. Accordingly, the Commission requests comments identifying and addressing these challenges and suggestions on how the Commission may modify the regulations to overcome them. This may include for example, differences in definitions between the Basel III framework and definitions contained in the *Proposal.*

5. Revision of Minimum Market Risk Capital Charge for Uncleared Interest Rate Swaps

The *2016 Capital Proposal* included a standardized market risk capital charge for uncleared interest rate swaps.[65] The proposed standardized market risk capital charges for uncleared interest rate swaps was consistent with the SEC's proposed standardized market risk capital charges for uncleared interest rate swaps in an effort to harmonize the two rules to minimize operational costs on entities dually registered with the CFTC and SEC, and therefore subject to both CFTC and SEC capital rules.[66]

Pursuant to the *Proposal,* a Covered Firm that was not approved to use internal market risk models would be required to take a standardized market risk capital charge equal to a percentage of the notional amount of the uncleared interest rate swap. The percentage that would be applied to the notional amount would be based upon the remaining time to maturity of the interest rate swap, and would range from 0% (for interest rate swaps with a remaining time to maturity of less than 3 months) to 6% (for interest rate swaps with a remaining time to maturity of 25 years or more). The *2016 Capital Proposal* further provided that a Covered Firm may net certain of the long and short uncleared interest rate swaps to reduce the net notional amount, provided that the net notional amount is subject to a minimum floor standardized capital charge equal to 0.5%.[67]

Commenters objected to the proposed standardized market risk charges as being too punitive and not tailored to the risk posed by the relevant portfolios of positions.[68] Specifically, commenters noted that the proposed standardized market risk charges would be substantially higher than the capital charges based on clearing house maintenance margin requirements for cleared interest rate futures contracts.[69] These commenters indicated that the excessive capital requirements derived from the proposed standardized capital charges would particularly impact small to mid-sized Covered Firms that are not

[63] *BCBS Minimum Capital Requirements for Market Risk,* January 2019 (revised February 2019), BIS, *https://www.bis.org/bcbs/publ/d457.htm.*

[64] *Id. See* MAR 40.2 for commodities which references MAR40.63 to MAR40.73 (commodities risk), plus additional requirements for option risks from commodities instruments (non-delta risks) under MAR40.74 to MAR40.86 (treatment of options).

[65] *See 2016 Capital Proposal,* 81 FR at 91307; Proposed Regulation 1.17(c)(5)(iii)(B). Regulation 1.17(c)(5)(iii)(B) would apply to FCMs, SDs that elect to follow the Bank-Based Capital Approach and are not approved to use internal capital models, and dually-registered FCM/SDs (collectively referred to as ''Covered Firms'').

[66] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70213 (Nov. 23, 2012) (the ''SEC Proposed Capital Rule'').

[67] The SEC proposed minimum standardized market risk charge of 1% of the net notional value of the interest rate swaps for SBSDs and 0.5% for BDs. *See* SEC Proposed Capital Rule, 77 FR at 70345; Proposed Rule 18a–1b(b)(2)(i)(C) (17 CFR 240.18a–1b(b)(2)(i)(C)) for SBSDs and Proposed Rule 15c3–1b(2)(i)(C) (17 CFR 240.15c3–1b(2)(i)(C)).

[68] SIFMA 5/15/17 Letter; Jefferies 5/12/17 Letter.

[69] SIFMA and Jefferies each estimated that the proposed standardized market risk charges for uncleared interest rate swaps would be approximately 144 times higher than the clearing house margin requirements. *See, Id.*

approved or otherwise do not use internal market risk models.

The Commission continues to believe that it is appropriate for the capital rule to include standardized market risk charges for uncleared interest rate swap positions to help ensure that a Covered Firm maintains capital to address potential decreases in the value of such positions, and as a general cushion to cover other types of risks. The Commission also believes that standardized market risk charges are necessary as not all Covered Firms will have internal models to compute market risk charges.

The Commission, however, recognizes that the *Proposal* would impose substantial capital charges that are not properly calibrated to the risks of the interest rate swap positions. In addition, the Commission acknowledges that the standardized market risk charges would impact Covered Firms that do not use internal models, which is expected to be smaller to mid-sized Covered Firms that are not part of a financial group that has obtained the approval of the SEC, prudential regulators, or a foreign regulator to use internal capital models. The Commission believes that establishing an appropriate level for the standardized capital charge for uncleared interest rate swaps would benefit market participants by encouraging smaller to mid-sized SDs to remain or to enter the market. Accordingly, the Commission request further comment on the proposed standardized market risk charge for uncleared interest rate swaps.

5–a. The Commission requests comment on modifying the proposed capital charges for interest rate swap positions for Covered Firms. Should the Commission modify the proposed regulation to include the 0.125% capital charge adopted by the SEC? Is the 0.125% capital charge appropriately calibrated to the risk of the interest rate swap positions? What would be the financial impact on Covered Firms' capital by modifying the regulation to provide for a 0.125% capital charge? How would the modified capital charge at a 0.125% level satisfy the statutory requirement of helping to ensure the safety and soundness of a SD? What would be the potential impact of having a capital charge that was not appropriately calibrated to the risk of the swap positions? Please provide empirical data and analysis in support for your responses.

5–b. The Commission requests comment on whether additional guidance concerning the method of applicable netting of uncleared interest rate swaps positions is necessary.

6. Revision of the Length of Time to Maturity Categories for Credit Default Swaps

The *2016 Capital Proposal* would require an FCM or SD to incur a standardized market risk capital charge for uncleared CDS. As noted above in section 4, the standardized market risk capital charge for uncleared CDS would be determined by multiplying the notional amount of the swap by a fixed percentage based upon the remaining length of time to maturity of the swap and the current basis point spread of the swap.

The *SEC Final Capital Rule* includes the same standardized market risk capital charges for uncleared CDS referencing broad-based security index.[70] However, the *SEC Final Capital Rule* contains slightly different categories of remaining length of maturity of the swap than the Commission's *2016 Capital Proposal.*[71] This difference was not intentional and is not deemed material.

The Commission and SEC have a long history of harmonizing CFTC and SEC capital requirements in order to reduce costs that would otherwise be imposed on dually-regulated entities, including dually-registered FCM/BDs, from having to comply with two different regulatory requirements. This approach to a uniform capital rule reduces costs to registrants and encourages entities to engage in activities that require registration with both the CFTC and SEC, while also providing appropriate regulatory requirements. To maintain this established system of uniform capital requirements, the Commission proposes to modify the grid of the final length of time to maturity of the CDS contact referencing broad-based security index in proposed Regulation 1.17(c)(5)(iii)(A)(*1*) to harmonize the standardized uncleared CDS contract market risk capital charges with the final SEC standardized capital charges.

6–a. The Commission requests comment on the potential modification of the standardized market risk charges for uncleared CDS referencing broad-based security index.

6–b. The potential modification to paragraph (c)(5)(iii)(A)(*1*) of Regulation 1.17 would revise the language of each row heading one month less, for example the first row would be titled less than 12 months as opposed to 12 months or less.

Would the potential modification described above appropriately address the harmonization of the CFTC and SEC standardized market risk capital charge for uncleared CDS referencing broad-based security index? If not, are there additional modifications that would need to be addressed, or different rule language necessary to appropriately harmonize the CFTC and SEC CDS standardized market risk charges? The Commission is of the view that the changes to the table above would have a de minimis effect on the required amount of capital; however, the Commission requests comments and supporting data on how the changes to the table would, if at all, affect efficiency, competitiveness, financial integrity, and price discovery of swaps market?

7. Tangible Net Worth Capital Approach

The *2016 Capital Proposal* included a provision permitting SDs that are ''predominantly engaged in non-financial activities'' to compute their minimum regulatory capital based upon the firms' ''tangible net worth'' (the ''Tangible Net Worth Capital Approach'') in lieu of the Bank-Based Capital Approach or the Net Liquid Assets Capital Approach.[72] Proposed Regulation 23.101(a)(2) defined the term ''predominantly engaged in non-financial activities'' by referencing the definition of the term ''financial activities'' under the Federal Reserve Board's regulations establishing criteria for determining if a nonbank financial company is predominantly engaged in financial activities.[73] For purposes of the *Proposal,* an entity would be considered ''predominantly engaged in non-financial activities'' if: (1) The consolidated annual gross financial revenues of the entity in either of its two most recently completed fiscal years represents less than 15 percent of the entity's consolidated gross revenue in that fiscal year (''15% Revenue Test''), and (2) the consolidated total financial assets of an entity at the end of its two most recently completed fiscal years represents less than 15 percent of the entity's consolidated total assets as of the end of the fiscal year (''15% Asset

[70] *See* SEC Final Rule; Rule 15c3–1b(b)(2)(i)(A) (17 CFR 240.15c3–1b(b)(2)(i)(A)) for BDs and Rule 18a–1b(b)(2)(i)(A) (17 CFR 240.18a–1b(b)(2)(i)(A)) for SBSDs.

[71] The length of time to maturity component of the respective CFTC and SEC standardized grids were different by one month.

[72] *See 2016 Proposed Capital Rule,* 81 FR at 91310–11; Proposed Regulation 23.101(a)(2). The term ''tangible net worth'' was proposed to be defined in Regulation 23.100, in relevant part, as the net worth of an SD as determined in accordance with generally accepted accounting principles in the U.S., excluding goodwill and other intangible assets.

[73] *See* 12 CFR 242.3. The Financial Stability Oversight Council uses the criteria when it considers the potential designation of a nonbank financial company for consolidated supervision by the Federal Reserve Board.

Test''). For purposes of the 15% revenue test, consolidated annual gross financial revenues would mean that portion of the consolidated total revenue of the entity that are related to activities that are financial in nature. For purposes of the 15% asset test, consolidated total financial assets would mean that portion of the consolidated total assets of the entity that are related to activities that are financial in nature.

The Commission proposed a Tangible Net Worth Capital Approach in recognition that certain entities that engage primarily in non-financial activities may meet the statutory and regulatory definitions of the term ''swap dealer'' and, therefore, would be required to register as such with the Commission.[74] However, while these entities may engage in swap dealing activities, they are primarily commercial enterprises. The business activities and the composition of the balance sheet of these commercial entities may differ materially from entities predominantly engaged in financial activities, including the types of transactions they enter into, and the types of market participants and swap counterparties that they deal with. Because of these differences, the Commission believed that application of the Bank-Based Capital Approach or Net Liquid Assets Capital Approach to these SDs could result in inappropriate capital requirements that would not be proportionate to the risk associated with these entities.[75] The proposed Tangible Net Worth Capital Approach would provide that an SD that was predominantly engaged in non-financial activities must maintain tangible net worth equal to or greater than the highest of:

(1) $20 Million plus the amount of the SD's market risk exposure requirement and credit risk exposure requirement associated with the SD's swaps and related hedge positions that are part of the SD's dealing activities;

(2) 8% of the sum of the:

(a) The amount of uncleared swap margin [76] for each uncleared swap position open on the books of the SD, computed on a counterparty by counterparty basis pursuant to the Commission's margin rules for uncleared swap transactions (Regulation 23.154);

(b) The amount of initial margin that would be required for each uncleared SBS position open on the books of the SD, computed on a counterparty by counterparty basis pursuant to SEC Rule 18a–3(c)(1)(i)(B) (17 CFR 240.18a–3(c)(1)(i)(B)) without regard to any initial margin exemptions or exclusions that the SEC rules may provide to such SBS positions; and

(c) The amount of initial margin required by clearing organizations for cleared proprietary futures, foreign futures, swaps, and SBS positions open on the books of the swap dealer; or

(3) The amount of capital required by a registered futures association of which the SD is a member.

Certain commenters generally supported the Tangible Net Worth Capital Approach but questioned the criteria proposed to qualify for the approach as overly narrow and entity specific. These commenters generally noted that a parent entity that is predominantly engaged in non-financial activities would not be permitted in any practical way to establish an SD subsidiary that would be able to use the Tangible Net Worth Capital Approach as the swaps activity of the SD would be considered financial activities.[77] Some commenters further noted that the proposed Tangible Net Worth Capital Approach would discriminate against corporate entities that are predominantly engaged in non-financial activities but elect to maintain their swap dealing activities in separate legal entities.[78] Another commenter stated that commercial enterprises may establish SD subsidiaries to perform centralized risk management operations for the commercial enterprise, and that such SD subsidiaries should have the option to elect a Tangible Net Worth Capital Approach.[79] These commenters generally suggested that the assessment of whether the entity satisfies the conditions for the use of the Tangible Net Worth Capital Approach should be made at an SD's parent level and not at the level of the SD.

The Commission continues to believe as it stated in the *2016 Capital Proposal* that certain SD entities which may engage in dealing activities but be associated with primarily commercial entities will need a more flexible capital requirement than either the Bank-Based Capital Approach or the Net Liquid Assets Capital Approach. In consideration of the comments that the Tangible Net Worth Capital Approach may not be available to the full universe of SDs that it may best fit, based on the type of transactions and market functions fulfilled by such SDs, the Commission believes ensuring the continued viability of the current range of SD businesses merits seeking additional comment on possibly broadening the applicability of the Tangible Net Worth Capital Approach, while considering the need for associated additional risk mitigants if a broader application is adopted. Expanding the availability of the Tangible Net Worth Capital Approach to SDs that are subsidiaries of a corporate group that is predominantly engaged in non-financial activities would provide flexibility to allow such corporate groups to determine the most efficient and effective corporate structure to meet their business and operational needs without forcing such entities to elect either the Net Liquid Assets Capital Approach or Bank-Based Capital Approach, which are designed primarily for financial entities, for their SD subsidiaries. Providing SDs that are subsidiaries of corporate groups that are predominantly engaged in non-financial activities with a choice of using the Tangible Net Worth Capital Approach may also encourage non-financial firms to register as SDs, which may benefit commercial end users and other market participants that use such SDs to hedge their commercial risk. Accordingly, the Commission is requesting further information with respect to the consideration of the Tangible Net Worth Capital Approach as follows.

7–a. The Commission requests comment on whether the rules should permit an SD that is not ''predominantly engaged in non-financial activities'' as defined in proposed Regulation 23.100 to nevertheless to use the Tangible Net Worth Capital Approach if its parent entity or the ultimate parent of its consolidated ownership group otherwise satisfies the criteria? This approach would effectively permit SDs that are subsidiaries of commercial enterprises that are ''predominantly engaged in non-financial activities'' as defined by the proposed rules to elect to use the Tangible Net Worth Capital

[74] The term ''swap dealer'' is defined by section 1a(49) of the CEA and Regulation 1.3 of the Commission's regulations. Regulation 1.3 provides that an entity may apply to limit its designation as an SD to specified categories of swaps or specified activities in connection with swaps.

[75] Furthermore, as an SD, the entity is required to exchange variation margin on swaps entered into with other SDs or financial end users, and post and collect initial margin on swaps entered into with SDs or financial end users with material swaps exposure. *See* CFTC Regulations 23.152 and 23.153.

[76] *See 2016 Capital Proposal,* 81 FR at 91309–10.

[77] *See, e.g.,* Letter from Phillip Lookadoo, and Jeremy Weinstein, International Energy Credit Association (May 15, 2017); Letter from Scott Earnest, Shell Trading Risk Management LLC (May 15, 2017) (Shell 5/15/17 Letter); Letter from David McIndoe, Commercial Energy Working Group (May 15, 2017); and Letter from Michael P. LeSage, Cargill Risk Management, a unit of Cargill, Inc. (May 15, 2017) (Cargill 5/15/17 Letter).

[78] *See e.g.,* Shell 5/15/17 Letter.

[79] *See* Letter from National Corn Growers Association and National Gas Supply Association, (May 15, 2017).

Approach in computing their capital requirements. What conditions should the Commission consider if it were to adopt such an approach? Under various conditions, how would cost of capital requirement change?

7–b. Should the Commission require an SD that relies on a parent entity to satisfy the ''predominantly engaged in non-financial activities'' criteria to elect the Tangible Net Worth Capital Approach to obtain parent guarantees, or some other form of financial support, for its swaps obligations? In addition to parent guarantees, what other forms of financial support should the Commission consider? How and to what extent might such requirements help protect market participants and the public? If no guarantees or other forms of financial support are provided, how would the SD be ensured of meeting its financial obligations?

7–c. Should the Commission require a higher minimum capital requirement for SDs that rely on its parent to meet the criteria to be eligible to use the Tangible Net Worth Capital Approach? If so, what should the minimum capital requirement be for such SDs? How should the Commission determine such SD's minimum capital requirements?

7–d. Should the Commission consider any revisions to the 15% Asset Test and/or the 15% Revenue Test? If so, what revisions should the Commission consider? Why are such revisions necessary to achieve the purpose of the Tangible Net Worth Capital Approach?

7–e. Should the Commission further expand the use of the Tangible Net Worth Capital Approach to SDs that are subsidiaries of parent entities that are predominantly engaged in financial activities if such SDs are primarily engaged in commodity swap transactions? How would the minimum capital requirement for such SDs under the proposed Tangible Net Worth Capital Approach compare to the minimum capital requirement under the Bank-Based Capital Approach or Net Liquid Assets Capital Approach.

7–f. The Commission request comments and supporting data on how various choices regarding changes under Tangible Net Worth Capital Approach would affect SD's risk management, liquidity provision, and capacity of serving end users? How would these choices affect efficiency, competitiveness, integrity and price discovery of swaps markets?

7–g. Should the Commission include in the rules a procedure that would allow an SD to petition the Commission on a case-by-case basis to use the Tangible Net Worth Capital Approach?

8. Quantitative and Qualitative Requirements for Internal Models

The *2016 Capital Proposal* included proposed Appendix A to Regulation 23.102 which described the requirements for the calculation of market risk exposure using internal models.

8–a. Commenters noted that while proposed Regulation 23.101(a)(1)(i)(B) provided that an SD that elects the Bank-Based Capital Approach must compute its risk-weighted assets in accordance with the requirements of the Federal Reserve Board for bank holding companies and set forth in 12 CFR part 217, the internal capital model requirements in proposed Regulation 23.102 did not explicitly incorporate the market risk and credit provisions of 12 CFR part 217.[80] To address this omission, a commenter suggested that the Commission modify paragraph (c) of proposed Regulation 23.102 to provide that a swap dealer's application must include: (1) In the case of a swap dealer subject to the minimum capital requirements in § 23.101(a)(1)(i) applying to use internal models to compute market risk exposure, the information required under 12 CFR 217 subpart F, as if the swap dealer were a bank holding company subject to 12 CFR part 217; (2) in the case of a swap dealer subject to the minimum capital requirements in § 23.101(a)(1)(i) applying to use internal models to compute credit risk exposure, the information required under 12 CFR 217 subpart E, sections 131–155, as if the swap dealer were a bank holding company subject to 12 CFR part 217; or (3) in the case of a swap dealer subject to the minimum capital requirements in § 23.101(a)(1)(ii), the information set forth in Appendix A of the section.

In addition, the commenter suggested the Commission modify paragraph (d) of proposed Regulation 23.102 to provide that the Commission or the registered futures association may approve or deny the application, or approve an amendment to the application, in whole or in part, subject to any conditions or limitations the Commission or registered futures association may require, if the Commission or registered futures association finds the approval to be appropriate in the public interest, after determining, among other things, whether the applicant has met the requirements of this section, and the appendices to this section. A swap dealer that has received Commission or registered futures association approval to compute market risk exposure requirements and credit risk exposure requirements pursuant to internal models must compute such charges in accordance with 12 CFR 217 subpart F, § 217 subpart E, sections 131–155 or Appendix A of the section, as applicable per paragraph (c).

The Commission requests comment on the suggested modifications to paragraphs (c) and (d) of proposed Appendix A to Regulation 23.102, which are intended to explicitly provide that SDs that elect to use the Bank-Based Capital Approach are subject to the Federal Reserve Board's market risk and credit risk model requirements. This modification would revise the text of Appendix A to be consistent with the Commission's stated objective and intent in the *2016 Capital Proposal* that SDs that elect the Bank-Based Capital Approach would be subject to the Federal Reserve Bank's capital requirements, including the market risk and credit risk model requirements contained in 12 CFR part 217. Would the rule language accurately reflect the potential modification and properly address the issue? If not, please provide alternative rule language to affect the modification.

8–b. Commenters to the *2016 Capital Proposal* requested clarification whether an SD applying for approval to use internal models would need to apply for models for market risk and credit risk or if they could request approval to use models for only one of the exposure types, market or credit, while opting for the standardized calculation method for the other.[81] The Commission invites comments and supporting data on this issue. How different would capital requirements be under various choices? Some commenters also inquired whether an SD's application for internal model approval had to encompass asset classes or asset types in which it is not actively dealing. The Commission would like to clarify that the suitability of internal models is to be evaluated for the specific activities of the SD and not for activities that the SD does not engage in.

9. Model Approval Process

The *2016 Capital Proposal* would require SDs and FCMs, in computing their respective capital, to take market risk capital charges to protect against potential losses in the value of their proprietary trading positions, and to take counterparty credit risk charges to protect against potential counterparty credit risk. Proposed Regulation 23.102 would permit an SD (and an FCM that is registered as an SD), subject to the

[80] *See* SIFMA 5/15/17 Letter; MS 5/15/17 Letter.

[81] *See e.g.,* SIFMA 5/15/17 Letter.

prior approval of the Commission or a registered futures association (*i.e.,* NFA), to compute market risk and credit risk capital charges using internal models in lieu of standardized market risk and credit risk capital charges.[82] The Commission proposed to permit market risk and credit risk modeling as it recognized that properly designed and monitored internal models, including value-at-risk models, are a more effective means of measuring economic risk from complex trading strategies involving swaps, SBS, and other investment instruments than the standardized capital charges, which are primarily computed based upon a fixed percentage of the notional or fair values of the instruments.

The SD's application to use internal models would have to be in writing and filed with the Commission and with the NFA in accordance with the applicable instructions. The model application would have to include specified information, which is contained in proposed Appendix A to Regulation 23.102. For example, proposed Appendix A would require an SD to submit: (1) A list of categories of positions the SD holds in its proprietary accounts and a brief description of the methods the SD would use to calculate deductions for market risk and credit risk on those categories of positions; (2) A description of the mathematical models to be used to price positions and to compute deductions for market risk and credit risk; (3) A description of how the SD will calculate current exposure and potential future exposure for its credit risk charges; and, (4) A description of how the SD would determine internal credit risk weights of counterparties, if applicable.[83]

The *2016 Capital Proposal* would further provide that as part of the approval process, and on an ongoing basis, an SD would be required to demonstrate to the Commission or NFA that the models reliably account for the risks that are specific to the types of positions the SD intends to include in the model computations.[84] Finally, the *2016 Capital Proposal* provided that the Commission or NFA may approve, in whole or in part, an application or an amendment to the application, subject to any conditions or limitations the Commission or NFA may require.[85]

The Commission received several comments concerning the use of internal capital models. One commenter expressed a strong concern regarding the *2016 Capital Proposal's* potential heavy reliance on the use of internal models.[86] The commenter stated that a reliance on internal models can permit regulated entities to manipulate risk controls to increase their own profits at the cost of increasing risks to the public. The commenter pointed out that analysis of the crisis experience evidenced manipulation of models to reduce capital charges. While the commenter acknowledged post-crisis refinements to internal model requirements, both in technique and governance, it argued that resource limitations at regulators, as well as continuing pressure from industry, may limit regulators' ability to prevent weakening standards and model misuse. The commenter thus advocated for strong limitations and floors on the use of internal models.[87]

Other commenters generally supported the Commission's proposal to permit internal capital models in lieu of standardized capital charges.[88] Another commenter stated that it strongly supports permitting SDs the flexibility to use internal models, when appropriate.[89]

Several commenters stated that it was necessary for the Commission to develop an efficient approach to the review and approval of internal models. In this regard, one commenter stated that it believed that the Commission's final rule should provide for the recognition of internal capital models used throughout corporate families if such models have been approved by a prudential regulator, the SEC, or a foreign regulator in a jurisdiction that has adopted the Basel capital requirements, provided that the relevant regulatory authority has ongoing periodic assessment power with regard to the model and provides the CFTC and the NFA with appropriate information.[90] Another comment stated that the Commission should modify the *Proposal* to permit SDs that are U.S. non-bank entities to use internal capital models approved and periodically assessed by a prudential regulator, the SEC, or the SDs' home country supervisor (if applicable), without requiring additional pre-approval of those models by the Commission or NFA.[91] Several commenters stated that the Commission should automatically approve market risk models and credit risk models of SDs that have already been approved by a prudential regulator, the SEC, or certain foreign regulators.[92] Another commenter stated that all models should be deemed ''provisionally approved'' while under review by the Commission or NFA, and that in no event should an SD be required to use the proposed standardized capital charges while awaiting model approval.[93] One commenter requested that the Commission clarify that no SD would be required to use the proposed standardized capital charges while awaiting model approval.[94]

The Commission continues to believe the regulations should provide for the appropriate use of internal market risk and credit risk models in lieu of the standardized capital charges. As the Commission noted in the *2016 Capital Proposal,* the Commission considered the degree to which its *Proposal* would be consistent with existing regulatory frameworks. Currently, prudential regulators permit SDs subject to their capital requirements to use internal capital models. In addition, the SEC Final Rule will permit SBSDs to seek approval from the SEC to use internal capital models. Accordingly, the Commission continues to support a capital requirement that would permit SDs to use internal capital models, which will allow such firms to compete with prudentially regulated or SEC regulated entities.

The use of models by firms that demonstrate compliance with both the quantitative and qualitative requirements also will potentially benefit market participants. As noted above, the Commission believes that properly designed and monitored internal models are a more effective means of measuring economic risk from complex trading strategies than the standardized capital charges, which are primarily computed based upon a fixed percentage of the notional or fair values of the instruments. SDs authorized to use models will generally have lower capital costs as compared to SDs that use standardized capital charges. The lower costs may result in the SDs engaging in mores swaps with counterparties or lower transaction costs for the SDs and counterparties.

The Commission requests comment on the following with respect to the model approval process.

[82] *See 2016 Capital Proposal,* 81 FR at 91311–17; Proposed Regulation 23.102 and proposed Appendix A to Regulation 23.102.

[83] *Id.*

[84] *Id.*

[85] *See 2016 Capital Proposal,* 81 FR at 91312; Proposed Regulation 23.102(d).

[86] *See* AFR 5/15/17 Letter.

[87] *Id.*

[88] *See, e.g.,* ISDA 5/15/17 Letter; SIFMA 5/15/17 Letter; and MS 5/15/17 Letter.

[89] *See* IFM 5/15/17 Letter.

[90] *See* ISDA 5/15/17 Letter.

[91] Letter from ABN, ING, Mizuho and Nomura (May 15, 2017).

[92] *See, e.g.,* FIA 5/15/17 Letter; SIFMA 5/15/17 Letter.

[93] *See* ISDA 5/15/17 Letter.

[94] *See* IFM 5/15/17 Letter.

9–a. The Commission requests comment on whether the proposed process for an SD to obtain regulatory approval to use internal models should be modified. If so, how should the Commission modify the model approval process? Should the Commission have different processes for SDs and for FCMs (including FCMs that are dually-registered as SDs)?

9–b. The Commission requests comment on permitting the Commission or NFA to accept market risk and/or credit risk models of an SD, or SD affiliate, that have been approved by a prudential regulator, the SEC, or a foreign regulator to be used by the SD to comply with the Commission's model requirements? What conditions should the Commission or NFA consider in permitting SDs to use models of affiliates that have been approved by other regulators? How would the Commission or NFA address possible situations where the SD's positions are materially different, such as a heavy concentration in a particular asset class or a particularly illiquid asset, from the positions of the affiliate that obtained model approval?

9–c. One commenter provided suggested rule language to modify Regulation 23.102 to permit SDs to use internal market risk and/or credit risk models without obtaining the prior written approval of the Commission or the NFA.[95] The ability for an SD to use a model without obtaining the prior written approval would be subject to the following conditions: (1) The model had been approved by the SEC, a prudential regulator, or a foreign regulatory authority whose capital adequacy requirements are consistent with the Basel-based capital requirements for banks; (2) the SD makes available to the Commission copies of underlying documentation; and, (3) for models approved by foreign regulators, a description of how the relevant foreign jurisdiction capital adequacy framework addresses the elements of the Commission's capital requirements.[96] The potential modification would establish a new paragraph (e) to Regulation 23.102 which would provide a swap dealer subject to the minimum capital requirements in Section 23.101(a)(1) may use an internal credit risk or an internal market risk capital model without the prior written approval of the Commission or a registered futures association if: (1) The relevant model has been approved and currently is in use, either by the relevant swap dealer or by an affiliated entity, under the supervision of the Securities and Exchange Commission, a prudential regulator or a foreign regulatory authority whose capital adequacy requirements are consistent with the Basel-based capital requirements for banking institutions; and (2) the swap dealer has made available to the Commission any copies of underlying documentation, including regulatory approvals, evidencing review, approval and supervision of the internal capital models, to the extent permitted by applicable law.

Further, this modificiation would provide, in the case of a model approved by a foreign regulatory authority, the swap dealer has submitted to the Commission: (i) A description of the objectives of the relevant foreign jurisdiction's capital adequacy requirements; (ii) a description (including specific legal and regulatory provisions) of how the relevant foreign jurisdiction's capital adequacy requirements address the elements of the Commission's capital adequacy requirements for swap dealers, including, at a minimum, the methodologies for establishing and calculating capital adequacy requirements; and (iii) a description of the ability of the relevant foreign regulatory authority or authorities to supervise and enforce compliance with the relevant foreign jurisdiction's capital adequacy requirements. Such description should discuss the powers of the foreign regulatory authority or authorities to supervise, investigate, and discipline entities for compliance with capital adequacy requirements, and the ongoing efforts of the regulatory authority or authorities to detect and deter violations, and ensure compliance with capital adequacy requirements. The description should address how foreign authorities and foreign laws and regulations address situations where an entity is unable to comply with the foreign jurisdiction's capital adequacy requirements.

The Commission requests comments on the suggested new paragraph (e) to Regulation 23.102. Please suggest any modifications that are necessary to the new paragraph (e). In addition, what types of information do registrants feel they may be restricted under law from providing to the Commission? Please be specific and identify the legal requirements and/or privileges that may impact the registrant's provision of information to the Commission or NFA. How can the Commission and NFA ensure they receive the information they need to supervise the use of the model on a going forward basis?

9–d. The Commission requests comments and supporting data on how various changes to the model approval process would affect the efficiency, competitiveness, financial integrity, and price discovery of the swaps market? Would the various changes affect the ability of the Commission to effectively meet the safety and soundness mandate established for capital requirements in the CEA?

B. Liquidity

10. Liquidity Requirements

The *2016 Capital Proposal* included liquidity requirements for SDs, which would include SDs that also are registered as FCMs.[97] Proposed Regulation 23.104(a) would require each SD electing the Bank-Based Capital Approach to meet the liquidity coverage ratio established by the Federal Reserve for bank holding companies under 12 CFR part 249. The proposed liquidity coverage ratio would require an SD to maintain each day an amount of high quality liquid assets (''HQLAs'')[98] that is no less than 100 percent of the SDs total net cash outflows over a prospective 30 calendar-day period (the ''HQLA Test'').[99]

For SDs that elect the Net Liquid Assets Capital Approach, and for FCMs dually-registered as SDs, proposed Regulation 23.104(b) would require each SD/FCM to perform stress testing on at least a monthly basis that takes into account certain assumed conditions lasting for 30 consecutive days (the ''Liquidity Stress Test''). The assumed conditions for the Liquidity Stress Test would include a decline in creditworthiness of the SD/FCM severe enough to trigger contractual credit related commitment provisions of counterparty agreements; the loss of all existing unsecured funding at the earlier of its maturity or put date and an inability to acquire a material amount of new unsecured funding; and, the potential for a material net loss of secured funding. The Commission's proposed Liquidity Stress Test was consistent with the liquidity stress testing requirements proposed by the

[95] *See* SIFMA 5/15/17 Letter, Appendix A. SIFMA also recommended corollary changes to their proposed subparagraph (f) (as proposed by the Commission in subparagraph (e)) which would refer to their proposed additional subparagraph (e) and retains the Commission or NFA's ability to determine if the models are no longer sufficient.

[96] *Id.*

[97] *See 2016 Capital Proposal,* 81 FR at 91317–38; Proposed Regulation 23.104.

[98] HQLAs are assets that are unencumbered by liens and other restrictions on the ability of the SD to transfer the assets (*see* 12 CFR 249.22(b)).

[99] *See* 12 CFR 249.10. Federal Reserve Board rules require a regulated institution to maintain a liquidity coverage ratio of HQLAs to net cash outflows that is equal to or greater than 1.0 on each business day.

SEC for BDs and SBSDs.[100] The SEC, however, elected not to adopt final liquidity requirements for BDs and SBSDs.[101]

Commenters raised issues with the proposed HQLA Test and the Liquidity Stress Test. One commenter suggested that SD entities should be able to elect either the HQLA Test or the Liquidity Stress Test requirement unrelated to the SD's chosen capital approach.[102] Another commenter stated that the requirements of the HQLA Test and the Liquidity Stress Test should be revised to be more similar to each other given that both approaches have the comparable regulatory objective of helping to ensure that an SD has sufficient access to liquidity to meet its obligations during periods of expected and unexpected market activity.[103] The commenter specifically noted that the Liquidity Stress Test's definition of liquidity reserves is materially narrower than the HQLA Test's definition of high quality liquid assets, and that the Commission should expand the definition under the Liquidity Stress Test to match the definition under the HQLA Test so as to recognize the full range of assets that are actually available to a firm to support its liquidity needs.[104]

Commenters also raised the concept of a third alternative, which would be the application of a more qualitative than quantitative requirement applicable to SDs that are subsidiaries of bank holding companies and already subject to comprehensive overall liquidity risk management program requirements at a parent level.[105]

The Commission proposed liquidity requirements to address the potential risk that an SD may not be able to efficiently meet both expected and unexpected current and future cash flow and collateral needs as a result of adverse events impacting the SD's daily operations or financial condition.[106] The proposed liquidity requirements would apply to SDs electing the Bank-Based Capital Approach and the Net Liquid Assets Capital Approach, but were not proposed for entities electing the Tangible Net Worth Capital Approach, as such SDs must be predominantly engaged in non-financial activities, which would limit their activities as counterparties or financial intermediaries to other parties.

The Commission recognizes that SDs are subject to existing CFTC requirements to maintain a general risk management program that addresses liquidity risk. Regulation 23.600(b)(1) provides that an SD must establish, document, maintain, and enforce a system of risk management policies and procedures designed to monitor and manage the risks associated with the swaps activities of the SD. Regulation 23.600(c)(4)(iii) provides that the risk management program must include liquidity risk policies and procedures that take into account, among other things, a daily measurement of liquidity needs; the assessment of procedures to liquidate all non-cash collateral in a timely manner and without significant effect on price; and the application of appropriate collateral haircuts that accurately reflect market and credit risk. The Commission, however, proposed the Liquidity Stress Test and the HQLA Test to provide specific quantitative and qualitative criteria that an SD must use in measuring its liquidity under defined scenarios. The Commission continues to believe that liquidity requirements are a necessary complement to the SD capital requirements, particularly for SDs that elect the Bank-Based Capital Approach. As previously discussed, the Bank-Based Capital Approach is not a liquidity-based capital requirement in the manner similar to the Net Liquid Assets Capital Approach.

The Commission requests further comments on the proposed liquidity requirements as set forth below.

10–a. The Commission requests comment on all aspects of the liquidity proposals contained in the *2016 Capital* Proposal. Please provide modified regulatory text in support of any comments provided, if applicable.

10–b. Should the Commission modify the *Proposal* to permit an SD to elect the HQLA Test or the Liquidity Stress Test, irrespective of the capital approach followed by the SD?

10–c. Should the Commission modify the definition of liquidity reserves to make the definition in the Liquidity Stress Test similar to the HQLA Test? If so, how should the definition be modified? Please suggest rule language to modify the regulation.

10–d. Should the Commission modify the *Proposal* to permit an SD to consider relying on the existing application of qualitative liquidity controls applicable at bank holding companies for SDs which are subsidiaries of bank holding companies in lieu of requiring the quantitative HQLA Test requirement proposed in Rule 23.104(a) as suggested by commenters as a third alternative? How would such approach apply to SDs electing the Bank-Based Capital Approach?

10–e. Should the Commission, similar to the SEC, not adopt the Liquidity Stress Test requirement as proposed in Rule 23.104(b)? If so, should the Commission impose an alternative liquidity requirement on SDs that elect the Net Liquid Assets Capital Approach beyond the general risk management requirements of Regulation 23.600? If the Commission does not adopt the Liquidity Stress Test or an alternative liquidity requirement, would this raise any competitive impact on SDs electing the Bank-Based Capital Approach? If so, how should the Commission address the competitive issues?

10–f. Should the Commission consider eliminating specific quantitative liquidity requirements for SDs electing either the Bank-Based Capital Approach or the Net Liquid Assets Capital Approach, in consideration of the requirement of all SDs to have comprehensive risk management programs including liquidity risk as in effect under Rule 23.600?

10–g. Should the Commission include any additional quantitative or more specific qualitative liquidity risk requirements in connection with any consideration of additional expansion of the Tangible Net Worth Capital Approach to a broader subset of SDs?

10–h. The Commission requests comments and supporting data on how various choices regarding changes to liquidity requirements would affect the cost of SD's participation in the swap markets? How would various choices affect the efficiency, competitiveness, integrity, and price discovery of swap markets?

C. Financial Reporting

The *2016 Capital Proposal* included proposed financial reporting requirements for SDs and MSPs. SDs and MSPs that are subject to the Commission's capital requirements would be required to, among other things: (1) Maintain current ledgers and other similar records summarizing transactions affecting their assets, liabilities, income, and expenses; (2) file notices of certain events with the Commission, including notices of failing to comply with the minimum capital requirements; (3) file monthly unaudited and annual audited financial statements with the Commission; and (4) respond to requests from the

[100] *See SEC Proposed Capital Rule;* Proposed Rule 18a–1(f) (17 CFR 240.18a–1(f)).

[101] *See SEC Final Capital Rule,* 84 FR 43872, 43874.

[102] *See, e.g.,* MS 5/15/17 Letter.

[103] *See,* SIFMA 5/15/17 Letter.

[104] *Id.*

[105] *See,* SIFMA 5/15/17 Letter; MS 5/15/17 Letter.

[106] *See, 2016 Capital Proposal,* 81 FR at 91273.

Commission for additional information as requested.[107]

The *2016 Capital Proposal* would also require SDs and MSPs that are subject to the capital rules of a prudential regulator to file certain information with the Commission. Such information includes: (1) Quarterly balance sheet, regulatory capital computations, and aggregate swaps position information; (2) notice filings, including notice of a failure to maintain the minimum applicable capital requirement; and (3) additional information as requested by the Commission.[108]

11. Use of International Financial Reporting Standards

The *2016 Capital Proposal* would permit certain SDs and MSPs to submit unaudited and audited financial statements in accordance with International Financial Reporting Standards issued by the International Accounting Standards Board (''IFRS'') in lieu of generally accepted accounting principles established in the United States (''U.S. GAAP'').[109] To be eligible to use IFRS, the SD or MSP may not be organized under the laws of a state or other jurisdiction of the United States, and may not be otherwise required to prepare financial statements in accordance with U.S. GAAP.[110]

Commenters generally supported the Commission approach of permitting non-U.S. SDs and MSPs to use IFRS in lieu of U.S. GAAP in the preparation of required financial statements. Commenters, however, requested that the *Proposal* be modified to permit U.S.-based SDs that are subsidiaries of non-U.S. parent entities to prepare required financial statements in accordance with IFRS.[111] These commenters stated that U.S. SDs that are subsidiaries of foreign-based holding companies may prepare their financial statements in accordance with IFRS as the subsidiary is consolidated with the parent in producing the parent's consolidated financial statements, and further stated that requiring U.S. GAAP financial statements in such situations would impose unnecessary costs on SDs without providing substantial enhancements to the regulatory objectives.[112]

As stated in the *2016 Capital Proposal,* the Commission recognized that several SDs or MSPs domiciled outside the U.S. may not use U.S. GAAP as their native accounting principles and that requiring these registrants to maintain two separate accounting records and systems to satisfy two separate financial reporting requirements would involve substantial expense and burden.[113] The Commission also does not want to burden or create an unfair advantage to U.S. domiciled SDs or MSPs that do not otherwise prepare financial statements in accordance with U.S. generally accepted accounting principles.

11–a. The Commission requests comment as to whether the *2016 Capital Proposal* should be modified to permit U.S. domiciled SDs or MSPs that are subsidiaries of foreign parent entities or holding companies to submit required unaudited or audited financial statements prepared in accordance with IFRS in lieu of U.S. GAAP. If so, should the modification be limited to U.S. SDs that are consolidated into foreign entities that are predominantly engaged in non-financial activities?

11–b. The Commission further requests comment regarding material differences between IFRS and U.S. GAAP, and how such differences may impact the financial condition of the SDs or MSPs?

12. Certified Financial Statements of Certain Non-Bank SDs

The *2016 Capital Proposal* would require in proposed Regulation 23.105(e)(5) that an SD or an MSP subject to the Commission's capital rules file an annual audited financial report as of the close of its fiscal year no later than sixty days after the close of the SDs or MSPs fiscal year-end. Several commenters expressed concern that the sixty day timeline was not practical for many large non-financial companies as they are typically permitted to provide audited financial statements within ninety days of the end of the year.[114] In *2016 Capital Proposal* the Commission noted that the sixty day financial reporting timeline is consistent with the timeline required by both the SEC and that currently required of FCMs. Further, timely financial reporting ensures that the Commission and its oversight functions can assess equally across all firms compliance with its capital rule, as well as, promote a culture of compliance at the firm and with its auditor that is at least as stringent as other similarly situated registrants. However, the Commission recognizes that not all SDs may be subjected to the same operational burdens and is cognizant that imposing an accelerated reporting cycle on certain SDs may unnecessarily increase costs of compliance without much added benefit.

12–a. The Commission requests comment as to whether the *2016 Capital Proposal* should be modified to recognize an exception to the proposed requirement for SDs to file annual audited financial report with the Commission within sixty-days of the SD's year-end date.

12–b. Should the Commission modify the requirement to permit a ninety-day period for SDs or MSPs that are not predominantly engaged in financial activities or that consolidate into parent entities that are not predominantly engaged in financial activities?

12–c. Are there other alternatives of how the Commission should define SDs that would be eligible to file annual audited financial statements within ninety days of the SDs' year-end dates?

12–d. How much additional cost will a SD save if they are permitted to file their audited financial statements within a ninety day period as opposed to a sixty day period?

13. Public Disclosures

Proposed Regulation 23.105(i)(3) and 23.105(p)(7)(ii) would require that certain financial information be publically posted to the SD's or MSP's website within ten business days after the SD or MSP is required to file the financial information with the Commission. Several non-bank SDs that are subsidiaries of public companies requested that the posting period on firm's website be extended from ten days to twenty days for the quarterly information, noting that additional timeframe would be necessary to allow for internal and external auditors to review the information.[115] One commenter stated that public disclosure of financial reports will be onerous for commercial SDs, while others requested elimination of public disclosures by prudentially regulated SDs.[116]

The Commission noted in the *2016 Capital Proposal* that its approach was consistent with the financial reporting information the Commission had previously determined should not qualify as exempt from the Freedom of Information Act for FCMs. For the bank

[107] *See 2016 Capital Proposal,* 81 FR at 91318–22; Proposed Regulation 23.105.

[108] *Id.*

[109] *Id.;* Proposed Regulation 23.105(d)(2) and (e)(3).

[110] *Id.*

[111] *See e.g.,* Shell 5/15/17 Letter; BPE 5/15/17 Letter.

[112] *Id.*

[113] *See 2016 Capital Proposal,* 81 FR at 91275.

[114] *See e.g.,* Shell 5/15/17 Letter; Cargill 5/15/17 Letter.

[115] *See* Shell 5/15/17 Letter; Letter from National Corn Growers Association and National Gas Supply Association, (May 15, 2017); and Letter from David McIndoe, Commercial Energy Working Group (May 15, 2017).

[116] *See* Shell 5/15/17 Letter; SIFMA 5/15/17 Letter; MS 5/15/17 Letter.

SDs, the Commission noted the Proposal was consistent with publicly available information provided by bank entities in call reports.[117] The Commission also noted that the SEC requires similar public posting of financial information pursuant to Regulation 17 CFR 240.18a–7(b)(1) and (2).[118] The Commission continues to agree that public disclosure of basic financial information is in the public's best interest, but wishes to ensure that manner in which disclosure is accomplished does not create an unnecessary burden on similarly situated or dual-registered registrants.

13–a. The Commission requests comment on modifying the *Proposal* by aligning the public disclosure requirements for SDs that are not affiliated with banks with that required by SEC for stand-alone SBSDs which would replace the quarterly public disclosure of financial information requirement with a bi-annual requirement? This modification would include change of the unaudited financial report posting requirement on the firm's website from ten business days as proposed to thirty calendar days following the date of the statements, while the annual audited requirement would be required to be posted ten days following the date they are filed. The Commission invites comment as to whether these changes are practicable, especially for those swap dealers which are not otherwise required to publicly disclose financial information currently, and whether the modifications would continue to provide the public with meaningful information on a timely basis?

13–b. The Commission requests comment on whether it would be appropriate to remove the proposed requirement that bank SDs (SDs subject to the capital requirements of a prudential regulator) be publicly posted on their website under the rationale that this information is already provided to the public on a timely basis as a result of separate disclosure requirements imposed by the prudential regulators? [119]

14. Technical Amendments Addressing Harmonization

Several commenters noted the importance with harmonizing the Commission's financial reporting and notification requirements with requirements of other regulators, namely the SEC and the prudential regulators. The Commission agrees on this general principle. Since the *2016 Capital Proposal,* the SEC has finalized its recordkeeping, notification and reporting rule for SBSDs, which includes several detailed forms and accompanying instructions.[120] However, the Commission in the *2016 Capital Proposal* did not propose specific forms for the monthly and annual financial reporting requirements, aside from the specific schedules found in Appendices A and B to proposed Regulation 23.105. Further, under proposed Regulation 23.105(d)(3) all dual registered SD and SBSDs are permitted to file SEC forms in lieu of the Commission's financial reporting requirements.

The Commission continues to believe that proposing a detailed form at this time is premature given the diversity of registrants under the Commission's jurisdiction and the several ways in which capital compliance can be achieved under the Commission's proposed approach.

Nonetheless, a commenter noted that the proposed appendices did not contain accompanying form instructions, despite having defined terms in both the column headings and rows.[121] The *2016 Capital Proposal* noted that the Appendices are based on identical information found in SEC forms now finalized in FOCUS Report Part II Schedules 1–4 of FORM X–17A–5, and FOCUS Report Part IIC of FORM X–17A–5.[122]

14–a. Accordingly, the Commission is considering including the following explanatory footnote in the appendices to Regulation 23.105 which will incorporate by reference the form instructions published by the SEC and invites comment as to whether this approach and language will be sufficient. The footnote would state that the information required to be reported within this form is intended to be identical to that required to be reported by Security Based Swap Dealers and Security Based Major Swap Participants under SEC FORM X–17A–5 FOCUS Report Part II. Please refer to FOCUS REPORT PART II INSTRUCTIONS and related interpretations published by the SEC in the preparation of this form.

In addition, the Commission requests comment on the following technical amendments to the financial statement forms and rules to ensure that harmonization is better achieved in financial reporting:

14–b. References to FORM SBS in Rule 23.105(d)(3) would be replaced with FORM X–17A–5 Focus Report Part II.

14–c. Regulation 23.105(p)(2) would be revised to require that SDs or MSPs that are the subject to the capital requirements of a prudential regulator would be required to file Appendix B to the Commission within thirty calendar days after the end of each calendar quarter.

14–d. Appendix A Schedule 1 column headings will be revised to include the words LONG/BOUGHT and SHORT/SOLD.

14–e. Appendix A Schedule 1 rows will be reorganized and renamed to require the identical information as found on FOCUS report Part II Schedule 1 of SEC FORM X–17A–5.

14–f. Appendix A Schedule 2, 3, and 4 column heading Total Exposure will be revised to state Current Net and Potential Exposure.

14–g. Appendix B column headings and rows will be revised to include identical information in the SEC FORM X–17A–5 FOCUS Report Part IIC and include the Cover Page included therein.

D. Additional Requests for Comment

15. SEC's Alternative Compliance Mechanism

SEC Rule 18a–10 (17 CFR 240.18a–10) provides an alternative compliance mechanism pursuant to which a dual registered SD and SBSD may elect to comply with the capital, margin, and segregation requirements of the CEA and the Commission's rules in lieu of complying with applicable SEC rules. In order to qualify for alternative CFTC compliance, the SD/SBSD must be predominantly engaged in swaps business and may not be registered as a BD or and OTC Derivatives Dealer with the SEC.[123]

[117] *See 2016 Capital Proposal,* 81 FR at 91277.

[118] SEC Rule 18a–7(b)(1) (17 CFR 240.18a–7(b)(1)) requires that every SBSD for which there is no prudential regulator to post annual financial information 10 days after firm is required to file with the SEC. SEC Rule 18a–7(b)(2) (17 CFR 240.18a–7(b)(2)) requires bi-annual unaudited financial information to be posted 30 calendar days within the date of the statements.

[119] *See, generally* 12 CFR 3.61–63.

[120] *See Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers,* publication in the **Federal Register** forthcoming. A prepublication version of the document can be found at *https://www.sec.gov/rules/final/2019/34-87005.pdf.*

[121] *See* SIFMA 5/15/17 Letter.

[122] *See Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers,* publication in the **Federal Register** forthcoming. A prepublication version of the document can be found at *https://www.sec.gov/rules/final/2019/34-87005.pdf.*

[123] In order to qualify, the aggregate gross notional amount of the SD/SBSD's SBS positions must not exceed the lesser of a maximum fixed dollar amount or 10% of the combined aggregate gross notional amount of the firm's SBS and swap positions. The maximum fixed-dollar amount is set

15–a. What, if any, revisions need to be made to the Commission's regulations or requirements in order to accommodate SD/SBSDs electing to use the SEC's alternative compliance mechanism?

16. Commercial End Users—Margin Collateral To Offset Credit Risk Charges

Should SDs recognize alternative forms of collateral (*e.g.,* letters of credit or liens) provided by commercial end users that are exempt from clearing and from the uncleared margin requirements in computing the SDs' counterparty credit risk charges for uncleared swap transactions? [124] Please provide comments with respect to SDs that are approved to use internal credit risk models and SDs not approved to use internal credit risk models. What would be the impact on the liquidity, efficiency, and vibrancy of the swap markets, particularly the commodity swaps markets, if alternative forms of collateral were taken into account in computing credit risk charges?

17. Compliance Date of the Regulations

In response to the *2016 Capital Proposal,* commenters expressed a general need for an appropriate period of time between the effective date and the compliance date for any final rules to operationally and legally prepare to implement capital and financial reporting regimes. This included an appropriate amount of time for both the Commission and NFA to review and approve the capital models of individual SDs, and for the Commission to conduct and issue comparability determinations for SDs domiciled in foreign jurisdictions. Commenters also raised concerns regarding the implementation of final rules prior to the effective date of the final phase-in of the uncleared margin requirements.

The Commission invites comments on an appropriate compliance schedule for the final capital and financial reporting requirements. Comments are particularly necessary now as the SEC issued its final SBSD capital, margin, segregation and financial reporting rules since the Commission's *2016 Capital Proposal.*

18. Economic Implications

Regulatory capital is designed to ensure that a firm will have enough capital, in times of financial stress, to cover the risk inherent of the activities in the firm. Regulatory capital's framework can be designed differently, but its primary purpose remains the same—to meet this objective. Although a firm may mitigate its risks through other methods, including risk management techniques (*e.g.,* netting, credit limits, margin), capital is viewed as the last line of defense of an entity, ensuring its viability in times of financial stress. In designing SD's capital requirement, the Commission is cognizant of the purpose of capital and the potential trade-off between the costs of requiring additional capital and the Commission's statutory mandate of helping to ensure the safety and soundness of SDs thereby promoting the stability of the U.S. financial system.

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its discretionary actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of swaps markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The Commission requests comments and data on how the baseline of the economic analyses has changed since the publication of the *2016 Capital Proposal.* The swap market activity has experienced significant changes, in part due to the fact that participants in this market are now subject to various new rules. The Commission requests comments and data on how the baseline of the economic analyses has changed since the publication of the *2016 Capital Proposal.* The swap market activity has experienced significant changes in the past three years and the Commission requests comments on how those changes in the baseline would impact the potential benefits and costs of capital requirements

The Commission requests comments and data on how potential alternatives set out above in response to questions would impact the potential costs and benefits of capital and reporting requirements with respect of the section 15(a) factors:

18–a. Protection of market participants and the public:

i. How much additional capital, if any, might be required for the SD and/or the system relative to current levels? How much capital to cover credit risk?

ii. How much capital would be required to cover market risk?

iii. How much capital would need to be required to safeguard against model risk, operational risk, and etc.?

iv. How would SDs source funds for these capital charges?

v. What might be the cost of raising additional capital for an SD and the combined cost for all the SDs?

vi. What sorts of costs do SDs expect to incur as a result of capital requirements and how should the costs of SDs exiting certain business lines as a result of holding more capital in reserve be factored into the cost benefit consideration?

vii. What business lines would SDs not participate in, if any?

viii. What would happen to liquidity provision? Would smaller clients and end users not be serviced in swaps market?

ix. What might be the cost of meeting reporting requirements for an SD and the combined cost for all the SDs?

x. How and to what extent might such requirements help protect market participants and the public?

18–b. Efficiency, competitiveness, and financial integrity of swaps markets:

i. How might such requirements affect SD's competitiveness in swap market?

ii. For each SD, how much capital might be required for the net liquid asset approach, relative to the recently finalized SEC requirements?

iii. How much capital might be required for the bank-based approach, relative to the current banking capital requirement, as Prudential Regulators continue to revise their capital requirements?

iv. How much capital might be required, relative to substituted compliance from foreign jurisdictions?

v. How might such requirements affect SD's liquidity provision in swap market?

vi. How might such requirements affect SD's ability to serve end users in various segments of swaps markets?

18–c. Price discovery:

i. How might such requirements affect price discovery in the swaps markets?

18–d. Sound risk management practices:

i. What are SD's current risk management practices for dealing with losses stemming from the market risk, credit risk, and operational risk?

ii. In the event that losses from trading activities exceed the available resource, how are excess losses dealt with?

at a transitional level of $250 billion for the first 3 years after the compliance date of the rule and then drops to $50 billion thereafter unless the SEC issues an order.

[124] In the prudential regulators' recently adopted rule on the standardized approach for calculating the exposure amount of derivatives contracts (''SA–CCR''), the prudential regulators removed the alpha factor for derivative transactions with commercial end users.

iii. How might such requirements affect these risk management practices?

18–e. Other public interest considerations.

i. Are there other public interest considerations that the Commission should consider? Please explain.

Issued in Washington, DC, on December 12, 2019, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendicies will not appear in the Code of Federal Regulations.

Appendicies to Capital Requirements of Swap Dealers and Major Swap Participants—Commission Voting Summary and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz and Stump voted in the affirmative. Commissioners Behnam and Berkovitz voted in the negative.

Appendix 2—Supporting Statement of Commissioner Brian Quintenz

I have long said that finalizing capital requirements for swap dealers (SDs) and futures commission merchants (FCMs) is perhaps the most consequential rulemaking of the post-crisis reforms to get right.

The financial crisis exposed serious vulnerabilities in the financial system—uncollateralized, opaque, bilateral exposures which, under the right circumstances could have, and did, cause a panic and liquidity freeze due to concerns around that counterparty credit risk. This panic, in my opinion, transformed a significant recessionary event into the crisis as we know it. Importantly, since the financial crisis, global regulators and certainly those in the U.S. have implemented many policy reforms, like central clearing requirements and margin for uncleared swaps, designed to bring transparency to those exposures.

I have long lamented prior regulators' implementation of the important swaps market regulatory reforms by viewing them in isolation of each other—calibrating each to try to think it alone could have prevented the crisis. In fact, the elegance of the reforms is that they work together and build upon each other.

Therefore, in my view, it is wrong to think of capital in terms of what levels should have existed during the financial crisis that could have prevented it. Very few capital regimes could have provided the market with enough certainty, given the size, nature, and opacity of these exposures, to remove the possibility of the panic, and the capital levels which could have done so would have rendered the entire swaps market obsolete and uneconomic. Therefore, regulatory capital regimes implemented to respond to the last crisis need to respect the increased transparency and certainty which other reforms have already brought to the market. I believe we are asking the right questions in this reopening to respect that progress in calibrating our own capital regime appropriately.

The final pillar of our Dodd-Frank Act reforms, capital ensures that firms are able to continue to operate during times of economic and financial stress by providing an adequate cushion to protect them from losses. Just as important as the safety and soundness of individual firms, capital is designed to give the marketplace confidence that any given firm has a high probability of surviving the next crisis.

Capital requirements also create important incentives that drive market behavior. The cost of capital may be the most determinative factor in a firm's decision to remain, or become, a swap dealer, or to continue to provide clearing services to clients, in the case of an FCM. If capital costs are too expensive, firms will restrict certain business activities, end unprofitable business lines, or, in some cases, exit the swaps or futures markets altogether. As a result, over time, the swaps and futures markets would become less liquid, less accessible to end users, more heavily concentrated, and less competitive. These are not the hallmarks of a healthy financial system.

Therefore, appropriate capital levels are directly linked to *both* the health and vibrancy of the derivatives markets and to the sustainability of the entire financial system more broadly.

To promote a vibrant derivatives market, I believe it is critically important that the CFTC finalize a capital rule that is appropriately calibrated to the true risks posed by an SD's or FCM's business. I am pleased to support the re-opening and request for comment before us today. This document solicits comment on the key issues the Commission *must* get right in the final rule to ensure that capital requirements are appropriate and commensurate to a firm's risk. I appreciate that market participants have commented on two prior capital proposals and the Commission will continue to consider all past comments in moving forward with a final rule. Nevertheless, I hope commenters use this opportunity to provide the Commission with much needed data and quantitative analysis demonstrating the impact that various choices contemplated in this proposal would have on a firm's minimum capital level—and, by extension, on that firm's ability to participate in the market and adequately service clients. Data will be vital to the Commission's ability to evaluate various capital alternatives and identify those alternatives that would render certain business lines or activities uneconomic. It will also be vital to the Commission's assessment that the capital requirements established ensure the safety and soundness of the firm. I welcome comments on all aspects of the reopening, but there are a few areas I am particularly interested in hearing from commenters.

The eight percent risk margin amount. We heard from many commenters that, of all the alternatives, the eight percent risk margin amount would act not as a capital floor as intended, but rather as the primary driver of firms' capital requirements and as a potential binding constraint on their businesses. Whereas FCMs are currently required to include in their minimum capital requirement eight percent of the margin required for their futures and cleared swaps customer positions, the 2016 proposal expanded the eight percent risk margin amount to include *proprietary* futures, swaps and security-based swap (SBS) positions for FCMs and for SDs electing the net liquid asset capital approach. In addition to these proprietary positions being included in the risk margin amount, these FCMs and SDs would also be subject to capital charges on these proprietary positions. I hope commenters can provide us with data showing the capital costs of including proprietary positions, for the first time, in an FCM's risk margin amount. To the extent possible, it also would be helpful to see how different risk margin percentages, or a different scope of products included in the margin amount, impacts the minimum capital requirements for an actual or hypothetical portfolio of positions. I would also be interested to hear from commenters about whether it makes sense to remove the risk margin amount altogether for standalone SDs electing the net liquid asset approach or bank-based approach, given the other minimum capital level requirements in the proposal.

Model approval process. The Commission must have a workable model approval process. I am interested to hear commenters' views on how the Commission or NFA should review or accept capital models that have already been approved by another regulator. Should such models be granted automatic or temporary approval, while the Commission or NFA conducts its own review?

In closing, I have often worried that the accepted mantra on regulatory capital requirements has become ''the higher, the better.'' Respectfully, I disagree. There is a direct tradeoff between the amount of capital regulators require firms to hold to ensure firms' resilience and viability, and the amount of available capital firms have to deploy in financial markets to support the market's ongoing liquidity and health. There is a balance necessary between capital levels that protect firms from losses on certain products, and capital levels that allow firms an economic benefit in servicing their customers' risk management needs through those products. I hope the feedback we receive from commenters on this reopening helps the Commission establish *appropriate* capital requirements that are commensurate to a firm's risk and not detrimental to its clients. I would also like to thank the staff of the Division of Swap Dealer and Intermediary Oversight for answering my questions and incorporating many of my comments into this document.

Appendix 3—Dissenting Statement of Commissioner Rostin Behnam

I respectfully dissent from the Commodity Futures Trading Commission's (the ''Commission'' or ''CFTC'') decision today to reopen the comment period and request additional comment on proposed regulations and amendments to implement section 731 of

the Wall Street Reform and Consumer Protection Act,[1] which requires the CFTC to establish capital rules for all registered swap dealers (''SDs'') and major swap participants (''MSPs'') that are not banks, including nonbank subsidiaries of bank holding companies, as well as associated financial recordkeeping and reporting requirements (the ''Reopening''). While I would have been comfortable supporting the Reopening as a matter of moving this critical Dodd-Frank Act rule forward to finalization, to the extent it introduces supplementary avenues for future rulemaking such as a leverage ratio requirement, it is a deception. Impulsively inviting comment on matters tangential to the 2016 Capital Proposal,[2] but perhaps relevant to determining appropriate capital standards and methodologies, as opposed to a thoughtful re-proposal sacrifices discipline for expediency, and runs afoul of proper process for notice and comment. I will not be complicit in supporting Commission action that I believe could invite backdoor rationalization when finalization is before us. The public deserves—and our integrity demands—that we play by the rules.

Today's action is a reopening of the comment period and a request for comment, rather than a true proposal, and thus the 2016 Capital Proposal remains the only concrete indicator to the public of the Commission's intentions. If the 2016 Capital Proposal is an extreme overshoot, the appropriate way to provide the public with an opportunity to comment is to issue a reproposal. Asking further questions, without a clear signal as to where the Commission is going, at the minimum risks further slowing this nearly ten-year effort to finalize a capital rule by adding an unnecessary step to the process in the form of a reproposal at some time in the future; and at the worst, incites the agency towards an exercise in creative reasoning outside the bounds of process.

Too often over the last couple of years, I believe this agency has slowed its own progress by snaking outside clear Administrative Procedure Act (''APA'') trajectories and adding unnecessary steps to the rulemaking process. In part, I fear that we are doing the same thing today. The competing threads throughout the Reopening make it harder for the public to discern what the Commission is proposing to do, and will make it more difficult to effectively comment on the existing proposal from 2016. This creates undue risk under the APA, and arguably poisons the well in regard to the reachable goals of this new request for comment.

To reiterate sentiments made in my first speech as a CFTC Commissioner,[3] capital is a cornerstone financial crisis reform[4] that is critical to protecting our financial institutions and our financial system as a whole, specifically from systemic risk and contagion, but also from unintended consequences if capital (and margin) levels are applied and set without due regard to the uniqueness of our financial markets and market participants. I appreciate that in moving forward, we must heed our directive to establish capital standards appropriately and in due consideration of other activities engaged in by SDs and MSPs such that we ensure that we do not penalize commercial end-users who need choices and benefit from competition in our markets.

The Reopening's overarching premise is that the chosen response to certain uncertainties at the time of the Commission's prior proposals[5] resulted in recommending standards that, in application, could in no way be justified as appropriate to offset the greater risk to SDs, MSPs, and the financial system,[6] such that the only solution for the potentially extreme overshoot is to dial it back. With the passage of time comes a nagging amnesia to the pain that the financial crisis brought on American households and the global economy. We cannot forget that undercapitalization was at the heart of the crisis.

The overall changes to the derivatives market over the last several years, the Commission's adoption and implementation of margin rules for uncleared swaps and growing knowledge and experience with SDs, and recent movement by the Securities and Exchange Commission in finalizing capital, margin, and segregation requirements as well as financial reporting requirements for security-based swap dealers and major security-based swap participants,[7] provide a reasonable basis for affording the public an opportunity to reevaluate the 2016 Capital Proposal. However, to the extent the Reopening seeks additional comment on both broader issues of harmonization and more targeted proposals regarding what amount of capital is appropriate and what methodology is used, its focus on solidifying a data-driven approach should send a strong signal that the Commission must justify its final determinations with respect to capital standards.

To reiterate, I would have liked to support today's Commission action. To the extent it would move us toward a final rule on a matter that is critical to the safety and resiliency of our markets, the supplemental concepts for consideration and overarching premise that we overshot the mark badly in the 2016 Capital Proposal raise concerns. If the 2016 Capital Proposal is an extreme overshoot, and if there are alternative methodologies and concepts to consider because of new market data, the appropriate way to provide the public with an opportunity to comment is to issue a reproposal. While I would have liked to stand with my fellow Commissioners today in supporting this first step towards a final capital rule, I cannot justify it under these circumstances.

[1] *See* The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203 section 731(e), 124 Stat. 1376, 1704–6 (2010) (the ''Dodd-Frank Act'').

[2] Capital Requirements of Swap Dealers and Major Swap Participants, 81 FR 91252 (proposed Dec. 16, 2016).

[3] *See* Rostin Behnam, The Dodd-Frank Inflection Point: Building on Derivatives Reform, Remarks of CFTC Commissioner Rostin Behnam at the Georgetown Center for Financial Markets and Policy (Nov. 14, 2017), *https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam.*

[4] G20, Leaders' Statement, Framework for Strong, Sustainable and Balanced Growth, The Pittsburgh Summit (September 24–25 2009), *http://www.g20.utoronto.ca/2009/2009communique0925.html* (''We committed to act together to raise capital standards . . .'').

[5] *See* Capital Requirements of Swap Dealers and Major Swap Participants, 76 FR 27802 (proposed May 12, 2011); 2016 Capital Proposal.

[6] *See Id.* at section 731(e)(2)(C) and (e)(3)(A)(ii); 7 U.S.C. 6s(e)(2)(C) and (e)(3)(A)(ii).

[7] *See* Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, 84 FR 43872 (Aug. 22, 2019); Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers, SEC Release No. 34–87005 (Sept. 19, 2019), available at *https://www.sec.gov/rules/final/2019/34-87005.pdf.*

Appendix 4—Dissenting Statement of Commissioner Dan M. Berkovitz

I dissent from the document that is called a ''Proposed Rule'' on the Capital Requirements of Swap Dealers and Major Swap Participants (the ''Document''). My objections are both procedural and substantive. Procedurally, the Document asks many open ended questions, is vague about what is being proposed, and lacks sufficient supporting data to serve as the basis for a final rule under the Administrative Procedure Act (''APA'').[1] The Document as structured is not a proposal that can lead to a final rule; rather it appears to be more in the nature of an advance notice of proposed rulemaking.

Substantively, I dissent because the Document encourages mostly changes that only weaken what the Commission had previously proposed. The path forward suggested by the proposed changes would undermine the statutory purpose of requiring swap dealers to retain an appropriate minimum level of capital to serve as a buffer of last resort after all other sources of credit support (*e.g.,* initial and variation margin) have been exhausted.

The Document Is Not a Proposal That Can Lead to a Final Rule

The Document asks over 140 questions regarding capital requirements that the Commission proposed in 2011 and again in 2016. We received numerous public comments on both prior proposals. The Document briefly discusses these comments, most of which were critical of the proposals, and then asks open-ended questions about various alternatives to the initial proposals. The discussion of the rationale behind the general alternatives posed in the questions is often superficial.

For the most part, the Document does not propose any new rule text or amendments to previously proposed rule text, but rather summarizes comments and asks for further comments, data, and analysis to support suggested alternatives to the previously proposed regulations. In many cases, a wide range of alternatives are suggested, such as capital levels ranging from 0 to 8% of risk

[1] It is ironic that on the very day this ''proposal'' is voted on, the Commission is also adopting an amendment to Part 13 that expressly confirms the APA as the procedures by which the Commission will propose and adopt its regulations.

margin. In a number of places, the Document asks commenters to propose new rule text for the Commission. The Document states ''[t]he Commission notes that comments are of the greatest assistance to rulemaking initiatives when accompanied by supporting data and analysis, and, if appropriate, accompanied by alternative approaches and suggested rule text language.'' [2] As an illustrative example, the Document asks commenters to, ''Please provide data and analysis in support of any suggested modified percentage of the risk margin amount.'' [3]

To the extent that some commenters provide significant new information or data that the Commission intends to rely upon in formulating or justifying a final rule, the public must be afforded notice of and an opportunity to comment on the new information. Under the APA it is not permissible for an agency to ask a wide range of questions about potential approaches, and then proceed to promulgate a final rule supported by new reasons and data sourced from the comments received. Data that is relied on by an agency to support its final rule and that is not merely supplemental or confirming data must be subjected to the notice and comment process.[4]

Under the APA, an agency has a ''duty to identify and make available technical studies and data that it has employed in reaching the decisions to propose particular rules. . . . An agency commits serious procedural error when it fails to reveal portions of the technical basis for a proposed rule in time to allow meaningful commentary.'' [5]

I have stated many times that when practical, the Commission should be guided by objective data in writing regulations. An excellent example is our rule setting the minimum swap dealer registration threshold at $8 billion. The CFTC staff undertook an exhaustive, objective data analysis that, when completed, showed that the $8 billion level captured the vast majority of swap dealing activity. I voted for the rule based on that analysis. However, we cannot rely on data submitted by commenters in the final rule without first allowing the public to comment on that data.

A Weaker Capital Rule Is the Purpose

After reading the 140-plus questions in the Document, it is clear that the Commission is headed in the wrong direction. The Document does not pursue the goal stated by Congress for the capital requirements to help assure the safety and soundness of the swap dealers.[6] In virtually every instance, the questions and accompanying discussion seek alternatives that would reduce the level of capital required or create greater flexibility for the swap dealers to comply.[7] The Document reads like an extensive diner menu offering up every type of rule reduction that a hungry swap dealer might desire.

Let's consider two significant examples. Under one approach proposed in the prior proposals, a swap dealer would be required to hold capital equal to or exceeding 8% of uncleared swap margin and initial margin for certain swaps and futures positions of the swap dealer. As explained in the Document, the 8% level is drawn from the Commission's experience with its risk-based capital requirements for futures commission merchants.[8]

Based on comments received on the prior proposals, and in an effort to harmonize with the SEC, the Document now proposes dropping that level to 2% (or 4% or perhaps another level that a commenter may propose) and allowing swap dealers to ''exclude any particular asset classes or positions from the computation of risk margin amount.'' No data is offered in the Document to explain why 2% would be a sufficient level. Maybe 8% is not the right number, but how does 2% in a formula that potentially excludes more asset classes or swap positions from the calculation even enter the realm of possibility when FCMs are held to much higher levels? The Document provides no clear rationale related to the statutory purpose of the rule. The rationale in the Document boils down to saying 2% would harmonize our rule with the SEC's security-based swap dealer capital rule. But the security-based swap market is very small and relatively narrow in scope. The Document includes virtually no analysis of whether a 2% level makes sense in the much larger, complex, and varied swap market. An individual swap dealer may maintain a portfolio of hundreds of different swap products with a notional amount in excess of a trillion dollars with thousands of counterparties. The dealer may make over a million trades a year. Asking generic questions about the differences in these two markets is helpful. However, it is apparent that any significant new data or analysis provided by commenters in response to this Document that the Commission uses to support the final rule will need to be presented to the public for consideration and comment.

As a further example, the Document asks questions about permitting expanded use of netting of offsetting positions when calculating the exposures against which minimum capital must be held. Netting of offsetting positions is an important function for intermediaries like swap dealers for day-to-day cash flow, liquidity, and risk management. In some respects, netting is the basis on which certain types of intermediaries build their business by dealing derivatives to different parties that want or need long positions when other parties need or want corresponding short positions.

However, when it comes to minimum capital requirements, which are intended to serve as a source of funding of last resort at all times, we must be very careful when proposing netting offsets. Should a large swap dealer with a complex dealing book only be required to hold some minimum amount of collateral simply because it is able to net out its book? That would not appear to serve the statutory purpose for a minimum capital requirement of helping to assure the safety and soundness of the swap dealer.[9] While I am not suggesting that netting should play no role in the capital requirement calculations, my concern is that the Document provides little in the way of data, analysis, or rationale as to how the netting provisions discussed, which could net significant portions of the requirement down to nothing, would serve the intended purpose. That is a concerning approach to take for a capital requirement and it is difficult to see how a final rule could be built on such questions in the Document.

Harmonization and Cost Reduction Alone Are Not Valid Policy Goals

In the Document, the costs of compliance and harmonization with the SEC's capital rule are repeatedly mentioned as reasons for various possible changes. Compliance cost reduction and rule harmonization, when feasible without undermining the policy goals of the regulations, are certainly important considerations in writing regulations. However, as I have stated in other contexts, these are secondary considerations and should not supplant achieving the policy goals stated by Congress in the Commodity Exchange Act. While the Document acknowledges that safety and soundness of each swap dealer is the stated purpose of the capital rule, and asks generic questions about the impact on swap dealer safety and soundness, that purpose is not mentioned as the reason for any of the proposed changes to the capital requirements. This odd omission belies the purported goals of the Document.

The Document also exposes the one-sided nature of the ''harmonization'' rationale. In several instances it relies almost completely on harmonizing the CFTC regulation with the comparable SEC regulation. In each of those instances, the result is always a weaker regulatory requirement. And yet in a other instances,[10] the Document acknowledges that a change to the existing capital rule proposals would conflict with the SEC's rules, but then goes on to support implementing a different rule. It seems that harmonization is used as a rationale for action only when it is convenient for reducing regulation and therefore obfuscates the real reason for the action.

Conclusion

For the reasons stated above, I dissent.

Notwithstanding my dissent, I want to acknowledge the hard work of the staff in trying to address my many questions and comments in the limited time we had to consider the Document. Capital requirements

[2] Document, introductory paragraph to section II.

[3] Document, question 1–b.

[4] *See Idaho Farm Bureau Fed'n* v. *Babbitt,* 58 F.3d 1392, 1402–03 (9th Cir. 1995).

[5] *Owner-Operator Indep. Drivers Assoc.* v. *Fed. Motor Carrier Safety Admin.,* 494 F.3d 188, 199 (D.C. Cir. 2007) (quoting *Solite Corp.* v. *EPA,* 952 F.2d 473, 484 (D.C. Cir 1991) and *Conn. Light & Power Co.* v. *NRC,* 673 F.2d 525, 530–31 (D.C. Cir. 1982).

[6] *See* 7 U.S.C. 6s(e)(3)(A).

[7] In some instances, the questions are premised on the desire to harmonize with the provisions of the SEC's securities-based swap dealer capital rules. However, the SEC's final rules were often premised on comments received on the CFTC's earlier capital rule proposals and result in reduced requirements, as discussed later in my statement.

[8] *See* 17 CFR 1.17(a)(1)(i)(B).

[9] *See* 7 U.S.C. 6s(e)(3)(A).

[10] *See, e.g.,* Document, sections II.A.5 and 10.

are one of the most complex and highly technical areas in our regulations. We had a little less than a month to review the Document, which was not enough time given the heavy schedule currently set for the Commission and the complexity and history behind the Document and the two prior capital rule proposals. Notwithstanding this short time frame, I appreciate the staff's efforts to incorporate a number of my requested changes and address several complicated issues.

[FR Doc. 2019–27116 Filed 12–18–19; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2019–0682]

RIN 1625–AA09

Drawbridge Operation Regulation; Northeast Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily modify the operating schedule that governs the Isabel S. Holmes Bridge (US 74/SR 133), across the Northeast Cape Fear River, at mile 1.0, at Wilmington, North Carolina. This proposed temporary modification will allow the drawbridge to be maintained in the closed position and is necessary to accommodate bridge maintenance.

DATES: Comments and relate material must reach the Coast Guard on or before January 21, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0682 using Federal e-Rulemaking Portal at *http://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Michael Thorogood, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6557, email *Michael.R.Thorogood@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
OMB Office of Management and Budget
§ Section
U.S.C. United States Code

II. Background, Purpose and Legal Basis

The North Carolina Department of Transportation, who owns and operates the Isabel S. Holmes Bridge (US 74/SR 133), across the Northeast Cape Fear River, at mile 1.0, at Wilmington, North Carolina, has requested this modification to allow the drawbridge to be maintained in the closed-to-navigation position to facilitate bridge maintenance of the drawbridge.

The Isabel S. Holmes Bridge (US 74/SR 133), across the Northeast Cape Fear River, at mile 1.0, at Wilmington, North Carolina has a vertical clearance of 40 feet above mean high water in the closed position and unlimited vertical clearance above mean high water in the open position. The current operating schedule for the drawbridge is published in 33 CFR 117.829(a).

This proposed temporary final rule is necessary to facilitate safe and effective bridge maintenance of the drawbridge, while providing for the reasonable needs of navigation. A work platform will reduce the vertical clearance of the entire bridge span to approximately 34 feet above mean high water in the closed position. Vessels that can safely transit through the bridge in the closed position with the reduced clearance may do so, if at least a thirty-minute notice is given, to allow for navigation safety.

The Coast Guard is proposing this rulemaking under authority in 33 U.S.C. 499.

III. Discussion of Proposed Rule

Under this proposed temporary final rule, the drawbridge will be maintained in the closed-to-navigation position twenty-four hours a day, seven days a week from 7 p.m. on January 1, 2020, through 12:01 a.m. on June 30, 2021. The bridge will open on signal for daily scheduled openings at 6 a.m., 10 a.m., 2 p.m., and 7 p.m., if at least a twenty-four hour notice is given; except for bridge closures authorized in accordance with 33 CFR 117.829(a)(4). The draw will also open on signal, if at least a twenty-four hour notice is given, for vessels unable to transit through the bridge during a scheduled opening, due to the vessel's draft; except for bridge closures authorized in accordance with CFR 117.829(a)(4). At all other times the drawbridge will operate per 33 CFR 117.829(a).

The bridge will not be able to open for emergencies and there is no immediate alternative route for vessels unable to pass through the bridge in the closed position. Vessels that can safely transit through the bridge in the closed position with the reduced vertical clearance may do so, if at least a thirty-minute notice is given, to allow for navigation safety.

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 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 fact that vessels can still transit the bridge on signal for daily scheduled openings at 6 a.m., 10 a.m., 2 p.m., and 7 p.m., if at least a twenty-four hour notice is given; except for bridge closures authorized in accordance with 33 CFR 117.829(a)(4). The draw will open on signal, if at least a twenty-four hour notice is given, for vessels unable to transit through the bridge during a scheduled opening, due to the vessel's draft; except for bridge closures authorized in accordance with 33 CFR 117.829(a)(4). At all other times the drawbridge will operate per 33 CFR 117.829(a).

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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 bridge 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**, above. 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 call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

D. Federalism and Indian Tribal Government

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 contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and the U.S. Coast Guard Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f).

We 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 promulgates the operating regulations or procedures for drawbridges. Normally this action is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

G. Protest Activities

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

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 *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact 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 *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacynotice.*

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at *http://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 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; DHS Delegation No. 0170.1.

■ 2 . Amend § 117.829 by adding paragraph (a)(5) to read as follows:

§ 117.829 Northeast Cape Fear River.

(a) * * *

(5) From 7 p.m. on January 1, 2020, through 12:01 a.m. on June 30, 2021, the draw will be maintained in the closed-to-navigation position. The draw will open on signal, if at least a twenty-four hour notice is given, for scheduled openings at 6 a.m., 10 a.m., 2 p.m. and 7 p.m.; except for bridge closures authorized in accordance with (a)(4) of this section. The draw will open on signal, if at least a twenty-four hour notice is given, for vessels unable to transit through the bridge during a scheduled opening, due to the vessel's draft; except for bridge closures authorized in accordance with (a) (4) of this section.

* * * * *

Dated: November 25, 2019.

G.G. Stump,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 2019–27355 Filed 12–18–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2019–0892]

RIN 1625–AA09

Drawbridge Operation Regulation; Hackensack River, Jersey City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to modify the operating schedules that govern the Route 1 & 9 Bridge, mile 1.8, and Route 7 Bridge, mile 3.1, both crossing the Hackensack River, at Jersey City, NJ. The bridge owner, the New Jersey Department of Transportation (NJDOT), submitted a request to allow two hours advance notice for nighttime transits due to infrequent bridge openings. This proposed rule would align the advance notice requirement for the PATH Bridge at mile 3.0.

DATES: Comments and related material must reach the Coast Guard on or before February 18, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0892 using the Federal eRulemaking Portal at *http://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Judy Leung-Yee, Project Officer, First Coast Guard District; telephone 212–514–4336, email *Judy.K.Leung-Yee@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
NJDOT New Jersey Department of Transportation
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
§ Section
U.S.C. United States Code

II. Background, Purpose and Legal Basis

The Route 1 & 9 Bridge at mile 1.8 over the Hackensack River at Jersey City, New Jersey, has a vertical clearance of 35 feet at mean high water and 40 feet at mean low water. Horizontal clearance is approximately 200 feet. The waterway users include recreational and commercial vessels including tugboat/barge combinations.

The Route 7 Bridge at mile 3.1 over the Hackensack River at Jersey City, New Jersey, has a vertical clearance of 35 feet at mean high water and 40 feet at mean low water. Horizontal clearance is approximately 158 feet. The waterway users include recreational and commercial vessels including tugboat/barge combinations.

The existing regulation, 33 CFR 117.5, requires both bridges open on signal at all times. NJ DOT has requested that overnight hours between 11 p.m. and 7 a.m. be modified to two hours advance notice. This rule change will allow for more efficient and economic operation of the bridge while meeting the reasonable needs of navigation. The Coast Guard is proposing this rulemaking under authority in 33 U.S.C. 499.

III. Discussion of Proposed Rule

The bridge logs show that between 11 p.m. and 7 a.m., the Route 1 & 9 Bridge had 27 annual openings in 2017, 12 annual openings in 2018, and 11 annual openings to date in 2019 (through October). During the subject hours, the Route 7 Bridge had 16 annual openings in 2017, 1 annual opening in 2018, and 0 annual openings to date in 2019. The Coast Guard proposes to permanently modify the operating regulation.

The proposed rule would allow that both Route 1 & 9 and Route 7 Bridges shall open on signal; except that, from 11 p.m. to 7 a.m., the draw shall open on signal if at least two hours advance notice is given by calling the number posted at the bridge. It is the Coast Guard's opinion that the proposed rule meets reasonable needs of marine traffic.

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 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 Office of Management and Budget (OMB) has not reviewed the NPRM and pursuant to OMB guidance, it is exempt from the requirements of Executive Order 13771.

The Coast Guard believes this rule is not a significant regulatory action. The bridges will still open for all vessel traffic after a two-hour advance notice is given during overnight periods. The vertical clearance under both bridges in the closed position are relatively high enough to accommodate most vessel traffic. We believe that this proposed change to the drawbridge operation regulations at 33 CFR 117.723 will meet the reasonable needs of navigation.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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.

The Route 1 & 9 and Route 7 Bridges provide 35 feet of vertical clearance at mean high water that should accommodate all the present vessel traffic except deep draft vessels. The bridges will continue to open on signal for any vessel, except between 11 p.m. and 7 a.m. when a two-hour advance notice will be required. While some owners or operators of vessels intending to transit the bridge 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**, above. 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 call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

D. Federalism and Indian Tribal Government

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 contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, and Environmental Planning COMDTINST 5090.1 (series), which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). We 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 promulgates the operating regulations or procedures for drawbridges. Normally, this action is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

G. Protest Activities

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

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 e-Rulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact 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 *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacynotice.*

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at *http://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 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 117.223, add paragraphs (j) and (k) to read as follows:

§ 117.723 Hackensack River.

* * * * *

(j) The draw of the Route 1 & 9 Bridge, mile 1.8, at Jersey City, shall open on signal; except that, from 11 p.m. to 7 a.m., the draw shall open on signal if at least two hours advance notice is given by calling the number posted at the bridge.

(k) The draw of the Route 7 Bridge, mile 3.1, at Jersey City, shall open on signal; except that, from 11 p.m. to 7 a.m., the draw shall open on signal if at least two hours advance notice is given by calling the number posted at the bridge.

Dated: December 5, 2019.

R.W. Warren,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 2019–27271 Filed 12–18–19; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 111

USPS Returns Service

AGENCY: Postal Service™.

ACTION: Proposed rule; revision; additional comment period.

SUMMARY: The Postal Service is proposing to amend *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) section 505.3.0, and various other sections, to remove references to the traditional Merchandise Return Service (MRS)

portion of merchandise return service and to enhance USPS Returns® service.

DATES: Submit comments on or before January 21, 2020.

ADDRESSES: Mail or deliver written comments to the manager, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5015. If sending comments by email, include the name and address of the commenter and send to *ProductClassification@usps.gov,* with a subject line of ''USPS Returns Service''. Faxed comments are not accepted. All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review on Monday through Friday, 9 a.m.–4 p.m., by calling 202–268–2906.

FOR FURTHER INFORMATION CONTACT: Karen Key at (202) 268–7492, Vicki Bosch at (202) 268–4978, or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION: The Postal Service published a notice of proposed rulemaking on July 23, 2018 (83 FR 34807–34811) to amend DMM section 505.3.0, *Merchandise Return Service (MRS),* to remove the references to traditional MRS processes and introduce an enhanced USPS Returns service. One formal response was received relating only to terminology used to describe users of the Enterprise Payment System (EPS).

The Postal Service has elected to issue a second revised proposed rule in order to further clarify our proposal and provide a revised effective date.

Under the Package Platform initiative, the Postal Service has leveraged devices that were installed as part of the Automated Package Verification system to enhance the capability of equipment used for the processing of package-size mailpieces. The upgraded equipment captures near real-time data on package dimensions, weight, mail class or product, and other attributes, and transmits the data to Postal Service information systems. The Postal Service will use this new technology to streamline its processes for the identification and postage assessment of each return package, and enable account holders to pay the postage for their returns electronically. Mailers will receive detailed reports to monitor package level pricing as their returns are processed and delivered through the Postal Service network. This improved functionality will significantly reduce the need to manually weigh and invoice returns or to estimate postage via sampling under the Postage Due Weight Averaging Program for MRS packages, and will eliminate the scan-based payment process currently used with USPS Returns services.

The USPS Returns service's new methodology was deployed January 27, 2019, allowing existing customers to migrate to the automated returns process and new customers to establish automated returns service. Current USPS Returns service and MRS customers would be expected to migrate to the new automated methodology by August 28, 2020. The originally proposed deadline of January 2021 for MRS customers to migrate to the new USPS Returns methodology is being revised because the Postal Service has been working closely with returns customers for an extended period of years, and more actively prior to and since the deployment of the automated functionality, and believes MRS customers can convert by August 28, 2020.

The proposed USPS Returns service automated methodology would use the same commercial prices as those currently applied to USPS Returns services and MRS: Priority Mail® Commercial Base® and Commercial Plus® (as applicable to the qualifying USPS Returns account holders), First-Class Package Service®—Commercial, and Parcel Select Ground®, and would apply those prices to each individual return package. Negotiated Service Agreement (NSA) prices would be available for eligible customers using the USPS Returns service automated process.

USPS Returns service account holders would pay postage and fees through an Enterprise Payment System (EPS) account. EPS is a relatively new payment system designed to provide a single point for all payment-related activities. Returns customers of any type would be required to set up an EPS account for electronic funds transfer for payment of USPS Returns service. USPS Returns service account customers can view payment information in a consolidated format in their EPS account accessed through the Business Customer Gateway at *https://gateway.usps.com.* The available information includes account balances, postage activity reports, transactions history, and other information. For EPS account set up or support, contact *Postalone@usps.gov* or call the *PostalOne!* Helpdesk at 800–522–9085, or the USPS Mailing and Shipping Solution Center at 1–877–MRC–0007 (1–877–672–0007).

USPS Tracking® is included as part of the service for any USPS Returns service product, and the Extra Services available for a fee for the USPS Returns service automated methodology include Insurance, Signature Confirmation™, and Certificate of Mailing service. In cases where the USPS Returns service account holder must sign for multiple returns bearing accountable Extra Services, the Postal Service will create an electronic firm sheet to capture the recipient's signature at the time of delivery and append it to the applicable associated returns. If all or part of the Intelligent Mail® package barcode (IMpb®) is unreadable, or the package is unable to be priced based on the availability of data collected, postage will be based on historical data, or default data determined at time of enrollment.

While moving forward with the substantive changes to the returns options described in this proposed rule, the Postal Service is modifying the proposed DMM changes to exclude the originally proposed section 505.3.8 and instead include those changes in an expanded section 505.3.1, which will replace current sections 505.3.1 through 505.3.6. This approach will consolidate the new USPS Returns automated methodology material and the existing returns sections into one section.

Additionally, the Postal Service is proposing to remove the references to ''Merchandise Return Service'', both in section 505.3.0 and in the other sections that refer to Merchandise Return Service. When appropriate, these references are being replaced with references to USPS Returns service.

In addition, the Postal Service proposes to update Quick Service Guides 220, 503, and 800, to reflect these DMM revisions.

We believe these proposed revisions to our returns package product offerings will provide customers who choose the Postal Service for return services a more efficient process and a superb customer experience.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

100 Retail Mail Letters, Cards, Flats, and Parcels

101 Physical Standards

* * * * *

6.0 Additional Physical Standards for First-Class Mail and First-Class Package Service—Retail

* * * * *

6.2 Cards Claimed at Card Prices

* * * * *

6.2.9 Double Cards

* * * Double cards are subject to these standards:

* * * * *

[Revise the second sentence of item b to read as follows:]

b. * * * The address side of the reply half may be prepared as Business Reply Mail, Courtesy Reply Mail, meter reply mail, or as a USPS Returns service label.

* * * * *

200 Commercial Letters, Flats, and Parcels Design Standards

201 Physical Standards

1.0 Physical Standards for Machinable Letters and Cards

* * * * *

1.2 Physical Standards for Cards Claimed at Card Prices

* * * * *

1.2.9 Double Cards

* * * Double cards are subject to these standards:

* * * * *

[Revise the second sentence of item b to read as follows:]

b. * * * The address side of the reply half may be prepared as business reply mail, courtesy reply mail, meter reply mail, or as a USPS Returns service label.

* * * * *

202 Elements on the Face of a Mailpiece

* * * * *

3.0 Placement and Content of Mail Markings

* * * * *

3.3 Priority Mail Express and Priority Mail Markings

* * * * *

3.3.3 Additional Markings for Priority Mail Express and Priority Mail

[Revise the first sentence of the introductory text of 3.3.3 to read as follows:]

In addition to the basic price marking in 3.3.1 and 3.3.2, except for pieces paid using a USPS Corporate Account, USPS Returns service, or permit imprint, Priority Mail Express and Priority Mail pieces claiming Commercial Base or Commercial Plus prices also must bear the appropriate commercial price marking, printed on the piece or produced as part of the meter imprint or PC Postage indicia. * * *

* * * * *

204 Barcode Standards

* * * * *

2.0 Standards for Package and Extra Service Barcodes

2.1 Intelligent Mail Package Barcode

2.1.1 Definition

[Revise the fourth sentence of 2.1.1 to read as follows:]

* * * All mailers generating Intelligent Mail package barcodes (IMpb) must also submit piece-level information to the USPS via an approved electronic file format (except for mailers generating barcodes for use on return services products, such as uninsured USPS Returns service packages). * * *

* * * * *

2.1.7 Electronic File

[Revise the first sentence of the introductory text of 2.1.7 to read as follows:]

All mailers generating Intelligent Mail package barcodes (IMpb) must transmit piece-level information to USPS in an approved electronic file format (except for mailers generating barcodes for use on return services products, such as uninsured USPS Returns service packages). * * *

* * * * *

220 Commercial Mail Priority Mail

223 Prices and Eligibility

1.0 Prices and Fees

* * * * *

1.2 Commercial Base Prices

* * * The Commercial Base prices are available for:

* * * * *

[Revise the text of item e to read as follows:]

e. Permit holders using USPS Returns service for packages returned at Priority Mail prices when all requirements are met under 505.3.0.

* * * * *

1.3 Commercial Plus Prices

1.3.1 Basic Eligibility

* * * Commercial Plus prices are available to Priority Mail customers who qualify for Commercial Base prices and whose cumulative account volume exceeds a combined total of 5,000 letter-size and flat-size pieces (including Flat Rate Envelopes, but not the Padded Flat Rate Envelope) or 50,000 total pieces in the previous calendar year (except Priority Mail Open and Distribute) and who have a customer commitment agreement with USPS (new Priority Mail customers see 1.3.2), and are:

* * * * *

[Revise the text of item d to read as follows:]

d. Permit holders using USPS Returns service for packages returned at Priority Mail prices when all requirements are met under 505.3.0.

* * * * *

1.4 Commercial Plus Cubic

1.4.1 Commercial Plus Cubic Eligibility

* * * The Commercial Plus cubic prices are available for:

* * * * *

[Revise the text of item c to read as follows:]

c. Permit holders using USPS Returns service for packages returned at Priority Mail prices when all requirements are met under 503.3.0.

* * * * *

224 Postage Payment and Documentation

1.0 Basic Standards for Postage Payment

1.1 Postage Payment Options

1.1.1 Commercial Base Pricing

Priority Mail Commercial Base and Regional Rate Box postage may be paid with:

* * * * *

[Revise the text of item e to read as follows:]

e. Permit holders using USPS Returns service for Priority Mail packages when all requirements are met under 505.3.0.

1.1.2 Commercial Plus Pricing

Commercial Plus Priority Mail postage may be paid with:

* * * * *

[Revise the text of item c to read as follows:]

c. Permit holders using USPS Returns service for Priority Mail packages who qualify for Commercial Base prices and whose account volumes exceed 100,000 pieces in the previous calendar year or who have a customer commitment agreement with the USPS (see 223.1.3.2).

* * * * *

1.1.3 Commercial Plus Cubic Pricing

Commercial Plus cubic prices may be paid with:

* * * * *

[Revise the text of item c to read as follows:]

c. Permit holders using USPS Returns service when packages are returned at Priority Mail prices and all requirements are met under 505.3.0.

* * * * *

280 Commercial Mail First-Class Package Service—Commercial

283 Prices and Eligibility

1.0 Prices and Fees

* * * * *

1.2 Commercial Prices

Commercial prices are available when paid by one of the following methods:

* * * * *

[Revise the text of item d to read as follows:]

d. Permit holders using USPS Returns service for First-Class Package Service—Commercial packages when all requirements are met under 505.3.0.

* * * * *

500 Additional Mailing Services

503 Extra Services

1.0 Basic Standards for All Extra Services

* * * * *

1.4 Eligibility for Extra Services

* * * * *

1.4.3 Eligibility—Domestic Returns

Extra services for return packages under 505.3.0 and 505.4.0 are available as follows:

Exhibit 1.4.3 Eligibility—Domestic Returns

[Revise Exhibit 1.4.3 by inserting a new table to read as follows:]

Return services	Eligible extra services (paid EPS account or by permit holder)			Eligible extra services (paid by sender)			
	Insurance $500 or less	Insurance more than $500	Signature confirmation	Insurance $500 or less	Insurance more than $500	Signature confirmation	Certificate of mailing
USPS Returns:							
Priority Mail Return Service	1	1, 2, 3	✓	1	1, 2	✓	4
First-Class Package Return Svs	3	2, 3	✓	✓	2	✓	4
Ground Return Service	3	2, 3	✓	✓	2	✓	4
Parcel Return Service	✓	2	.....	✓	2	.....	4

1. Insurance is not included for Priority Mail Return Service, it must be purchased.
2. A signature is not provided as part of the delivery record for USPS Returns service items insured for more than $500.
3. Insurance being purchased by the EPS account holder must be accompanied by electronic data that supports the value of the merchandise and the associated fee paid (see 4.3.1).
4. Individual pieces using Form 3817 or Form 3665 by sender only.

* * * * *

2.0 Registered Mail

* * * * *

2.2 Fees and Liability

* * * * *

[Delete 2.2.4, Merchandise Return, in its entirety and renumber 2.2.5 as 2.2.4.]

2.2.4 Indemnity

[Revise the text of renumbered 2.2.4 to read as follows:]

No indemnity is paid for any matter registered without prepayment of postage and fees.

* * * * *

2.5 Inquiry on Uninsured Article

2.5.1 Who, When and How to File

[Revise the second sentence of 2.5.1 to read as follows:]

* * * Only the mailer may file an inquiry for Registered Mail items with no declared value.

* * * * *

4.0 Insured Mail

* * * * *

4.2 Insurance Coverage—Priority Mail

Priority Mail pieces bearing an Intelligent Mail package barcode (IMpb) or USPS retail tracking barcode (see 4.3.4) are insured against loss, damage, or missing contents, up to a maximum of $50.00 or $100.00, subject to the following:

* * * * *

[Revise the text of item e to read as follows:]

e. Insurance coverage under 4.2a or 4.2b is not provided for Priority Mail packages mailed as USPS Returns service, Priority Mail Open and Distribute, or Premium Forwarding Service.

* * * * *

4.3 Basic Standards

4.3.1 Description

Insured mail is subject to the basic standards in 1.0; see 1.4 for eligibility. The following additional standards apply to insured mail:

[Revise the text of item a by adding a new third sentence to read as follows:]

a. * * * For customer-generated integrated barcodes used for USPS Returns service or Parcel Return Service, the returns account holder must provide USPS with electronic data in a shipping services file version 1.6 or higher that identifies the USPS Tracking number of the insured return package, total postage paid, insurance fee paid, declared value, mailing date, origin ZIP Code, and delivery ZIP Code, along with the recipient name and address information. * * *

* * * * *

505 Return Services

* * * * *

[Revise the heading and text of 3.0 to read as follows:]

3.0 USPS Returns Service

3.1 Basic Standards

3.1.1. Description

USPS Returns service allows an authorized account holder to pay the postage and fees on single-piece priced commercial Priority Mail, First-Class Package Service—Commercial, or Parcel Select Ground packages returned to the account holder by senders (mailers) via a return label, meeting the standards in 3.1.4, produced by the account holder. Unless otherwise restricted, any mailable matter may be mailed using any of the USPS Returns service options (Priority Mail Return Service, First-Class Package Return Service, and Ground Return Service (Parcel Select Ground)). Any content that constitutes First-Class Mail matter may only be mailed using Priority Mail Return Service. USPS Returns service is subject to the following conditions:

a. *Availability.* USPS Returns service is available to the account holder for mailing to the account holder's designated address on the USPS Returns label(s).

b. *Payment Guarantee.* The account holder must guarantee payment of the proper postage and fees, including any fees for Extra Services requested by the account holder, on all packages returned bearing a valid barcoded USPS Returns label produced by the account holder. The account holder must have sufficient funds in their associated Electronic Payment Account to pay the postage and fees on an ongoing basis.

c. *Where Service Established.* USPS Returns service accounts may be established at any Post Office in the United States and its territories and possessions or at any overseas U.S. military Post Office (APO/FPO/DPO). USPS Returns service is not available for returns from any foreign country.

3.1.2 Accounts

USPS Returns service accounts are subject to the following:

a. *Account Enrollment.* An approved USPS Returns service account may be established by calling the Mailing and Shipping Solutions Center at 1–877–672–0007.

b. *Advance Deposit Account.* The account holder must pay postage and fees through an Enterprise Payment System (EPS) account, accessed through the Business Customer Gateway (BCG) at *https://gateway.usps.com* and agree to the terms and conditions for use of such EPS account as the EPS account holder.

c. *Mailer Identification Code (MID).* Applicants must request a new MID via the BCG, select the product type of nonmanifested returns, and select the applicable Service Type Codes (STCs) for the desired USPS Returns service products.

d. *Application Process.* Applicants must have a valid Enterprise Payment Account and be registered in the Business Customer Gateway (BCG).

e. *Canceled Accounts.* If the account is cancelled by the EPS account holder, USPS Returns service packages bearing the sender's return address are returned to the sender; otherwise, they are treated as dead mail.

f. *Account Cancellation.* The USPS may cancel an account if the EPS account holder refuses to accept and pay postage and fees for USPS Returns service packages, fails to keep sufficient funds in the advance deposit account to cover postage and fees, or distributes return labels that do not meet USPS standards.

g. *Reapplying After Cancellation.* To receive a new account after a previous USPS Returns service account is canceled, the applicant must re-register in the Business Customer Gateway and obtain and new mailer identification code (MID) for USPS Returns service use. If not using labels generated by the USPS Application Program Interface (API) *https://www.usps.com/business/web-tools-apis/welcome.htm* or Merchant Return Application (MRA), applicants must submit for approval two samples for each label format to the National Customer Support Center (NCSC). In addition, applicants must provide evidence that the reasons for the account cancellation are corrected, and maintain funds in their advance deposit account sufficient to cover normal returns for at least two weeks.

h. *Using Other Post Offices.* The authorized Enterprise Payment System (EPS) account holder using USPS Returns may distribute USPS Returns labels for return through other Post Office locations.

3.1.3 Postage and Prices

Postage and prices are subject to the following:

a. Postage is calculated based on the weight of the return package and zone associated with the point of origin and delivery ZIP Code subject to the eligibility for commercial prices and fees based on the class of mail under 220, 250, and 280, except that postage for USPS Returns in flat-rate packaging is based on the packaging type used and the associated Universal Product Code (UPC) on the packaging. USPS Returns service packages are charged postage and fees based on the service type code (STC) embedded in the Intelligent Mail Package barcode (IMpb) and as provided under 3.1.3c. If all or part of the IMpb is unreadable, or the package is unable to be priced based on the data collected, postage will be determined by the Postal Service based on historical data, or default data determined at time of enrollment.

b. Prices for Priority Mail Return Service, First-Class Package Return Service, and Ground Return Service (Parcel Select Ground) packages are charged as follows:

1. Priority Mail Commercial Base prices are available for account holders using Priority Mail Return Service, when all applicable requirements are met.

2. Priority Mail Commercial Plus prices are available for Priority Mail Return Service packages that qualify for Commercial Base prices and for which the account holder has a customer commitment agreement with the USPS (see 223.1.3).

3. First-Class Package Service—Commercial prices are available for First-Class Package Return Service packages when all applicable requirements are met.

4. Parcel Select Ground prices are available for Ground Return Service packages when all applicable requirements are met.

c. The account holder or mailer may obtain extra and additional services as follows:

1. Insurance—is available for USPS Returns service (see 503.0). Insurance is not included with the postage for Priority Mail Return Service. Insurance is available to the account holder for a fee on packages that have the applicable STC imbedded into the IMpb on the label, and for which the account holder has provided electronic data that supports the value of the merchandise (see 503.4.3.1a). Only the account

holder may file a claim (see 609). Mailers mailing a USPS Returns service package may obtain insurance at their own expense at the time of mailing by presenting the labeled USPS Returns package at a Post Office retail unit to obtain the service.

2. Signature Confirmation is available for USPS Returns service (see 503.0). Signature Confirmation is available for a fee to the account holder for packages that have the applicable STC for Signature Confirmation imbedded into the IMpb on the label. Mailers mailing a USPS Returns package may obtain Signature Confirmation at their own expense at the time of mailing by presenting the labeled USPS Return package at a Post Office retail unit to obtain the service.

3. Certificate of Mailing is available only to mailers at their own expense at the time of mailing by presenting the certificate at a Post Office retail unit to obtain the receipt.

4. Pickup on Demand Service is available for a fee with USPS Returns service (see 507.7.0).

3.1.4 Labels

Distribution and preparation of labels are subject to the following:

a. *Distribution of Labels.* USPS Returns labels may be distributed to customers as an enclosure with merchandise, as a separate package (including when requested electronically through the *Business Customer Gateway* for printing and delivery to the customer by USPS), as an electronic transmission for customer downloading and printing (including through Label Broker™ which allows customers to have the pre-paid returns label printed for them at a USPS Retail System Software (RSS) enabled retail location via a Label ID and/or QR code on a smart phone, on a piece of paper, or written directly on a package presented to the retail associate), or through one of the account holder's designated pickup facilities.

b. *Label Preparation.* USPS Returns labels must meet the standards in the Parcel Labeling Guide available on the PostalPro website at *https://postalpro.usps.com/parcellabelingguide.* The label must include an IMpb, accommodate all required information, be legible, and be prepared in accordance with Publication 199, *Intelligent Mail Package Barcode (IMpb) Implementation Guide,* available on the PostalPro website. Standard label sizes are 3 inches by 6 inches, 4 inches by 4 inches, or 4 inches by 6 inches, and must be certified by the USPS for use prior to distribution. Except for USPS Returns labels generated by the USPS Application Program Interface (API) or Merchandise Return Application (MRA), all returns labels must have a properly constructed (C01, C05, N02, or N05, as applicable) IMpb approved by the National Customer Support Center (NCSC). EPS account holders or their agents may distribute approved return labels and instructions by means specified in 3.1.4b. EPS account holders or their agents must provide written instructions to the label end-user (mailer) as specified in 3.1.4c. Labels cannot be faxed. If all applicable content and format standards are met, USPS Returns labels may be produced by any of the following methods:

1. As an impression printed by the EPS account holder directly onto the package to be returned.

2. As a separate label preprinted by the EPS account holder to be affixed by the customer onto the package to be returned. The reverse side of the label must bear an adhesive strong enough to bond the label securely to the package. Labels must be printed and delivered by USPS to the customer when requested electronically by the EPS account holder or its agents through the Business Customer Gateway, or provided as an electronic file created by the EPS account holder for local output and printing by the customer. The electronic file must include instructions that explain how to affix the label securely to the package, and that caution against covering with tape or other material any part of the label where postage and fee information is to be recorded.

c. *Labeling Instructions.* Written instructions must be provided with the label that, at a minimum, directs the customer to do the following:

1. ''If your name and address are not already preprinted in the return address area, print them neatly in that area or attach a return address label there.''

2. ''Attach the label squarely onto the largest side of the package, centered if possible. Place the label so that it does not fold over to another side. Do not place tape over any barcodes on the label or any part of the label where postage and fee information will be recorded.''

3. ''Remove or obliterate any other addresses, barcodes or price markings on the outside packaging.''

4. ''Mail the labeled USPS Returns service package at a Post Office, drop it in a collection box, leave it with your USPS carrier, or schedule a package pickup at *www.usps.com.*''

3.1.5 Noncompliant Labels

USPS Returns account holders must use USPS-certified labels meeting the standards in 3.1.4. When noncompliant labels are affixed to USPS Returns service packages, the permit holder will be assessed the appropriate USPS Retail Ground price calculated from the package's initial entry point (first physical scan) in the USPS network to its delivery address.

3.1.6 Enter and Deposit

The EPS account holder's customers may mail the USPS Returns service package at any Post Office; any associated office, station, or branch; in any collection box (except a Priority Mail Express box); with any rural carrier; by package pickup; on business routes during regular mail delivery if prior arrangements are made with the carrier; as part of a collection run for other mail (special arrangements might be required); or at any place designated by the Postmaster for the receipt of mail. USPS Returns service packages with extra services must be mailed either with the rural carrier or at the main Post Office or any associated office, station, or branch. Any such packages deposited in collection boxes may be returned to the sender for the extra service to be purchased appropriately, or it will be processed and charged postage and fees based on the service type code (STC) embedded in the Intelligent Mail Package barcode (IMpb) on the label and as provided under 3.1.3c.

3.1.7 Additional Standards

Additional mailing standards applicable to each service option are as follows:

a. Priority Mail Return service may contain any mailable matter meeting the standards in 201.8.0 and 220.2.0. APO/FPO/DPO mail is subject to 703.2.0 and 703.4.0, and Department of State mail is subject to 703.3.0. Priority Mail Return service receives expeditious handling and transportation, with service standards in accordance with Priority Mail. Priority Mail Return service mailed under a specific customer agreement is charged postage according to the individual agreement. Commercial Base and Commercial Plus prices are the same as for outbound Priority Mail in Notice 123, *Price List.*

b. First-Class Package Return service may contain mailable matter meeting the standards in 201.8.0 and 280.2.0. First-Class Package Return service handling, transportation, and eligibility of contents are the same as for outbound First-Class Package Service—Commercial parcels under 283. First-Class Package Return service packages may not contain documents or personal correspondence, except that such packages may contain invoices, receipts,

incidental advertising, and other documents that relate in all substantial respects to merchandise contained in the package.

c. Ground Return (Parcel Select Ground) service provides ground transportation for parcels containing mailable matter meeting the standards in 201.8.0 and 153.3.0. Ground Return (Parcel Select Ground) service is required for restricted and hazardous materials mailed using USPS Returns service and as provided in Publication 52, *Hazardous, Restricted, and Perishable Mail.* Ground Return (Parcel Select Ground) service assumes the handing and transportation and service objectives for delivery of USPS Retail Ground.

* * * * *

507 Mailer Services

* * * * *

7.0 Pickup on Demand Service

7.1 Postage and Fees

7.1.1 Postage

[Revise the text of 7.1.1 to read as follows:]

The correct amount of postage must be affixed to each piece except for a Priority Mail Express label paid with a corporate account, packages with a USPS Returns label affixed (under 505.3.0), pieces with a Parcel Return Service permit label affixed (under 505.4.0), and manifest mailings paid by permit imprint indicia approved by Business Mailer Support (BMS).

* * * * *

7.1.3 Fee Not Charged

The customer is not charged for:

* * * * *

[Revise the text of item c to read as follows:]

c. Pickup on Demand when the item bears a USPS Returns service label that indicates that the permit holder will pay for Pickup on Demand service.

* * * * *

508 Recipient Services

* * * * *

7.0 Premium Forwarding Services

* * * * *

7.3 Premium Forwarding Service Commercial

* * * * *

7.3.3 Conditions

* * * PFS-Commercial service is subject to these conditions:

* * * * *

[Revise the text of item f to read as follows:]

f. The mailer must keep a postage-due account or business reply mail (BRM) account at the originating postal facility where the P.O. Box or business street address is located. Any short paid, BRM pieces will be charged to the mailer's account prior to shipment.

* * * * *

7.4 Premium Forwarding Service Local

* * * * *

7.4.3 Conditions

* * * PFS-Local service is subject to these conditions:

* * * * *

[Revise the text of item f to read as follows:]

f. A business must keep a postage-due account or business reply mail (BRM) account at the originating postal facility where the PO Box or business street address is located. Any short paid, BRM pieces will be charged to the mailer's account prior to reshipment.

* * * * *

600 Basic Standards For All Mailing Services

* * * * *

602 Addressing

1.0 Elements of Addressing

* * * * *

1.3 Address Elements

All mail not bearing a simplified address must bear a delivery address that contains at least the following elements in this order from the top line:

* * * * *

e. ZIP Code where required:

[Revise the text of item e1 to read as follows:]

1. ZIP Codes are required on Priority Mail Express, commercial First-Class Mail, First-Class Package Service—Commercial, Periodicals, USPS Marketing Mail, Package Services and Parcel Select mailpieces, all mail sent to military addresses within the United States and to APO and FPO addresses, official mail, Business Reply Mail, and USPS Returns service packages.

* * * * *

604 Postage Payment Methods and Refunds

* * * * *

6.0 Payment of Postage

* * * * *

6.4 Advance Deposit Account

[Revise the third sentence of 6.4 to read as follows:]

* * * Mailers may use a single advance deposit account to pay postage due charges for more than one return service (*e.g.,* business reply mail and Bulk Parcel Return Service).

* * * * *

10.0 Postage Due Weight Averaging Program

10.1 Basic Information

10.1.1 Description

[Revise the second sentence of 10.1.1 to read as follows:]

* * * This program, subject to application, approval, and authorization, is available for customers who receive a minimum of 50,000 combined postage due parcels and flats or Bulk Parcel Return Service (BPRS) pieces. * * *

10.1.2 General Qualification

[Revise the second sentence of 10.1.2 to read as follows:]

* * * Returns can include all classes of mail where postage due fees are assessed, including BPRS return pieces. * * *

* * * * *

[Delete 11.0, Scan-Based Payment, in its entirety.]

* * * * *

609 Filing Indemnity Claims for Loss or Damage

1.0 General Filing Instructions

* * * * *

1.3 Who May File

A claim may be filed by:

* * * * *

[Revise the text of items c and d to read as follows:]

c. Only the account holder, for USPS Returns packages that are insured as identified by the account holder's mailer identification (MID) and the applicable STC for insurance imbedded into the IMpb on the label, and for which the account holder has provided electronic data that supports the value of the merchandise being returned (see 503.4.3.1a).

d. Only the mailer, when the mailer has added and paid for insurance on USPS Returns service packages.

* * * * *

3.0 Providing Evidence of Insurance and Value

3.1 Evidence of Insurance

* * * Examples of acceptable evidence are:

* * * * *

[Revise the introductory text of item e to read as follows:]

e. For insured mail or COD mail paid using MMS or eVS under 705.2.0, or for

insured mail paid using an EPS account for USPS Returns service under 503.3.0, the mailer must use one of the following:

[Revise the text of item e1 to read as follows:]

1. A Detail Record in their Shipping Services file version 1.6 or higher (which includes the USPS Tracking number of the insured item, total postage paid, insurance fee paid, declared value, mailing date, origin ZIP Code, delivery ZIP Code) along with the recipient name and address information for the accountable extra services pieces.

* * * * *

Index

* * * * *

M

* * * * *

[Revise the heading and text under ''merchandise return service'' to read as follows (re-alphabetize heading and text after revision):]

USPS Returns service, 505.3.0

accounts 505.3.1.2

adding extra services (by the mailer), 505.3.1.3

adding extra services (by the permit holder), 505.3.1.3

advanced deposit account, 505.3.1.2

applying for a permit, 505.3.1.2

format for label, 505.3.1.4

general information, 505.3.1.1

* * * * *

R

* * * * *

Reply Mail

* * * * *

[Revise the ''merchandise return service'' entry to read as follows (re-alphabetize entry after revision):]

USPS Returns service, 505.3.0

* * * * *

return services

* * * * *

[Delete ''merchandise return service''.]

* * * * *

[Revise the ''USPS return services'' entry to read as follows:]

USPS Returns service, 505.3.0

* * * * *

Brittany M. Johnson,

Attorney, Federal Compliance.

[FR Doc. 2019–27005 Filed 12–18–19; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[EPA–HQ–OW–2017–0300; FRL–10003–26–OW]

RIN 2040–AF15

National Primary Drinking Water Regulations: Lead and Copper Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On November 13, 2019, the U.S. Environmental Protection Agency (EPA) published in the **Federal Register** a proposed rule pertaining to the National Primary Drinking Water Regulation (NPDWR) for lead and copper under the authority of the Safe Drinking Water Act (SDWA) and requested comments by January 13, 2020. In response to stakeholder requests, the EPA is extending the comment period an additional 30 days to February 12, 2020.

DATES: Comments must be received on or before February 12, 2020.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OW–2017–0300 by any of the following methods:

Federal eRulemaking Portal: https://www.regulations.gov/ (our preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information please contact Erik Helm at the Environmental Protection Agency, Office of Ground Water and Drinking Water (Mail Code 4607M), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone: 202–566–1049; or email: *helm.erik@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OW–2017–0300 at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. General Information

On November 13, 2019, the EPA published in the **Federal Register** (84 FR 61684) a notice of proposed rulemaking (NPRM) for the National Primary Drinking Water Regulations: Proposed Lead and Copper Rule Revisions. The (NPRM) revisions and request for public comment, as initially published in the **Federal Register**, provided for written comments to be submitted to the EPA on or before January 13, 2020 (a 60-day public comment period). Since publication, the EPA has received requests for additional time to submit comments. Many of the requests cite the need for additional time to consider the regulatory changes that have been proposed and to evaluate the substantial supporting materials in the docket. The EPA has considered these requests and is extending the public comment period for an additional 30 days until February 12, 2020. The EPA will consider public comments in the development of final regulatory revisions to the National Primary Drinking Water Regulations for Lead and Copper. The proposal and supporting documents are available at *https://www.regulations.gov* (Docket ID No. EPA–HQ–OW–2017–0300).

Dated: December 13, 2019.

David P. Ross,

Assistant Administrator, Office of Water.

[FR Doc. 2019–27282 Filed 12–18–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA–R01–UST–2019–0421; FRL–10003–05–Region 1]

New Hampshire: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the heading, Agency, and Summary to a proposed rule published in the Federal Register of November 1, 2019, regarding approval of revisions to the State of New Hampshire's Underground Storage Tank (UST) program. This correction clarifies the title of the Agency proposing the rule.

DATES: Comments were due by December 2, 2019.

FOR FURTHER INFORMATION CONTACT: Susan Hanamoto, RCRA Waste Management, UST, and Pesticides Section; Land, Chemicals, and Redevelopment Division; EPA Region 1, 5 Post Office Square, Suite 100, (Mail Code 07–1), Boston, MA 02109–3912.

SUPPLEMENTARY INFORMATION:

Correction

In proposed rule FR Doc. 2019–23708 appearing on page 58674 in the issue of November 1, 2019, make the following corrections:

1. On page 58674, in the heading, the agency name is corrected to read ''Environmental Protection Agency''.

2. On page 58674, in the **AGENCY** caption, the agency name is corrected to read ''Environmental Protection Agency (EPA)''.

3. On page 58674, in the first sentence of the summary, ''Environmental Services Agency'' is corrected to read ''Environmental Protection Agency''.

Dated: November 5, 2019.

Nancy Barmakian,

Acting Director of Land, Chemicals, and Redevelopment Division.

[FR Doc. 2019–26689 Filed 12–18–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 27

[WT Docket No. 18–120; DA 19–1184; FRS 1685]

Comment Sought on Small Business Size Standards for Auctions of Licenses in the 2.5 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Comments invited on small business size standards.

SUMMARY: In this document, the Wireless Telecommunications Bureau (WTB) and the Office of Economics and Analytics (OEA) seek comment on the small business size standards to be used to determine an entity's eligibility for small business bidding credits in an auction of unassigned Educational Broadband Service (EBS) spectrum in the 2.5 GHz band.

DATES: Comments are due on or before January 21, 2020, and reply comments are due on or before February 3, 2020.

ADDRESSES: Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (May 1, 1998). All filings in response to the *2.5 GHz Small Business Size Standards Public Notice* must refer to WT Docket No. 18–120. The Commission strongly encourages interested parties to file comments electronically.

Electronic Filers: Comments may be filed electronically using the internet by accessing the ECFS: *https://www.fcc.gov/ecfs/.* Filers should follow the instructions provided on the website for submitting comments. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number, WT Docket No. 18–120.

Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mary Lovejoy in the Auctions Division of the Office of Economics and Analytics at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Public Notice (*2.5 GHz Small Business Size Standards Public Notice*), WT Docket No. 18–120, DA 19–1184, released on November 15, 2019. The complete text of the *2.5 GHz Small Business Size Standards Public Notice* is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 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 complete text is also available on the Commission's website at *www.fcc.gov/auctions* or by using the search function for WT Docket No. 18–120 on the Commission's ECFS web page at *www.fcc.gov/ecfs.* Alternative formats are available to persons with disabilities by sending an email to *FCC504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document.

1. In the *2.5 GHz Small Business Size Standards Public Notice,* the WTB and OEA seek comment on the small business size standards to be used to determine an entity's eligibility for small business bidding credits in an auction of unassigned Educational Broadband Service (EBS) spectrum in the 2.5 GHz band. In the *2.5. GHz Report and Order,* 84 FR 57343, October 25, 2019, the Commission modernized the regulatory framework for the 2.5 GHz band to make this swath of vital mid-band spectrum available for

advanced wireless services, including 5G, with unassigned spectrum to be made available for commercial use via competitive bidding following the completion of a Rural Tribal priority filing window. In so doing, the Commission adopted small business size standards and associated bidding credits for new EBS licenses to improve the ability of small businesses to attract the capital necessary to participate meaningfully in the auction of 2.5 GHz spectrum.

2. The *Notice of Proposed Rulemaking* (NPRM) in this proceeding, 83 FR 26396, June 7, 2018, proposed to conduct any auction of EBS licenses in conformity with the Commission's Part 1 competitive bidding rules. The NPRM also proposed not to apply designated entity preferences in such auctions, and accordingly did not propose any small business size standards under which qualifying small businesses would receive bidding credits. In comments and *ex parte* letters submitted in response to the NPRM, several parties supported the adoption of bidding credits in an EBS auction to encourage the participation of small service providers. Upon consideration of the record in this proceeding, the Commission concluded that using bidding credits in competitive bidding for EBS licenses in the 2.5 GHz band would be an effective tool to achieve the statutory objective of promoting the participation of designated entities in the provision of spectrum-based services. Noting that the removal of the eligibility restriction and educational use requirements will attract more commercial operators to the 2.5 GHz band, the Commission found that bidding credits should help facilitate greater participation in any auction of EBS licenses and that offering bidding credits to designated entities should improve the ability of small businesses to attract the capital necessary to meaningfully participate in such an auction. Thus, the *2.5 GHz Report and Order* adopted small business size standards and associated bidding credits for new EBS licenses.

3. A Federal department or agency that adopts a size standard for categorizing a business concern as a small business is required to consult with the Small Business Administration (SBA) prior to proposing the size standard for public comment and subsequently, it is required to obtain the SBA Administrator's approval of the size standard. In this proceeding, because the NPRM did not propose to apply designated entity preferences in auctions of new EBS licenses in the 2.5 GHz band, the NPRM did not propose any size standards under which qualifying small businesses would receive bidding credits. Therefore, the Commission did not consult with the SBA regarding proposed size standards for new EBS licenses in the 2.5 GHz band. However, in the *2.5 GHz Report and Order,* the Commission directed the WTB, in conjunction with OEA, to seek further comment on the two adopted small business size standards and to consult with the SBA and obtain its approval of the adopted size standards in advance of any auction of 2.5 GHz EBS overlay licenses, as required by law.

4. Accordingly, we seek comment on the definitions of a ''small business'' as an entity that, together with its affiliates, its controlling interests, and the affiliates of its controlling interests, has average gross revenues that are not more than $55 million for the preceding five years, and a ''very small business'' as an entity that, together with its affiliates, its controlling interests, and the affiliates of its controlling interests, has average gross revenues that are not more than $20 million for the preceding five years. Pursuant to the *2.5 GHz Report and Order,* a winning bidder in an auction of EBS licenses that qualifies as a ''small business'' would be eligible for a 15% bidding credit, and a winning bidder qualifying as a ''very small business'' would be eligible for a 25% bidding credit.

5. Copies of the comments and replies filed in response to the *2.5 GHz Small Business Size Standards Public Notice* will be provided to the SBA consistent with SBA procedures for approval of size standards prescribed by Federal departments and agencies.

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

Federal Communications Commission.

William Huber,

Associate Chief, Auctions Division, Office of Economics and Analytics.

[FR Doc. 2019–27425 Filed 12–18–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 17–310; Report No. 3136; FRS 16305]

Petitions for Reconsideration of Action in Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for Reconsideration.

SUMMARY: Petitions for Reconsideration (Petitions) have been filed in the Commission's proceeding listed below by Jeffrey A. Mitchell, on behalf of SHLB Coalition, Michael J. Dunleavy, on behalf of State of Alaska, B. Lynn Follansbee, on behalf of USTelecom—The Broadband Association, Leonard A. Steinberg, on behalf of Alaska Communications, David J. Kirby, on behalf of North Carolina Telehealth Network Association and Southern Ohio Health Care Network.

DATES: Oppositions to the Petitions must be filed on or before January 3, 2020. Replies to an opposition must be filed on or before January 13, 2020.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William Layton, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–0868.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3136, released December 05, 2019. The full text of the Petitions are available for viewing and copying at the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554. Petitions also may be accessed online via the Commission's Electronic Comment Filing System at: *http://apps.fcc.gov/ecfs/*. The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5.U.S.C. because no rules are being adopted by the Commission.

Subject: Promoting Telehealth in Rural America, FCC 19–78, published at 84 FR 54952, October 11, 2019, in WT Docket No. 17–310.

Number of Petitions Filed: 5.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–27387 Filed 12–18–19; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2019–0011]

RIN 2127–AL96

Federal Motor Vehicle Safety Standards; Tires

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: NHTSA is issuing this ANPRM to seek comment on provisions contained in the Federal Motor Vehicle Safety Standards for tires. NHTSA is reviewing existing regulations to determine if updates are necessary to keep pace with new technology. This notice focuses on tire-related comments received to the DOT's regulatory review and request for public comment notice issued on October 2, 2017. NHTSA seeks comment on matters related to the existing strength test, the bead unseating resistance test, and the tire endurance test. Lastly, the agency seeks comment on the current use and relevance of some tire marking regulations and other matters related to new tire technologies. Comments to this notice will inform NHTSA as it considers regulatory reform aimed at reducing regulatory burden while maintaining existing safety levels for motor vehicle tires.

DATES: Comments must be received no later than February 18, 2020. See Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document for more information about written comments.

ADDRESSES: You may submit comments electronically to the docket identified in the heading of this document by visiting the following website:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Alternatively, you can file comments using the following methods:

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Regardless of how you submit your comments, you should mention the docket number identified in the heading of this document.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

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Confidential Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given below under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in the confidential business information regulation. (49 CFR part 512.)

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FOR FURTHER INFORMATION CONTACT: Please contact, Jesus Valentin-Ruiz, Office of Crash Avoidance Standards, telephone 202–366–1810, or David Jasinski, Office of the Chief Counsel, telephone 202–366–2992. You may send mail to both of these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590 or fax to 202–493–0073.

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I. Introduction

On October 2, 2017, DOT issued a **Federal Register** notice requesting public comment on existing rules and other agency actions that are candidates for repeal, replacement, suspension, or modification (82 FR 45750). This public input was aimed to inform DOT's review of its existing regulations and other agency actions to evaluate their continued necessity, determine whether they are crafted effectively to solve current safety issues, and evaluate whether they potentially burden the development or use of domestically produced energy resources. DOT received almost 3,000 comments in response to this notice, of which approximately twenty-three addressed

rules and agency actions under the scope of NHTSA. The agency is publishing a series of advance notices of proposed rulemaking (ANPRMs) on various topics derived from input submitted by stakeholders in response to the DOT notice and NHTSA's own regulatory review. This ANPRM discusses requirements and test procedures for tires that may be candidates for repeal, replacement, suspension or modification.

As part of its mission, NHTSA issues Federal Motor Vehicle Safety Standards (FMVSSs) and regulations for new vehicles and motor vehicle equipment to save lives, prevent injuries, and reduce economic costs due to road traffic crashes. NHTSA also reviews and revises existing standards and regulations to respond to, for example, the introduction of new technology in motor vehicles. In 2017, section 2(a) of Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, establishes that unless prohibited by law, whenever an agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it must identify at least two existing regulations to be repealed. Also, according to E.O. 13777, Enforcing the Regulatory Reform Agenda, each agency must evaluate existing regulations, and make recommendations for their repeal, replacement, or modification. As part of this process, the Department is directed to seek input from entities significantly affected by its regulations. In response to the October 2, 2017 notice, the U.S. Tire Manufacturers Association (USTMA) [1] identified tire-related regulations that, in its view, are outdated, unnecessary, or ineffective. USTMA stated that the regulations identified present an opportunity to lower regulatory burdens on tire manufacturers and increase regulatory effectiveness by eliminating regulations that do not reflect current technology and removing requirements where compliance costs exceed benefits. Topics identified include: (1) Tire strength (plunger energy) tests in FMVSSs No. 109, 119, and 139; (2) bead unseating resistance tests in FMVSS Nos. 109 and 139; (3) the tire endurance test in FMVSS No. 139; (4) the Uniform Tire Quality Grading Standards (UTQGS) in 49 CFR 575.104; and (5) tire markings for ply rating, tubeless, and radial in FMVSS No. 139.

USTMA mentioned that each of the regulations identified do not appropriately address how tire technologies have changed since the regulations' inception. Continental Automotive Systems, Inc. (Continental), a member of USTMA, agreed with the comments, with emphasis on the elimination of the tire strength test in FMVSS Nos. 109 and 139. Comments received on the UTQGS, along with other consumer information topics are not the focus of this ANPRM and may be addressed in a separate rulemaking.[2]

NHTSA seeks focused comment on issues and possible modifications to the strength test and bead unseating resistance test for modern tires. NHTSA also seeks comment on the certain aspects of the tire endurance test. Lastly, the agency seeks comment on the current use and relevance of some tire marking regulations as well as other matters related to new tire technologies. Safety standards for tire rims (FMVSSs No. 110 and 120) and tire pressure monitoring systems (FMVSS No. 138) are not the focus of this notice. Similarly, issues related to previously proposed upgrades to FMVSS No. 119, are not the focus of this notice.[3]

II. Background

a. NHTSA's Prior Efforts To Improve Tire Safety Standards

In 2000, a surge in tire tread separation failures prompted Congress to enact the Transportation Recall Enhancement, Accountability, and Documentation Act (TREAD) Act.[4] Section 10 of the TREAD Act, ''Endurance and resistance standards for tires'', required NHTSA to revise and update FMVSS No. 109—New Pneumatic Tires [5] and FMVSS No. 119—New Pneumatic Tires for Vehicles Other than Passenger Cars.[6] NHTSA made several improvements and established a new safety standard, FMVSS No. 139, New pneumatic radial tires for light vehicles.[7] FMVSS No. 139 applies to new pneumatic radial tires for use on motor vehicles (other than motorcycle and low speed vehicles) that have a gross vehicle weight rating (GVWR) of 10,000 pounds or less.[8] It adopted more stringent high speed and endurance tests as well as a new low-pressure performance test. The objective was to improve the ability of tires to endure the effects of tire heat building-up and severe under-inflation during highway travel under fully loaded conditions. In a petition for reconsideration to the final rule establishing FMVSS No. 139, manufacturers requested that NHTSA either redefine ''chunking'' or not consider ''chunking'' to be an indication of tire failure during the endurance test.[9] The agency decided against eliminating ''chunking'' as a test failure condition.[10]

As part of the improvements to the tire safety standards following the TREAD Act, NHTSA proposed to replace the strength test in FMVSS No. 109 with a road hazard impact test, modeled after a Society of Automotive Engineers (SAE) recommended practice. The agency also proposed to replace the bead unseating test in FMVSS No. 109 with a new test used by Toyota.[11] The construction characteristics of a radial tire, relative to a bias-ply tire, are what make the tests appear to be ineffective in differentiating among modern tires with respect to these aspects of performance. However, after further consideration and public comments, NHTSA deferred action on proposals to revise the existing strength test and bead unseating resistance test because additional research was needed to inform a decision.

Since then, both industry and NHTSA have examined the strength test and bead unseating test, by conducting additional research and updating relevant industry standards.[12] [13]

b. Tire Trends

FMVSS for tires were first established in 1967. At the time, the typical light-vehicle tire was a bias-ply tire, had a 78 to 85 percent aspect ratio,[14] and was mounted on a wheel with a 14- to 15-inch diameter (rim codes 14 or 15).[15] Bias tires have body ply cords that are laid at alternate angles, substantially less than 90 degrees to the tread centerline, extending from bead to bead. As the tire deflects, shear occurs

[1] USTMA, formerly Rubber Manufactures Association (RMA), represents tire manufacturers with operations in the United States.

[2] RIN 2127–AK76.

[3] RIN 2127–AK17.

[4] Public Law 106–414, November 1, 2000, 114 Stat. 1800.

[5] 49 CFR 571.109.

[6] 49 CFR 571.119.

[7] 68 FR 38115 (Jun. 26, 2003).

[8] 49 CFR 571.139.

[9] Chunking means the breaking away of pieces of the tread or sidewall. 49 CFR 571.139, S3.

[10] 71 FR 877 (Jan. 6, 2006).

[11] 67 FR 10050 (Mar. 5, 2002).

[12] Harris, J.R., Evans, L.R., & MacIsaac Jr., J.D. (July 2013). Evaluation of laboratory tire tread and sidewall strength plunger test methods. (Report No. DOT–HS–811–797). Washington, DC: National Highway Traffic Safety Administration.

[13] Harris, J.R., Evans, L.R., & MacIsaac Jr., J.D. (April 2013). Laboratory tire bead unseating: Evaluation of new equipment, pressures, and ''A'' dimension from ASTM F–2663–07as. (Report No. DOT–HS–811–735). Washington, DC: National Highway Traffic Safety Administration.

[14] Aspect ratio refers to a two-digit number that gives the tire's ratio of height to width.

[15] SAEJ918b_1966, Passenger Car Tire Performance Requirements and Test Procedures. Available at *www.sae.org.*

between body plies which generates heat.

Currently, most tires sold in the United States are radial tires. In contrast to bias-ply tires, radial tires have body ply cords that are laid radially at 90 degrees to the centerline of the tread, extending from bead to bead. Because the opposite ends of each cord are anchored to the beads at points that are directly opposite to each other, the radial tire carcass is more flexible. The radial tire is reinforced and stabilized by a belt that runs circumferentially around the tire under the tread. This construction allows the sidewalls to act independently of the belt and tread area when forces are applied to the tire. This independent action is what allows the sidewalls to readily absorb road irregularities without overstressing the cords. Research has shown that impact breaks caused by cord rupture are less likely to occur in radial-ply passenger car tires.[16] Radial body cords deflect more easily under load, generating less heat. Currently, passenger car tires have reached aspect ratios as low as 20, and rim codes as large as 32.

Changes in tire technology, including tire construction and rim diameter codes ratios, have prompted NHTSA to consider updating the existing requirements and test procedures in FMVSS for modern tires. This ANPRM seeks comment and supporting information about tire-related regulations or provisions within the regulations which may be a candidate for repeal, replacement, suspension or modification.

III. Considerations Regarding Federal Motor Vehicle Safety Standards for Tires

a. Tire Strength Test

NHTSA introduced the tire strength test, also known as ''plunger energy,'' as part of FMVSS No. 109 in 1967.[17] The test is used to evaluate the strength of tire materials. The tire is mounted on a test rim and inflated to the specified pressure. The tire is conditioned at room temperature for at least three hours and its pressure readjusted as specified. Then, a steel plunger with a rounded end is used to contact the tire at the tread centerline. The plunger is advanced into the tire, at a rate of 50 mm per minute until a certain force (energy level) is reached or the tire is punctured. The tire strength test specifies a minimum energy that must be attained without the tire breaking. However, if the plunger is stopped by reaching the rim prior to attaining the minimum breaking energy (bottoming out) without breaking the tire, the breaking energy of the tire is calculated using the force at the time the tire bottoms out. If the minimum breaking energy is not reached, the tire fails the test.

The performance requirements for tire strength are included in FMVSS No. 109 S4.2.2.4, FMVSS No. 117 S5.1.1(d), FMVSS No. 119 S7.3 and FMVSS No. 139 S6.5.1 and S6.5.2 for LT tires. FMVSS No. 109, New pneumatic tires and certain specialty tires, applies to bias-ply tires used on light vehicles and radial tires for use on passenger cars manufactured before 1975. FMVSS No. 117, Retreaded pneumatic tires, applies to retreaded tires for use on passenger cars manufactured after 1948. FMVSS No. 119, applies to new pneumatic tires of motor vehicles with a GVWR of more than 4,536 kilograms and motorcycles. FMVSS No. 139, New pneumatic radial tires for light vehicles, applies to new radial tires used on light vehicles manufactured after 1975.

In a 2002 notice of proposed rulemaking, NHTSA reported that when conducting the strength test, the plunger often bottoms-out on the rim rather than breaking the reinforced materials in a radial tire. The issue seems to be more prevalent on radial tires with low aspect ratio (low-profile); these tires have less available section height for the plunger to travel to generate the required minimum breaking energy. The agency explained that radial tires have flexible sidewalls that absorb deflections and have high-strength belt packages. At the time, NHTSA proposed replacing the existing strength test with a new test modeled after SAE J1981, Road Hazard Impact for Wheel and Tire Assemblies.[18] However, the agency deferred action on the proposal to revise the test because tests on 4 of the 20 tires subject to the SAE J1981 test resulted in the test device damaging the rim without air loss or damage to the tire.[19] Public comments also questioned whether the proposed test was more stringent and correlated well with field performance.

On July 12, 2011, USTMA submitted a petition for rulemaking requesting NHTSA update existing requirements related to tire strength testing.[20] In its petition, USTMA stated that when testing radial passenger tires with low aspect ratios, the plunger strikes the inside of the wheel well before reaching the minimum force required to pass the existing tire strength test. NHTSA test procedure (TP–109) indicates that: ''If any plunger application contacts the test rim before the minimum specified breaking energy is reached, the tire shall be put on a different rim that has more clearance in the test area, and the test repeated.[21] Tires are tested using any rim that is listed as appropriate for use with that tire according to the year books listed in the tire standards or by notification to NHTSA in accordance with FMVSS No. 139 S4.1 (or other similar provision for other tire standards).

In its petition, USTMA stated that, when using specially fabricated rims with deeper wells used solely for testing, the plunger may still bottom out on the rim; however, the tires would achieve the minimum strength requirement. USTMA included with its petition a table with strength test results for 20 tires tested using standard rims and specially fabricated deep well rims. The table includes data for tire rim codes 17 to 20, width 215 to 275, and aspect ratios 35 to 50. USTMA stated that there is a need to provide a more practical test procedure for low aspect ratio tires. To address its concerns, USTMA suggested that NHTSA adopt a test procedure for testing low-profile tires used in American Society for Testing and Materials (ASTM) F414–09, ''Standard Test Method for Energy Absorbed by a Tire When Deformed by Slow-Moving Plunger.'' When the plunger bottoms out on the rim without puncturing the tire, ASTM F414–09 specifies that the required minimum breaking energy is deemed to have been achieved.[22] USTMA stated that this modification would eliminate the need to use deep-well rims for testing.

In response to the October 2, 2017 notice, USTMA asked that the tire strength test in FMVSS Nos. 109, 119, and 139 be eliminated.[23] Although USTMA acknowledged its petition for rulemaking requesting modification of the tire strength requirement, it stated that the complete elimination of the strength requirement would reduce the regulatory burden on manufacturers without impacting tire safety or performance. USTMA also stated that eliminating the strength requirement would eliminate costs to NHTSA associated with auditing for compliance.

NHTSA examined the laboratory tire tread and sidewall strength test

[16] Harris, J.R. et al., supra note 12.

[17] 32 FR 15792 (Nov. 16, 1967).

[18] 67 FR 10050 (Mar. 5, 2002). See also SAE J1981_200205, Road Hazard Impact for Wheel and Tire Assemblies (Passenger Car, Light Truck, and Multipurpose Vehicles). Available at *www.sae.org.*

[19] Harris, J.R. et al., supra note 12.

[20] Docket No. NHTSA–2011–0002–0005.

[21] *https://www.nhtsa.gov/document/tp-109-09pdf.*

[22] Current version, F414–15, also contains this provision.

[23] Docket No. DOT–OST–2017–0069–2842.

procedures.[24] The study determined what percentage of tires tested to the applicable FMVSS No. 109 or FMVSS No. 119 experienced plunger bottom-out without reaching the minimum specified breaking energy. All 12 tires tested reached the FMVSSs minimum breaking energy level before bottoming (67%) or rupturing (33%).[25] NHTSA also evaluated ways to modify the FMVSS strength test to avoid plunger bottom-out. Nine passenger car tires were evaluated with the then-draft version of the ASTM F414–06. The ASTM F414–06 included a clause that if a bottom-out occurred, the tire could be considered as passing any standard; or the tire could continue to be retested at incremental higher inflation pressures until rupture or bottom-out occurred at the maximum allowable pressure. The six tires tested to ASTM F414–06 also reached the FMVSS minimum breaking energy before either bottoming-out (66.6%) or rupturing (16.6%). When increasingly higher inflation pressure was used, four of those six tires transition from bottoming-out to rupturing. Lastly, six passenger tire models were tested using an experimental sidewall bruise/strength test and generated statistically different levels of bruise width, penetration, and rupture force between 1-ply, 2-ply, and 3-ply sidewall tires. The results suggested that plunger penetration and breaking force were significantly influenced by the number of plies in the tire sidewall.

NHTSA seeks comment on whether a change to or elimination of the tire strength test is appropriate. Based on the test results submitted by USTMA, some low-profile passenger car tires may not comply with the existing strength requirement. NHTSA currently does not have data to indicate a greater safety concern related to low-profile tires that may not meet the minimum strength requirement because they bottom out on the test rim prior to reaching the minimum strength requirement.

NHTSA also requests comment about modifying the tire strength test to accommodate low-profile tires. NHTSA seeks comments on these amendments where the tire strength test could be modified. First, NHTSA could allow testing with specially manufactured deep-well test rims. These rims would be like those used by USTMA in its testing of low-profile tires. The test results submitted by USTMA indicate that all tires they tested would meet the minimum tire strength requirement when tested with specially manufactured deep-well test rims. As the tire strength test procedure is currently written, tires are tested when mounted on rims meeting dimensional specifications set forth by tire manufacturers. These specifications may be submitted directly to NHTSA or those contained in publications of the following tire standards organizations including the Tire and Rim Association (TRA); the European Tyre and Rim Technical Organization (ETRTO); Japan Automobile Tire Manufacturers' Association, Inc. (JATMA); Tyre & Rim Association of Australia (TRAA); Associacao Latino Americana de Pneus e Aros (Brazil) (ALAPA); and South African Bureau of Standards (SABS). To test with specialized deep well rims, those rims would have to be specified by the tire manufacturer as suitable for use with the tire and either submitted to NHTSA or published by one of those standards organizations. NHTSA would then need to acquire those specialized rims to conduct its testing.

Second, NHTSA requests comment on the need and feasibility to set a different minimum breaking energy requirement to apply to low-profile radial tires. It is possible that a performance value could be derived from knowledge of the impact forces exerted on a tire when driven over a road hazard. However, NHTSA currently has no data to consider. In addition, the issue of what tires would be considered ''low profile'' and subject to a different minimum breaking energy would have to be addressed.

Third, NHTSA seeks comment on the idea of deeming tires that have bottomed out on the test rim to have met the minimum breaking energy requirement.[26] This is consistent with USTMA's suggestion that NHTSA use the test procedure for testing low-profile tires used in ASTM F414–09, ''Standard Test Method for Energy Absorbed by a Tire When Deformed by Slow-Moving Plunger.'' According to ASTM F414–09, when the plunger bottoms out on the rim without puncturing the tire, the required minimum breaking energy is deemed to have been achieved.

Fourth, NHTSA seeks comment on whether a new performance test for tire strength has been developed or whether a new test should be developed. Such a test could address the issue raised in the petition related to the testing of low-profile tires. Low-profile tires may be more prone to blowing out upon impact with a road hazard (*i.e.,* pothole, curb) because the low sidewall height causes the sidewall to be pinched between the road hazard and the rim. In addition, low-profile tires may be damaged when impacting a road hazard, resulting in a sidewall ''bubble'' that compromises the integrity of the tire. However, the existing tire strength requirement addresses the strength along the tread, not the sidewall. The testing of forces on the sidewall of the tire would likely require a dynamic road wheel impact test that is substantially different than the current quasi-static plunger test.[27] NHTSA seeks comment about any safety concerns related to low-profile tires.

Finally, NHTSA seeks comment about the practical and safety implications of removing the tire strength test. The tire strength requirement was adopted at a time when most tires produced for the U.S. market were bias-ply tires. The purpose of the strength requirement is to ensure that there are no weak points along the tread of bias-ply tires. NHTSA seeks comment on the differences between the failure modes of radial-ply tires and bias-ply tires, specifically along the tread area, and whether the testing is necessary for radial tires. Data show nearly all passenger car tires sold in the U.S. today are radial tires.[28] NHTSA also seeks comment about the scope of any elimination of, or amendments to, the tire strength requirement. For example, the performances test could be modified or eliminated for all tires, low-profile tires, or all radial tires. The issue identified by USTMA is not applicable to tires other than low-profile radial passenger car tires. Finally, although few bias-ply tires are sold in the U.S., some bias-ply tires are still used. NHTSA seeks comment on how bias-ply tires are used in the marketplace in the U.S. and whether bias-ply tires will continue to be sold in the U.S.

To summarize, NHTSA seeks comment on the following:

1. Can the tire strength test be repealed, replaced, or modified without negatively affecting safety? If not, what potential safety issues should the agency be focused on and how could such safety issues be mitigated? Explain your perspective, include specifics and data supporting your response.

2. *Repealing.* What are the practical and safety implications of eliminating the tire strength test? Should the test be eliminated for all low-profile tires, all radial tires, or all tires without adversely affecting safety? What are the estimated cost savings of repealing this provisions within the standards?

[24] Harris, J.R. et al., supra note 12.

[25] Ibid.

[26] Ibid.

[27] Harris, J.R. et al., supra note 12.

[28] Tire Industry Facts: US Tire Shipment Activity Report for Statistical Year 2018. (March 2019). Washington, DC: U.S. Tire Manufacturers Association.

3. *Modifying.* What specific changes should the agency consider? What are the estimated cost savings of implementing such modifications? In addition, provide comments to the following possible modifications:

a. Specify and allow use of deep-well test rims.

b. Specify new minimum breaking energy (performance value) to apply to low-profile radial tires. How should NHTSA define the term ''low-profile tires''?

c. Are there any ambiguities in the term ''bottomed out'' and, if so, is there any suggestion on how to define the term?

4. *Replacing.* What other test procedures(s) are available or can be developed to replace the strength test (currently used to evaluate the strength of tire materials)? Should a different procedure be used for low-profile tires? Please provide sufficient details about each procedure to permit the agency to analyze and determine whether the procedure is appropriate and feasible, and whether the procedure is objective and repeatable. What are the estimated costs of implementing such procedures?

5. How many bias-ply tires are sold in the U.S. annually? Will manufacturers continue selling bias-ply tires for use on motor vehicles? Should NHTSA keep the strength test for bias-ply tires?

b. Tire Bead Unseating Resistance Test

NHTSA introduced the tire bead unseating resistance test as part of FMVSS No. 109 in 1967.[29] This test is used to evaluate the ability of the tire's bead to remain seated on the rim and retain tire inflation pressure when the tire is subjected to high lateral forces.[30] The test consists of mounting the wheel and tire in a fixture and force a bead unseating block against the tire sidewall as specified. The load is applied through the block to the tire's outer sidewall at the distance specified. The force applied to the sidewall is increased until the bead region unseats with resulting air loss, or the specified minimum force value is achieved, whichever occurs first. The performance requirements for bead unseating resistance that applies to passenger car tires are included in FMVSS No.109 S5.2 and FMVSS No. 139 S6.6.

The test forces used in the bead unseating resistance test are based on bias-ply tires. Because radial tires can satisfy the test easily,[31] industry has suggested that NHTSA eliminate this requirement. In 2002, NHTSA proposed to replace the existing test with a new bead unseating test that was based on a procedure used by Toyota.[32] The alternate test procedure uses forces more stringent than those in the current standard. However, NHTSA test data and public comments called into question whether the proposed test would adequately upgrade the existing standard. As a result, in the subsequent final rule, the agency decided to retain the FMVSS No.109 bead unseating test for pneumatic tires, to extend that test to light truck tires, and to conduct additional research to inform a decision.[33]

In an August 12, 2008 letter to NHTSA, USTMA petitioned the agency to update the bead unseating resistance test in FMVSS No. 109. USTMA described two issues with the existing test procedure. First, Figure 1, Bead Unseating Fixture, does not have specifications necessary to test tires with rim diameter code greater than 20. Second, Figure 2 and Figure 2A, the diagrams of the bead unseat block, do not provide suitable geometries for use on low aspect ratio and larger diameter tires. USTMA asked that NHTSA revise the test fixtures (in Figure 1, Figure 2, and Figure 2A) or reference within the regulation, ASTM International F2663–07, paragraph 11.10 and annex A1 Fixtures and Settings.

ASTM F2663, ''Standard Test Method for Bead Unseating of Tubeless Tires for Motor Vehicles with GVWR of 4536 kg (10,000 lb.) or Less'' was developed by the ASTM International F09 committee.[34] The petitioner mentioned that the industry standard provides a solution to the two concerns identified because it includes a comprehensive set of test blocks that accommodate a wide range of tire sizes for bead unseating resistance testing and a formula to calculate the ''A'' dimension that is required to complete the test.

In April 2011, USTMA responded to a request for comments about existing DOT regulations.[35] It suggested NHTSA remove the bead unseating test as a mandatory requirement for new pneumatic radial tires for light vehicles (as described in FMVSS No. 139). It mentioned that the test should be only applicable to tubeless bias-ply tires (in FMVSS No. 109). It expressed concerns that the bead unseat test is outdated, developed for bias-ply tires, and not effective in evaluating radial tires. USTMA cited differences in construction and force distribution between bias and radial tires as the reason it believes a bead unseat test for radial tires is of little value. USTMA suggested that, if NHTSA determines that it is critical to maintain the test, the agency consider test protocols like those found in ASTM International F2663–07a. It mentioned that using ASTM provisions would allow testing tires with rim diameter codes larger than 20 and with lower aspect ratios.

In a report issued in 2013, NHTSA described its work examining the feasibility of the equipment and test procedures in ASTM F2663–07a.[36] The study evaluated block designs, the ''A'' dimension, and whether inflation pressures were appropriate for testing. A total of 14 passenger vehicle tires and 4 light truck (load ranges D & E) tire models were included in the study. The tires had widths from 155 to 345 mm, aspect ratios from 30 to 80, and rim codes from 12 to 28. Tires were selected to evaluate the limits of the test equipment including the physical dimensions and possible forces required to unseat the tire.

Although NHTSA did not find rim interference problems while testing these radial ply tires using the revised test blocks, the agency seeks comment on the testing of these tires. The study suggests that ASTM F2663–07a methods facilitated the conduct tests for passenger vehicles and light truck tires having a wide range of rim diameter codes and aspect ratios. The test blocks used allowed testing of different tire sizes with low aspect ratios since the block did not contact the rim before reaching the test force specified in the requirement. Two test pressures were used to evaluate the bead unseating performance of the tires tested. One test pressure was the inflation pressure, 180 kPa (26 psi), specified for the bead unseating test in FMVSS No. 109. The other pressure used was 240 kPa (35 psi). Results at the test pressures indicated that the force required to unseat the tire's bead from the rim exceeded the minimum test force required in FMVSS No. 109.

In June 2011, USTMA withdrew the petition after testing low-profile tires and indicated that additional study of the suggested test method was needed. It formed a task group to study and develop recommendations for ASTM and NHTSA to consider. The task group found that some sizes could not be tested according to ASTM F2663–07a

[29] 32 FR 15792 (Nov. 16, 1967).

[30] Bead means that part of the tire made of steel wires, wrapped or reinforced by ply cords, that is shaped to fit the rim.

[31] Harris, J.R. et al., supra note 13.

[32] 67 FR 10050 (Mar. 5, 2002).

[33] 68 FR 38115 (Jun. 26, 2003).

[34] ASTM F2663–07a, Standard Test Method for Bead Unseating of Tubeless Tires for Motor Vehicles with GVWR of 4536 kg (10 000 lb.) or Less, ASTM International, West Conshohocken, PA, 2007, *www.astm.org.*

[35] Docket No. DOT–OST–2011–0025–0054.

[36] Harris, J.R. et al., supra note 12.

due to: (1) Interference between the block and the fixture or the block and the rim and (2) test block sliding across the tread instead of pushing on the sidewall when testing. The task group developed recommendations for the location of the block and revised which blocks is most appropriate to use on each size.

TABLE 1—USTMA COMPARISON OF FMVSS NO. 109 VERSUS ASTM F2663–15

Provision	FMVSS No. 109	ASTM F2663–15
Bead Unseated Block Type.	Specifies use of block: ..... • Block 2A: Tire diameter codes 10–16 in.	Defines two new blocks (in addition to 2A), that are larger in radius and arc to provide consistent tire contact for diameters up to 30 in code: • Block 2A: Tire diameter codes 10–16 in. • Block 2B: Tire diameter codes 17–24 in. • Block 2C: Tire diameter codes 25–30 in.
Bead Unseated Block Position.	Specified a single block location based on rim diameter ..... Fixed location does not accommodate sufficiently low aspect ratio tires and results in inconsistent point of contact with the block on the tire sidewall.	Specifies the point of contact to be 75% of the tire section height. Location based on tire geometry and treats each tire in a consistent manner.

These recommendations were presented to the ASTM F09 and included in F2663–15, published in 2015 to replace F2663–07a.[37] In August 2016, USTMA petitioned NHTSA to amend FMVSS No. 109 and FMVSS No. 139. It requested the agency to adopt the F2663–15 ASTM Bead Unseating Procedure.

USTMA requested NHTSA eliminate the bead unseating test in FMVSS Nos. 109 and 139 for radial tires, indicating that the test is outdated and does not provide a safety benefit for modern tires.[38] It highlighted four reasons for this request. First, most of the tires in the market today are radial ply tires and the bead unseating test was designed in the 1960s to evaluate bias-ply tires.[39] Second, tires today have much larger diameters (up to 25-inch diameters) and smaller aspect ratios (as small as 20) and the current regulation does not properly address the range of tire sizes in the market today.[40] [41] Third, the test cannot be performed as intended for some modern tires, and these tires designed to pass the test may have additional material at no benefit to the consumer—with an unintended consequence of increasing rolling resistance, which contributes to lower vehicle fuel economy. Lastly, it indicated that eliminating the bead unseated requirements would reduce test and materials cost for tire manufacturers and reduce costs to NHTSA to audit compliance. It mentioned that field performance of tires in countries with no bead unseating performance test requirements show no related performance issues with tires in service. No data was provided with this submission.

NHTSA seeks comment on whether change to or elimination of the tire bead unseating test is appropriate. NHTSA seeks data about low-profile tire testing with regards to the bead unseat test. NHTSA also requests comment about modifying the test to accommodate low-profile tires. NHTSA seeks comment on whether the bead unseating test can be modified using ASTM F2663 to extend the applicability of the test to low profile tires and tires with larger rim diameter codes. NHTSA is also seeking comment on whether a new test to examine tire bead unseating, in addition to the one described in this notice, has been developed or whether a new test can be developed. Such a test could address the issue raised in the petition related to the testing of low-profile tires. Lastly, NHTSA seeks comment about the practical and safety implications of removing the tire bead unseating test and about the scope of any elimination of this requirement.

To summarize, NHTSA seeks comment on the following:

6. Can the bead unseating resistance test be repealed, replaced, or modified without negatively affecting safety? If not, what potential safety issues should the agency be focused on and how could such safety issues be mitigated? Explain your perspective in detail and include any available data in support of your response.

7. *Repealing.* What are the practical and safety implications of eliminating the tire bead unseating resistance test? Could the test be eliminated for all low-profile tires, all radial tires, all tires without adversely affecting safety? What are the estimated cost savings of repealing this provision within the standards?

8. *Modifying.* What specific changes should the agency consider? What are the estimated cost savings of implementing such modifications? NHTSA seeks specific comment on the following modification:

a. Adopt *ASTM F2663,* to apply FMVSS No. 109 procedure to tires with rim diameter code up to 30.[42]

9. *Replacing.* What other test procedures are available or can be developed to replace the bead unseating resistance test? Should a different procedure be used for low-profile tires?

Please provide sufficient details about each procedure to permit the agency to analyze and determine whether the procedure is appropriate and feasible, and whether the procedure is objective and repeatable. What are the estimated costs of implementing such procedures?

c. Tire Endurance Test: Failure Due to Chunking

The endurance test requirements for passenger car tires are included in FMVSS No. 139. The test consists of mounting the tire on a test rim and inflate to the pressure specified for the tire. The assembly is conditioned and the pressure readjusted to the values specified. The assembly is then mounted in a test axle and pressed against the outer face of a smooth wheel. The test is conducted without interruptions at not less than 120 km/h and with the specified loads and test periods. The inflation pressure is not

[37] ASTM F2663–15, Standard Test Method for Bead Unseating of Tubeless Passenger and Light Truck Tires, ASTM International, West Conshohocken, PA, 2015, *www.astm.org.*

[38] *https://www.regulations.gov/document?D=DOT-OST-2017-0069-2842.*

[39] Bias-ply tire means a pneumatic tire in which the ply cords that extend to the beads are laid at alternate angles substantially less than 90 degrees to the centerline of the tread. Radial ply tire means a pneumatic tire in which the ply cords which extend to the beads are laid at substantially 90 degrees to the centerline of the tread.

[40] Harris, J.R. et al., supra note 12.

[41] Harris, J.R. et al., supra note 13.

[42] For example, using the information in Table A1.1—''Table of Recommended Blocks and Rim Sizes'' for 'A' dimension data that include larger rim diameter codes and is organized to specify which test block to use for each 'A' dimension value and its corresponding rim diameter code from 10 to 30; the formula to calculate an alternate 'A' dimension value; and information about dimensional mechanical drawings for each test block for manufacturing.

corrected during the test and the test load is maintained at the value corresponding to each test period. After running the test for the time specified, the inflation pressure is measured and the tire is visually inspected.

When tested in accordance to the specified test procedure, FMVSS No. 139, S6.3.2(a) specifies that there shall be no visual evidence of tread, sidewall, ply, cord, belt or bead separation; chunking; open splices; cracking or broken cords.[43] The tire pressure after the test shall not be less than 95% of the initial pressure specified in S6.3.1.1.1.

After the 2013 final rule establishing FMVSS No. 139, tire manufacturers requested that NHTSA either redefine tire chunking or not consider tire chunking to be an indication of tire failure during the endurance test. In response to petitions for reconsideration to that final rule, the agency decided against eliminating ''chunking'' as a test failure condition.[44] The agency concluded that operating a vehicle with chunked tires may create concerns due to wheel imbalance and vehicle vibration. Further, the agency found that allowing tread chunking just short of exposing the reinforcement cords could create risk of tire failure. No data was provided to the agency demonstrating that some fixed percentage of a tire's tread could break away without detrimental effect on safe vehicle operation. NHTSA noted that international standards also include the presence of tire chunking as a damage condition.

In response to the October 2, 2017 notice, USTMA stated that tread chunking is not a structural degradation of the tire, is not a safety related condition, and therefore should not be considered a damage condition used in regulatory compliance assessments. It views tire chunking as an endurance testing anomaly, indicating that chunking is also a result that lacks consistency due to variability in test conditions. USTMA did not provide data to support its assertion, to justify the expected benefits, or to evaluate the potential unintended consequences of removing this requirement. Such data would be helpful to inform potential regulatory action on this subject.

NHTSA seeks comments on the following:

10. NHTSA seeks data and information about the test conditions and performance requirements for the endurance test in FMVSS No. 139.

11. What are the potential cost savings associated with the removal of chunking as a damage condition for the endurance test? Please describe the cost elements and provide supporting data for the estimates.

12. Are there negative safety consequences of removing chunking as a relevant damage condition for the endurance test? Please explain.

d. Tire Markings for Ply Description, Ply Rating, Tubeless, and Radial

FMVSS No. 139, S5.5 Tire markings, specifies that a tire must be marked on each sidewall with the following information: (a) The symbol DOT, which constitutes a certification that the tire conforms to the FMVSS; (b) the tire size designation as listed in the documents and publications specified in S4.1.1 of this standard; (c) the maximum permissible inflation pressure, subject to the limitations of S5.5.4 through S5.5.6 of this standard; (d) the maximum load rating and for light truck (LT) tires, the letter designating the tire load range; (e) the generic name of each cord material used in the plies (both sidewall and tread area) of the tire; (f) the actual number of plies in the sidewall, and the actual number of plies in the tread area, if different; (g) the term ''tubeless'' or ''tube type,'' as applicable; (h) the word ''radial,'' if the tire is a radial ply tire; and (i) the alpine symbol, at the manufacturer's option if the tire meets the definition of a ''snow tire.''

USTMA states that several marking regulations for tires are obsolete and should be eliminated. These include ply description and ply rating; 'tubeless' marking, and 'radial' marking.[45] USTMA indicates that the number of plies no longer indicates a tire's robustness, customers do not purchase tires based on this information, and there is no safety impact associated with this information or errors to it. USTMA states that errors in marking can lead to a manufacturer filing a petition for inconsequential noncompliance, with associated administrative cost for both NHTSA and tire manufacturer. The agency has made determinations that some labeling errors constitute an inconsequential noncompliance.[46]

NHTSA seeks comments on the following:

13. Are there benefits to all required tire markings, specifically, ply description and ply rating; 'tubeless' marking, and 'radial' marking and seeks information on the impacts of these marking requirements on motor vehicle safety? If there are potential safety issues associated with the removal of any required markings, how could such safety issues be mitigated? Explain your perspective, include specifics and any data supporting your response.

14. What are the potential cost savings associated with the removal of these markings (ply description and ply rating; 'tubeless' marking, and 'radial' marking)? Please provide any supporting data for the estimates.

e. Other Tire-Related Issues

In response to a January 18, 2018, request for comments on automated driving systems (ADS),[47] Bridgestone America asked that NHTSA consider new and emerging tire technologies to reduce tire failures on ADS-equipped vehicles.[48] It asked that NHTSA consider how pneumatic tire alternatives can be permitted as compliance options for both ADS-equipped vehicles and conventional vehicles. Examples provided include extended mobility tires; run-flat tires; and non-pneumatic extended use tires. NHTSA seeks comment on how existing regulations can be revised to foster tire innovation without adversely affecting safety.

NHTSA has also received two petitions for rulemaking to update tire regulations and the agency is seeking comments in this ANPRM to support its response. First, in a December 3, 2010 petition,[49] the Tire and Rim Association petitioned NHTSA to recognize 250 kPa and 290 kPa as allowable maximum inflation pressures for passenger car tires in FMVSS No. 139, and to provide a corresponding reference in FMVSS No. 138. TRA stated that these tire sizes have been recognized by the European Tyre and Rim Technical Organization and the Japanese Tyre Manufacturers Association and have been approved and published by ISO. TRA suggested that no adjustments to test criteria would be necessary, meaning that 250 kPa tires would be subject to the test criteria for 240 kPa standard load tires and 290 kPa tires would be subject to the test criteria for 280 kPa extra load tires.[50] Although this would result in

[43] These damage conditions are defined in 49 CFR 571.139, S3.

[44] 71 FR 877 (Jan. 6, 2006).

[45] 49 CFR.571.139, S5.5 (e), (f), (g), and (h).

[46] See, *e.g.,* 76 FR 73007 (Nov. 28, 2011).

[47] 83 FR 2607.

[48] NHTSA–2018–0009.

[49] NHTSA–2019–0011.

[50] The December 3, 2010 petition states, that based on the actions of the ISO Working Group on passenger car tire loads, TRA, the European Tyre and Rim Technical Organization, and the Japanese Automobile Tyre Manufacturers Association have adopted new guidelines for load ratings for future size passenger car tires. These harmonize guidelines have also been approved by ISO and are published in ISO Standard 4000–1. The reference inflation pressure for standard load tires is 250 kPa and 290 kPa for extra load tires. This program has been

250 kPa and 290 kPa tires being subject to slightly more stringent standards than the 240 kPa and 280 kPa tires, higher tire pressure equates to higher load capacity. NHTSA seeks comment on whether to amend FMVSS No. 139 as requested by TRA (with a corresponding amendment to FMVSS No. 138).

In a July 14, 2014 petition,[51] TRA requested that NHTSA revise the metric conversion for T-type spare tires. Currently, T-type spare tires have a maximum inflation pressure of 420 kPa (60 psi). Currently, the TRA year book recognizes both 415 kPa and 420 kPa as options for T-type spare tires with the notation that NHTSA requires T-type spare tires to be marked with a maximum inflation pressure of 420 kPa. ETRTO and JATMA only specify a maximum inflation pressure of 420 kPa. No change was suggested to the 60 psi maximum inflation pressure. NHTSA requests comment on whether this change suggested by TRA is necessary and would not reduce safety.

15. NHTSA seeks comments on the following: Please provide information about emerging tire technologies and trends that may impact motor vehicle safety.

16. Do existing regulations impede tire innovation(s)? Please explain.

17. What regulatory actions are needed to remove impediment(s) to tire innovation without adversely affecting safety?

IV. Public Participation

a. How can I influence NHTSA's thinking on this rulemaking?

Your comments will help us improve this rulemaking. NHTSA invites you to provide different views on options NHTSA discusses, new approaches the agency has not considered, new data, descriptions of how this ANPRM may affect you, or other relevant information.

NHTSA welcomes public review of on all aspects of this ANPRM, but request comments on specific issues throughout this document. NHTSA will consider the comments and information received in developing its eventual proposal for how to proceed with updating requirements for motor vehicles. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning as clearly as possible.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell NHTSA which parts of the ANPRM you support, as well as those with which you disagree.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the ANPRM, such as the units or page numbers of the preamble.

b. How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the Docket, please include the docket umber of this document located at the beginning of this notice in your comments.

Your primary comments should not be more than 15 pages long.[52] You may attach additional documents to your primary comments, such as supporting data or research. There is no limit on the length of the attachments.

Please submit one copy of your comments (two if submitting by mail or hand delivery), including the attachments, to the docket via one of the methods identified under the **ADDRESSES** section at the begging of this document. If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using an Optical Character Recognition (OCR) process, thus allowing NHTSA to search and copy certain portions of your submission.

Please note that pursuant to the Data Quality Act, for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, NHTSA encourages you to consult the guidelines in preparing your comments. DOT's guidelines may be accessed at *www.transportation.gov/regulations/dot-information-dissemination-quality-guidelines.*

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement published in the **Federal Register** on April 11, 2000 (65 FR 19477–78) or you may visit *http://www.transportation.gov/privacy.*

c. How can I be sure that my comments were received?

If you submit comments by hard copy and wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail. If you submit comments electronically, your comments should appear automatically in the docket number at the beginning of this notice on *http://www.regulations.gov.* If they do not appear within two weeks of posting, we suggest that you call the Docket Management Facility at 202–366–9826.

d. How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information that you claim to be confidential business information, to the Chief Counsel, NHTSA, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. In addition, you should submit a copy from which you have deleted the claimed confidential business information to Docket Management, either in hard copy at the address given above under **ADDRESSES**, or electronically through *regulations.gov.* When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in 49 CFR part 512.

e. Will the agency consider late comments?

NHTSA will consider all comments received to the docket before the close of business on the comment closing date indicated above under the **DATES** section. NHTSA will consider these additional comments to the extent possible, but we caution that we may not be able to fully address those comments prior to the agency's proposal.

f. How can I read the comments submitted by other people?

You may read the comments received by Docket Management in hard copy at the address given above under the **ADDRESSES** section. The hours of the Docket Management office are indicated above in the same location. You may also read the comments on the internet by doing the following:

(1) Go to *http://www.regulations.gov.*

reviewed and accepted by most of the vehicle manufacturers in United States, Europe and Japan. These proposed additions do not include any changes to the test inflation pressure criteria.

[51] Docket No. NHTSA–2014–0009–0003.

[52] 49 CFR 553.21.

(2) *Regulations.gov* provides two basic methods of searching to retrieve dockets and docket materials that are available in the system:

a. The search box on the home page which conducts a simple full-text search of the website, into which you can type the docket number of this notice and

b. ''Advanced Search,'' which is linked on the *regulations.gov* home page, and which displays various indexed fields such as the docket name, docket identification number, phase of the action, initiating office, date of issuance, document title, document identification number, type of document, **Federal Register** reference, CFR citation, etc. Each data field in the advanced search function may be searched independently or in combination with other fields, as desired. Each search yields a simultaneous display of all available information found in *regulations.gov* that is relevant to the requested subject or topic.

(3) Once you locate the docket at *http://www.regulations.gov,* you can download the comments you wish to read. We note that since comments are often imaged documents rather than word processing documents (*e.g.,* PDF rather than Microsoft Word), some comments may not be word-searchable.

Please note that, even after the comment closing date, NHTSA will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, NHTSA recommends that you periodically check the Docket for new material.

V. Rulemaking Notices and Analyses

a. Executive Orders 12866, 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this ANPRM under Executive Order 12866, Executive Order 13563, and DOT Order 2100.6, ''Policies and Procedures for Rulemakings.'' This rulemaking has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures and the policies of the Office of Management and Budget. Because NHTSA does not have sufficient information to formulate a proposal on all of the issues discussed in this notice, NHTSA cannot estimate the costs and benefits of this ANPRM. However, NHTSA requests comments on the costs and benefits of any of the regulatory actions suggested in this ANPRM or by any commenter.

b. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

This action is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because it is an advance notice of proposed rulemaking.

c. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* no analysis is required for an ANPRM. However, vehicle manufacturers and equipment manufacturers are encouraged to comment if they identify any aspects of the potential rulemaking that may apply to them.

d. Executive Order 13132 (Federalism)

As an ANPRM, NHTSA does not believe that this document raises sufficient federalism implications to warrant the preparation of a federalism assessment. NHTSA believes that federalism issues would be more appropriately considered if and when the agency proposes changes to its tire regulations.

e. Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issues by the Attorney General. This document is consistent with that requirement.

f. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There are no information collection requirements associated with this ANPRM. Any information collection requirements and the associated burdens will be discussed in detail once a proposal has been issued.

g. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.,* the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers. The NTTAA directs us to provide Congress (through OMB) with explanations when we decide not to use available and applicable voluntary consensus standards. As NHTSA has not yet developed specific regulatory requirements, the NTTAA does not apply for purposes of this ANPRM.

h. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure of State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). NHTSA has determined that this ANPRM would not result in expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, in excess of $100 million annually.

i. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has preliminarily determined that implementation of this rulemaking action would not have any significant impact on the quality of the human environment.

j. Plain Language

The Plain Language Writing Act of 2010 (Pub. L. 111–274) requires that federal agencies write documents in a clear, concise, and well-organized manner. While the Act does not cover regulations, Executive Orders 12866 and 13563 require each agency to write all notices in plain language that is simple and easy to understand. Application of the principles of plain language includes consideration of the following questions:

• Have we organized the material to suit the public's needs?
• Are the requirements in the notice clearly stated?
• Does the notice contain technical language or jargon that is not clear?
• Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
• Would more (but shorter) sections be better?
• Could we improve clarity by adding tables, lists, or diagrams?

If you have any responses to these questions, please include them in your comments on this proposal.

k. Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Issued in Washington, DC, under authority delegated in 49 CFR part 1.95 and 501.5.

James Clayton Owens,

Acting Administrator.

[FR Doc. 2019–27209 Filed 12–18–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[4500090022]

Endangered and Threatened Wildlife and Plants; Five Species Not Warranted for Listing as Endangered or Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of findings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce 12-month findings on petitions to list three species as endangered or threatened species under the Endangered Species Act of 1973, as amended (Act) and two additional findings that current candidate species no longer warrant listing. After a thorough review of the best scientific and commercial data available, we find that it is not warranted at this time to list the Ozark chub, purpledisk honeycombhead, red tree vole (North Oregon Coast distinct population segment (DPS)), sand verbena moth, and skiff milkvetch. However, we ask the public to submit to us at any time any new information relevant to the status of any of the species mentioned above or their habitats.

DATES: The findings in this document were made on December 19, 2019.

ADDRESSES: Detailed descriptions of the basis for each of these findings are available on the internet at *http://www.regulations.gov* under the following docket numbers:

Species	Docket No.
Ozark chub	FWS–R4–ES–2019–0094
Purpledisk honeycombhead	FWS–R4–ES–2019–0095
Red tree vole (North Oregon Coast DPS)	FWS–R1–ES–2019–0096
Sand verbena moth	FWS–R1–ES–2010–0096
Skiff milkvetch	FWS–R6–ES–2019–0097

Supporting information used to prepare these findings is available for public inspection, by appointment, during normal business hours, by contacting the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**. Please submit any new information, materials, comments, or questions concerning these findings to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT:

Species	Contact Information
Ozark chub	Melvin Tobin, Supervisor, Arkansas Ecological Services Field Office, 501–513–4473.
Purpledisk honeycombhead	Tom McCoy, Field Supervisor, South Carolina Ecological Services Field Office, 843–727–4707, ext. 227.
Red tree vole	Paul Henson, State Supervisor, Oregon Fish and Wildlife Office, 503–231–6179.
Sand verbena moth	Brad Thompson, Acting State Supervisor, Washington Office of Fish and Wildlife, 360–753–9440.
Skiff milkvetch	Ann Timberman, Field Supervisor, Western Colorado Ecological Services Office, 970–628–7181.

If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Under section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), we are required to make a finding whether or not a petitioned action is warranted within 12 months after receiving any petition that we have determined contains substantial scientific or commercial information indicating that the petitioned action may be warranted (''12-month finding''). We must make a finding that the petitioned action is: (1) Not warranted; (2) warranted; or (3) warranted but precluded. ''Warranted but precluded'' means that (a) the petitioned action is warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened species, and (b) expeditious progress is being made to add qualified species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) and to remove from the Lists species for which the protections of the Act are no longer necessary. Section 4(b)(3)(C) of the Act requires that, when we find that a petitioned action is warranted but precluded, we treat the petition as though resubmitted on the date of such finding, that is, requiring that a subsequent finding be made within 12 months of that date. We must publish these 12-month findings in the **Federal Register**.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations at part 424 of title 50 of the Code of

Federal Regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Lists. The Act defines ''endangered species'' as any species that is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)), and ''threatened species'' as any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). Under section 4(a)(1) of the Act, a species may be determined to be an endangered species or a threatened species because of any of the following five 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.

In considering whether a species may meet the definition of an endangered species or a threatened species because of any of the five factors, we must look beyond the mere exposure of the species to the stressor to determine whether the species responds to the stressor in a way that causes actual impacts to the species. If there is exposure to a stressor, but no response, or only a positive response, that stressor does not cause a species to meet the definition of an endangered species or a threatened species. If there is exposure and the species responds negatively, we determine whether that stressor drives or contributes to the risk of extinction of the species such that the species warrants listing as an endangered or threatened species. The mere identification of stressors that could affect a species negatively is not sufficient to compel a finding that listing is or remains warranted. For a species to be listed or remain listed, we require evidence that these stressors are operative threats to the species or its habitat, either singly or in combination, to the point that the species meets the definition of an endangered or a threatened species under the Act.

In conducting our evaluation of the five factors provided in section 4(a)(1) of the Act to determine whether the Ozark chub (*Erimystax harryi*), purpledisk honeycombhead (*Balduina atropurpurea*), North Oregon Coast DPS of red tree vole (*Arborimus longicaudus*), sand verbena moth (*Copablepharon fuscum*), and skiff milkvetch (*Astragalus microcymbus*) meet the definition of ''endangered species'' or ''threatened species,'' we considered and thoroughly evaluated the best scientific and commercial data available regarding the past, present, and future stressors and threats. We reviewed the petitions, information available in our files, and other available published and unpublished information. These evaluations may include information from recognized experts; Federal, State, and tribal governments; academic institutions; foreign governments; private entities; and other members of the public.

The species assessments for the Ozark chub, purpledisk honeycombhead, North Oregon Coast DPS of red tree vole, sand verbena moth, and skiff milkvetch contain more-detailed biological information, a thorough analysis of the listing factors, and an explanation of why we determined that these species do not meet the definition of an endangered species or a threatened species. This supporting information can be found on the internet at *http://www.regulations.gov* under the appropriate docket number (see **ADDRESSES**, above). The following are informational summaries for each of the findings in this document.

Ozark Chub

Previous Federal Actions

On April 20, 2010, we received a petition from the Center for Biological Diversity (CBD), Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, West Virginia Highlands Conservancy, Tierra Curry, and Noah Greenwald (referred to below as the CBD petition) to list 404 aquatic, riparian, and wetland species, including the Ozark chub, from the southeastern United States as endangered or threatened species under the Act. On September 27, 2011, we published in the **Federal Register** (76 FR 59836) a 90-day finding in which we announced that the petition contained substantial information indicating listing may be warranted for the Ozark chub. This document constitutes our 12-month finding on the April 20, 2010, petition to list the Ozark chub under the Act.

Summary of Finding

The Ozark chub is a small, slender, freshwater fish in the minnow family, Cyprinidae, found in the White River basin in Arkansas and Missouri and the upper St. Francis River Basin in Missouri. Adult Ozark chubs most frequently occur in runs and riffles approximately 45–60 centimeters deep over gravel, habitat directly below riffles, or shallow pools with noticeable current. Young individuals occupy backwater and shoreline or side channel habitats with low velocity, such as the shallow marginal areas of pool headwaters. Spawning occurs in April and May, with eggs deposited in clean gravel substrate. The average life span for females is about 3.5 years, whereas most males survive a little more than 2 years. Ozark chubs feed primarily on or near the stream bottom, consuming detritus composed of diatomaceous algae and bacteria in the winter, adding drifting algae and plant matter to their diet in the other seasons. Invertebrate insects, likely ingested incidentally, make up a much smaller portion (less than 10 percent) of the diet.

We have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats to the Ozark chub, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. The primary stressors affecting the Ozark chub's biological status include large dams and their impoundments, and water quality impairment, including sedimentation. Altered natural flow in the impoundments formed by dams and in the tailwaters below dams has made habitat unsuitable in several stream and river segments historically occupied by Ozark chubs, and has fragmented populations. Water quality is impaired in some stream reaches within each watershed currently occupied by the chub. Predominant sources of water quality impairment are agriculture, forestry, mining, and urban development.

While threats have acted on the species to reduce available habitat, the Ozark chub persists in 22 of 23 historically occupied watersheds, and the breadth of the species' range has not changed. A majority of the range is rural, and large increases in urbanization are not anticipated, nor are any additional large high-head dams likely to be constructed. Many of the water-quality problems affecting the species currently are the legacy of past land-use practices that no longer or rarely occur. Currently 3, 14, and 5 of the occupied watersheds contain populations in high, moderate, and low condition, respectively. Based on current trends in population growth and land development, no extirpations are predicted. In addition, State-designated special use waters and Federal lands managed by the U.S. Forest Service and National Park Service—including 135

miles of the Buffalo River, which harbors a high-condition population—will continue to protect large areas of the species' habitat.

Therefore, we find that listing the Ozark chub as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the Ozark chub species assessment and other supporting documents (see **ADDRESSES**, above).

Purpledisk Honeycombhead

Previous Federal Actions

On April 20, 2010, we received the CBD petition to list 404 aquatic, riparian, and wetland species, including purpledisk honeycombhead, from the southeastern United States as endangered or threatened species under the Act. On September 27, 2011, we published in the **Federal Register** (76 FR 59836) a 90-day finding in which we announced that the petition contained substantial information indicating listing may be warranted for purpledisk honeycombhead. This document constitutes our 12-month finding on the April 20, 2010, petition to list purpledisk honeycombhead under the Act.

Summary of Finding

Purpledisk honeycombhead is a perennial herb found in pine savanna and flatwood ecosystems of Florida, Georgia, South Carolina, North Carolina, and (historically) Alabama. It is distinguished from other species in the genus by its dark purple disk flowers. Purpledisk honeycombhead occurs in a variety of habitat types where moisture and light are conducive for growth throughout the pine savanna and flatwood ecosystem. Large-scale or small-scale disturbance caused primarily by fire has shaped and characterized the wet pine savannas, seepage slopes, and pitcherplant bogs of the southeastern Coastal Plain where purpledisk honeycombhead occurs.

Of the 79 purpledisk honeycombhead populations, 38 remain extant across the historical range. Currently, purpledisk honeycombhead is extant in Bladen County in North Carolina; Richland County in South Carolina; Ben Hill, Charlton, Coffee, Colquitt, Cook, Evans, Irwin, Jeff Davis, Jenkins, Liberty, Tattnall, Long, Toombs, Turner, and Worth Counties in Georgia; and Clay, Duval, and Nassau Counties in Florida.

We have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats to purpledisk honeycombhead, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. The primary stressors affecting purpledisk honeycombhead's biological status are habitat-based: Habitat loss due to development or land conversion (*e.g.,* agriculture, pine plantations, etc.) and habitat degradation due to fire suppression. Across purpledisk honeycombhead's range, the transition zone between longleaf pine uplands and aquatic wetlands has been heavily affected by habitat destruction and modification. Large tracts of land, containing both uplands and aquatic wetlands, are needed to protect these transitions zones. Further, purpledisk honeycombhead and its habitat requires frequent fire prescription to maintain the open conditions in these mesic transition zones to abate woody encroachment and facilitate nutrient releases. Other potential factors influencing the viability of purpledisk honeycombhead include nonnative, invasive species (*i.e.,* feral hogs) and climate change. However, land management (prescribed fire, mowing, and mechanical treatment of woody vegetation) occurring on protected lands and some private lands is beneficial to purpledisk honeycombhead by maintaining suitable habitat conditions, and most of the high- to moderate-resiliency populations occur on protected lands with active management.

Impacts from habitat destruction and modification and fire suppression do not appear to be affecting high- or moderate-resiliency purpledisk honeycombhead populations. In the foreseeable future, purpledisk honeycombhead is predicted to have a core of high- and moderate-resiliency populations within three representative units on lands (including protected lands) on which management provides suitable habitat for the species. In addition, management on protected lands is predicted to continue providing a core of relatively secure populations such that the species will not become in danger of extinction in the foreseeable future.

Therefore, we find that listing purpledisk honeycombhead as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the purpledisk honeycombhead species assessment and other supporting documents (see **ADDRESSES**, above).

Red Tree Vole (North Oregon Coast DPS)

Previous Federal Actions

On June 18, 2007 we received a petition from Center for Biological Diversity, Oregon Chapter of the Sierra Club, Audubon Society of Portland, Cascadia Wildlands Project, and OregonWild to list the north Oregon coast Distinct Population Segment (DPS) of the red tree vole as endangered or threatened under the Act. On October 28, 2008, we published a 90-day finding in the **Federal Register** (73 FR 63919) concluding that the petition presented substantial information indicating that listing the north Oregon coast DPS of the red tree vole may be warranted. On October 13, 2011, we published in the **Federal Register** (76 FR 63720) a 12-month finding in which we stated that listing the north Oregon coast population of the red tree vole as a DPS was warranted primarily due to habitat loss. However, listing was precluded at that time by higher priority actions, and the DPS of the red tree vole was added to the candidate species lists. From 2012 through 2016, we addressed the status of the north Oregon coast DPS of the red tree vole annually in our candidate notice of review, with the determination that listing was warranted but precluded (see 77 FR 69994, November 21, 2012; 78 FR 70104, November 22, 2013; 79 FR 72450, December 5, 2014; 80 FR 80584, December 24, 2015; 81 FR 87246, December 2, 2016).

Summary of Finding

Red tree voles are small, mouse-sized, arboreal rodents that live in conifer forests. They spend almost all of their time in the tree canopy; if they do come to the ground, it is typically only to move quickly between trees. The north Oregon coast population of the red tree vole is found in the conifer forests of the following counties in Oregon: Clatsop, Columbia, Tillamook, Washington, Yamhill, Polk, Lincoln, Benton, and Lane. Their principal food is conifer needles, predominantly Douglas-fir (*Pseudotsuga menziesii*) but also western hemlock (*Tsuga heterophylla*); they are one of the few animals to persist on this diet. The needs of individual red tree voles are met in conifer forest stands with: (1) Connected tree canopies to facilitate foraging and dispersal, and to minimize time on the ground that may increase predation risk; (2) available structures to support nests; and (3) structural complexity and taller trees that likely reduce visibility and vulnerability to predators. These features are more common in older forests (greater than 80 years old).

We have carefully assessed the best scientific and commercial data regarding the past, present, and future threats to the north Oregon coast population of the red tree vole, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. Since the development of our 2016 CNOR, tree vole habitat was modeled across the DPS, and we were able to use that spatial data to more robustly assess existing habitat conditions, population resiliency, and associated future trends in a way that had been previously unattainable. Specifically, the spatial habitat layer allowed us to consider distribution of habitat and model clusters of occupied habitat to serve as proxies for red tree vole subpopulations or management units on which to do an analysis of resiliency, redundancy, and representation for the status assessment. This modeling indicated that 26 percent of the DPS area was suitable habitat, as compared to the 11 percent that the model we used in our previous status reviews had predicted. By projecting habitat trends in future scenarios, we developed a more informed picture of the future than had been available for the 2016 CNOR.

The primary stressors affecting the north Oregon coast population of the red tree vole include habitat loss and fragmentation due to timber harvest and wildfire. Despite impacts from these stressors and some observed decline in abundance, the red tree vole in this area has maintained resilient populations over time, primarily in the two large habitat clusters under Federal management, the Nestucca Block and South Block. Although we predict some continued impacts from these stressors in the future, we anticipate these two large habitat clusters will continue to maintain resiliency and provide redundancy across a large portion of the DPS. Furthermore, it is reasonable to expect the Tillamook State Forest and Kilchis River clusters to increase and expand their areas based on habitat succession in the adjoining landscape. A portion of the State Forest land adjoining these two clusters will likely mature into red tree vole habitat (80 years old or older) over the coming years, thereby increasing the footprint of these two clusters, and even connecting them. With respect to future representation of the red tree vole, the two large habitat clusters will continue to maintain both the Sitka spruce (*Picea sitchensis*) and western hemlock (*Tsuga heterophylla*) vegetation zones even in light of climate change.

For these reasons, we find that these stressors do not, alone or in combination, rise to a level that causes the north Oregon coast population of the red tree vole to meet the definition of an endangered species or a threatened species. Therefore, we find that listing the north Oregon coast DPS of the red tree vole as an endangered species or threatened species is not warranted. A detailed discussion of the basis for this finding can be found in the species assessment forms for the north Oregon coast population of the red tree vole and in other supporting documents (see **ADDRESSES**, above).

Sand Verbena Moth

Previous Federal Actions

On February 17, 2010, we received a petition, dated February 4, 2010, from WildEarth Guardians and the Xerces Society for Invertebrate Conservation requesting that the sand verbena moth be listed as endangered or threatened throughout its entire range. On February 17, 2011, we published in the **Federal Register** (76 FR 9309) a 90-day finding that the petition presented substantial information indicating that listing the sand verbena moth may be warranted. This document constitutes our 12-month finding on the February 4, 2010, petition to list the sand verbena moth under the Act.

Summary of Finding

The sand verbena moth (*Copablepharon fuscum*) belongs to the second-largest family of the owlet moths (Noctuidae). It is a nocturnal moth that has a short flight period from mid-May to early July. Over the last 20 years, it has been detected at 11 sites: 5 in Canada and 6 in the State of Washington. Our status analysis indicated that six of these sites may currently support populations and are located in low-lying nearshore areas around the Salish Sea; three of these are in Canada on Vancouver Island, and three are in Washington in areas around the Puget Sound. These six sites (and 10 of the 11 total detection sites) occur in the rain shadows of the Coast Mountains on Vancouver Island or the Olympic Mountains in Washington. We do not have enough information to determine if the remaining five sites currently support populations of sand verbena moth.

Like all species of *Copablepharon,* the sand verbena moth occurs in light sandy soils, and most are restricted to active dunes. However, the sand verbena moth is unique in the genus in that it completes its entire life cycle on and around the yellow sand verbena plant (*Abronia latifolia*). The moth has an obligate mutualistic relationship with yellow sand verbena (*i.e.,* the moth feeds on the plant during immature stages and provides pollination services in its adult phase). To the best of our understanding, the ecological needs of the sand verbena moth include the following features: Flowering patches of yellow sand verbena with total leaf cover greater than 400 to 500 square meters (0.04 to 0.05 hectares, or 0.10 to 0.12 acres), greater than 25 percent leaf cover of total area, and high flower production from May through July; loose, well-drained, sandy soil away from the tidal inundation zone; and climate associations for yellow sand verbena that support the sand verbena moth, such as 30-year normal precipitation of less than 1,950 millimeters (77 inches) and 30-year normal temperature greater than 7.47 degrees Celsius (45 degrees Fahrenheit).

We have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats to the sand verbena moth, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing stressors to the species. The primary stressors affecting the sand verbena moth's biological status include the effects of current and future habitat loss, modification, and fragmentation (Factor A) from erosion, inundation, recreation, development, and invasive species. Habitat appears to be exposed to stressors at all sites. Based on the available data, we cannot determine whether there is a declining or increasing population trend at the sites that may currently support populations, or whether the range of the species has contracted or expanded. Although there is no information on the average or maximum dispersal distance of the sand verbena moth, the species may possess the potential for long-distance dispersal capacity, and therefore may be able to colonize patches of yellow sand verbena that are separated by great distances.

Projections show that sea-level rise and storms may lead to an increase in inundation events, potentially affecting the low-lying sites where the species has been detected. While these projections may appear concerning, there is much uncertainty with regard to the response of the sand verbena moth over time to changes in habitat, including inundation events. The beach dune system that supports yellow sand verbena is naturally dynamic with regular erosion and accretion, and it

remains unknown whether that dynamic quality will allow the system to adapt and integrate future local disturbance events due to the effects of climate change. For example, future local disturbances could cause the loss of sand verbena moth and its habitat at detection sites, or they could instead lead to a slow shift in the species' distribution over time or the creation of new habitat due to accretion. The best scientific and commercial data available appear to point towards adaptation and integration because in the years since we received the petition to list the species in 2010, additional sites with positive detections of the moth have been discovered. In addition, although the species does not appear to be abundant, the sand verbena moth's distribution across a relatively large area (for a narrow endemic) makes it possible for the species to maintain viability in the midst of local disturbance events.

Therefore, we find that listing the sand verbena moth as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the sand verbena moth species assessment and other supporting documents (see **ADDRESSES**, above).

Skiff Milkvetch

Previous Federal Actions

On July 30, 2007, we received a petition dated July 24, 2007, from Forest Guardians (now WildEarth Guardians) requesting that 206 species that occur in our Mountain Prairie Region be listed as either endangered or threatened under the Act, including skiff milkvetch. On August 18, 2009, we published a partial 90-day finding in the **Federal Register** (74 FR 41649) concluding that the petition presented substantial information indicating that listing the skiff milkvetch may be warranted. On December 15, 2010, we published a 12-month finding in the **Federal Register** (75 FR 78514) in which we stated that listing skiff milkvetch as endangered or threatened was warranted primarily due to threats from off-road vehicle use and drought. However, listing was precluded at that time by higher-priority actions, and the species was added to the candidate species list. From 2011 through 2016, we addressed the status of skiff milkvetch annually in our candidate notice of review, with the determination that listing was warranted but precluded (see 76 FR 66370, October 26, 2011; 77 FR 69994, November 21, 2012; 78 FR 70104, November 22, 2013; 79 FR 72450, December 5, 2014; 80 FR 80584, December 24, 2015; 81 FR 87246, December 2, 2016).

Summary of Finding

Skiff milkvetch is a narrow endemic perennial plant known to occur only in Gunnison and Saguache Counties in Colorado. The species occurs primarily on land administered by the Bureau of Land Management (BLM), but also is found on small amounts of private land in the sagebrush steppe ecosystem. Skiff milkvetch habitat occupies approximately 310 acres (125 hectares). The majority of skiff milkvetch individuals are found along the South Beaver Creek drainage, containing approximately 93 percent of the species' known range; approximately 7 percent is found along the Cebolla Creek drainage. The South Beaver Creek subpopulations are located within an area designated as the South Beaver Creek Area of Critical Environmental Concern (ACEC) that is managed by the BLM.

Skiff milkvetch plants emerge in early spring and usually begin to flower from mid- to late May, into October. Skiff milkvetch is known to reproduce via mast seeding events (*e.g.,* the production of many seeds by a plant every 2 or more years in regional synchrony with other plants of the same species), which are related to environmental conditions such as precipitation. The majority of individuals live 2 to 3 years; however, some individuals can exhibit whole plant dormancy, allowing them to live beyond 20 years. Annual population monitoring for skiff milkvetch on BLM-managed lands since 1995 indicates that skiff milkvetch is stable in overall population size over the long term. Despite statistically significant short-term population declines that have been documented during periods of drought, the species has been known to increase in abundance after periods of increased precipitation.

We have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats to skiff milkvetch (including re-evaluating stressors considered in previous Federal decisions and CNORs using updated data and analysis), and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. The primary stressors affecting skiff milkvetch's biological status include periodic drought and climate change. Other stressors were only found to be having effects on individuals or local areas, or their impacts were not as great as previously thought. We found that the species' current viability is characterized by persistence on the landscape as a narrow endemic species with a stable population size over the long term, a lack of stressors other than drought and climate change, and protections in place on BLM lands. These protections cover approximately 80 percent of the species' range, and include the South Beaver Creek ACEC, which was designated to protect skiff milkvetch, and designation of a State natural area. Seasonal dormancy may also provide protection from environmental change, as evidenced by recovery of individuals with above-ground growth after recent population declines. Given the levels of resiliency currently present in each analysis unit, the stability of the population over the long term, protections in place, and the life-history characteristics of the species, we believe skiff milkvetch currently has sufficient ability to withstand stochastic and catastrophic events and adapt to changes. Looking into the foreseeable future, we anticipate that, overall, the persistence of the species within the large Beaver Creek analysis unit combined with the ability to withstand drought through seasonal dormancy provide the species with sufficient levels of resiliency to future stochastic events through 2050. Despite the projected loss of some smaller subpopulations, we anticipate the species will still have multiple subpopulations across its narrow range, such that it will still have limited but sufficient ability to withstand catastrophic events and to adapt to changing conditions.

Therefore, we find that listing the skiff milkvetch as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the skiff milkvetch species assessment and other supporting documents (see **ADDRESSES**, above).

New Information

We request that you submit any new information concerning the taxonomy of, biology of, ecology of, status of, or stressors to the Ozark chub, purpledisk honeycombhead, North Oregon Coast DPS of red tree vole, sand verbena moth, and skiff milkvetch to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**, whenever it becomes available. New information will help us monitor these species and make appropriate decisions about their conservation and status. We encourage local agencies and stakeholders to continue cooperative monitoring and conservation efforts.

References Cited

Lists of the references cited in the petition findings are available on the internet at *http://www.regulations.gov* in the dockets provided above in **ADDRESSES** and upon request from the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

Authors

The primary authors of this document are the staff members of the Species Assessment Team, Ecological Services Program.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 10, 2019

Margaret E. Everson,

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

[FR Doc. 2019–27334 Filed 12–18–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2018–0105; 4500030113]

RIN 1018–BD85

Endangered and Threatened Wildlife and Plants; Threatened Species Status for West Coast Distinct Population Segment of Fisher With Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule; reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), recently published a document proposing changes to our October 7, 2014, proposed rule to list the West Coast distinct population segment (DPS) of fisher (*Pekania pennanti*) as a threatened species under the Endangered Species Act (Act) and proposing a rule issued under section 4(d) of the Act for this DPS. We announced the opening of a 30-day public comment period on the revised proposed rule, ending December 9, 2019. We now reopen the public comment period for an additional 15 days, to allow all interested parties more time to comment on the revised proposed rule. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final determination.

DATES: The public comment period on the revised proposed rule that published November 7, 2019, at 84 FR 60278, is reopened. We will accept comments received or postmarked on or before January 3, 2020. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**, below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern time on this date.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R8–ES–2018–0105, which is the docket number for the action. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate the correct document. You may submit a comment by clicking on ''Comment Now!'' Please ensure that you have found the correct rulemaking before submitting your comment.

(2) *By hard copy:* Submit by U.S. mail or hand delivery to: Public Comments Processing, Attn: Docket No. FWS–R8–ES–2018–0105, U.S. Fish and Wildlife Service, MS: JAO/1N, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

Document availability: The revised proposed rule is available on *http://www.regulations.gov* at Docket No. FWS–R8–ES–2018–0105 and on our website at *https://www.fws.gov/Yreka.* Comments and materials we received during a previous comment period, as well as supporting documentation we used in preparing the preceding proposed rule, are also available for public inspection at Docket No. FWS–R8–ES–2014–0041. In addition, the supporting files for the revised proposed rule will be available for public inspection, by appointment, during normal business hours, at our Yreka Fish and Wildlife Office, 1829 South Oregon Street, Yreka, CA 96097; telephone 530–842–5763.

FOR FURTHER INFORMATION CONTACT: Jenny Ericson, Field Supervisor, Yreka Fish and Wildlife Office, telephone: 530–842–5763. Direct all questions or requests for additional information to: WEST COAST DPS FISHER QUESTIONS, U.S. Fish and Wildlife Service, Yreka Fish and Wildlife Office, 1829 South Oregon Street, Yreka, CA 96097. Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 2019, we published in the **Federal Register** (84 FR 60278) a document that proposed: (1) Changes to our October 7, 2014, proposed rule (79 FR 60419) to list the West Coast DPS of fisher as a threatened species under the Act (16 U.S.C. 1531 *et seq.*); and (2) a rule issued under section 4(d) of the Act for this DPS. The November 7, 2019, **Federal Register** publication (84 FR 60278) opened a 30-day public comment period, ending December 9, 2019. The Service now reopens the comment period as specified above in **DATES**.

See the November 7, 2019, **Federal Register** publication (84 FR 60278) for more information about previous Federal actions concerning this DPS.

Public Comments

We will accept comments and information during this reopened comment period on our November 7, 2019, revised proposed rule (84 FR 60278). We will consider information and recommendations from all interested parties. We intend that any final action resulting from the proposal will be based on the best scientific and commercial data available and will be as accurate and as effective as possible. Our final determination will take into consideration all comments and any additional information we receive during the comment period. Therefore, the final decision may differ from the November 7, 2019, revised proposed rule (84 FR 60278), based on our review of all information we receive during this rulemaking. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final determination.

Comments should be as specific as possible. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you assert. Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not meet the standard of best available scientific and commercial data. Section

4(b)(1)(A) of the Act directs that determinations as to whether any species is endangered or threatened must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. If you submit information via *http://www.regulations.gov,* your entire submission—including your personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R8–ES–2018–0105, or by appointment, during normal business hours, at the Yreka Fish and Wildlife Office (see **ADDRESSES**). Our final determination concerning the November 7, 2019, revised proposed rule (84 FR 60278) will take into consideration all written comments we receive during the open comment periods and comments from peer reviewers. These comments will be included in the public record for this rulemaking, and we will fully consider them in the preparation of our final determination.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 10, 2019.

Margaret E. Everson,

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

[FR Doc. 2019–27270 Filed 12–18–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[4500030115]

Endangered and Threatened Wildlife and Plants; 90-Day Findings for Two Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings and initiation of status reviews.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce 90-day findings on two petitions to add species to the List of Endangered and Threatened Wildlife under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petitions present substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, with the publication of this document, we announce that we plan to initiate status reviews of the Bethany Beach firefly (*Photuris bethaniensis*) and Gulf Coast solitary bee (*Hesperapis oraria*) to determine whether the petitioned actions are warranted. To ensure that the status reviews are comprehensive, we are requesting scientific and commercial data and other information regarding the species and factors that may affect their status. Based on the status reviews, we will issue 12-month petition findings, which will address whether or not the petitioned actions are warranted, in accordance with the Act.

DATES: These findings were made on December 19, 2019. As we commence our status reviews, we seek any new information concerning the status of, or threats to, the species or their habitats. Any information received during the course of our status reviews will be considered.

ADDRESSES: *Supporting documents:* Summaries of the bases for the petition findings contained in this document are available on *http://www.regulations.gov* under the appropriate docket number (see table under **SUPPLEMENTARY INFORMATION**). In addition, this supporting information is available for public inspection, by appointment, during normal business hours by contacting the appropriate person, as specified in **FOR FURTHER INFORMATION CONTACT**.

Status reviews: If you have new scientific or commercial data or other information concerning the status of, or threats to, the species for which we are initiating status reviews, please provide those data or information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter the appropriate docket number (see table under **SUPPLEMENTARY INFORMATION**). Then, click on the ''Search'' button. After finding the correct document, you may submit information by clicking on ''Comment Now!'' If your information will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our information review procedures. If you attach your information as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: [Insert appropriate docket number; see table under **SUPPLEMENTARY INFORMATION**], U.S. Fish and Wildlife Service, MS: JAO/1N, 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We request that you send information only by the methods described above. We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us.

FOR FURTHER INFORMATION CONTACT:

Species common name	Contact person
Bethany Beach firefly	Krishna Gifford, 413–253–8619; *krishna_gifford@fws.gov.*
Gulf Coast solitary bee	Sean Blomquist, 850–769–0552; *sean_blomquist@fws.gov.*

If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations in title 50 of the Code of Federal Regulations (50 CFR part 424) set forth the procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants (List or Lists) in 50 CFR part 17. Section 4(b)(3)(A) of the Act requires that we make a finding on whether a

petition to add a species to the List (*i.e.,* ''list'' a species), remove a species from the List (*i.e.,* ''delist'' a species), or change a listed species' status from endangered to threatened or from threatened to endangered (*i.e.,* ''reclassify'' a species) presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish the finding promptly in the **Federal Register**.

Our regulations establish that substantial scientific or commercial information with regard to a 90-day petition finding refers to ''credible scientific or commercial information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted'' (50 CFR 424.14(h)(1)(i)).

A species may be determined to be an endangered species or a threatened species because of one or more of the five factors described in section 4(a)(1) of the Act (16 U.S.C. 1533(a)(1)). The five factors are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A);

(b) Overutilization for commercial, recreational, scientific, or educational purposes (Factor B);

(c) Disease or predation (Factor C);

(d) The inadequacy of existing regulatory mechanisms (Factor D); or

(e) Other natural or manmade factors affecting its continued existence (Factor E).

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to, or are reasonably likely to, affect individuals of a species negatively. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself. However, the mere identification of any threat(s) may not be sufficient to compel a finding that the information in the petition is substantial information indicating that the petitioned action may be warranted. The information presented in the petition must include evidence sufficient to suggest that these threats may be affecting the species to the point that the species may meet the definition of an endangered species or threatened species under the Act. If we find that a petition presents such information, our subsequent status review will evaluate all identified threats by considering the individual-, population-, and species-level effects and the expected response by the species. We will evaluate individual threats and their expected effects on the species, then analyze the cumulative effect of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that are expected to have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts that may ameliorate threats. It is only after conducting this cumulative analysis of threats and the actions that may ameliorate them, and the expected effect on the species now and in the foreseeable future, that we can determine whether the species meets the definition of an endangered species or threatened species under the Act. If we find that a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, the Act requires that we promptly commence a review of the status of the species, and we will subsequently complete a status review in accordance with our prioritization methodology for 12-month findings (81 FR 49248; July 27, 2016).

Summaries of Petition Findings

The petition findings contained in this document are listed in the table below, and the basis for each finding, along with supporting information, is available on *http://www.regulations.gov* under the appropriate docket number.

TABLE: STATUS REVIEWS

Common name	Docket No.	URL to Docket on *http://www.regulations.gov*
Bethany Beach firefly	FWS–R5–ES–2019–0088	*https://www.regulations.gov/docket?D=FWS-R5-ES-2019-0088.*
Gulf Coast solitary bee	FWS–R4–ES–2019–0089	*https://www.regulations.gov/docket?D=FWS-R4-ES-2019-0089.*

Evaluation of a Petition To List the Bethany Beach Firefly

Species and Range

Bethany Beach firefly (*Photuris bethaniensis*); Sussex County, Delaware.

Petition History

On May 15, 2019, we received a petition from the Center for Biological Diversity and Xerces Society for Invertebrate Conservation requesting that the Bethany Beach firefly be listed as endangered or threatened and critical habitat be designated for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses whether the petition presents substantial information indicating the petitioned action may be warranted.

Finding

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating the petitioned action may be warranted for the Bethany Beach firefly due to potential threats associated with the following: Habitat loss, degradation, or modification (via urban development, wetland conversion, and habitat fragmentation) (Factor A); overutilization for recreational purposes (Factor B); and other natural or manmade factors (via light pollution, invasive species, pesticide use, and the effects of climate change (sea level rise, increased incidence of severe storms, and increased temperature and phenology changes)) (Factor E). The petition also presented substantial information indicating that the existing regulatory mechanisms may be inadequate to address impacts of these threats (Factor D).

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *http://*

www.regulations.gov under Docket No. FWS–R5–ES–2019–0088 under the Supporting Documents section.

Evaluation of a Petition To List the Gulf Coast Solitary Bee

Species and Range

Gulf Coast solitary bee (*Hesperapis oraria*); Jackson County, Mississippi; Mobile and Baldwin Counties, Alabama; Escambia, Okaloosa, Walton, Santa Rosa, and Bay Counties, Florida.

Petition History

On April 2, 2019, we received a petition dated March 27, 2019, from the Center for Biological Diversity, requesting that the Gulf Coast solitary bee be listed as endangered or threatened and critical habitat be designated for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses whether the petition presents substantial information indicating the petitioned action may be warranted.

Finding

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating the petitioned action may be warranted for the Gulf Coast solitary bee due to potential threats associated with the following: Effects from climate change, pesticide spraying, and urbanization (Factor A); and loss of pollination mutualism (Factor E). The petition also presented substantial information indicating that the existing regulatory mechanisms may be inadequate to address impacts of these threats (Factor D).

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2019–0089 under the Supporting Documents section.

Conclusion

On the basis of our evaluation of the information presented in the petitions under sections 4(b)(3)(A) and 4(b)(3)(D)(i) of the Act, we have determined that the petitions summarized above for the Bethany Beach firefly and Gulf Coast solitary bee present substantial scientific or commercial information indicating that the petitioned actions may be warranted. We are, therefore, initiating status reviews of these species to determine whether the actions are warranted under the Act. At the conclusion of the status reviews, we will issue findings, in accordance with section 4(b)(3)(B) of the Act, as to whether the petitioned actions are not warranted, warranted, or warranted but precluded by pending proposals to determine whether any species is an endangered species or a threatened species.

Authors

The primary authors of this document are staff members of the Ecological Services Program, U.S. Fish and Wildlife Service.

Authority

The authority for these actions is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 5, 2019.

Margaret E. Everson,

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

[FR Doc. 2019–27338 Filed 12–18–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 191213–0113]

RIN 0648–BJ08

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Greater Amberjack Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). If implemented, this proposed rule would revise the commercial trip limit in the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) for greater amberjack. In addition, this proposed rule would revise the boundaries of several Gulf reef fish management areas to reflect a change in the seaward boundary of Alabama, Louisiana, and Mississippi for purposes of management under the FMP to 9 nautical miles (nm). The purpose of this proposed rule and the framework action is to extend the commercial fishing season for greater amberjack by constraining the harvest rate while continuing to prevent overfishing and rebuild the stock in the Gulf, and to update the boundaries of reef fish management areas to reflect the current state boundaries.

DATES: Written comments must be received on or before January 21, 2020.

ADDRESSES: You may submit comments on the proposed rule, identified by ''NOAA–NMFS–2019–0088'' by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA–NMFS–2019–0088,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Kelli O'Donnell, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

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

Electronic copies of the framework action, which includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis may be obtained from the Southeast Regional Office website at 6*https://www.fisheries.noaa.gov/action/framework-action-greater-amberjack-commercial-trip-limits.*

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, Southeast Regional Office, NMFS, telephone: 727–824–5305, email: *Kelli.ODonnell@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes greater amberjack, is managed under the FMP. The FMP was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and to achieve, on a continuing basis, the optimum yield from federally managed fish stocks to ensure that fishery resources are managed for the greatest overall benefit to the nation.

The greater amberjack stock in the Gulf has been overfished since 2001. To help rebuild the stock NMFS has implemented several modifications to the rebuilding plan, including changes to the commercial and recreational catch levels, and changes to management measures intended to constrain harvest and extend the commercial and recreational seasons. Most recently, NMFS implemented a framework action that modified the greater amberjack rebuilding time period, and modified the sector-specific annual catch limits (ACLs) and annual catch targets (ACTs) (82 FR 61485; December 28, 2017). NMFS also implemented another framework action that was expected to extend the greater amberjack recreational fishing season by modifying the recreational fishing year and the fixed closed season (83 FR 13426; March 29, 2018).

This proposed rule would implement a framework action that is expected to extend the fishing season for the commercial sector by reducing the commercial trip limit. Greater amberjack is not a common target species for the reef fish commercial sector, with the majority of trips landing less than 500 lb (227 kg), gutted weight, 520 lb (236 kg), round weight, of the species. However, some directed trips with higher harvest levels do occur. When commercial landings for greater amberjack are projected to meet the commercial annual catch target, which is codified as the commercial quota, NMFS prohibits harvest for the remainder of the fishing year and any overage of the annual catch limit is paid back the following year (50 CFR 622.41). Harvest for Gulf commercial greater amberjack has closed before the end of the fishing year every year since 2009.

In 2012, NMFS implemented Amendment 35 to the FMP, which established a greater amberjack commercial trip limit of 2,000 lb (907 kg), round weight (77 FR 67574; November 13, 2012). In 2015, the greater amberjack commercial trip limit was reduced to 1,500 lb (680 kg), gutted weight; 1,560 lb (708 kg), round weight, (80 FR 75432; December 2, 2015).

The Council decided to reduce the trip limit further to a level that is expected to lengthen the fishing season while continuing to allow enough harvest per trip to support the current small number of vessels that engage in directed trips.

Management Measure Contained in This Proposed Rule

Commercial Trip Limit

This proposed rule would reduce the Gulf greater amberjack commercial trip limit from 1,500 lb (680 kg), gutted weight, 1,560 lb (708 kg), round weight, to 1,000 lb (454 kg), gutted weight, 1,040 lb (472 kg), round weight. Additionally, there would be a reduction in the trip limit to 250 lb (113 kg), gutted weight, 260 lb (118 kg), round weight, when 75 percent of the commercial ACT has been landed.

As described in the framework action, the proposed trip limit reduction is expected to extend the length of the commercial fishing season beyond June, the month when recent closures have occurred. However, an in-season closure is still expected to occur sometime in September.

The Council considered three other trip limit alternatives which ranged from 750 lb (340 kg), gutted weight (780 lb (354 kg), round weight), to 250 lb (113 kg), gutted weight (260 lb (118 kg), round weight). However, the Council determined that these trip limits were too small to allow for directed commercial greater amberjack trips. Additionally, the 250 lb (113 kg), gutted weight, alternative was not expected to allow fishers to harvest all of the commercial ACT.

Changes in This Proposed Rule Not in the Framework Action

State/Federal Waters Boundary

This proposed rule would revise the boundaries of three Gulf reef fish management areas to reflect a change in the seaward boundary of Alabama, Louisiana, and Mississippi for purposes of management under the FMP. Generally, the state/Federal waters boundary for fisheries management is 3 nm off the coasts of Louisiana, Mississippi, and Alabama and 9 nm off the coasts of Texas and Florida. However, language included in the 2016 and 2017 Consolidated Appropriations Acts (P.L. 114–113, December 18, 2015, and P.L. 115–31, May 5, 2017), changed the state/Federal waters boundary for purposes of management under the FMP to 9 nm off the coasts of all of the Gulf states. Therefore, some existing Federal reef fish management areas that were exclusively in Federal waters now extend into state waters.

This proposed rule would update the regulations to revise the coordinates of the inshore boundaries for the reef fish stressed area (Table 2 of Appendix B to 50 CFR part 622), the reef fish longline and buoy gear restricted area (Table 1 of Appendix B to 50 CFR part 622), and the recreational shallow-water grouper closure (50 CFR 622.34(d)). This rule would also update the terminology in the coordinate tables to reflect that this is boundary specific to Gulf reef fish management. This rule would not change the management measures associated with each area.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Framework Action to the FMP, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule is not an Executive Order 13771 regulatory action because this proposed rule is not significant under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination follows.

A description of the proposed rule, why it is being considered, and the objectives of, and legal basis for this proposed rule are contained in the preamble of this proposed rule at the beginning of the **SUPPLEMENTARY INFORMATION** section and in the **SUMMARY** section. The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record keeping, or other compliance requirements are introduced by this proposed rule. Accordingly, the requirements of the Paperwork Reduction Act do not apply to this proposed rule.

The proposed action would reduce the commercial trip limit for Gulf greater amberjack from 1,500 lb (680 kg), gutted weight, 1,560 lb (708 kg), round weight, to 1,000 lb (454 kg), gutted weight, 1,040 lb (472 kg), round weight, with an added measure that the trip limit would reduce to 250 lb (113 kg), gutted weight, 260 lb (118 kg), round weight, when 75 percent of the commercial ACT had been reached. As a result, this action would directly affect

federally permitted commercial fishers fishing for greater amberjack in the Gulf. For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide.

To determine whether the proposed rule would have a significant economic impact on a substantial number of small entities, NMFS first describes the characteristics of the federal commercial reef fish vessels that harvest greater amberjack in the Gulf. NMFS then estimates the number of commercial vessels to which the reduction in the trip limit reduction would apply, as well the average revenue of these vessels. Last, NMFS estimates to what extent the proposed rule would reduce the revenue or profits of these vessels.

Commercial vessels in the Gulf used a variety of gear types in harvesting reef fish, including greater amberjack. Most vessels used hook-and-line gear in harvesting greater amberjack, with a few using longline or some other fishing gear types, such as spear or powerhead while diving. All vessels, regardless of gear type used, depended more on species other than greater amberjack for their revenues. Relative to total revenues, greater amberjack accounted for approximately 2.24 percent, 0.25 percent, and 9.75 percent for vessels using hook-and-line, longline, and other gear types, respectively. Although greater amberjack is a minor revenue generator for an average vessel, it appears that vessels using other gear types, such as diving gear, depend on greater amberjack more than other vessels.

Florida is the dominant state in the harvest of Gulf greater amberjack, both in terms of landings and revenues. The number of Florida vessels that harvested greater amberjack is the key factor that places Florida above the level of other states. Although Louisiana registered a much lower number of vessels than Florida, greater amberjack landings and revenues from the species appear to be relatively substantial. The other three Gulf states have relatively minor commercial landings of greater amberjack. Although Florida ranks first in terms of total revenues from all sources, Texas ranks first in terms of revenues per vessel, with Alabama/Mississippi (combined for confidentiality purposes) ranking last.

From 2013 through 2017, on average, 204 vessels per year landed greater amberjack from the entire Gulf. These vessels, combined, averaged 628 trips per year in the Gulf on which greater amberjack was landed and 3,167 other trips, which were taken either in the Gulf and no greater amberjack were harvested, or in the South Atlantic regardless of species caught. The average annual total dockside revenue (2017 dollars) was approximately $0.66 million from greater amberjack, $5.68 million from other species co-harvested with greater amberjack (on the same trips), and $32.53 million from other trips by these vessels in the Gulf on which no greater amberjack were harvested or occurred in the South Atlantic. Total average annual revenue from all species harvested by vessels harvesting greater amberjack in the Gulf was approximately $38.87 million or approximately $190,000 per vessel. Revenues from greater amberjack accounted for approximately 1.7 percent of total revenues from all species, indicating that greater amberjack is a minor revenue generator for an average vessel.

Based on the foregoing revenue information, all commercial vessels affected by the proposed action may be considered to be small entities. Because all entities that are expected to be affected by this proposed rule are considered small entities, the issue of disproportional effects on small versus large entities does not arise.

Based on 2016–2018 data, the proposed action would extend the commercial fishing season from 85 days (closure date of June 27) under the no action alternative to, potentially, 170 days (closure date of September 20), but the entire commercial greater amberjack ACT would still be reached in a fishing year, resulting in about the same total revenues from greater amberjack as the no action alternative. Compared to the current trip limit, the 1,000-lb (454-kg), gutted weight, 1,040-lb (472-kg), round weight, trip limit would reduce harvest of greater amberjack per trip by about 18 percent and the 250-lb (113-kg), gutted weight, 260-lb (118-kg), round weight, trip limit would further reduce harvest per trip to about 71 percent. The reduced trip limit would therefore be expected to reduce revenue per trip and possibly lower profits per trip given the same fishing cost. As noted above, greater amberjack accounts for only 1.7 percent of total reef fish vessel revenues indicating that the resulting reduction in revenues per trip would be relatively small. In addition, an extended commercial fishing season would likely provide a better pricing condition for greater amberjack, further mitigating the reduced harvest per trip. Moreover, commercial vessels can make some adjustments as to species composition of catch to make up for whatever is lost as a result of a reduced trip limit for greater amberjack. Although the proposed action would possibly reduce revenues per trip, total annual revenues would remain the same. Therefore, NMFS does not expect the economic impacts of the reduced trip limit on revenues to be significant. Additionally, the updated 9 nm state/Federal boundary coordinates would not affect the analysis done for this proposed rule.

The information provided above supports a determination that this proposed rule would not have a significant economic impact on a substantial number of small entities. Because this proposed rule, if implemented, is not expected to have a significant economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of subjects in 50 CFR Part 622

Boundary, Commercial, Coordinates, Fisheries, Fishing, Greater amberjack, Gulf, Trip limits.

Dated: December 13, 2019.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.34, revise paragraph (d) to read as follows:

§ 622.34 Seasonal and area closures designed to protect Gulf reef fish.

* * * * *

(d) *Seasonal closure of the recreational sector for shallow-water grouper (SWG).* The recreational sector for SWG, in or from the Gulf EEZ, is closed each year from February 1 through March 31, in the portion of the Gulf EEZ seaward of rhumb lines connecting, in order, the points in the following table. During the closure, the bag and possession limit for SWG in or from the Gulf EEZ seaward of the following rhumb lines is zero.

TABLE 1 TO PARAGRAPH (D)

Point	North latitude	West longitude
1	24°48.0′	82°48.0′
2	25°07.5′	82°34.0′
3	26°26.0′	82°59.0′
4	27°30.0′	83°21.5′
5	28°10.0′	83°45.0′
6	28°11.0′	84°00.0′
7	28°11.0′	84°07.0′
8	28°26.6′	84°24.8′
9	28°42.5′	84°24.8′
10	29°05.0′	84°47.0′
11	29°02.5′	85°09.0′
12	29°21.0′	85°30.0′
13	29°27.9′	85°51.7′
14	29°45.8′	85°51.0′
15	30°05.6′	86°18.5′
16	30°07.5′	86°56.5′
17	29°43.9′	87°33.8′
18	29°43.0′	88°18.5′
19	29°18.9′	88°50.7′ at State/Federal Reef Fish Management Boundary, follow Reef Fish Management Boundary to point 20

TABLE 1 TO PARAGRAPH (D)—Continued

Point	North latitude	West longitude
20	28°58.98′	89°35.1′ at State/Federal Reef Fish Management Boundary
21	29°02.0′	89°45.5′
22	28°32.7′	90°21.5′
23	28°24.8′	90°52.7′
24	28°42.3′	92°14.4′
25	28°34.2′	92°30.4′
26	28°27.6′	95°00.0′
27	28°20.0′	95°06.9′
28	28°02.2′	96°11.1′
29	27°46.5′	96°38.1′
30	27°15.0′	97°00.0′
31	26°45.5′	97°01.4′
32	At EEZ	96°51.0′

* * * * *

■ 3. In § 622.43, revise paragraph (a) to read as follows:

§ 622.43 Commercial trip limits.

* * * * *

(a) *Gulf greater amberjack.* (i) Until 75 percent of the quota specified in § 622.39(a)(1)(v) is reached, 1000 lb (454 kg), gutted weight; 1040 lb (472 kg), round weight.

(ii) After 75 percent of the quota is reached or projected to be reached, 250 lb (113 kg), gutted weight; 260 lb (118 kg), round weight. See § 622.39(b) for the limitations regarding greater amberjack after the quota is reached. When the conditions in this paragraph (a)(ii) have been reached, the Assistant Administrator will implement this trip limit change by filing a notification with the Office of the Federal Register.

* * * * *

■ 4. Revise Appendix B to Part 622, to read as follows:

Appendix B to Part 622—Gulf Areas

TABLE 1 OF APPENDIX B TO PART 622—SEAWARD COORDINATES OF THE LONGLINE AND BUOY GEAR RESTRICTED AREA

Point number and reference location [1]	North lat.	West long.
1 Seaward limit of the State/Federal Reef Fish Management Boundary north of Dry Tortugas.	24°48.0′	82°48.0′
2 North of Rebecca Shoal	25°07.5′	82°34.0′.
3 Off Sanibel Island—Offshore	26°26.0′	82°59.0′.
4 West of Egmont Key	27°30.0′	83°21.5′.
5 Off Anclote Keys—Offshore	28°10.0′′	83°45.0′.
6 Southeast corner of Florida Middle Ground	28°11.0′	84°00.0′.
7 Southwest corner of Florida Middle Ground	28°11.0′	84°07.0′.
8 West corner of Florida Middle Ground	28°26.6′	84°24.8′.
9 Northwest corner of Florida Middle Ground	28°42.5′	84°24.8′.
10 South of Carrabelle	29°05.0′	84°47.0′.
11 South of Cape St. George	29°02.5′	85°09.0′.
12 South of Cape San Blas lighted bell buoy—20 fathoms	29°21.0′	85°30.0′.
13 South of Cape San Blas lighted bell buoy—50 fathoms	28°58.7′	85°30.0′.
14 De Soto Canyon	30°06.0′	86°55.0′.
15 South of Pensacola	29°46.0′	87°19.0′.
16 South of Perdido Bay	29°29.0′	87°27.5′.
17 East of North Pass of the Mississippi River	29°14.5′	88°28.0′.
18 East of South Pass of the Mississippi River	29°04.0′	88°49.7′ at State/Federal Reef Fish Management Boundary.
Thence westerly along the seaward limit of the State/Federal Reef Fish Management Boundary to:		
19 South of Southwest Pass of the Mississippi River	28°46.5′	89°26.0′.
20 Northwest tip of Mississippi Canyon	28°38.5′	90°08.5′.
21 West side of Mississippi Canyon	28°34.5′	89°59.5′.
22 South of Timbalier Bay	28°22.5′	90°02.5′.
23 South of Terrebonne Bay	28°10.5′	90°31.5′.
24 South of Freeport	27°58.0′	95°00.0′.
25 Off Matagorda Island	27°43.0′	96°02.0′.
26 Off Aransas Pass	27°30.0′	96°23.5′.
27 Northeast of Port Mansfield	27°00.0′	96°39.0′.
28 East of Port Mansfield	26°44.0′	96°37.5′.
29 Northeast of Port Isabel	26°22.0′	96°21.0′.
30 U.S./Mexico EEZ boundary	26°00.5′	96°24.5′.
Thence westerly along U.S./Mexico EEZ boundary to the seaward limit of the State/Federal Reef Fish Management Boundary.		

[1] Nearest identifiable landfall, boundary, navigational aid, or submarine area.

TABLE 2 OF APPENDIX B TO PART 622—SEAWARD COORDINATES OF THE STRESSED AREA

Point Number and reference location [1]	North lat.	West long.
1 Seaward limit of the State/Federal Reef Fish Management Boundary northeast of Dry Tortugas.	24°45.5′	82°41.5′.
2 North of Marquesas Keys	24°48.0′	82°06.5′.
3 Off Cape Sable	25°15.0′	82°02.0′.
4 Off Sanibel Island—Inshore	26°26.0′	82°29.0′.
5 Off Sanibel Island—Offshore	26°26.0′	82°59.0′.
6 West of Egmont Key	27°30.0′	83°21.5′.
7 Off Anclote Keys—Offshore	28°10.0′	83°45.0′.
8 Off Anclote Keys—Inshore	28°10.0′	83°14.0′.
9 Off Deadman Bay	29°38.0′	84°00.0′.
10 Seaward limit of the State/Federal Reef Fish Management Boundary east of Cape St. George.	29°35.5′	84°38.6′.
Thence westerly along the seaward limit of the State/Federal Reef Fish Management Boundary to:		
11 Seaward limit of the State/Federal Reef Fish Management Boundary south of Cape San Blas.	29°32.2′	85°27.1′.
12 Southwest of Cape San Blas	29°30.5′	85°52.0′.
13 Off St. Andrew Bay	29°53.0′	86°10.0′.
14 De Soto Canyon	30°06.0′	86°55.0′.
15 South of Florida/Alabama border	29°34.5′	87°38.0′.
16 Off Mobile Bay	29°41.0′	88°00.0′.
17 South of Alabama/Mississippi border	30°01.5′	88°23.7′.
18 Horn/Chandeleur Islands	30°01.5′	88°39.8' at State/Federal Reef Fish Management Boundary.
Thence southerly along the seaward limit of the State/Federal Reef Fish Management Boundary to:		
19 Seaward limit of the State/Federal Reef Fish Management Boundary off Chandeleur Islands.	29°50.8'	88°39.07' at State/Federal Reef Fish Management Boundary.
20 Chandeleur Islands	29°35.5′	88°37.0′.
21 Seaward limit of the State/Federal Reef Fish Management Boundary off North Pass of the Mississippi River.	29°21.0′	88°54.43′ at State/Federal Reef Fish Management Boundary.
Thence southerly and westerly along the seaward limit of the State/Federal Reef Fish Management Boundary to:		
22 Seaward limit of the State/Federal Reef Fish Management Boundary off Southwest Pass of the Mississippi River.	29°01.3′	89°34.67′ at State/Federal Reef Fish Management Boundary.
23 Seaward limit of the State/Federal Reef Fish Management Boundary west of the Mississippi.	29°5.24′ at State/Federal Reef Fish Management Boundary.	89°41.0′.
Thence westerly along the seaward limit of the State/Federal Reef Fish Management Boundary to:.		
24 Seaward limit of the State/Federal Reef Fish Management Boundary south of Grand Isle.	29°3.03′ at State/Federal Reef Fish Management Boundary.	89°56.0′.
25 Quick flashing horn buoy south of Isles Dernieres	28°32.5′	90°42.0′.
26 Southeast of Calcasieu Pass	29°10.0′	92°37.0′.
27 South of Sabine Pass—10 fathoms	29°09.0′	93°41.0′.
28 South of Sabine Pass—30 fathoms	28°21.5′	93°28.0′.
29 East of Aransas Pass	27°49.0′	96°19.5′.
30 East of Baffin Bay	27°12.0′	96°51.0′.
31 Northeast of Port Mansfield	26°46.5′	96°52.0′.
32 Northeast of Port Isabel	26°21.5′	96°35.0′.
33 U.S./Mexico EEZ boundary	26°00.5′	96°36.0′.
Thence westerly along U.S./Mexico EEZ boundary to the seaward limit of the State/Federal Reef Fish Management Boundary.		

[1] Nearest identifiable landfall, boundary, navigational aid, or submarine area.

[FR Doc. 2019–27356 Filed 12–18–19; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 84, No. 244

Thursday, December 19, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Announcement of meetings.

SUMMARY: The Black Hills National Forest Advisory Board (Board) will meet in Rapid City, South Dakota. The Board is established consistent with the Federal Advisory Committee Act of 1972, the Forest and Rangeland Renewable Resources Planning Act of 1974, the National Forest Management Act of 1976, and the Federal Public Lands Recreation Enhancement Act. Additional information concerning the Board, including meeting agendas and meeting summary/minutes, can be found by visiting the Board's website at: *http://www.fs.usda.gov/main/blackhills/workingtogether/advisorycommittees.*

DATES: The meeting will be held on Wednesday, January 8, 2020, from 1:00 p.m. to 4:30 p.m. All meetings are subject to cancellation. For updated status of meeting prior to attendance, please contact Scott Jacobson, Committee Coordinator, by phone at 605–673–9216 or by email at *scott.j.jacobson@usda.gov.*

ADDRESSES: The meeting will be held at the U.S. Forest Service, Mystic Ranger District Office, 8221 Mount Rushmore Road, Rapid City, South Dakota 57702.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses, when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the Black Hills National Forest Supervisor's Office. Please call ahead at 605–673–9216 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Scott Jacobson, Committee Coordinator, by phone at 605–673–9216 or by email at *scott.j.jacobson@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to provide advice and recommendations on a broad range of forest issues such as forest plan revisions or amendments, forest health including fire, insect and disease, travel management, forest monitoring and evaluation, recreation fees, and site specific projects having forest-wide implications. Specific agenda topics during CY2020 may include but are not limited to:

a. Black Hills Resilient Landscapes Project;

b. Motorized Trail Strategy;

c. Non-motorized Trails;

d. Recreation Site Analysis and Recreation Facilities;

e. Mining, and Gold Exploration;

f. Wildland Fire Preparedness and Response;

g. Forest management to include Timber program and Hazardous Fuels Reduction Treatments; and,

h. Wildlife, Range, Botany and Heritage Management Projects.

The meetings are open to the public. If time allows, the public may make oral statements of three minutes or less. Individuals wishing to make an oral statement should submit a request in writing by December 31, 2019, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the Board may file written statements with the Board's staff before or after the meeting. Written comments and time requests for oral comments must be sent to Scott Jacobson, Black Hills National Forest Supervisor's Office, 1019 North Fifth Street, Custer, South Dakota 57730; by email to *scott.j.jacobson@usda.gov,* or via facsimile to 605–673–9208.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation for access to the facility or proceedings by contacting Scott Jacobson, Committee Coordinator, by phone at 605–673–9216 or by email at *scott.j.jacobson@usda.gov.* All reasonable accommodation requests are managed on a case by case basis.

Dated: November 7, 2019.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2019–27296 Filed 12–18–19; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–885]

Phosphor Copper From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016–2018

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

SUMMARY: The Department of Commerce (Commerce) determines that Bongsan Co., Ltd. (Bongsan) did not make U.S. sales of phosphor copper from the Republic of Korea (Korea) below normal value during the period of review (POR), October 14, 2016 through March 31, 2018.

DATES: Applicable December 19, 2019.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3797.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* on June 17, 2019.[1] For a history of events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[2]

On August 13, 2019, Commerce postponed the final results of this

[1] *See Phosphor Copper from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016–2018,* 84 FR 28009 (June 17, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Phosphor Copper from the Republic of Korea: Issues and Decision Memorandum for the Final Results of Antidumping Duty administrative Review; 2016–2018,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

review until December 13, 2019.[3] On September 24, 2019, Commerce issued post preliminary results of the particular market situation and pricing agreement alleged by the petitioner.[4]

Scope of the Order [5]

The product covered by this order is phosphor copper from Korea. For a complete description of the scope of this order, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties are addressed in the Issues and Decision Memorandum and are identified in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on-file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we have revised the reported financial expense ratio to the preliminary margin calculations for Bongsan.[6]

Final Results

As a result of this review, Commerce determines the following weighted-average dumping margin for Bongsan for the period October 14, 2016 through March 31, 2018:

Exporter or producer	Weighted-average dumping margin (percent)
Bongsan Co., Ltd	0.00

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protections (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For Bongsan, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those sales in accordance with 19 CFR 351.212(b)(1). When either Bongsan's weighted-average dumping margin is zero or *de minimis* (*i.e.,* less than 0.5 percent), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For entries of subject merchandise during the POR produced by Bongsan for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for Bongsan will be equal to the weighted-average dumping margin established in the final results of this administrative review, except if that rate is *de minimis,* in which situation the cash deposit rate will be zero; (2) for merchandise exported by a producer or exporter not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 8.43 percent, the all-others rate established in the LTFV investigation.

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

Notification to Importers Regarding the Reimbursement of Duties

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

Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: December 13, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Particular Market Situation and Pricing Agreement Allegations
V. Changes Made Since the *Preliminary Results*
VI. Analysis of Comments

[3] *See* Memorandum, ''Phosphor Copper from the Republic of Korea: Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review; 2016–2018,'' dated August 13, 2019.

[4] *See* Memorandum, ''Post Preliminary Analysis of Particular Market Situation Allegation and Pricing Agreement Allegation in the Antidumping Duty Administrative Review: Phosphor Copper from the Republic of Korea; 2016–2018,'' dated September 24, 2019.

[5] *See Phosphor Copper from the Republic of Korea: Antidumping Duty Order,* 82 FR 18893 (April 24, 2017) (*Order*).

[6] *See* Memorandum, ''Final Results in the Antidumping Duty Administrative Review of Phosphor Copper from the Republic of Korea (2016–2018): Sales and Cost of Production Calculation Memorandum for Bongsan Co., Ltd.,'' dated concurrently with this notice.

Comment 1: Adverse Facts Available (AFA) to Bongsan
Comment 2: Cost-Based Particular Market Situation (PMS)
Comment 3: Bongsan's Costs on a Quarterly-Average Basis
Comment 4: Bongsan's Financial Expense Ratio
VII. Recommendation

[FR Doc. 2019–27407 Filed 12–18–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–830]

Carbon and Certain Alloy Steel Wire Rod From Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that sales of carbon and certain alloy steel wire rod (wire rod) from Mexico were made at less than normal value during the period of review (POR), October 1, 2017 through September 30, 2018. We invite interested parties to comment on these preliminary results.

DATES: Applicable December 19, 2019.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–8362.

Background

On October 29, 2002 Commerce published the *Wire Rod Order* in the **Federal Register**.[1] On December 11, 2018, pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), Commerce initiated an administrative review of the *Wire Rod Order* covering Deacero S.A.P.I. de C.V. (Deacero), ArcelorMittal Las Truchas, S.A. de C.V. (AMLT), ArcelorMittal Mexico S.A. de C.V. (AMM) (successor-in-interest to AMLT),[2] Ternium Mexico S.A. de C.V. (Ternium), Grupo Villacero S.A. de C.V. (Grupo Villacero), and Talleres y Aceros S.A. de C.V. (Talleres y Aceros).[3] Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 28, 2019.[4] As a result, the revised deadline for the preliminary results of this administrative review became August 12, 2019. On July 26, 2019, Commerce extended the deadline for the preliminary results to December 10, 2019.[5] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[6]

Scope of the Order

The product covered by the *Wire Rod Order* is wire rod, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter. The subject merchandise is currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7213.91.3000, 7213.91.3010, 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3090, 7213.91.3091, 7213.91.3092, 7213.91.3093, 7213.91.4500, 7213.91.4510, 7213.91.4590, 7213.91.6000, 7213.91.6010, 7213.91.6090, 7213.99.0030, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0000, 7227.20.0010, 7227.20.0020, 7227.20.0030, 7227.20.0080, 7227.20.0090, 7227.20.0095, 7227.90.6010, 7227.90.6020, 7227.90.6030, 7227.90.6035, 7227.90.6050, 7227.90.6051, 7227.90.6053, 7227.90.6058, 7227.90.6059, 7227.90.6080, and 7227.90.6085. The HTSUS subheadings are provided for convenience and customs purposes only; the written product description remains dispositive. A full description of the scope of the *Wire Rod Order* is contained in the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Act. Export and constructed export price were calculated in accordance with section 772 of the Act. Normal value was calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

Preliminary Results of the Review

As a result of this review, we preliminarily determine the following weighted-average dumping margins exist for the POR:

Exporter/producer	Weighted-average dumping margins (percent)
Deacero S.A.P.I de C.V	6.70
Ternium Mexico S.A. de C.V	6.70
ArcelorMittal Mexico S.A. de C.V (formerly ArcelorMittal Las Truchas de C.V.)	6.70
Grupo Villacero S.A. de C.V	6.70
Talleres y Aceros de C.V	6.70

Assessment Rates

Upon issuance of the final results, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. If the weighted-average dumping margin for Deacero is not zero or *de minimis* (*i.e.,* less than 0.5 percent), we will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR

[1] *See Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine,* 67 FR 65945 (October 29, 2002) (*Wire Rod Order*).

[2] *See Final Results of Changed Circumstances Review: Antidumping Duty Order on Carbon and Certain Alloy Steel Wire Rod from Mexico,* 82 FR 53456 (November 16, 2017) in which Commerce determined that AMM is the successor-in-interest to AMLT.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 63615 (December 11, 2018).

[4] *See* Memorandum, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding affected by the partial federal government closure have been extended by 40 days.

[5] *See* Memorandum, ''Carbon and Certain Alloy Steel Wire Rod from Mexico: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated July 26, 2019.

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Mexico; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

351.212(b)(1).[7] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* 0.5 percent). Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review where applicable.

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by each respondent which did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate entries not reviewed at the all-others rate of 20.11 percent [8] if there is no rate for the intermediate company(ies) involved in the transaction. We intend to issue instructions to CBP 41 days after publication of the final results of this review.[9]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of wire rod from Mexico entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for the firms listed above will be equal to the dumping margins established in the final results of this review, except if the ultimate rates are *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rates will be zero; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the producer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 20.11 percent, the all-others rate established in the antidumping duty investigation.[10] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

We intend to disclose the calculations performed in these preliminary results to parties in this proceeding within five days of the date of publication of this notice.[11]

Public Comment

Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.[12] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[13] All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the established deadline.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

We intend to issue the final results of this administrative review, including the results of our analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Notification to Importers

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

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h)(1).

Dated: December 9, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Non-Selected Rate
V. Discussion of the Methodology
VI. Recommendation

[FR Doc. 2019–27406 Filed 12–18–19; 8:45 am]

BILLING CODE 3510–DS–P

[7] In the preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[8] *See Wire Rod Order,* 67 FR at 65947.

[9] *See* 19 CFR 356.8(a).

[10] *See Wire Rod Order,* 67 FR at 65947.

[11] *See* 19 CFR 351.224(b).

[12] *See* 19 CFR 351.309(d).

[13] *See* 19 CFR 351.309(c)(2) and (d)(2) and 19 CFR 351.303 (for general filing requirements).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Atlantic Mackerel, Squid, and Butterfish Amendment 14 Data Collection

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 17, 2020.

ADDRESSES: Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 or via the internet at *PRAcomments@doc.gov.* Comments will generally be posted without change. Please do not include information of a confidential nature, such as sensitive personal information or proprietary information. All Personally Identifiable Information (for example, name and address) voluntarily submitted may be publicly accessible.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Alyson Pitts, Greater Atlantic Region, Sustainable Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930, (978) 281–9352, *Alyson.Pitts@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection. Under the Magnuson-Stevens Fishery Conservation and Management Act, the Secretary of Commerce has the responsibility for the conservation and management of marine fishery resources. Much of this responsibility has been delegated to NOAA's National Marine Fisheries Service (NMFS). Under this stewardship role, the Secretary was given certain regulatory authorities to ensure the most beneficial uses of these resources. One of the regulatory steps taken to carry out the conservation and management objectives is to collect information from users of the resources.

This collection requires vessel trip reports (VTRs) to be submitted weekly for all limited access Atlantic mackerel and longfin squid 1A and 1B permit holders. In addition, all limited access Atlantic mackerel, longfin squid 1A and 1B permit holders must maintain a vessel monitoring system (VMS) unit on their vessels and declare intent to target Atlantic mackerel or longfin squid and submit daily catch reports via VMS. They must also submit daily catch reports via VMS. Vessels that land over 20,000 lb of mackerel must notify NMFS Office of Law Enforcement (OLE) via VMS of the time and place of offloading at least 6 hours prior to crossing the VMS demarcation line on their return trip to port, or if the vessel does not fish seaward of the VMS demarcation line, at least 6 hours prior to landing.

This collection also requires limited access Atlantic mackerel and longfin squid 1A and 1B permit holders to bring all catch aboard the vessel and make it available for sampling by an observer. If catch is not made available to an observer before discard, that catch is defined as slippage, and the vessel operator must complete a ''Released Catch Affidavit'' form within 48 hours of the end of the fishing trip which details why catch was slipped, estimates the quantity and species composition of the slipped catch, and records the time and location of the slipped catch.

Finally, this collection requires any vessel with a limited access Atlantic mackerel permit intending to land over 20,000 lbs of Atlantic mackerel to contact NMFS at least 48 hours in advance of a fishing trip to request an observer. Vessels currently contact NMFS via phone, and selection notices or waivers are issued by NMFS via VMS. If service providers are unable to provide coverage, an owner, operator, or vessel manager may request a waiver by calling the Northeast Fisheries Observer Program.

This collection is necessary for continued catch monitoring for the Atlantic mackerel, squid, and butterfish fisheries and to address incidental catch of river herring and shad through responsible management.

II. Method of Collection

VTR Requirements

All Atlantic mackerel, squid, and butterfish permit holders must submit VTRs weekly either online or by submitting them by paper form through the mail.

VMS Requirements

Vessels with VMS requirements are required to declare their intent to fish and submit daily catch reports using electronic VMS units on board the vessel. Other VMS actions include trip start and pre-landing notifications, activity and gear codes, and trip type declaration.

Documentation of Slippage Events

Any slippage event that occurs during a trip requires the completion of a ''Released Catch Affidavit'', which is submitted by signed paper form sent in the mail.

Observer Program Call-In Requirements

Vessels with a limited access mackerel permit intending to land over 20,000 lb of Atlantic mackerel are required to give advance notification to the Northeast Fisheries Observer Program (NEFOP) before the start of a trip in order to receive a fisheries observer or a waiver. Vessels use a toll-free call-in number or a local phone number to comply with this requirement.

III. Data

OMB Control Number: 0648–0679.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations; Individual or households.

Estimated Number of Respondents: 414.

Estimated Total Annual Burden Hours: 3,751.

Estimated Total Annual Cost to Public: $2,322.

Estimated Time per Response: VTR Reports: 5 minutes; activity declarations: 5 minutes; power-down exemption: 5 minutes; pre-landing notification: 5 minutes; Released Catch Affidavit: 5 minutes; Observer Call In: 5 minutes.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

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

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–27289 Filed 12–18–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2019–HQ–0028]

Submission for OMB Review; Comment Request

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 21, 2020.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: U.S. Army Corps of Engineers, Instrument for Hurricane Evacuation Behavioral Survey; Generic Collection for OMB Control Number 0710–0019.

Type of Request: Extension.

Number of Respondents: 6,000.

Responses per Respondent: 1.

Annual Responses: 6,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 1,500.

Needs and Uses: The primary purpose of collections to be conducted under this clearance is to provide data which will be used in conjunction with other information to derive numerical values of certain evacuation behaviors which in turn will be used in transportation modeling of evacuation clearance times, along with shelter planning and public outreach. In general all collections under this clearance will be designed based upon accepted statistical practices and sampling methodologies, will gather consistent and valid data that are representative of the target population, address non-response bias issues, and achieve response rates needed to obtain statistically useful results.

Affected Public: Business or other for-profit; individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: December 13, 2019.

Morgan E. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–27367 Filed 12–18–19; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2019–HQ–0027]

Submission for OMB Review; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 21, 2020.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: USMA Admissions Procedures; USMA Form 5–518, 5–490, 2–66, 847, 5–489, 5–519, 8–2, 5–599, 480–1; OMB Control Number 0702–0060.

USMA Pre-Candidate Procedures

Type of Request: Reinstatement.

Number of Respondents: 75,000.

Responses per Respondent: 1.

Annual Responses: 75,000.

Average Burden per Response: 25 minutes.

Annual Burden Hours: 31,250.

USMA Candidate Procedures

Type of Request: Reinstatement.

Number of Respondents: 53,800.

Responses per Respondent: 1.

Annual Responses: 53,800.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 17,933.

Offered Candidate Procedures

Type of Request: Reinstatement.

Number of Respondents: 46,880.

Responses per Respondent: 1.

Annual Responses: 46,880.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 11,720.

Needs and Uses: Due to the advent of USMA technology, the collection of information for Pre-Candidates (0702–0060), Candidates (0702–0061) and Accepted Candidates (0702–0062) are now collected from the single on-line Department of Admissions website. Henceforth, based on this electronic modernization upgrade and intersection of information this collection is updated to reflect a single collection (0702–0060) that encompasses all three distinct phases: Pre-Candidate Procedures, Candidate Procedures, and Accepted Candidate Procedures.

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://*

www.regulations.gov as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: December 13, 2019.

Morgan E. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–27362 Filed 12–18–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 19–45]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 19–45 with attached Policy Justification and Sensitivity of Technology.

Dated: December 12, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

SEP 1 1 2019

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 19-45 concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Morocco for defense articles and services estimated to cost $776 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 19–45

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Kingdom of Morocco

(ii) *Total Estimated Value:*

Major Defense Equipment *	$700 million
Other	$ 76 million
TOTAL	$776 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Two thousand four hundred and one (2,401) TOW 2A, Radio Frequency (RF) Missiles (BGM-71-4B-RF)

Twenty-eight (28) TOW 2A, Radio Frequency (RF) Missiles (BGM-71-4B-RF) Fly-to-Buy Lot Acceptance Missiles

Four hundred (400) M220A2 TOW Launchers and/or four hundred (400) M41 Improved Target Acquisition System (ITAS) Launchers

Non-MDE: Also included are missile support equipment; Government

furnished equipment; technical manuals/publications; spare parts; tool and test equipment; training; U.S. Government technical and logistical support, contractor technical support, and other associated equipment and services.

(iv) *Military Department:* Army

(v) *Prior Related Cases, if any:* MO-B-USZ

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress:* September 11, 2019

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Morocco—TOW 2A, Radio Frequency (RF) Missiles (BGM-71-4B-RF)

The Government of Morocco has requested a possible sale of two thousand four hundred and one (2,401) TOW 2A, Radio Frequency (RF) Missiles (BGM-71-4B-RF); and twenty eight (28) TOW 2A, Radio Frequency (RF) Missiles (BGM-71-4B-RF), Fly-to-Buy missiles for lot acceptance testing; and Four hundred (400) M220A2 TOW Launchers and/or four hundred (400) M41 Improved Target Acquisition System (ITAS) Launchers. Also included are missile support equipment; Government furnished equipment; technical manuals/publications; spare parts; tool and test equipment; training; U.S. Government technical and logistical support, contractor technical support, and other associated equipment and services. The estimated cost is $776 million.

This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of a major Non-NATO ally that continues to be an important force for political stability and economic progress in North Africa.

The proposed sale of the TOW 2A Missiles and TOW Launchers will advance Morocco's efforts to develop an integrated ground defense capability. A strong national defense and dedicated military force will assist Morocco to sustain itself in its efforts to maintain stability.

The proposed sale of this equipment will not alter the basic military balance in the region.

The principal contractors involved in this program are Raytheon Missile Systems, Tucson, Arizona and McKinney, Texas. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the U.S. Government or contractor representatives to travel to Morocco.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 19-45

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The TOW 2A, Radio Frequency (RF) Missiles (BGM-71-4B-RF) is a direct attack missile designed to defeat armored vehicles, reinforced urban structures, field fortifications and other such targets. TOW missiles are fired from a variety of TOW launchers in the U.S. Army, USMC, and FMS customer forces. The TOW 2A RF missile can be launched from the same launcher platforms as the existing wire-guided TOW 2A missile without modification to the launcher. The TOW 2A missile (both wire & RF) contains two tracker beacons (xenon and thermal) for the launcher to track and guide the missile in flight. Guidance commands from the launcher are provided to the missile by a RF link contained within the commands from the missile case. The hardware, software, and technical publications provided with the sale are UNCLASSIFIED. However, the system itself contains sensitive technology that instructs the system on how to operate in the presence of countermeasures.

2. Improved Target Acquisition System (ITAS) is designed to fire all existing versions of the TOW missile and consists of a Target Acquisition Subsystem (TAS), a Fire Control Subsystem (FCS), a Li-Ion Battery Box (LBB), a modified Traversing Unit (TU) plus the standard launch tube and tripod. The ITAS provides for the integration of both the direct view optics and a second generation Standard Advanced Dewar Assembly (SADA) II thermal sensor into a single housing; direct view optics that provide viewing the target scene in daylight and non-obscured conditions; introduction of both passive and active eye safe laser-ranging; development of embedded training and training sustainment; automatic bore sight which allows the gunner to align the night vision system with the direct view optics; insertion of advanced Built-in Test/Built-in Test Equipment (BIT/BITE) which provides fault detection and recognition and go/no go status for the gunner; and an Aided Target Tracker (ATT) that provides the capability to process infrared imagery into recognizable contour features used to assist the gunner's aim point.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Morocco can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal are authorized for release and export to the Government of Morocco.

[FR Doc. 2019–27292 Filed 12–18–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2019–HA–0101]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 21, 2020.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Mr. Josh Brammer, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Department of Defense Active Duty/Reserve Forces Dental Examination; DD Form 2813; OMB Control Number 0720–0022.

Type of Request: Revision.
Number of Respondents: 150,000.
Responses per Respondent: 5.
Annual Responses: 750,000.
Average Burden per Response: 3 minutes.
Annual Burden Hours: 37,500.
Needs and Uses: The information collection requirement is necessary to obtain and record the dental health status of members of the Armed Forces. This form is the means for civilian dentists to record the results of their findings and provide the information to the member's military organization. The military organizations are required by Department of Defense policy to track the dental status of its members.
Affected Public: Individuals or households, Business or Other For-Profit, and Not-For-Profit Institutions.
Frequency: Annually and on occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Mr. Josh Brammer.
You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:
• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.
DOD Clearance Officer: Ms. Angela James.
Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: December 13, 2019.

Morgan E. Park,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2019–27368 Filed 12–18–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2019–HA–0095]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 21, 2020.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Mr. Josh Brammer, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:
Title; Associated Form; and OMB Number: Women, Infants, and Children Overseas Program (WIC Overseas) Eligibility Application; OMB Control Number 0720–0030.
Type of Request: Extension.
Number of Respondents: 14,550.
Responses per Respondent: 2.
Annual Responses: 29,100.
Average Burden per Response: 15 minutes.
Annual Burden Hours: 7,275.
Needs and Uses: The information collection requirement is necessary for individuals to apply for certification and periodic recertification to receive WIC Overseas benefits.
Affected Public: Individuals or households.
Frequency: On occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Mr. Josh Brammer.
You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:
• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.
DOD Clearance Officer: Ms. Angela James.
Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: December 13, 2019.

Morgan E. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–27369 Filed 12–18–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2019–OS–0121]

Submission for OMB Review; Comment Request

AGENCY: Defense Counterintelligence and Security Agency, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 21, 2020.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:
Title; Associated Form; and OMB Number: DoD Consolidations Facility Request for Records; OMB Control Number 0704–0561.
Type of Request: Extension.
Number of Respondents: 120.
Responses per Respondent: 1.
Annual Responses: 120.
Average Burden per Response: 5 minutes.
Annual Burden Hours: 10.
Needs and Uses: The information collection requirement is necessary to ensure needed information is collected to positively identify individuals who request records regarding themselves that are maintained by the DoD Consolidated Adjudications Facility. These records will also be used in any Privacy Act appeals or related litigation. The Law Enforcement, Congressional Inquiries, Department of Justice for Litigation, National Archives and Records Administration, and Data

Breach Remediation, and Routine Uses found at *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx.* The DoD Consolidated Adjudications Facility Request for Records form will also be used to refer records under the release authority of another Federal Agency.

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: December 13, 2019.

Morgan E. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–27365 Filed 12–18–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2019–HA–0096]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 21, 2020.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Mr. Josh Brammer, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Active Duty Dental Program (ADDP) Claim Form; OMB Control Number 0720–0053.

Type of Request: Revision.

Number of Respondents: 105,000.

Responses per Respondent: 4.

Annual Responses: 420,000.

Average Burden per Response: 15 minutes

Annual Burden Hours: 105,000.

Needs and Uses: The information collection is necessary to obtain and record the dental readiness of Service Members using the Active Duty Dental Program (ADDP) and at the same time submit the claim for the dental procedures provided so that claims can be processed and reimbursement made to the provider. Many Service Members are not located near a military dental treatment facility and receive their dental care in the private sector.

Affected Public: Business or other for-profit; individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Josh Brammer.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: December 13, 2019.

Morgan E. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–27360 Filed 12–18–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2019–OS–0136]

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service (DFAS), DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Finance and Accounting Service announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 18, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Finance and Accounting Services—Cleveland, 1240 East 9th Street, Cleveland, OH 44199, ATTN: Mr. Charles Moss, *charles.moss@dfas.mil,* 216–204–4426.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Custodianship Certification to Support Claims on Behalf of Minor Children of Deceased Members of the Armed Forces, DD Form 2790, OMB Control Number 0730–0010.

Needs and Uses: Per DoD Financial Management Regulation, 7000.14–R, Volume 7B, Chapter 46, paragraph 460103A(1), an annuity for a minor child is paid to the legal guardian, or, if there is no legal guardian, to the natural parent who has care, custody, and control of the child as the custodian, or to a representative payee of the child. An annuity may be paid directly to the child when the child is considered to be of majority age under the law in the state of residence. The child then is considered an adult for annuity purposes and a custodian or legal fiduciary is not required.

Affected Public: Individuals or households.

Annual Burden Hours: 120.

Number of Respondents: 300.

Responses per Respondent: 1.

Annual Responses: 300.

Average Burden per Response: 24 minutes.

Frequency: On occasion.

Dated: December 16, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–27393 Filed 12–18–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2019–OS–0116]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 21, 2020.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Joint Contingency and Expeditionary Services (JCXS); OMB Control Number 0704–XXXX.

Type of Request: New.

Number of Respondents: 5,500.

Responses per Respondent: 1.

Annual Responses: 5,500.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 2,750.

Needs and Uses: The information collection requirement is necessary to maintain the safety of contractors and U.S. Armed Forces while ensuring that the U.S. Government is not doing business with entities at odds with American interests. JCXS contains two modules, the Joint Contingency Contracting System (JCCS), which evaluates vendors for possible approval or acceptance to do business with and have access to U.S. military installations around the world, and the Civilian Arming Authorization Management System (CAAMS), which provides a standardized and automated process for the submission, review, approval, and compliance management of the contractor arming process. JCXS is the DoD's agile, responsive, and global provider of Joint expeditionary acquisition business solutions that fulfill mission-critical requirements while supporting interagency collaboration—to include, but not limited to, contracting, finance, spend analysis, contract close-out, staffing, strategic sourcing, and reporting.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: December 13, 2019.

Morgan E. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–27366 Filed 12–18–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2019–OS–0135]

Proposed Collection; Comment Request

AGENCY: Chief Information Officer, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Joint Services Provider announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 18, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Joint Services Provider, 6000 Defense Pentagon, Washington, DC 20301–6000, Gregg Meserve, (703) 693–8376.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Joint Service Provider (JSP) Software Request; DD Form 3078; OMB Control Number 0704–XXXX.

Needs and Uses: All JSP customers submit a Software Request Form when they require software. The Software Request Form request information on the Customer, their computer name, computer operating system, name of software being requested, and the justification for the software. This information is used to ensure that JSP in in compliance with the use rights of the software.

Affected Public: Individuals and households.

Annual Burden Hours: 5,525.

Number of Respondents: 11,050.

Responses per Respondent: 1.

Annual Responses: 11,050.

Average Burden per Response: 30 Minutes.

Frequency: On Occasion.

Dated: December 16, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–27389 Filed 12–18–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2019–HQ–0017]

Submission for OMB Review; Comment Request

AGENCY: The Office of the Under Secretary of the Navy, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 21, 2020.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov*. Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil*.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Application Forms and Information Guide, Naval Reserve Officers Training Corps (NROTC) Scholarship Program; OMB Control Number 0703–0026.

Type of Request: Extension.

Number of Respondents: 14,000.

Responses per Respondent: 7.

Annual Responses: 98,000.

Average Burden per Response: 2.5 hours.

Annual Burden Hours: 46,666.

Needs and Uses: This collection of information is used to make a determination of an applicant's academic and/or leadership potential and eligibility for an NROTC scholarship. The information collected is used to select the best-qualified candidates.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil*.

Dated: December 13, 2019.

Morgan E. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–27363 Filed 12–18–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2019–OS–0018]

Submission for OMB Review; Comment Request

AGENCY: The Office of the Under Secretary of the Navy, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 21, 2020.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov*. Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Camp Lejeune Notification Database; OMB Control Number 0703–0057.

Type of Request: Extension.

Number of Respondents: 10,000.

Responses per Respondent: 1.

Annual Responses: 10,000.

Average Burden per Response: 6 minutes.

Annual Burden Hours: 1,000.

Needs and Uses: The information collection requirement is used to obtain and maintain contact information on people who may have been exposed to contaminated drinking water in the past aboard Marine Corps Base Camp Lejeune, NC, as well as other persons interested in the issue. The information will be used to provide notifications and updated information as it becomes available. The information will also be used to correspond with registrants, as necessary (*e.g.,* respond to voicemails or letters).

Affected Public: Federal Government; individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: December 13, 2019.

Morgan E. Park,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2019–27364 Filed 12–18–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0158]

Agency Information Collection Activities; Comment Request; Student Assistance General Provisions—Satisfactory Academic Progress Policy

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before February 18, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0158. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Student Assistance General Provisions—Satisfactory Academic Progress Policy.

OMB Control Number: 1845–0108.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or Households; Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 33,524,675.

Total Estimated Number of Annual Burden Hours: 1,468,591.

Abstract: The Department of Education (the Department) is making this request is for an extension of the current approval of the policies and procedures for determining satisfactory academic progress (SAP) as required in Section 484 of the Higher Education Act of 1965, as amended (HEA). These regulations identify the policies and procedures to ensure that students are making satisfactory academic progress in their program at a pace and a level to receive or continue to receive Title IV, HEA program funds. If there is lapse in progress, the policy must identify how the student will be notified and what steps are available to a student not making satisfactory academic progress toward the completion of their program, and under what conditions a student who is not making satisfactory academic progress may continue to receive Title IV, HEA program funds.

Dated: December 16, 2019.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2019–27382 Filed 12–18–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2019–ICCD–0159]

Agency Information Collection Activities; Comment Request; National Professional Development Program: Grantee Performance Report

AGENCY: Office of English Language Acquisition (OELA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before February 18, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0159. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Francisco Javier Lopez, 202–401–1433.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Professional Development Program: Grantee Performance Report.

OMB Control Number: 1885–0555.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 138.

Total Estimated Number of Annual Burden Hours: 6,900.

Abstract: The NPD Program provides grants for eligible entities to implement professional development activities intended to improve instruction for English Learners (ELs) and assists education personnel working with ELs to meet high professional standards. Information in the NPD grantee performance report is being collected in compliance with the authorized by section 3131(c)(1)(C) of the Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act, and in accordance with the Government Performance Results Act (GPRA) of 1993, Section 4 (1115), and the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.253. Grantees are required to report targets and their progress toward meeting the objectives and goals established for each ED grant program. This information collection serves two purposes; the data are necessary to assess the performance of the NPD program on measures and also, budget information and data on project-specific performance measures are collected from NPD grantees for project monitoring and for the purpose of determining continuation funding.

Dated: December 16, 2019.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2019–27383 Filed 12–18–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2019–ICCD–0157]

Agency Information Collection Activities; Comment Request; Credit Enhancement for Charter School Facilities Program Performance Report

AGENCY: Office of Innovation and Improvement (OII), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before February 18, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0157. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Clifton Jones, 202–205–2204.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the

Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Credit Enhancement for Charter School Facilities Program Performance Report.

OMB Control Number: 1855–0010.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 60.

Total Estimated Number of Annual Burden Hours: 1,500.

Abstract: The purpose of the Credit Enhancement program is to award grants to eligible entities that demonstrate innovative methods of helping charter schools address the cost of acquiring, constructing, and renovating facilities by enhancing the availability of loans and bond financing. This program provides grants to eligible entities to permit them to enhance the credit of charter schools so that the charter schools can access private-sector and other non-Federal capital in order to acquire, construct, and renovate facilities at a reasonable cost. The Credit Enhancement for Charter School Facilities Program and the Charter Schools Facilities Financing Demonstration Program have a statutory mandate for an annual report. This reporting is a requirement in order to obtain or retain benefits according to section 4304 of the Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act (ESSA) of 2015. The information is collected in order to adhere to statutory requirements and to perform monitoring and evaluation of grantees.

Dated: December 16, 2019.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance. Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2019–27381 Filed 12–18–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–16–000]

Notice of Intent To Prepare an Environmental Assessment for the Proposed Portland Natural Gas Transmission System Westbrook XPress Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Westbrook XPress Project involving construction and operation of facilities by Portland Natural Gas Transmission System (PNGTS) in Cumberland County, Maine. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the project. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on January 21, 2020.

You can make a difference by submitting your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff will consider all filed comments during the preparation of the EA.

If you sent comments on this project to the Commission before the opening of this docket on November 18, 2019, you will need to file those comments in Docket No. CP20–16–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law.

PNGTS provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC website (*www.ferc.gov*) at *https://www.ferc.gov/resources/guides/gas/gas.pdf.*

Public Participation

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. To sign up go to *www.ferc.gov/docs-filing/esubscription.asp.*

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to

assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is also on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP20–16–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Summary of the Proposed Project

PNGTS proposes modifications and additions to existing facilities in Cumberland County, Maine. The Westbrook XPress Project would provide about 131 billion standard cubic feet of natural gas per day to New England. According to PNGTS, its project would provide access to, and allow for the transportation of, natural gas supplies from North American supply basins, such as Marcellus, Utica, and others, via TransCanada PipeLines Limited's Canadian Mainline and Trans-Quebec & Maritimes Pipeline.

The Westbrook XPress Project would consist of the following facilities:

- Installation of one new natural gas fired turbine compressor unit and appurtenant facilities in a greenfield expansion area approximately 1,500 feet southwest of the currently developed Westbrook Compressor Station;
- approximately 1,500 feet of 30-inch-diameter suction and discharge lines to connect the greenfield expansion area to the existing station; and
- modifications at the existing Westbrook Metering and Regulating Station 30006, including replacement of existing pipeline, filter separator, and appurtenant facilities.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would disturb 20.8 acres of land for the aboveground facilities and suction and discharge lines. Following construction, PNGTS would maintain 8.0 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses.

The EA Process

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- air quality and noise;
- public safety; and
- cumulative impacts.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present Commission staff's independent analysis of the issues. The EA will be available in electronic format in the public record through eLibrary[2] and the Commission's website (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). If eSubscribed, you will receive instant email notification when the EA is issued. The EA may be issued for an allotted public comment period. Commission staff will consider all comments on the EA before making recommendations to the Commission. To ensure Commission staff have the opportunity to address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The EA for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the Commission issues the EA for an allotted public comment period, a *Notice of Availability* of the EA will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (*www.ferc.gov*). If you need to make changes to your name/address, or if you would like to remove your name

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

from the mailing list, please return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP20–16). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: December 12, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–27320 Filed 12–18–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–118–000]

Notice of Revised Schedule for Environmental Review of the Trans-Foreland Pipeline Company, LLC Kenai LNG Cool Down Project

This notice identifies the Federal Energy Regulatory Commission staff's revised schedule for the completion of the environmental assessment (EA) for Trans-Foreland Pipeline Company, LLC's (Trans-Foreland) Kenai LNG Cool Down Project. The first notice of schedule, issued on June 19, 2019, identified December 13, 2019 as the EA issuance date. In its October 2019 response to Commission staff's data requests, Trans-Foreland states that it will not file certain information until January 2020. Further, Commission staff also issued a follow-up data request to Trans-Foreland on December 9, 2019, requiring Trans-Foreland to clarify certain critical and complex information and address data gaps that were not addressed by Trans-Foreland in previous responses to staff data requests. As a result of Trans-Foreland's representations that this critical data will not be filed until sometime in January and the need for Commission staff and cooperating agencies to review this information, Commission staff has revised the schedule for issuance of the EA. The revised schedule for the EA is based upon Trans-Foreland providing complete responses to outstanding data requests in the timeframes it has identified and as requested in the December 9 data request.

Schedule for Environmental Review

Issuance of the EA April 24, 2020

90-day Federal Authorization Decision Deadline July 23, 2020

If a schedule change becomes necessary, an additional notice will be provided so that the relevant agencies are kept informed of the project's progress.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP19–118), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: December 12, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–27319 Filed 12–18–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–18–000]

Notice of Request Under Blanket Authorization; Southern Natural Gas Company, L.L.C.

Take notice that on December 2, 2019, Southern Natural Gas Company, L.L.C., 569 Brookwood Village, Suite 749, Birmingham, Alabama 35209, filed in the above referenced docket a prior notice request pursuant to section 157.216(b) of the Commission's regulations under the Natural Gas Act (NGA) and its blanket certificate issued in Docket No. CP82–406–000 for authorization to abandon in place a 2,900 horsepower compressor unit located at its Ellerslie Compressor Station in Harris County, Georgia, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Parker Gargis, Analyst, Rates & Regulatory, Southern Natural Gas Company, L.L.C., 569 Brookwood Village, Suite 749, Birmingham, Alabama 35209, by telephone at (205) 325–7603, or by email at *parker_gargis@kindermorgan.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: December 12, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–27321 Filed 12–18–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1894–209]

Notice of Availability of Environmental Assessment; Dominion Energy South Carolina Inc.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application submitted by Dominion Energy South Carolina Inc. (licensee) to allow Newberry Sand Inc. (NSI), in Newberry and Greene Counties, South Carolina, the use of Parr Shoals Hydroelectric (FERC No. 1894) project lands and waters to conduct hydraulic sand mining. The project is located on the mainstem of the Broad River Newberry and Fairfield Counties, South Carolina.

An Environmental Assessment (EA) has been prepared as part of Commission staff's review of the proposal. In the application, NSI anticipates removing 23,500 tons of sand each year from the project reservoir. The dredge would pump sand to an upland processing area. This EA contains Commission staff's analysis of the probable environmental impacts of the proposed action and concludes that approval of the proposal would not constitute a major federal action significantly affecting the quality of the human environment with implementation of the staff recommendations.

The EA is available for electronic review and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–1894) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3372 or for TTY, (202) 502–8659.

For further information, contact Michael Calloway at (202) 502–8041 or by email at *michael.calloway@ferc.gov*.

Dated: December 12, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–27323 Filed 12–18–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3251–010]

Cornell University; Notice Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 3251–010.

c. *Date Filed:* June 28, 2019.

d. *Applicant:* Cornell University.

e. *Name of Project:* Cornell University Hydroelectric Project (Cornell Project).

f. *Location:* On Fall Creek within the Cornell University campus in the City of Ithaca, Tompkins County, New York. The project does not occupy federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Frank Perry, Manager of Projects, Energy and Sustainability, Humphreys Service Building, Room 131, Cornell University, Ithaca, NY 14853–3701; (607) 255–6634; email—*fdp1@cornell.edu.*

i. *FERC Contact:* Christopher Millard at (202) 502–8256; or email at *christopher.millard@ferc.gov.*

j. *Deadline for filing scoping comments:* 30 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file scoping comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–3251–010.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a

particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *The Cornell Project consists of:* (1) An existing 28-foot-high, 260-foot-long reinforced-concrete gravity overflow-type dam, known as Beebe Lake Dam, with a crest elevation of 780.7 feet mean sea level (msl); (2) an impoundment (Beebe Lake) with a surface area of 16 acres and a storage capacity of 50 acre-feet at the normal pool elevation of 780.7 feet msl; (3) a concrete forebay wall and reinforced-concrete intake with a 6-foot-high, 6-foot-wide steel vertical-slide gate along the right (north) bank; (4) a 5-foot-diameter, 1,507-foot-long reinforced-concrete underground pipeline and a 5-foot-diameter, 200-foot-long riveted-steel underground penstock; (5) a 79-foot-long, 29-foot-wide, 24-foot-high powerhouse containing two Ossberger turbines and induction generators with a combined authorized capacity of 1,718 kilowatts; (6) a tailrace located on the river right-side of Fall Creek directly below the powerhouse; (7) a 385-foot-long, 2.4-kilovolt transmission line connecting to Cornell's distribution system; and (8) appurtenant facilities.

The Cornell Project is operated in a run-of-river mode and bypasses an 1,800-foot-long reach of Fall Creek that extends from the toe of the dam to the powerhouse tailrace. From 2013 through 2018, the average annual generation was 4,599 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

n. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Scoping Process:* The Commission intends to prepare an environmental assessment (EA) for the Cornell Project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, we are soliciting comments, recommendations, and information, on the Scoping Document 1 (SD1) issued December 13, 2019.

Copies of SD1 outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of SD1 may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Dated: December 13, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–27417 Filed 12–18–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC19–31–000]

Commission Information Collection Activities (FERC–547); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comments on the currently approved information collection, FERC–547 (Gas Pipeline Rates: Refund Report Requirements) and submitting the information collection to the Office of Management and Budget (OMB) for review. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below.

DATES: Comments on the collection of information are due by January 21, 2020.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0084, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer.

A copy of the comments should also be sent to the Commission, in Docket No. IC19–31–000, by either of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–547, Gas Pipeline Rates: Refund Report Requirements.

OMB Control No.: 1902–0084.

Type of Request: Three-year extension of the FERC–547 information collection requirements with no changes to the reporting requirements.

Abstract: The Commission uses FERC–547 (Gas Pipeline Rates: Refund Report Requirements) to implement the statutory refund provisions governed by sections 4, 5 and 16 of the Natural Gas Act (NGA).[1] Sections 4 and 5 authorize the Commission to order a refund (with interest) for any portion of a natural gas company's increased rate or charge found to be unjust or unreasonable. Refunds may also be instituted by a natural gas company as a stipulation to a Commission-approved settlement agreement or a provision under the company's tariff. Section 16 of the NGA authorizes the Commission to prescribe rules and regulations necessary to administer its refund mandates. The Commission's refund reporting requirements are in 18 Code of Federal Regulation (CFR) 154.501 and 154.502.

The Commission uses the data to monitor refunds owed by natural gas companies to ensure that the flow-through of refunds owed by these companies are made as expeditiously as possible and to assure that refunds are made in compliance with the Commission's regulations.

[1] 15 U.S.C. 717–717w.

On July 30, 2019 (84 FR 41708), the Commission published a Notice in the **Federal Register** in Docket No. IC19–31–000 requesting public comments. The Commission received no comments and is noting that in the related submittal to OMB.

Type of Respondents: Jurisdictional natural gas companies.

Estimate of Annual Burden:[2] The Commission estimates the annual public reporting[3] burden and cost[4] for the information collection as:

FERC–547—GAS PIPELINE RATES: REFUND REPORT REQUIREMENTS

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden hrs. & cost ($) per response	Total annual burden hours & total annual cost ($)	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Natural Gas Pipelines	19	2	38	2 hrs.; $160	76 hrs.; $6,080	$160

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: December 12, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–27322 Filed 12–18–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–500–000]

Northern Natural Gas Company; Notice of Availability of the Environmental Assessment for the Proposed Palmyra to South Sioux City A-Line Abandonment Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Palmyra to South Sioux City A-Line Abandonment Project, proposed by Northern Natural Gas Company (Northern) in the above-referenced docket. Northern requests authorization to abandon a segment of its A-Line Pipeline and construct, own, and operate two new natural gas pipeline loops.[1]

The EA assesses the potential environmental effects of the construction and operation of the Palmyra to South Sioux City A-Line Abandonment Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The proposed Palmyra to South Sioux City A-Line Abandonment Project is in Nebraska and includes the following facilities:

- Abandonment in place of 44.2 miles of 20-inch-diameter and 14.8 miles of 16-inch-diameter mainline in Otoe, Lancaster, Saunders, and Dodge Counties (M581A);
- abandonment in place of 58.7 miles of 16-inch-diameter mainline in Dodge, Burt, Thurston, and Dakota Counties (M570A);
- construction of 1.7 miles of new 24-inch-diameter pipeline loop in Otoe County (Palmyra North D-Line Loop);
- construction of 2.5 miles of new 24-inch-diameter pipeline loop in Dodge County (Fremont North D-Line Loop);
- construction of a new pig[2] launcher and two valve sites within the existing Palmyra Compressor Station at the beginning of the Palmyra D-Line Loop and a pig receiver and one valve site at the end of the pipeline loop; and
- construction of a new pig launcher and one valve site within the existing Fremont Compressor Station and one valve site at the end of the Fremont North D-Line Loop.

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the Environmental Documents page (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://www.ferc.gov/docs-filing/elibrary.asp*), click on General Search, and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP19–500). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is

[2] ''Burden'' is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 Code of Federal Regulations 1320.3.

[3] The change in number of respondents is an update due to normal industry fluctuations. The changes to the estimated numbers for frequency of filing and burden per filing are due to improved estimates.

[4] The Commission staff estimates that industry is similarly situated in terms of hourly cost (for wages plus benefits). Based on the Commission's FY (Fiscal Year) 2019 average cost (for wages plus benefits), $80.00/hour is used.

[1] A loop is a pipeline that is constructed adjacent to another pipeline for the purpose of increasing capacity in this portion of the system.

[2] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

important that we receive your comments in Washington, DC, on or before 5:00 p.m. Eastern Time on January 13, 2020.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the *eFiling* feature on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP19–500–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.* Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission may grant affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the *eLibrary* link. The *eLibrary* link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: December 13, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–27416 Filed 12–18–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0751; FRL–10001–75]

Pesticide Registration Review; Interim Decisions for Several Pesticides and Case Closure for Meat Meal; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's interim registration review decision for the following chemicals: Aviglycine hydrochloride, Bacteriophage active against *Xanthomonas campestris* pv. *vesicatoria* and Bacteriophage active against *Pseudomonas syringae* pv. *Tomato,* bispyribac-sodium, diclosulam, flucarbazone-sodium, florasulam, imazamox, imazapic, imazaquin, imazethapyr, L-Glutamic Acid (LGA) and Gamma Aminobutyric Acid (GABA), penoxsulam, phosphorous acid and its salts, Polyoxin D Zinc Salt, penoxsulam, pyriproxyfen, and thiobencarb. In addition, it announces the closure of the registration review cases for meat meal because the last U.S. registrations for this pesticide have been canceled.

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information, contact: The Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

For general information on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–7106; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the pesticide specific contact person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of the decision documents and other related information?

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

II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed interim decisions for all pesticides listed in the Table in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of the chemicals listed in the Table in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this document announces the availability of EPA's interim registration review decisions for the pesticides shown in the following table. The interim registration review decisions are supported by rationales included in the docket established for each chemical.

TABLE—REGISTRATION REVIEW INTERIM DECISIONS BEING ISSUED

Registration review case name and No.	Docket ID No.	Chemical Review Manager and contact information
Aviglycine Hydrochloride (AVG), Case Number 6070	EPA–HQ–OPP–2011–0691	Donna Kamarei, *kamarei.donna@epa.gov*, 703–347–0443.
Bacteriophage active against *Xanthomonas campestris* pv. *vesicatoria* and Bacteriophage active against *Pseudomonas syringae* pv. *tomato,* Case Numbers 6509 & 6510.	EPA–HQ–OPP–2015–0702	Susanne Cerrelli, *cerrelli.susanne@epa.gov*, 703–308–8077.
Bispyribac-sodium, Case Number 7258	EPA–HQ–OPP–2014–0074	Moana Appleyard, *appleyard.moana@epa.gov,* 703–308–8175.
Diclosulam, Case Number 7249	EPA–HQ–OPP–2015–0285	Susan Bartow, *bartow.susan@epa.gov,* 703–603–0065.
Flucarbazone-sodium, Case Number 7251	EPA–HQ–OPP–2013–0283	Veronica Dutch, *dutch.veronica@epa.gov,* 703–308–8585.
Florasulam, Case Number 7274	EPA–HQ–OPP–2015–0548	Moana Appleyard, *appleyard.moana@epa.gov,* 703–308–8175.
Imazamox, Case Number 7238	EPA–HQ–OPP–2014–0395	Eric Fox, *fox.ericm@epa.gov,* 703–347–0104.
Imazapic, Case Number 7234	EPA–HQ–OPP–2014–0279	Eric Fox, *fox.ericm@epa.gov,* 703–347–0104.
Imazaquin, Case Number 7204	EPA–HQ–OPP–2014–0224	Andy Muench, *muench.andrew@epa.gov,* 703–347–8263.
Imazethapyr, Case Number 7208	EPA–HQ–OPP–2013–0774	Katherine St. Clair, *stclair.katherine@epa.gov,* 703–347–8778.
L-Glutamic Acid (LGA) and Gamma Aminobutyric Acid (GABA), Case Number 6025.	EPA–HQ–OPP–2014–0109	Cody Kendrick, *kendrick.cody@epa.gov,* 703–347–0468.
Penoxsulam, Case Number 7265	EPA–HQ–OPP–2015–0303	Samantha Thomas, *thomas.samantha@epa.gov,* 703–347–0514.
Phosphorous Acid and Its Salts, Case Number 6035	EPA–HQ–OPP–2016–0488	Cody Kendrick, *kendrick.cody@epa.gov,* 703–347–0468.
Polyoxin D Zinc Salt, Case Number 6076	EPA–HQ–OPP–2014–0108	Cody Kendrick, *kendrick.cody@epa.gov,* 703–347–0468.
Pyriproxyfen, Case Number 7424	EPA–HQ–OPP–2011–0677	Kent Fothergill, *fothergill.kent@epa.gov,* 703–347–8299.
Thiobencarb, Case Number 2665	EPA–HQ–OPP–2011–0932	R. David Jones, *jones.rdavid@epa.gov,* 703–305–6725.

The proposed interim registration review decisions for the chemicals in the table above were posted to the docket and the public was invited to submit any comments or new information. EPA addressed the comments or information received during the 60-day comment period for the proposed interim decisions in the discussion for each pesticide listed in the table. Comments from the 60-day comment period that were received may or may not have affected the Agency's interim decision. Pursuant to 40 CFR 155.58(c), the registration review case docket for the chemicals listed in the Table will remain open until all actions required in the interim decision have been completed.

This document also announces the closure of the registration review case for Meat Meal (Case Number 6041, Docket ID Number EPA–HQ–OPP–2013–0361) because the last U.S. registrations for this pesticide have been canceled.

Background on the registration review program is provided at: *http://www.epa.gov/pesticide-reevaluation.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: October 31, 2019.

Mary Reaves,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2019–27375 Filed 12–18–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID No. EPA–HQ–ORD–2011–0676; FRL–10003–40–ORD]

Availability of the Systematic Review Protocol for the Polychlorinated Biphenyls (PCBs) Noncancer Integrated Risk Information System (IRIS) Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a 30-day public comment period associated with release of the Systematic Review Protocol for the Polychlorinated Biphenyls (PCBs) Noncancer IRIS Assessment. This document communicates the rationale for

conducting the assessment of PCBs, describes screening criteria to identify relevant literature, outlines the approach for evaluating study quality, and describes the process of evidence synthesis/integration and dose-response methods.

DATES: The 30-day public comment period begins December 19, 2019 and ends January 21, 2020. Comments must be received on or before January 21, 2020.

ADDRESSES: The Systematic Review Protocol for PCBs will be available via the internet on the IRIS website at *https://www.epa.gov/iris* and in the public docket at *http://www.regulations.gov,* Docket ID: EPA–HQ–ORD–2011–0676.

FOR FURTHER INFORMATION CONTACT: For information on the docket, contact the ORD Docket at the EPA Headquarters Docket Center; telephone: 202–566–1752; facsimile: 202–566–9744; or email: *Docket_ORD@epa.gov.*

For technical information on the protocol, contact Dr. James Avery, Center for Public Health & Environmental Assessment; telephone: 202–564–1494; or email: *avery.james@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information on the IRIS Program and Systematic Review Protocols

EPA's IRIS Program is a human health assessment program that evaluates quantitative and qualitative risk information on effects that may result from exposure to chemicals found in the environment. Through the IRIS Program, EPA provides high quality science-based human health assessments to support the Agency's regulatory activities and decisions to protect public health.

As part of developing a draft IRIS assessment, EPA presents a methods document, referred to as the protocol, for conducting a chemical-specific systematic review of the available scientific literature. EPA is seeking public comment on components of the protocol including the described strategies for literature searches, criteria for study inclusion or exclusion, considerations for evaluating study methods, information management for extracting data, approaches for synthesis within and across lines of evidence, and methods for derivation of toxicity values. Additionally, key scientific issues that warrant consideration in this assessment are identified in Section 2.5. The protocol serves to inform the subsequent development of the draft assessment and is made available to the public. EPA may update the protocol based on the evaluation of the literature, and any updates will be posted to the docket and on the IRIS website. In accordance with the most current systematic review practices of the IRIS Program, EPA is releasing the PCB protocol to provide similar public engagement steps as other IRIS assessments that have started more recently.

II. How To Submit Technical Comments to the Docket at *http://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2011–0676 for PCBs, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: Docket_ORD@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (ORD Docket), Mail Code: 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The ORD Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20229.

The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to EPA–HQ–ORD–2011–0676 for PCBs. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *https://www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information through *https://www.regulations.gov* or email that you consider to be CBI or otherwise protected. The *https://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Docket: Documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *https://www.regulations.gov* or as a hard copy at the ORD Docket in the EPA Headquarters Docket Center.

Dated: December 10, 2019.

Wayne E. Cascio,

Director, Center for Public Health & Environmental Assessment.

[FR Doc. 2019–27427 Filed 12–18–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of Intent To Terminate Receiverships

Notice is hereby given that the Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for the institutions listed below, intends to terminate its receivership for said institutions.

NOTICE OF INTENT TO TERMINATE RECEIVERSHIPS

Fund	Receivership name	City	State	Date of appointment of receiver
10518	North Milwaukee State Bank	Milwaukee	WI	03/11/2016

The liquidation of the assets for each receivership has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receiverships will serve no useful purpose. Consequently, notice is given that the receiverships shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of any of the receiverships, such comment must be made in writing, identify the receivership to which the comment pertains, and be sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of the above-mentioned receiverships will be considered which are not sent within this time frame.

(Authority: 12 U.S.C. 1819)

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on December 16, 2019.

Annmarie H. Boyd,

Assistant Executive Secretary.

[FR Doc. 2019–27397 Filed 12–18–19; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201327.

Agreement Name: Sealand/GWF Ecuador Slot Charter Agreement.

Parties: Maersk Line A/S d/b/a Sealand and Great White Fleet Corp.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The Agreement authorizes Sealand to charter space to Great White Fleet on Sealand's South Atlantic Express service in the trade between Ecuador and the Pacific Coast of the United States.

Proposed Effective Date: 12/11/2019.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/26451.

Dated: December 13, 2019.

Rachel E. Dickon,

Secretary.

[FR Doc. 2019–27300 Filed 12–18–19; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the 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 January 3, 2020.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The PG Pierce 2005 Trust, Peter G. Pierce III, trustee, both of Oklahoma City, Oklahoma;* to retain voting shares of First Bethany Bancorp, Inc. and thereby indirectly retain voting shares of First Bethany Bank and Trust, both of Bethany, Oklahoma. In addition, Paul G. Pierce, M.D., Poppy G. Pierce, and Louisa M. Pierce, all of Oklahoma City, Oklahoma; and Meredith A. Cunningham, Alistar T. Cunningham, Virginia R. Cunningham, and Pierce S. Cunningham, all of New Orleans, Louisiana, as members of the Pierce Family Group, to retain voting shares of First Bethany Bancorp, Inc. and thereby indirectly retain voting shares of First Bethany Bank and Trust.

Board of Governors of the Federal Reserve System, December 16, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–27424 Filed 12–18–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

[Docket No. OP–1691]

Regulation Q; Regulatory Capital Rules: Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice.

SUMMARY: The Board is providing notice of the 2019 aggregate global indicator amounts, as required under the Board's rule regarding risk-based capital surcharges for global systemically important bank holding companies (GSIB surcharge rule).

DATES: 2019 aggregate global indicator amounts *effective:* December 19, 2019.

FOR FURTHER INFORMATION CONTACT: Juan Climent, Manager, (202) 872–7526, Sean Healey, Lead Financial Institution Policy Analyst, (202) 912–4611, or Christopher Appel, Senior Financial Institution Policy Analyst II, (202) 973–6862, Division of Supervision and Regulation or Mark Buresh, Senior Counsel, (202) 452–5270, or Mary Watkins, Senior Attorney, (202) 452–

3722, Legal Division. Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Board's GSIB surcharge rule establishes a methodology to identify global systemically important bank holding companies in the United States (GSIBs) based on indicators that are correlated with systemic importance.[1] Under the GSIB surcharge rule, a firm must calculate its GSIB score using a specific formula (Method 1). Method 1 uses five equally weighted categories that are correlated with systemic importance—size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity—and subdivided into twelve systemic indicators. For each indicator, a firm divides its own measure of each systemic indicator by an aggregate global indicator amount. A firm's Method 1 score is the sum of its weighted systemic indicator scores expressed in basis points. The GSIB surcharge for a firm is the higher of the GSIB surcharge determined under Method 1 and a second method, Method 2, which weights size, interconnectedness, cross-jurisdictional activity, complexity, and a measure of a firm's reliance on wholesale funding (instead of substitutability).[2]

The aggregate global indicator amounts used in the score calculation under Method 1 are based on data collected by the Basel Committee on Banking Supervision (BCBS). The BCBS amounts are determined based on the sum of the systemic indicator scores of the 75 largest U.S. and foreign banking organizations as measured by the BCBS, and any other banking organization that the BCBS includes in its sample total for that year. The BCBS publicly releases these values, denominated in euros, each year. Pursuant to the GSIB surcharge rule, the Board publishes the aggregate global indicator amounts each year as denominated in U.S. dollars using the euro-dollar exchange rate provided by the BCBS.[3] Specifically, the Board multiplied each of the euro-denominated indicator amounts made publicly available by the BCBS by 1.1450, which was the daily euro to U.S. dollar spot rate on December 31, 2018, provided by the BCBS (as published by the European Central Bank, available at *http://www.ecb.europa.eu/stats/eurofxref/index.en.html*).

The aggregate global indicator amounts for purposes of the 2019 Method 1 score calculation under § 217.404(b)(1)(i)(B) of the GSIB surcharge rule are:

AGGREGATE GLOBAL INDICATOR AMOUNTS IN U.S. DOLLARS (USD) FOR 2019

Category	Systemic indicator	Aggregate global indicator amount (in USD)
Size	Total exposures	86,929,981,510,715
Interconnectedness	Intra-financial system assets	8,378,699,821,090
	Intra-financial system liabilities	9,423,444,832,391
	Securities outstanding	14,980,796,701,622
Substitutability	Payments activity	2,451,526,935,926,810
	Assets under custody	162,964,740,953,671
	Underwritten transactions in debt and equity markets	6,508,969,472,114
Complexity	Notional amount of over-the-counter (OTC) derivatives	606,648,652,426,571
	Trading and available-for-sale (AFS) securities	3,572,783,522,209
	Level 3 assets	530,724,384,529
Cross-jurisdictional activity	Cross-jurisdictional claims	21,901,114,980,308
	Cross-jurisdictional liabilities	18,341,219,019,191

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

Board of Governors of the Federal Reserve System, December 16, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–27414 Filed 12–18–19; 8:45 am]

BILLING CODE 6210–01–P

[1] *See* 12 CFR 217.402, 217.404.

[2] Method 2 uses similar inputs to those used in Method 1, but replaces the substitutability category with a measure of a firm's use of short-term wholesale funding. In addition, Method 2 is calibrated differently from Method 1.

[3] 12 CFR 217.404(b)(1)(i)(B); 80 FR 49082, 49086–87 (August 14, 2015). In addition, the Board maintains the GSIB Framework Denominators on its website, available at *https://www.federalreserve.gov/bankinforeg/basel/denominators.htm.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10302]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by February 18, 2020.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10302 Collection Requirements for Compendia for Determination of Medically-Accepted Indications for Off-label Uses of Drugs and Biologicals in an Anti-Cancer Chemotherapeutic Regimen

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. 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 the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Collection Requirements for Compendia for Determination of Medically-accepted Indications for Off-label Uses of Drugs and Biologicals in an Anti-cancer Chemotherapeutic Regimen; *Use:* Section 182(b) of the Medicare Improvement of Patients and Providers Act (MIPPA) amended section 1861(t)(2)(B) of the Social Security Act (42 U.S.C. 1395x(t)(2)(B)) by adding at the end the following new sentence: 'On and after January 1, 2010, no compendia may be included on the list of compendia under this subparagraph unless the compendia has a publicly transparent process for evaluating therapies and for identifying potential conflicts of interest.' We believe that the implementation of this statutory provision that compendia have a ''publicly transparent process for evaluating therapies and for identifying potential conflicts of interests'' is best accomplished by amending 42 CFR 414.930 to include the MIPPA requirements and by defining the key components of publicly transparent processes for evaluating therapies and for identifying potential conflicts of interests.

All currently listed compendia will be required to comply with these provisions, as of January 1, 2010, to remain on the list of recognized compendia. In addition, any compendium that is the subject of a future request for inclusion on the list of recognized compendia will be required to comply with these provisions. No compendium can be on the list if it does not fully meet the standard described in section 1861(t)(2)(B) of the Act, as revised by section 182(b) of the MIPPA. *Form Number:* CMS–10302 (OMB control number: 0938–1078); *Frequency:* Annually; *Affected Public:* Business and other for-profits and Not-for-profit institutions; *Number of Respondents:* 845; *Total Annual Responses:* 900; *Total Annual Hours:* 5,135. (For policy questions regarding this collection contact Sarah Fulton at 410–786–2749.)

Dated: December 16, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–27385 Filed 12–18–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; OCSE–75 Tribal Child Support Enforcement Program Annual Data Report (OMB #0970–0320)

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is requesting a three-year extension of the form OCSE–75—Tribal Child Support Enforcement Annual Data Report (OMB # 0970–0320, expiration 03/31/2020). There are no changes requested to the form.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV.* Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The data collected by form OCSE–75 are used to prepare the OCSE preliminary and annual data reports. In addition, Tribes administering CSE programs under Title IV–D of the Social Security Act are required to report program status and accomplishments in an annual narrative report and submit the OCSE–75 report annually.

Respondents: Tribal Child Support Enforcement Organizations or the Department/Agency/Bureau responsible for Child Support Enforcement in each tribe.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
OCSE–75	60	1	60	3,600

Estimated Total Annual Burden Hours: 3,600.

Authority: Title IV–D of the Social Security ACT as required by CFR 45 Section 309.170(b).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–27423 Filed 12–18–19; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0403]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Protection of Human Subjects; Informed Consent; and Institutional Review Boards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 21, 2020.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0130. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Protection of Human Subjects; Informed Consent; and Institutional Review Boards—21 CFR Parts 50 and 56

OMB Control Numbers 0910–0755 and 0910–0130—Revision

This information collection supports Agency regulations pertaining to the protection of human subjects, informed consent, and responsibilities of Institutional Review Boards (IRBs) as set forth in parts 50 and 56 (21 CFR parts 50 and 56). Parts 50 and 56 apply to all clinical investigations regulated by FDA under sections 505(i) and 520(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i) and 360j(g), respectively), as well as clinical investigations that support applications for research or marketing permits for products regulated by FDA. The regulations in parts 50 and 56 are intended to protect the rights and safety of subjects involved in such investigations. The regulations also contain the standards for composition, operation, and responsibilities of IRBs that review clinical investigations regulated by FDA.

21 CFR Part 50—Protection of Human Subjects

Provisions in 21 CFR part 50 provide for the protection of human subjects involved in FDA-regulated clinical investigations. With few exceptions, no investigator may involve a human being as a subject in FDA-regulated research unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative.

Basic elements of informed consent are set forth in § 50.25 and include, among other things, a statement of the purpose and duration of a subject's participation in the research; a description of the procedures to be followed; identification of any experimental procedures; a description of risks, benefits, and appropriate alternative procedures or treatments; a description of extent to which confidentiality of records identifying the subject will be maintained; certain contact information; and a statement that participation is voluntary and may be discontinued at any time. Additional elements set forth in § 50.25 are required in the informed consent as appropriate. Exceptions to these requirements are governed by § 50.23, which requires both investigator and physician to certify in writing that necessary elements for exception from general requirements have been satisfied; and § 50.24, which covers exception from informed consent requirements for emergency research. In accordance with § 50.27, informed consent must be documented, except as provided in § 56.109(c), which provides for an IRB to waive documentation of informed consent in certain circumstances. Informed consent must be documented using a written consent form approved by the IRB and signed and dated by the subject or the subject's legally authorized representative at the time of consent. For each clinical investigation reviewed by an IRB, we believe there will typically be one associated written consent form developed by an investigator. In some cases, investigators will seek IRB approval of changes in the research and/or consent form after initial IRB approval. For some multi-institutional clinical investigations, the IRB of each institution involved may separately conduct initial and continuing review of the research, including review of the written consent form to determine

whether it is in accordance with § 50.25. However, in cases where a multi-institutional clinical investigation uses a single IRB review process, there may only be one IRB conducting such reviews.

Finally, additional safeguards are required for children, as prescribed in subpart D (21 CFR parts 50.50 through 50.56) of the regulations.

21 CFR Part 56—Institutional Review Boards

The general standards for the composition, operation, and responsibilities of an IRB are set forth in 21 CFR part 56. IRBs serve in an oversight capacity by reviewing, among other things, informed consent documents and protocols for FDA-regulated studies, to make findings required to approve research and document IRB actions. Part 56 also regulates the administrative activities of IRBs reviewing FDA-regulated research including, among other things, identification of types of IRB records that must be prepared and maintained. Required recordkeeping includes documentation pertaining to written procedures, proposals reviewed, committee membership, meeting minutes, actions taken by the IRB, correspondence, as well as other functional and operational aspects of the IRB. Finally, the regulations describe administrative actions for non-compliance, including both disqualification of IRBs or IRB parent institutions, as well as reinstatement and alternative and additional actions.

Consolidation of Information Collection Requests

On our own initiative, we are revising the information collection under OMB control number 0910–0130 to include information collection under OMB control number 0910–0755 pertaining to the protection of human subjects, including informed consent and certain IRB requirements. Because of the related nature of the information collections and the applicable regulations in parts 50 and 56, we believe taking this action will improve our operational efficiency.

Description of Respondents: Respondents to the information collection are IRBs that review and approve clinical investigations regulated by the FDA and clinical investigators of such research who obtain informed consent of human subjects prior to research participation.

In the **Federal Register** of August 14, 2019 (84 FR 40421), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received. Upon our own review, however, we have reorganized and added detail to the notice to describe more clearly the information collection and associated burden. We continue to invite comment.

We estimate the annual burden for the collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
56.113; suspension or termination of research	2,520	1	2,520	* 0.5	1,260
56.120(a); IRB response to lesser administration actions for noncompliance	7	1	7	10	70
56.123; reinstatement of an IRB or an institution	1	1	1	5	5
Total					1,335

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
* (30 minutes).

Based on a review of data, there are currently 2,520 IRBs overseeing FDA-regulated clinical research. After reorganizing the table summarizing estimated annual reporting burden to list only one requirement per row as discussed in the 60-day notice (84 FR 40421), we recognized that some of those regulatory provisions are more appropriately characterized as having associated recordkeeping or third-party disclosure burdens. Therefore, we have revised Tables 1, 2, and 3 accordingly in this notice. We request comments on this estimate.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
50.24; exceptions from informed consent for emergency research	8	3	24	1	24
50.27; documentation of informed consent	2,520	40	100,800	* 0.5	50,400
56.115; IRB records (documentation of IRB activities)	2,520	14.6	36,792	40	1,471,680
Total					1,626,759

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
* (30 minutes).

As discussed above, we have reorganized the table to characterize our estimate of burden associated with 50.24 and 50.27 as recordkeeping burdens. We assume each of the 2,520 IRBs meets an average of 14.6 times annually and that approximately 40 hours of person-time per meeting are required to meet the IRB recordkeeping requirements of 21 CFR 56.115. We have reduced the estimate of average burden per response from 100 hours to 40 hours because we believe the original estimate of 100 hours has decreased with the use of electronic recordkeeping and new technologies available to maintain records. We estimate burden associated with recordkeeping responsibilities

under 21 CFR parts 50 and 56 cumulatively, however we have itemized burden associated with certain of the regulatory provisions for purposes of providing a more detailed estimate. We invite comment on burden associated with these information collection requirements.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
50.25; elements of informed consent	2,520	40	100,800	*0.5	50,400
56.109(d); written statement about minimal risk research when documentation of informed consent is waived	2,520	2	5,040	*0.5	2,520
56.109(e); written notification to approve or disapprove research	2,520	40	100,800	*0.5	50,400
56.109(g) IRB written statement about public disclosures to sponsor of emergency research under 50.24	8	2	16	1	16
Total					103,336

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
* (30 minutes).

As discussed above, we have reorganized the table to characterize our estimates of burden associated with 21 CFR 50.25, 56.109(d) and 56.109(e) as disclosure burdens. We estimate that eight IRBs per year will receive a request to review emergency research under § 50.24, thus requiring written notification under 21 CFR 56.109(g) from the IRB to the sponsor. We estimate that it will take an IRB approximately 1 hour to prepare each written statement, for a total of 2 hours per study. The total annual third-party disclosure burden for IRBs to fulfill this requirement is estimated at 16 hours.

Dated: December 11, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–27351 Filed 12–18–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–5585]

Bridging for Drug-Device and Biologic-Device Combination Products; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Bridging for Drug-Device and Biologic-Device Combination Products.'' This draft guidance, when finalized, will represent the Agency's thinking on how to approach bridging in new drug applications (NDAs) or biologics license applications (BLAs) for drug-device and biologic-device single entity or co-packaged combination products and will help to fulfill the performance goals under the sixth authorization of the Prescription Drug User Fee Act (PDUFA VI). For the purposes of this guidance, the term *bridging* refers to the process of establishing the scientific relevance of information developed in an earlier phase of the development program or another development program to support the combination product for which an applicant is seeking approval. Once the applicant has established the relevance of such information to (*i.e.,* bridged to) its product, the applicant may be able to leverage that information to streamline the development program.

DATES: Submit either electronic or written comments on the draft guidance by February 18, 2020 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–5585 for ''Bridging for Drug-Device and Biologic-Device Combination Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential

information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002; or the Office of Communication and Education, CDRH-Division of Industry and Consumer Education, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4621, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Robert Berlin, Center for Drug Evaluation and Research, Office of New Drugs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6373, Silver Spring, MD 20993, 301–796–8828; Irene Chan, Center for Drug Evaluation and Research, Office of New Drugs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4420, Silver Spring, MD 20993, 301–796–3962; Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911; Andrew Yeatts, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5452, Silver Spring, MD 20993–0002, 301–796–4539; or Patricia Love, Office of Special Medical Programs, Office of Combination Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5144, Silver Spring, MD 20993–0002, 301–796–8933.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Bridging for Drug-Device and Biologic-Device Combination Products.'' This document is one of several documents FDA is issuing to fulfill the performance goals under PDUFA VI. This document provides guidance to industry and FDA staff on how to approach bridging in NDAs or BLAs for drug-device and biologic-device single entity or co-packaged combination products, including the following:

- Bridging of information related to a combination product that employs a different device constituent part or parts with the same drug or biological product constituent part or parts as the proposed combination product
- Bridging of information related to a combination product that employs a different drug or biological product constituent part or parts as the proposed combination product

For the purposes of this draft guidance, the term *bridging* refers to the process of establishing the scientific relevance of information developed in an earlier phase of the development program or another development program to support the combination product for which an applicant is seeking approval. After the applicant has established the relevance of such information to (*i.e.,* bridged to) its product, the applicant may be able to leverage that information to streamline its development program. From a scientific perspective, an applicant must bridge its current application to information developed in an earlier phase of the development program or another development program if the applicant wishes to leverage that information in its current application. For certain types of applications, the use of information from another development program may require that the applicant own the information or have a right of reference.

This draft guidance seeks to clarify how to bridge to information gathered from another development program to leverage that information in support of an application. To facilitate that process, the draft guidance recommends that an applicant use an analytical framework described in the draft guidance to identify and address information gaps for an application. Although the draft guidance is intended to help applicants consider the type and scope of information that may be leveraged for a combination product development program, the draft guidance does not address all of the issues applicable to any particular combination product.

In addition, the draft guidance presents three hypothetical case examples to illustrate how an applicant might appropriately apply the recommended framework and associated analyses to determine the bridging strategy and informational needs in a development program. These considerations and recommendations are not intended to apply to any particular development program. The draft guidance also encourages applicants to discuss their particular development program and bridging strategy with FDA.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Bridging for Drug-Device and Biologic-Device Combination Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to currently approved FDA collections of information. These collections of information are subject to review by the

Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 312 for investigational new drug applications and 21 CFR part 314 for new drug applications have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively. The collections of information in 21 CFR part 601 for biologics license applications have been approved under OMB control number 0910–0338. The collections of information in 21 CFR part 814, subparts A through E, for premarket approval applications have been approved under OMB control number 0910–0231. The collections of information in section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), subpart E for 510(k) notifications, have been approved under OMB control number 0910–0120. The collections of information in the guidance for industry and FDA staff entitled ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' have been approved under OMB control number 0910–0844. The collection of information in 21 CFR part 4 has been approved under the underlying current good manufacturing process regulations for drugs, devices, and biological products, including current good tissue practices for human cells, tissues, and cellular and tissue-based products, found at parts 211, 820, 600 through 680, and 1271 (21 CFR parts 211, 820, 600 through 680, and 1271), which have already been approved and are in effect. The provisions of part 211 are approved under OMB control number 0910–0139. The provisions of part 820 are approved under OMB control number 0910–0073. The provisions of parts 606, 640, and 660 are approved under OMB control number 0910–0116. The provisions of part 610 are approved under OMB control numbers 0910–0116 and 0910–0338 (also for part 680). The provisions of part 1271, subparts C and D, are approved under OMB control number 0910–0543.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products,* or *https://www.regulations.gov.*

Dated: December 13, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–27354 Filed 12–18–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: National Practitioner Data Bank Attestation of Reports by Hospitals, Medical Malpractice Payers, Health Plans, Health Centers, and Other Eligible Entities

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than February 18, 2020.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: National Practitioner Data Bank (NPDB) Attestation of Reports by Hospitals, Medical Malpractice Payers, Health Plans, Health Centers, and Other Eligible Entities, OMB No. 0906–0028—Revision.

Abstract: NPDB proposes to continue collecting data from entities, such as hospitals, medical malpractice payers, health plans, and health centers that are subject to NPDB reporting requirements during registration renewal.[1] This will allow the NPDB to continue to assist these entities in understanding and meeting their reporting requirements.

NPDB plans to expand its population of focus to include other eligible entities,[2] including ambulatory surgery centers, group medical practices, skilled nursing facilities, mental health centers, and other registered entities. Beyond attesting to meeting NPDB reporting requirements, entities will also attest to querying and confidentiality compliance.

NPDB began operation on September 1, 1990. The statutory authorities establishing and governing the NPDB are Title IV of Public Law (Pub. L.) 99–660, the Health Care Quality Improvement Act of 1986, as amended, Section 5 of the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100–93, codified as Section 1921 of the Social Security Act, and Section 221(a) of the Health Insurance Portability and Accountability Act of 1996, Public Law 104–191, codified as Section 1128E of the Social Security Act. Final regulations governing the NPDB are codified at 45 CFR part 60. Responsibility of the NPDB implementation and operation resides in the Bureau of Health Workforce, HRSA, HHS.

[1] Unless otherwise noted, the term ''health centers'' refers to health centers whose access and reporting obligations are addressed in the NPDB statutory and regulatory requirements for health care entities. In this document, ''health center'' refers to organizations that receive grants under the HRSA Health Center Program as authorized under section 330 of the Public Health Service Act, as amended (referred to as ''grantees'') and FQHC Look-Alike organizations, which meet all the Health Center Program requirements but do not receive Health Center Program grants. It does not refer to FQHCs that are sponsored by tribal or Urban Indian Health Organizations, except for those that receive Health Center Program grants.

[2] ''Other eligible entities'' that participate in the NPDB are defined in the provisions of Title IV, Section 1921, Section 1128E, and implementing regulations. In addition, a few federal agencies also participate with the NPDB through federal memorandums of understanding. Eligible entities are responsible for complying with all reporting and/or querying requirements that apply; some entities may qualify as more than one type of eligible entity. Each eligible entity must certify its eligibility in order to report to the NPDB, query the NPDB, or both. Information from the NPDB is available only to those entities specified as eligible in the statutes and regulations. Not all entities have the same reporting requirements or level of query access.

NPDB acts primarily as a flagging system; its principal purpose is to facilitate comprehensive review of practitioners' professional credentials and background. Information on medical malpractice payments, health-related civil judgments, adverse licensure actions, adverse clinical privileging actions, adverse professional society actions, and Medicare/Medicaid exclusions is collected from, and disseminated to, eligible entities such as licensing boards, hospitals, and other health care entities. It is intended that NPDB information should be considered with other relevant information in evaluating a practitioner's credentials.

NPDB outlines specific reporting requirements for hospitals, medical malpractice payers, health plans, health centers and other eligible entities; per 45 CFR part 60. These reporting requirements are further explained in Chapter E of the NPDB e-Guidebook, which can be found at *http://www.npdb.hrsa.gov/resources/aboutGuidebooks.jsp*.

Through a process called Attestation, hospitals, medical malpractice payers, health plans, health centers, and other eligible entities are required to attest that they understand and have met their responsibility to submit all required reports, queries, and maintain confidentiality adherence with NPDB compliance. The Attestation process is completely automated through the secure NPDB system (*http://www.npdb.hrsa.gov*), using both secure email messaging and system notifications to alert entities registered with the NPDB of their responsibility to attest. All entities with reporting requirements and querying access to the NPDB must register with the NPDB before gaining access to the secure NPDB system for all reporting and querying transactions.

The secure NPDB system currently used by hospitals, medical malpractice payers, health plans, health centers, and other entities to conduct reporting and querying will not undergo any changes, ensuring that these entities are familiar with the interface needed to complete the Attestation process. NPDB asks these entities to attest to their reporting, querying, and confidentiality compliance every two years. If the organization is responsible for privileging or credentialing individuals who provide services for other sites, those sites are included in the Attestation process.

Users of the NPDB include reporters (entities that are required to submit reports) and queriers (entities that are authorized to request for information). Data collected through the Attestation process informs the NPDB operations and facilitate the structuring of compliance efforts in a manner that is the most effective. The Attestation process will also serve as a catalyst to collect meaningful data about reporting entities which can later be transformed into actionable information and serve as a platform for future initiatives. The Attestation forms collect the following information: Information regarding sub-sites and entity relationships; contact information for the Attesting official; and a statement attesting whether the organization adhered to all reporting, querying, and confidentiality requirements.

Need and Proposed Use of the Information: The NPDB engages in compliance activities to ensure the accuracy and completeness of the information in the NPDB. Through the Attestation process, the NPDB can better determine which, hospitals, medical malpractice payers, health plans, health centers and other eligible entities, are meeting the reporting, querying, and confidentiality requirements, and which of these entities may require additional outreach and assistance. The biennial Attestation process strengthens the robustness of the data in the NPDB, improving the accuracy of the query responses for entities with access to NPDB reports.

Below is a summary of the proposed revisions:

1. Add Query and Confidentiality language to the instruments. Beyond attesting to meeting NPDB reporting requirements, entities will also attest to querying and confidentiality compliance.

2. Change Title of ICR.

Current Title: National Practitioner Data Bank Attestation of Reports by Hospitals, Medical Malpractice Payers, Health Plans, and Certain Other Health Care Entities

Proposed New Title: National Practitioner Data Bank Attestation of Reports by Hospitals, Medical Malpractice Payers, Health Plans, Health Centers, and Other Eligible Entities

3. Add NPDB Guidebook definition for Eligible Entities in footnote.

4. Discontinue use of the Generic Form. Currently Hospitals, Medical Malpractice Payers, and Health Plans use the Generic Form to attest. This revision includes making each attestation form specific to entity type based on reporting/querying requirements.

5. Revise attestation question so that all entities will receive the same question.

A. Current Question for Health Centers

Has your organization reported all adverse actions taken from Month DD, YYYY to Month DD, YYYY affecting the clinical privileges of a physician or dentist as defined above?

- Yes, all required reports are submitted
- No, some required reports have not been submitted

If ''no'', why not? _____

B. Current Question for Hospitals, Health Plans, Medical Malpractice Payers

Has your organization submitted all reports, as required by law, from <MM DD,YYYY>, to <MM DD, YYYY> ?

- Yes, all required reports are submitted
- No, some required reports have not been submitted

If ''no'', why not? _____

C. New Question for All Registered Entities

Has your organization complied with all NPDB regulatory requirements as outlined above?

- Yes
- No

If ''no'', why not?_____

Likely Respondents: Hospitals, Medical Malpractice Payers, Health Plans, Health Centers, and Other Eligible Entities.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

Total Estimated Annualized Burden Hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours [3]
Authorized Agent Attestation	350	1	350	1	350
Health Center Attestation	650	1	650	1	650
Hospital Attestation	3,250	1	3,250	1	3,250
Medical Malpractice, Peer Review Organization, or Private Accreditation Organization Attestation	250	1	250	1	250
Other Eligible Entity Attestation • Agencies administering federal programs, including contract entities. • Federal law enforcement officials and agencies (including DEA, HHS OIG, and federal prosecutors). • Federal licensing or certification agencies. • Health Plans. • Other health care entities with formal peer review. • Other Health care service providers. • Professional Societies with formal peer review. • State agencies administering or supervising state programs. • State law or fraud enforcement agencies (including Medicaid fraud control units & state prosecutors).	7,100	1	7,100	1	7,100
Total	11,600		11,600		11,600

HRSA specifically requests comments on (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.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2019–27395 Filed 12–18–19; 8:45 am]

BILLING CODE 4165–15–P

[3] There are approximately 700 authorized agents; 1,300 health centers; 6,500 hospitals; 500 medical malpractice payers, peer review organizations, and private accreditation organizations; and 14,200 other eligible entities, for an estimated total of 23,200 registered entities currently in attestation or scheduled for attestation with the NPDB. However, the reporting entities may include multiple sites that are registered independently in the system, thereby increasing the total number of respondents. Given that entities will only be required to complete attestation biennially, these estimates are divided in half for the annualized burden hours.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the National Advisory Council on the National Health Service Corps

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces that the Secretary's National Advisory Council on the National Health Service Corps (NACNHSC) will hold public meetings for the 2020 calendar year (CY). Information about NACNHSC, agendas, and materials for these meetings can be found on the NACNHSC website at: *https://nhsc.hrsa.gov/nac/meetings.html*.

DATES:

- January 14, 2020, 9:00 a.m.–5:00 p.m.; January 15, 2020, 9:00 a.m.–2:00 p.m. Eastern Time (E.T.)—In-Person and Webinar;
- March 10, 2020, 9:00 a.m.–5:00 p.m.; March 11, 2020, 9:00 a.m.–2:00 p.m. E.T.—Webinar;
- June 16, 2020, 9:00 a.m.–5:00 p.m.; June 17, 2020, 9:00 a.m.–2:00 p.m. E.T.—In-Person and Webinar;
- November 5, 2020, 9:00 a.m.–5:00 p.m.; November 6, 2020, 9:00 a.m.–2:00 p.m. E.T.—In-Person and Webinar.

ADDRESSES: Meetings may be held in-person, by teleconference, and/or Adobe Connect webinar. In-person NACNHSC meetings will be held at 5600 Fishers Lane, Rockville, Maryland 20857. Instructions for joining the meetings either in person or remotely will be posted on the NACNHSC website 30 business days before the date of the meeting. For meeting information updates, go to the NACNHSC website meeting page at *https://nhsc.hrsa.gov/nac/meetings.html*.

FOR FURTHER INFORMATION CONTACT: Diane Fabiyi-King, Designated Federal Official (DFO), Division of National Health Service Corps, HRSA. Address: 5600 Fishers Lane, Room 14N110, Rockville, Maryland 20857; phone (301) 443–3609; or *BHWNACNHSC@hrsa.gov.*

SUPPLEMENTARY INFORMATION: The NACNHSC consults, advises, and makes annual recommendations to the Secretary of HHS and the Administrator of HRSA with respect to their NHSC related responsibilities under Subpart II, Part D of Title III of the Public Health Service Act (42 U.S.C. 254d–254k), as amended, to designate areas of the United States with health professional shortages and assign National Health Service Corps clinicians to improve the delivery of health services in health professional shortage areas. Since priorities dictate meeting times, be advised that times and agenda items are subject to change. CY 2020 meetings and agenda items may include, but are not limited to, the identification of NHSC priorities for future program issues and concerns; proposed policy changes by using the varying levels of expertise represented on NACNHSC to advise on specific program areas; updates from clinician workforce experts; and education and practice improvement in the training development of primary care clinicians. More general items may include presentations and discussions on the current and emerging needs of health workforce; public health priorities; healthcare access and evaluation; NHSC-approved sites; HRSA priorities and other federal health workforce and education programs that impact the NHSC.

Refer to the NACNHSC website listed above for all current and updated information concerning the CY 2020 NACNHSC meetings, including draft agendas and meeting materials that will be posted 14 calendar days before each meeting. Members of the public will have the opportunity to provide comments. Public participants may submit written statements in advance of the scheduled meeting(s). Oral comments will be honored in the order they are requested and may be limited as time allows.

Requests to submit a written statement or make oral comments to the NACNHSC should be sent to Diane Fabiyi-King via email at *BHWNACNHSC@hrsa.gov* at least 5 business days before the meeting date(s). Individuals who need special assistance or another reasonable accommodation should notify Diane Fabiyi-King using the contact information listed above at least 10 business days before the meeting(s) they wish to attend. Since all in-person meetings occur in a federal government building, attendees must go through a security check to enter the building. Non-U.S. Citizen attendees must notify HRSA of their planned attendance at least 20 business days prior to the meeting in order to facilitate their entry into the building. All attendees are required to present government-issued identification prior to entry.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2019–27357 Filed 12–18–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Solicitation of Nominations for Membership To Serve on the Centers for Disease Control and Prevention (CDC)/Health Resources and Services Administration (HRSA) Advisory Committee on HIV, Viral Hepatitis and Sexually Transmitted Disease (STD) Prevention and Treatment

AGENCY: HRSA, Department of Health and Human Services (HHS).

ACTION: Request for nominations.

SUMMARY: HRSA is seeking nominations of qualified candidates for consideration for appointment as members of the CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment (CHACHSPT). CHACHSPT advises the HHS Secretary, the CDC Director, and the HRSA Administrator on objectives, strategies, policies, and priorities for HIV, viral hepatitis, and STD prevention and treatment efforts. These include surveillance of HIV infection, viral hepatitis, other STDs, and related behaviors; epidemiologic, behavioral, health services, and laboratory research on HIV, viral hepatitis, and other STDs; identification of policy issues related to HIV/viral hepatitis/STD professional education, patient healthcare delivery, and prevention services; agency policies about prevention, treatment, healthcare delivery, and research and training relating to HIV, viral hepatitis and other STDs; strategic issues influencing the ability of CDC and HRSA to fulfill their missions of providing prevention and treatment services; programmatic efforts to prevent and treat HIV, viral hepatitis, and other STDs; and support to the agencies in their development of responses to emerging health needs related to HIV, viral hepatitis, and other STDs.

DATES: HRSA will receive written nominations for CHACHSPT on a continuous basis.

ADDRESSES: Nomination packages must be submitted via email at *CHACAdvisoryComm@hrsa.gov.*

FOR FURTHER INFORMATION CONTACT: Email *chacadvidorycomm@hrsa.gov.* A copy of the CHACHSPT charter and list of the current membership may be obtained by accessing the CHACHSPT website at *https://www.cdc.gov/maso/facm/facmchachspt.html.*

SUPPLEMENTARY INFORMATION: The Secretary of HHS, and by delegation, the CDC Director and the HRSA Administrator, are authorized by the PHS Act to: (1) Conduct, encourage, cooperate with, and assist other appropriate public health authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases, and other impairments; (2) assist states and their political subdivisions in preventing, suppressing, and treating communicable diseases and other preventable conditions and in promoting health and well-being; (3) assist public and non-profit private entities in preventing, controlling and treating STDs, including HIV; (4) improve health and achieve health equity through access to quality services and a skilled health workforce and innovative programs; (5) support healthcare services to persons living with or at risk for HIV, viral hepatitis, and other STDs; and (6) advance the education of health professionals and the public about HIV, viral hepatitis, and other STDs.

CHACHSPT meets two times each calendar year, or at the discretion of the Designated Federal Officer in consultation with the CHACHSPT co-chairs.

Nominations: HRSA is requesting nominations for voting members to serve as Special Government Employees (SGEs) on CHACHSPT. The Secretary of HHS appoints CHACHSPT members with the expertise needed to fulfill the duties of the Advisory Committee. Nominees are sought to provide a balance of diverse experiences and expertise. The Secretary of HHS or his designee shall select members of the CHACHSPT with knowledge in the fields of public health; epidemiology; laboratory practice; immunology; infectious diseases; behavioral health and science including, but not limited, to opioid use and related expertise; health education; healthcare delivery; state health programs; clinical care; preventive health; medical education; health services and clinical research; and healthcare financing. In addition, people with HIV and affected populations, as well as state and local health and education agencies, HIV/viral hepatitis/STD community-based organizations, and the ethics or religious community are encouraged to submit nomination packages for consideration. Current federal employees will not be considered. Interested applicants may self-nominate or be nominated by another individual or organization.

Individuals selected for appointment to CHACHSPT will be invited to serve for up to 4 years. Members appointed as SGEs receive a stipend and reimbursement for per diem and travel expenses incurred for attending CHACHSPT meetings and/or conducting other business on behalf of the CHACHSPT as authorized by 5 U.S.C. 5703 of the Federal Travel Regulation for persons employed intermittently in government service.

The following information must be included in the package of materials submitted for each individual nominated for consideration:

- A letter of interest or personal statement from the nominee stating how their expertise would inform the work of CHACHSPT;
- A biographical sketch of the nominee (500 words or fewer);
- A copy of the nominee's resume or curriculum vitae; and
- The nominee's contact information (address, daytime telephone number, and email address).

Nomination packages may be submitted directly by the individual seeking nomination or by the person/organization recommending the candidate. HRSA will collect and retain nomination packages to create a pool of potential future CHACHSPT members. When a vacancy occurs, HRSA will review nomination packages and may contact nominees at that time. Nominations should be updated and resubmitted every two years for continuing consideration for CHACHSPT vacancies.

Appointments shall be made without discrimination on the basis of age, ethnicity, gender, sexual orientation, or cultural, religious, or socioeconomic status.

Individuals who are selected for appointment will be required to provide detailed information regarding their financial interests and, for example, any work they do for the federal government through research grants or contracts. Disclosure of this information is required in order for HRSA ethics officials to determine whether there is a conflict between the SGE's public duties as a member of CHACHSPT and their private interests, including an appearance of a loss of impartiality as defined by federal laws and regulations, and to identify any required remedial action needed to address the potential conflict.

Authority: CHACHSPT was established under Section 222 of the Public Health Service (PHS) Act, [42 U.S.C. 217a], as amended. CHACHSPT is governed by the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App., which sets forth requirements for the formation and use of advisory committees.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2019–27301 Filed 12–18–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0452]

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 February 18, 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 0990–0452–60D, 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.

Title of the Collection: Federal Evaluation of Making Proud Choices! (MPC!).

Type of Collection: Revision.

OMB No.: 0990–0452.

Abstract: The Office of Population Affairs (OPA), U.S. Department of Health and Human Services (HHS) is requesting an extension with revision of a currently approved information collection (OMB No: 0990–0452). The purpose of the revision is to complete the nine-month follow-up data collection for the Federal Evaluation of Making Proud Choices! (MPC). The evaluation is being conducted in 15 schools across four school districts nationwide and will provide information about program design, implementation, and impacts through a rigorous assessment of a highly popular teen pregnancy prevention curriculum—MPC. Clearance is requested for three years. This revision is necessary to complete the 9-month post-baseline follow up data collection after enrolling a fourth and final cohort into the study. The follow-up survey data will be used to determine program effectiveness by comparing sexual behavior outcomes, such as postponing sexual activity, and reducing or preventing sexual risk behaviors and STDs and intermediate outcomes, such as improving exposure, knowledge and attitudes between treatment (program) and control youth. The findings from these analyses of program impacts will be of interest to the general public, to policymakers, and to schools and other organizations interested in supporting a comprehensive approach to teen pregnancy prevention. The revision request also updates the burden by removing the second (15 months post baseline) survey from the data collection.

Type of Respondent: The follow-up survey will be administered to study participants, who will primarily be in 10th–12th grade at the time of the follow-up survey.

ANNUALIZED BURDEN HOUR TABLE

Forms (if necessary)	Respondents (if necessary)	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
Follow up survey (9-months post baseline)	students	200	1	30/60	100
Total			1		100

Terry Clark,

Office of the Secretary, Asst. Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2019–27376 Filed 12–18–19; 8:45 am]

BILLING CODE 4150–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; High Impact, Interdisciplinary Science in NIDDK Research Areas (RC2)—Diabetes, Endocrinology and Metabolic Diseases.

Date: February 21, 2020.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dianne Camp, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7013, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–7682, *campd@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 13, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–27313 Filed 12–18–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of Postdoctoral Research Associate Training (PRAT) Program Applications.

Date: April 3, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt House, Potomac Conference Room, The Wharf, 725 Wharf Street SW, Washington, DC 20024.

Contact Person: Isaah S. Vincent, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12L, Bethesda, MD 20892, (301) 594–2948, *isaah.vincent@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: December 13, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–27317 Filed 12–18–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; 2020 Beeson Review.

Date: January 14–15, 2020.

Time: 4:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Diplomat Ambassador Conference Room, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alexander Parsadanian, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 496–9666, *parsadaniana@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 13, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–27310 Filed 12–18–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes And Digestive And Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: March 4–5, 2020.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, Conference Room Montgomery 1&2, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jason D. Hoffert, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7343, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 496–9010, *hoffertj@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 13, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–27315 Filed 12–18–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: January 10, 2020.

Time: 11:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700 B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Barbara J. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Ste. 4076, MSC 9306, Bethesda, MD 20892–9306, 301–402–0838, *barbara.thomas@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: December 12, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–27309 Filed 12–18–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR19–319: NIDDK Biorepositories Sample Access (X01).

Date: January 15, 2020.

Time: 12:00 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma S. Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR17–123: Panel for Biomarkers for Diabetes, Digestive and Kidney Diseases.

Date: January 16, 2020.

Time: 11:00 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma S. Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 13, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–27314 Filed 12–18–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Clinical Aging Review Committee NIA–C.

Date: January 30–31, 2020.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Conference Room Forest Glen, 5701 Marinelli Road, Rockville, MD 20852.

Contact Person: Isis S. Mikhail, MD, MPH, DrPH, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 402–7704, *mikhaili@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 13, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–27312 Filed 12–18–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Behavior and Social Science of Aging Review Committee NIA–S.

Date: January 30–31, 2020.

Time: 8:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Salon C Conference Room, 5701 Marinelli Road, Rockville, MD 20852.

Contact Person: Carmen Moten, Ph.D., MPH, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 402–7703, *cmoten@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 13, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–27311 Filed 12–18–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIGMS Initial Review Group; Training and Workforce Development Subcommittee—C The Review of Bridges to the BAC/DOC and IRACDA applications.

Date: March 26–27, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, Union Square, Olympic Conference Room, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Lee Warren Slice, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institutes of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18A, Bethesda, MD 20814, (301) 435–0807, *slicelw@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: December 13, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–27316 Filed 12–18–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4465–DR; Docket ID FEMA–2019–0001]

North Carolina; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–4465–DR), dated October 4, 2019, and related determinations.

DATES: This amendment was issued December 9, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 4, 2019.

Bladen and Chowan Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–27302 Filed 12–18–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2019–0028; OMB No. 1660–0080]

Agency Information Collection Activities: Proposed Collection; Comment Request; Application for Surplus Federal Real Property Public Benefit Conveyance and BRAC Program for Emergency Management Use

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on an extension, with changes, of a currently approved information collection. In accordance with the Paperwork Reduction Act of

1995, this notice seeks comments concerning the application process for the conveyance of Federal real property for public benefit. The purpose of this application is to implement the processes and procedures for the successful, lawful, and expeditious conveyance of real property from the Federal Government to public entities such as State, local, city, town, or other like government bodies as it relates to emergency management response purposes, including Fire and Rescue services. Compliance will ensure that properties will be fully positioned to use at their highest and best potentials as required by General Services Administration and Department of Defense regulations, Federal law, Executive Orders, and the Code of Federal Regulations.

DATES: Comments must be submitted on or before February 18, 2020.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2019–0028. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW, 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Anna Page Campbell, Realty Specialist, FEMA, Installations & Infrastructure Division, (202) 212–3631, *Annapage.Campbell@FEMA.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: Excess Federal real property is defined as property that is no longer mission critical to the needs of the Federal Government. The conveyance and disposal of excess real property is governed by the Federal Property and Administrative Services Act of 1949 (Property Act) as amended, 40 U.S.C. 541, *et seq.,* 40 U.S.C. 553, and applicable regulations (41 CFR parts 102–75.750 through 102.75.815).

Under the sponsorship of Federal Emergency Management Agency (FEMA) the Property Act gives the Administrator of the General Services Administration (GSA) authority to convey Federal real and related surplus property (without monetary consideration) to units of State and local government for emergency management response purposes, including fire rescue services. The scope and philosophy of GSA's real property policies are contained in 41 CFR part 102–71.

Collection of Information

Title: Application for Surplus Federal Real Property Public Benefit Conveyance and BRAC Program for Emergency Management Use.

Type of Information Collection: Extension, with changes, of a currently approved information collection.

OMB Number: 1660–0080.

FEMA Forms: FEMA Form 119–0–1, Surplus Federal Real Property Application for Public Benefit Conveyance.

Abstract: Use of the Application for Surplus Federal Real Property Public Benefit Conveyance and Base Realignment and Closure (BRAC) Program for Emergency Management Use is necessary to implement the processes and procedures for the successful, lawful, and expeditious conveyance of real property from the Federal Government to public entities such as State, local, county, city, town, or other like government bodies, as it relates to emergency management response purposes, including fire and rescue services. Utilization of this application will ensure that properties will be fully positioned for use at their highest and best potentials as required by GSA and Department of Defense regulations, public law, Executive Orders, and the Code of Federal Regulations.

Affected Public: State, local, or Tribal Government.

Estimated Number of Respondents: 15.

Estimated Number of Responses: 15.

Estimated Total Annual Burden Hours: 75.

Estimated Total Annual Respondent Cost: $4,277.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $2,885.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Maile Arthur,

Acting Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2019–27429 Filed 12–18–19; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4471–DR; Docket ID FEMA–2019–0001]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–4471–DR), dated December 6, 2019, and related determinations.

DATES: The declaration was issued December 6, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 6, 2019, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency

Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Tennessee resulting from a severe storm and straight-line winds on October 26, 2019, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Manny J. Toro, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Tennessee have been designated as adversely affected by this major disaster:

Benton, Decatur, Hardin, Henderson, Houston, Humphreys, McNairy, Montgomery, Perry, and Wayne Counties for Public Assistance.

All areas within the State of Tennessee are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–27305 Filed 12–18–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4470–DR; Docket ID FEMA–2019–0001]

Mississippi; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–4470–DR), dated December 6, 2019, and related determinations.

DATES: The declaration was issued December 6, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 6, 2019, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Mississippi resulting from a severe storm, straight-line winds, and flooding on October 26, 2019, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Mississippi.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Jose M. Girot, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Mississippi have been designated as adversely affected by this major disaster:

Alcorn, Covington, Itawamba, Jasper, Jefferson Davis, Leake, Lee, Marion, Neshoba, Newton, Pontotoc, Prentiss, Scott, Simpson, Smith, and Tippah Counties for Public Assistance.

All areas within the State of Mississippi are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–27304 Filed 12–18–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4468–DR; Docket ID FEMA–2019–0001]

Florida; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4468–DR), dated October 21, 2019, and related determinations.

DATES: This amendment was issued December 9, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those

areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 21, 2019.

Broward and Volusia Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–27303 Filed 12–18–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Cybersecurity and Infrastructure Security Agency; Availability of Draft Binding Operational Directive 20–01

AGENCY: Cybersecurity and Infrastructure Security Agency, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: Through this notice, CISA is making available a draft binding operational directive that will apply to all Federal, executive branch departments and agencies relating to vulnerability disclosure policies. The draft binding operational directive proposes requiring agencies to develop and publish a vulnerability disclosure policy (VDP) and maintain supporting handling procedures. This notice also requests comment on the draft binding operational directive.

DATES: Comments are due by December 27, 2019.

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

- *Agency Website:* For instructions on how to provide comments, please follow the instructions provided at *https://cyber.dhs.gov/bod/20-01/.*
- *Email: BOD.Feedback@cisa.dhs.gov.* Include ''Draft Binding Operational Directive 20–01'' in the subject line of the email.

Instructions: The full text of the draft Binding Operational Directive 20–01 is available at *https://cyber.dhs.gov./bod/20-01/.* Do not submit comments that include trade secrets, confidential commercial or financial information, Chemical-terrorism Vulnerability Information (CVI), Protected Critical Infrastructure Information (PCII), or Sensitive Security Information (SSI). All written comments received will be posted without alteration at *https://github.com/,* including any personal information. Contact information submitted through email will not be posted to *https://github.com/,* except for any name and affiliation included in the comment.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (''DHS'' or ''the Department'') has the statutory responsibility, in consultation with the Office of Management and Budget, to administer the implementation of agency information security policies and practices for information systems, which includes assisting agencies and providing certain government-wide protections. 44 U.S.C. 3553(b). As part of that responsibility, the Department is authorized to ''develop[ ] and oversee[ ] the implementation of binding operational directives to agencies to implement the policies, principles, standards, and guidance developed by the Director [of the Office of Management and Budget] and [certain] requirements of [the Federal Information Security Modernization Act of 2014.]'' 44 U.S.C. 3553(b)(2). A binding operational directive (''BOD'') is ''a compulsory direction to an agency that (A) is for purposes of safeguarding Federal information and information systems from a known or reasonably suspected information security threat, vulnerability, or risk; [and] (B) [is] in accordance with policies, principles, standards, and guidelines issued by the Director[.]'' 44 U.S.C. 3552(b)(1). Agencies are required to comply with these directives. 44 U.S.C. 3554(a)(1)(B)(ii).

Overview of Draft BOD 20–01

On November 27, 2019, CISA posted draft directive 20–01, titled ''Develop and Publish a Vulnerability Disclosure Policy,'' for public feedback at *https://cyber.dhs.gov/bod/20-01.* This directive requires each agency to develop and publish a vulnerability disclosure policy (VDP), enable receipt of unsolicited vulnerability reports, maintain supporting handling procedures for any vulnerability reports received, and report certain metrics to CISA. DHS is publishing this notice of availability to provide awareness of the draft binding operational directive being available now for review and comment.

Dated: December 13, 2019.

Richard Driggers,

Deputy Assistant Director, Cybersecurity Division, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2019–27307 Filed 12–18–19; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

Revision of a Currently Approved Collection: Immigration Bond; Correction

AGENCY: U.S. Immigration and Customs Enforcement, DHS.

ACTION: Notice; correction.

SUMMARY: On August 27, 2019 ICE published in the **Federal Register** requests for comments on the revision of the currently approved I–352 Immigration Bond collection. An information field did not display correctly on the published version of the revised draft bond form.

FOR FURTHER INFORMATION CONTACT: For specific question related to collection activities, please contact: Justin Gellert, 202–732–5462, *justin.c.gellert@ice.dhs.gov,* Enforcement and Removal Operations, Bond Management Unit, ICE.

The revised bond form that was published by ICE inadvertently hid the information line for the ''name and address of the person who executed a written instrument with the surety company requesting it to post bond,'' also known as the indemnitor. This information about the indemnitor is requested on the current approved version of the bond form, and the information line will be included in the final version of the revised form.

Dated: December 16, 2019.

Scott Elmore,

ICE PRA Clearance Officer.

[FR Doc. 2019–27404 Filed 12–18–19; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2019–N169; FXES11130300000–201–FF03E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before January 21, 2020.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents, as well as any comments, by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* TEXXXXXX):

- *Email: permitsR3ES@fws.gov.* Please refer to the respective application number (*e.g.,* Application No. TEXXXXXX) in the subject line of your email message.
- *U.S. Mail:* Regional Director, Attn: Nathan Rathbun, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458.

FOR FURTHER INFORMATION CONTACT: Nathan Rathbun, 612–713–5343 (phone); *permitsR3ES@fws.gov* (email). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

We invite local, State, and Federal agencies, Tribes, and the public to comment on the following applications.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE43605A	Daniel Cox, Streator, IL.	Add Gray bat (*Myotis grisescens*) to existing permitted species: Indiana bat (*M. sodalis*), northern long-eared bat (*M. septentrionalis*).	Add new location—FL—to existing authorized locations: AL, AR, CT, DE, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, VT, VA, WV, WI, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle, mist-net, harp trap, band, radio-tag, release.	Amend.
TE60750D	Aaron Geheber, Warrensburg, MO.	Topeka shiner (*Notropis topeka*).	MO	Conduct scientific research.	Captive reared individuals: Transport, handle, temporary hold, euthanize.	New.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Lori Nordstrom,

Assistant Regional Director, Ecological Services, Region 3.

[FR Doc. 2019–27337 Filed 12–18–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–MB–2019–N148; FF09M29000–190–FXMB1232090BPP0]

Migratory Birds; Double-Crested Cormorant Increased Take Limits for Depredation Permits in the Central and Eastern United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: In November 2017, the U.S. Fish and Wildlife Service, working in collaboration with the U.S. Department of Agriculture's Wildlife Services, completed an environmental assessment (EA) and finding of no significant impact for the issuance of depredation permits for double-crested cormorants.

The scope of the EA covered issuance of depredation permits for the purposes of health and human safety, aquaculture, property damage, and concern for co-nesting threatened or endangered species. This notice is to inform the public that, based on an adaptive management approach, we have reviewed recent data and are moving from the preferred alternative to the proposed action of using a higher annual take threshold, as prescribed in the 2017 EA.

FOR FURTHER INFORMATION CONTACT: Jerome Ford, Assistant Director, Migratory Birds, U.S. Fish and Wildlife Service, at 202–208–1050.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service (Service) is the Federal agency delegated the primary responsibility for managing migratory birds. Our authority derives from the Migratory Bird Treaty Act of 1918, as amended (MBTA or Act, 16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Russia Federation. The MBTA protects certain migratory birds from take, except as permitted under the Act. We implement the provisions of the MBTA through regulations in parts 10, 13, 20, 21, and 22 of title 50 of the Code of Federal Regulations (CFR). Regulations pertaining to migratory bird permits are at 50 CFR part 21.

The double-crested cormorant (*Phalacrocorax auritus*) is a fish-eating migratory bird that is distributed across a large portion of North America. These birds are generalist predators whose diet varies considerably between seasons and locations and tends to reflect fish species composition.

Environmental Assessment

In 2017, we completed an environmental assessment (EA) on the issuance of depredation permits for double-crested cormorants across 37 central and eastern states and the District of Columbia (*see* 82 FR 52936; Nov. 15, 2017). The scope of the EA covered issuance of depredation permits for the purposes of protecting human safety and health, aquaculture, property, and co-nesting threatened or endangered species.

Our preferred alternative in 2017 allowed a take of 51,571 cormorants per year. This alternative limited take to amounts previously authorized in the period 2010–2015, well below the lower limit of the potential take limit (PTL) model conducted for the Environmental Assessment. This more conservative limit was taken in order to assess the continued need for individual permits and allow an adaptive approach if needed, while staying within the limits in the PTL model. In the EA, we noted that, by using an adaptive management approach, the Service may consider transitioning from the preferred alternative (reduced take alternative) to the less restrictive take authorized in the proposed action using the lower limit of the PTL. The PTL models estimated that the annual maximum allowable take of 74,396 cormorants per year would maintain the cormorant populations considered in the proposed action.

Current Situation and Response

In 2018, authorized take of cormorants was 51,154, and 10 permittees requested amendments to increase the authorized take of cormorants in their individual permits. In two cases, the amendments for increased take were requested multiple times. As of October 3, 2019, authorized take in 2019 was already 40,960 birds, and we have received 8 amendment requests. In one case, the amendment for an increase was requested a second time.

This notice is to inform the public that, based on an adaptive management approach and our review of the recent data just described, we are moving from the preferred alternative in the 2017 EA to the proposed action of using a higher annual take threshold.

To ensure that authorized take is not having a significant effect on cormorant populations, the Service will assess cormorant survey data and update the PTL at least every 10 years using data acquired from the Service Permits Information Tracking System. We will publish a notice in the **Federal Register** if we determine that the take of double-crested cormorants should be changed again in the future.

Dated: October 31, 2019.

Margaret E. Everson,

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

[FR Doc. 2019–27415 Filed 12–18–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[120 A2100DD/AAKC001030/ A0A501010.999900]

Sauk-Suiattle Indian Tribe Alcohol Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Alcohol Control Ordinance of the Sauk-Suiattle Indian Tribe. The alcohol control ordinance is to regulate and control the possession, sale, manufacture, and distribution of alcohol in conformity with the laws of the State of Washington for the purpose of generating new Tribal revenues. Enactment of this ordinance will help provide a source of revenue to strengthen Tribal government, provide for the economic viability of Tribal enterprises, and improve delivery of Tribal government services.

DATES: This code shall take effect on December 19, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Norton, Tribal Government Specialist, Northwest Regional Office, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, OR 97232, Phone: (503) 231–6702; Fax: (503) 231–2201.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Sauk-Suiattle Tribal Council duly adopted the Alcohol Control Ordinance of the Sauk-Suiattle Indian Tribe on May 16, 2019.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Sauk-Suiattle Indian Tribal Council duly adopted the Alcohol Control Ordinance of the Sauk-Suiattle Indian Tribe by Resolution No. 05/19A/2019 dated May 16, 2019.

Dated: November 18, 2019.

Tara Lean Sweeney,

Assistant Secretary—Indian Affairs.

Alcohol Control Ordinance of the Sauk-Suiattle Indian Tribe

Section 1. Definitions.

a. Alcoholic Liquor. Alcoholic liquor means any alcoholic beverage containing more than one half of one percent alcohol by volume, and every liquid or solid, patented or not, containing alcohol and capable of being consumed by a human being.

b. Barrel. Barrel means 31 gallons for beer or malt beverages.

c. Beer or Malt Beverage. Beer or malt beverage means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt,

hops, or any other product, or any combination of such products in water containing not more than 14 percent alcohol by volume, and including ale, porter, brown, stout, lager beer, small beer, and strong beer. Also included are beverages known as 'non-alcoholic beer' which is made by fermentation of any infusion or decoction of barley, malt, hops, or other products, and containing less than three percent, but more than 0.5 percent alcohol by volume. The term 'malt beverage' does not include sake, known as Japanese rice wine.

d. Liquor Establishment. Liquor establishment means any public place, including a place available for rental by the public, selling alcoholic liquor either for consumption by the public on the premises or for carry-out to be consumed on private property. A liquor establishment is not considered a public place for purposes of the Sauk-Suiattle Indian Tribe Law and Order Code § 5.9.000.

e. ''To Sell'' or ''Sale''

i. Whenever the words ''sell'' or ''to sell'' refer to anything forbidden by this ordinance and related to alcoholic liquor, they include: (a) To solicit or receive an order. (b) To keep or expose for sale. (c) To deliver for value or in any way other than purely gratuitously. (d) To peddle. (e) To keep with intent to sell. (f) To traffic in. (g) For any consideration, promise or obtain directly or indirectly or under any pretext or by any means to procure or allow to be procured for any other person.

ii. The word ''sale'' includes every act of selling as defined in subsection (i).

f. Wine. Wine means any alcoholic beverage containing not more than 21 percent alcohol made from fruits, berries, or grapes either by natural fermentation or by natural fermentation with brandy added. Wine includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverages, vermouths, special natural wines, rectified wines, and like products. The term ''wine'' does not include cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage. A liquid shall first be deemed to be a wine at the point in the manufacturing process when it conforms to the definition of wine contained in this section.

Section 2. Findings and Purpose.

a. The introduction, possession, and sale of liquor on Indian reservations has historically been recognized as a matter of special concern to Indian tribes and to the United States. The control of liquor within the territorial jurisdiction of the Sauk-Suiattle Indian Tribe remains exclusively subject to the legislative enactments of the Sauk-Suiattle Indian Tribe in its exercise of its governmental powers over its territories, and the United States.

b. Federal Law prohibits the introduction of liquor into Indian Country (18 U.S.C. 1154), and authorized tribes to decide when and to what extent liquor transactions, sales, possession and service shall be permitted on their reservation (18 U.S.C. 1161).

c. Pursuant to the Constitution and Bylaws of the Sauk-Suiattle Indian Tribe Article VII § (B) the Sauk-Suiattle Tribal Council, the governing body of the Sauk-Suiattle Indian Tribe, has the authority ''to negotiate with the federal, state, and local governments on behalf of the tribe, and to advise and consult with the representatives of the department of the interior on all activities of the department that may affect the Sauk-Suiattle Indian Tribe.

d. Pursuant to Article VII § (P) the Sauk-Suiattle Tribal Council has the authority ''to promulgate and enforce ordinances governing the conduct of all persons within the jurisdiction of the Sauk-Suiattle Indian Tribe.''

Section 3. Jurisdiction. To the greatest extent feasible under existing law, including but not limited to the Treaty of Point Elliott and authority delegated under Title 18, United States Code Section 1161, this Act shall apply throughout the territorial jurisdiction of the Sauk-Suiattle Indian Tribe as set forth in Article 1, Section 2, of the Constitution of the Sauk-Suiattle Indian Tribe approved by the Secretary of the Interior on September 17, 1975. Nothing herein shall be construed to limit the inherent sovereignty of the Sauk-Suiattle Indian Tribe to regulate liquor sales and service on all lands within the Tribe's reservation or which constitute Indian Country as defined in 18 U.S.C. 1151 subject to the governmental jurisdiction of the Sauk-Suiattle Indian Tribe. To that end, this ordinance shall be liberally construed.

Section 4. Provisions of Ordinance. It shall be unlawful for any person to sell, trade or manufacture any alcoholic liquor within the territorial jurisdiction of the Sauk-Suiattle Indian Tribe except as provided for in this ordinance.

Section 5. Grant of Liquor Establishment. All commercial liquor establishments shall require a grant from the tribal council of the Sauk-Suiattle Indian Tribe to operate. A grant shall issue from a formal resolution of the tribal council and shall specifically outline the location of the establishment, where alcohol is permitted to be served on the premises, and the type of liquor establishment being granted.

Section 5.1 Types of Liquor Establishments. A grant from the tribal council may provide for the liquor establishment to be classified as one or more of the following:

(a) Full Service—A full service establishment may sell all legal alcoholic liquors.

(b) Beer and Wine Only—A beer and wine only establishment may only sell beer or malt beverages and/or wine.

(c) Brewpub—A Brewpub is an establishment that serves food and manufactures beer or malt beverages on the premises.

(d) Brewery—A Brewery is an establishment that manufactures beer or malt beverages.

Section 6. Ownership of Liquor Establishments. All liquor establishments within the territorial jurisdiction of the Sauk-Suiattle Indian Tribe shall be tribally owned, which may include a corporate entity owned entirely by the Sauk-Suiattle Indian Tribe, and further it shall be unlawful for any other business establishment or person in the territorial jurisdiction of the Sauk-Suiattle Indian Tribe to possess, transport or keep with intent to sell, barter, or trade to another, any alcoholic liquor.

Section 7. Compliance with State Law. All liquor establishments created by this act must comply with the laws of the State of Washington to the extent required by 18 U.S.C. 1161. Such compliance may be demonstrated either via a current license issued by the Washington State Liquor and Cannabis Board or by complying with any bilateral agreements the Tribe may enter into with the State of Washington regarding liquor sales, such as a Memorandum of Understanding.

Section 8. Permissible Sales at Liquor Establishments. Commercial liquor establishments shall be permitted to sell alcoholic liquors, subject to any limitations based on classifications.

Section 9. Permissible Manufacture of Beer or Malt Beverages.

Section 9.1 Brewpubs. A brewpub is authorized to manufacture on the granted premises not more than 1,500 barrels of malt beverage in a calendar year solely for retail sale on the premises and solely in draft form.

Section 9.2 Breweries. A Brewery is authorized to manufacture and sell beer and or malt beverages for on or off premises consumption subject to the following:

(a) Retail. A brewery grant holder may sell beer or malt beverages to individuals, provided, however that such sales are limited to 3,000 barrels of

malt beverages per year produced at the premises to the following individuals:

a. Those who are on such premises for consumption of beer or malt beverages on the premises: and/or

b. Those who will consume the beer or malt beverages off the premises, provided, however, that such sales shall not exceed a maximum of 288 ounces of malt beverages per consumer per day.

(b) Wholesale. A brewer grant holder may wholesale beer or malt beverages to retailers, however that such sales are limited to 10,000 barrels of beer or malt beverages per year produced on premises.

Section 10. Sauk-Suiattle Indian Tribe Law and Order Code Unaffected. Nothing in this Act is intended to repeal any part of the Sauk-Suiattle Indian Tribe Law and Order Code. It shall remain unlawful for any person, to, in a public place, consume alcohol, or possesses or be in control of an open container containing alcohol, except that a liquor establishment operating pursuant to this Ordinance shall not be considered a public place for purposes of the Sauk-Suiattle Indian Tribe Law and Order Code.

Section 11. Minors.

a. It shall be unlawful for any person under the age of 21 years to buy, attempt to buy or to misrepresent their age in attempting to buy alcoholic liquor. It shall be unlawful for any person under the age of 21 years to transport, possess or consume any alcoholic liquor in the territorial jurisdiction of the Sauk-Suiattle Indian Tribe. No person shall sell or furnish alcoholic liquor to any minor.

b. Proof of Minimum Age: Where there may be a question of a person's right to purchase alcoholic liquor by reason of his age, such person shall be required to present any one of the following official issued cards of identification which shows his correct age and bears his signature and photograph:

i. Liquor control authority card of identification of any state;

ii. Driver's license of any state or ''Identicard'' issued by the Washington State Department of Motor Vehicles;

iii. United States active duty military identification;

iv. Passport;

v. Any Tribal Identification card accepted by the State of Washington as official identification for purposes of purchasing alcohol;

vi. Sauk-Suiattle Tribal identification card.

Section 12. Employment. No person shall be hired to work in a tribally owned liquor establishment if they are a minor.

Section 13. Enforcement and Penalties.

a. All liquor establishments, including any places used for storage or sale of liquor or any premises or parts of premises used or in any way connected physically or otherwise with the liquor establishment shall at all times be opened to inspection by any tribal inspector or tribal police officer.

b. Every person, being on any such premises and having charge thereof, who refuses or fails to admit a tribal inspector or tribal police officer, demanding to enter therein in pursuance of this section and executing a duly authorized duty, or who obstructs or attempts to obstruct the entry of such inspector or tribal police officer, or who refuses or neglects to make any return required by this Title or the regulations passed pursuant thereto, shall be thereby deemed to have violated this Title.

c. For violation of any section of this Ordinance the person so convicted shall be subject to a fine not to exceed Three Hundred Sixty Dollars ($360) and/or shall be sentenced to jail for a period not to exceed six months, or both.

d. All contraband liquor shall be confiscated by the Sauk-Suiattle Tribal Police Department and preserved in accordance with the established procedures for the preservation of impounded property.

e. Serious or repeated infractions may result in the suspension or termination of the liquor establishment grant by the Sauk-Suiattle Tribal Council. Prior to suspension or termination of the liquor establishment grant, the Tribal Council shall provide notice to the grant holder at least ten (10) days prior to the suspension or cancellation. The grant holder shall have the right, prior to the suspension or termination date, to apply to the Sauk-Suiattle Tribal Court for a hearing to determine whether the grant was rightfully suspended or terminated. The sovereign immunity of the Sauk-Suiattle Indian Tribe is waived for this hearing; provided, however, that such waiver shall not be construed to allow an award of money damages against the Tribe nor any other relief other than a declaration of rights, nor shall it be construed to waive the sovereign immunity of the Tribe in any court but the Tribal Court.

f. The Sauk-Suiattle Tribal Court shall have exclusive jurisdiction to enforce this code and the civil fines, criminal punishment and exclusion authorized by this section or the Sauk-Suiattle Law and Order Code.

Section 14. Sovereign Immunity. Unless specifically provided herein, nothing in this code is intended or shall be construed as a waiver of the sovereign immunity of the Sauk-Suiattle Indian Tribe. No liquor establishment, nor any of its employees, shall be authorized, nor shall they attempt, to waive the sovereign immunity of the Sauk-Suiattle Indian Tribe pursuant to this Code.

Section 15. Severability. If any provision or provisions in this code are held invalid by a court of competent jurisdiction, this Code shall continue in effect as if the invalid provision(s) were not a part hereof.

Section 16. Effective Date. This Code shall be effective following approval by the Tribal and Council and approval by the Secretary of the Interior or his/her designee and publication in the **Federal Register** as provided by federal law.

[FR Doc. 2019–27400 Filed 12–18–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000.L63100000.HD0000. 20XL1116AF.HAG 20–0034]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Oregon State Office, Portland, Oregon, 30 calendar days from the date of this publication. The surveys, which were executed at the request of the BLM, are necessary for the management of these lands.

DATES: Protests must be received by the BLM by January 21, 2020.

ADDRESSES: A copy of the plats may be obtained from the Public Room at the Bureau of Land Management, Oregon State Office, 1220 SW 3rd Avenue, Portland, Oregon 97204, upon required payment. The plats may be viewed at this location at no cost.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6124, Branch of Geographic Sciences, Bureau of Land Management, 1220 SW 3rd Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 to contact the above individual during normal business hours. The service 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 plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management, Oregon State Office, Portland, Oregon:

Willamette Meridian, Oregon

T. 25 S., R. 15 E., accepted November 14, 2019

T. 31 S., R. 5 W., accepted November 21, 2019

T. 31 S., R. 5 W., accepted November 25, 2019

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the Chief Cadastral Surveyor for Oregon/Washington, Bureau of Land Management. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. The notice of protest must be filed before the scheduled date of official filing for the plat(s) of survey being protested. Any notice of protest filed after the scheduled date of official filing will be untimely and will not be considered. A notice of protest is considered filed on the date it is received by the Chief Cadastral Surveyor for Oregon/Washington during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed with the Chief Cadastral Surveyor for Oregon/Washington within 30 calendar days after the notice of protest is filed. If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the next business day following dismissal or resolution of all protests of the plat.

Before including your address, phone number, email address, or other personal identifying information in a notice of protest or statement of reasons, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Mary J.M. Hartel,

Chief Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2019–27377 Filed 12–18–19; 8:45 am]

BILLING CODE 4310–33–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (a portion of which will be open to the public) at the Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC, on January 9–10, 2020.

DATES: Thursday, January 9, 2020, from 9:00 a.m. to 5:00 p.m., and Friday, January 10, 2020, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Elizabeth Van Osten, Designated Federal Officer, Advisory Committee on Actuarial Examinations, at 202–317–3648.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at the Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, on Thursday, January 9, 2020, from 9:00 a.m. to 5:00 p.m., and Friday, January 10, 2020, from 8:30 a.m. to 5:00 p.m.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the November 2019 Pension (EA–2F) Examination in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the May 2020 Basic (EA–1) Examination and the May 2020 Pension (EA–2L) Examination also will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the portions of the meeting dealing with the discussion of questions that may appear on the Joint Board's examinations and the review of the November 2019 Pension (EA–2F) Examination fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1:00 p.m. on January 9, 2020, and will continue for as long as necessary to complete the discussion, but not beyond 3:00 p.m. Time permitting, after the close of this discussion by Advisory Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements should contact the Designated Federal Officer at *NHQJBEA@IRS.GOV* and include the written text or outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. Persons who wish to attend the public session should contact the Designated Federal Officer at *NHQJBEA@IRS.GOV* to obtain teleconference or building access instructions. Notifications of intent to make an oral statement or to attend the meeting must be sent electronically to the Designated Federal Officer by no later than January 6, 2020. In addition, any interested person may file a written statement for consideration by the Joint Board and the Advisory Committee by sending it to: Internal Revenue Service; Attn: Ms. Elizabeth Van Osten, Joint Board for the Enrollment of Actuaries; SE:RPO, Room 3422; 1111 Constitution Avenue NW; Washington, DC 20224.

Dated: December 12, 2019.

Thomas V. Curtin,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2019–27308 Filed 12–18–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0015]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Request To Be Included on the List of Pro Bono Legal Service Providers for Individuals in Immigration Proceedings (Form EOIR–56)

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional days until January 21, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone: (703) 305–0289.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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/or
—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:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Request to be Included on the List of Pro Bono Legal Service Providers for Individuals in Immigration Proceedings.

3. *The agency form number:* EOIR–56 (OMB #1125–0015).

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Legal service providers seeking to be included on the List of Pro Bono Legal Service Providers (''List''), a list of persons who have indicated their availability to represent aliens on a pro bono basis. Abstract: EOIR seeks approval to implement an electronic system to apply for and renew participation in the List, in addition to maintaining the paper version of the EOIR Form–56. Use of the electronic system is mandatory, and the paper collection should only be sued when the electronic system is unavailable. This is intended to elicit, in a uniform manner, all of the required information for EOIR to determine whether an applicant meets the eligibility requirements for inclusion on the List.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 107 respondents will complete each form within approximately 30 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* 53.50 annual burden hours.

If additional information is required contact: Melody D. Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405B, Washington, DC 20530.

Dated: December 13, 2019.

Melody D. Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–27298 Filed 12–18–19; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0240]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection: Capital Punishment Report of Inmates Under Sentence of Death

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until January 21, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Tracy L. Snell, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *Tracy.L.Snell@usdoj.gov;* telephone: 202–616–3288). Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, 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;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection: Capital Punishment Report of Inmates under Sentence of Death.

(2) *The Title of the Form/Collection:* Capital Punishment Report of Inmates under Sentence of Death.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form numbers for the

questionnaires are: NPS–8 (Report of Inmates under Sentence of Death); NPS–8A (Update Report of Inmate under Sentence of Death); NPS–8B (Status of Death Penalty—No Statute in Force); and NPS–8C (Status of Death Penalty—Statute in Force). The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will be staff from state departments of correction, state Attorneys General, and the Federal Bureau of Prisons. Staff responsible for keeping records on inmates under sentence of death in their jurisdiction and in their custody are asked to provide information for the following categories: Condemned inmates' demographic characteristics, legal status at the time of capital offense, capital offense for which imprisoned, number of death sentences imposed, criminal history information, reason for removal and current status if no longer under sentence of death, method of execution, and cause of death by means other than execution. BJS plans to publish this information in reports and reference it when responding to queries from the U.S. Congress, Executive Office of the President, the U.S. Supreme Court, state officials, international organizations, researchers, students, the media, and others interested in criminal justices statistics.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 46 responses at 30 minutes each for the NPS–8; 2,707 responses at 30 minutes each for the NPS–8A; and 52 responses at 15 minutes each for the NPS–8B or NPS–8C.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,389.5 annual total burden hours associated with the collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: December 13, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–27293 Filed 12–18–19; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: 2020 Adverse Effect Wage Rate for Range Occupations

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this notice to announce the 2020 Adverse Effect Wage Rate (AEWR) for the employment of temporary or seasonal nonimmigrant foreign workers (H–2A workers) to perform herding or production of livestock on the range. AEWRs are the minimum wage rates the Department has determined must be offered and paid by employers to H–2A workers and workers in corresponding employment so that the wages and working conditions of similarly employed workers in the United States will not be adversely affected. In this notice, the Department announces the annual update of the AEWR for workers engaged in the herding or production of livestock on the range, as required by the methodology established in the *Temporary Agricultural Employment of H–2A Foreign Workers in the Herding or Production of Livestock on the Range in the United States,* 80 FR 62958, 63067–63068 (Oct. 16, 2015); 20 CFR 655.211.

DATES: The rate is applicable January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Thomas M. Dowd, Deputy Assistant Secretary, Employment and Training Administration, Department of Labor, Box #12–200, 200 Constitution Ave. NW, Washington, DC 20210, Telephone: (202) 693–2772 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The U.S. Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer's petition for the admission of H–2A nonimmigrant temporary and seasonal agricultural workers in the United States unless the petitioner has received an H–2A labor certification from the Department. The labor certification provides that: (1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5); 20 CFR 655.100.

Adverse Effect Wage Rate for 2020

The Department's H–2A regulations covering the herding or production of livestock on the range (H–2A Herder Rule) at 20 CFR 655.210(g) and 655.211(a)(1) provide that employers must offer, advertise in recruitment, and pay each worker employed under 20 CFR 655.200–655.235 a wage that is at least the highest of: (1) The monthly AEWR, (2) the agreed-upon collective bargaining wage, or (3) the applicable minimum wage imposed by federal or state law or judicial action. Further, when the monthly AEWR is adjusted during a work contract and is higher than both the agreed-upon collective bargaining wage and the applicable minimum wage imposed by federal or state law or judicial action in effect at the time the work is performed, the employer must pay that adjusted monthly AEWR upon publication by the Department in the **Federal Register**. 20 CFR 655.211(a)(2).

As provided in 20 CFR 655.211(c)(2) of the H–2A Herder Rule, the monthly AEWR for range occupations in all states for a calendar year is based on the monthly AEWR for the previous calendar year, adjusted by the Employment Cost Index (ECI) for wages and salaries published by the Bureau of Labor Statistics for the preceding annual period. In setting the AEWR for 2020, ETA applied the required ECI adjustment of 3.0 percent to the monthly AEWR for range occupations in effect for 2019, resulting in a monthly wage of $1,682.33. The 12-month change in the ECI for wages and salaries of private industry workers between September 2018 and September 2019 was 3.0 percent.[1] Thus, the national

[1] The regulation at 20 CFR 655.211(c)(2) states that the monthly AEWR is calculated based on the ECI for wages and salaries ''for the preceding October—October period.'' This regulatory language was intended to identify the Bureau of Labor Statistics' October publication of ECI for wages and salaries, which presents data for the September—September period. Accordingly, the most recent 12-month change in the ECI for private sector workers published on October 31, 2019, by the Bureau of Labor Statistics was used for establishing the monthly AEWR under the regulations. *See https://www.bls.gov/news.release/eci.htm.* The ECI for private sector workers was used rather than the ECI

monthly AEWR rate for all range occupations in the H–2A program in 2020 is calculated by multiplying the monthly AEWR for calendar year 2019 by the October 2019 ECI adjustment ($1,633.33 × 1.030 = 1,682.33) or $1,682.33. Accordingly, any employer certified or seeking certification for range workers must pay each worker a wage that is at least the highest of the monthly AEWR of $1,682.33, the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by federal or state legislation or judicial action at the time work is performed on or after the effective date of this notice.

John Pallasch,

Assistant Secretary for Employment and Training.

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for all civilian workers given the characteristics of the H–2A herder workforce.

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Trade Adjustment Assistance

In accordance with the Section 223 (19 U.S.C. 2273) of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (''Act''), as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act (''TAA'') for workers by (TA–W) number issued during the period of *November 1, 2019 through November 30, 2019.* (This Notice primarily follows the language of the Trade Act. In some places however, changes such as the inclusion of subheadings, a reorganization of language, or ''and,'' ''or,'' or other words are added for clarification.)

Section 222(a)—Workers of a Primary Firm

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements under Section 222(a) of the Act (19 U.S.C. 2272(a)) must be met, as follows:

(1) The first criterion (set forth in Section 222(a)(1) of the Act, 19 U.S.C. 2272(a)(1)) is that a significant number or proportion of the workers in such workers' firm (or ''such firm'') have become totally or partially separated, or are threatened to become totally or partially separated;

AND (2(A) or 2(B) Below)

(2) The second criterion (set forth in Section 222(a)(2) of the Act, 19 U.S.C. 2272(a)(2)) may be satisfied by either (A) the Increased Imports Path, or (B) the Shift in Production or Services to a Foreign Country Path/Acquisition of Articles or Services from a Foreign Country Path, as follows:

(A) Increased Imports Path

(i) the sales or production, or both, of such firm, have decreased absolutely;

AND (ii and iii Below)

(ii)(I) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased; OR

(II)(aa) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased; OR

(II)(bb) imports of articles like or directly competitive with articles which are produced directly using the services supplied by such firm, have increased; OR

(III) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

AND

(iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; OR

(B) Shift in Production or Services to a Foreign Country Path OR Acquisition of Articles or Services From a Foreign Country Path

(i)(I) there has been a shift by such workers' firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm; OR

(II) such workers' firm has acquired from a foreign country articles or services that are like or directly competitive with articles which are produced or services which are supplied by such firm;

AND

(ii) the shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers' separation or threat of separation.

Section 222(b)—Adversely Affected Secondary Workers

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(b) of the Act (19 U.S.C. 2272(b)) must be met, as follows:

(1) a significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

AND

(2) the workers' firm is a supplier or downstream producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act (19 U.S.C. 2272(a)), and such supply or production is related to the article or service that was the basis for such certification (as defined in subsection 222(c)(3) and (4) of the Act (19 U.S.C. 2272(c)(3) and (4));

AND

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; OR

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation determined under paragraph (1).

Section 222(e)—Firms Identified by the International Trade Commission

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(e) of the Act (19 U.S.C. 2272(e))must be met, by following criteria (1), (2), and (3) as follows:

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under

section 202(b)(1) of the Act (19 U.S.C. 2252(b)(1)); OR

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1) of the Act (19 U.S.C. 2436(b)(1)); OR

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

AND

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) of the Trade Act (19 U.S.C. 2252(f)(1)) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3) (19 U.S.C. 2252(f)(3)); OR

(B) notice of an affirmative determination described in subparagraph (B) or (C)of paragraph (1) is published in the **Federal Register**;

AND

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); OR

(B) notwithstanding section 223(b) of the Act (19 U.S.C. 2273(b)), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (Increased Imports Path) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
94,979	Carl Zeiss Vision Inc., Carl Zeiss Vision International GmbH	Independence, MO	July 10, 2018.
95,048	Tucker Powersports, Motorsport Aftermarket Group, PDQ Temporaries	Fort Worth, TX	August 5, 2018.
95,305	Remington Arms, First Choice Staffing	Ilion, NY	October 18, 2018.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (Shift in Production or Services to a Foreign Country Path or Acquisition of Articles or Services from a Foreign Country Path) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
94,702	Rosenberger North America	Plano, TX	April 4, 2018.
94,728	Intel Corporation, Information Technology, Hawthorne Farm Campus, etc	Hillsboro, OR	February 3, 2019.
94,728A	Intel Corporation, Information Technology, Hawthorne Farm Campus, etc	Hillsboro, OR	April 11, 2018.
94,728B	On-site Leased Workers from 123 Enterprises, Accenture, etc., Intel Corporation, Information Technology, Hawthorne Farm Campus.	Hillsboro, OR	April 11, 2018.
94,728C	Intel Corporation, Information Technology, Ronler Acres Campus, 123 Enterprises, etc.	Hillsboro, OR	April 11, 2018.
94,735	Leggett & Platt, Inc., Consumer Products Group, Adjustable Bed Group, Branch 0797, etc.	Neosho, MO	April 17, 2018.
94,763	PerkinElmer Health Sciences, Inc., Accounting Unit	Shelton, CT	April 26, 2018.
94,786	Silver Star Brands, Crosby Rock	Oshkosh, WI	May 6, 2018.
94,793	Lumedx Inc.	Bellevue, WA	May 7, 2018.
94,822	Vtech Communications, Renhill Staffing Services, Workforce Logiq	Beaverton, OR	May 16, 2018.
94,846	A123 Systems LLC, Adecco—USA	Romulus, MI	July 25, 2019.
94,846A	A123 Systems LLC, Adecco—USA	Livonia, MI	July 25, 2019.
94,871	Blue Cross and Blue Shield, Blue Cross Blue Shield of Minnesota, Claims Processor Division, etc.	Eagan, MN	June 4, 2018.
94,881	Stratus Video Language Company, Manpower, Randstad	Dallas, TX	June 5, 2018.
94,890	FCT US LLC, Jaci Carroll, Hamilton Connections	Torrington, CT	June 12, 2018.
94,919	Flexsteel Industries, Staffmark, Employment Solutions, York Employment.	Riverside, CA	June 20, 2018.
94,929	Muzak LLC, Mood Media, Customer Service Division	Austin, TX	June 21, 2018.
94,973	DXC Technology Services LLC, DXC Technology Company	Plano, TX	July 5, 2018.
94,981	Masonite Corporation, Baron HR, Delta Infotech, Employbridge, Target CW, Randstad, etc.	Stockton, CA	July 10, 2018.
94,984	Salter Labs, Aerotek, Pridestaff	Vista, CA	July 11, 2018.
94,999	Synopsys, Inc., Design Group, PRO Unlimited	Hillsboro, OR	July 16, 2018.
94,999A	Synopsys, Inc., Verification Group, Vayavya Labs	Hillsboro, OR	July 16, 2018.
94,999B	Synopsys, Inc., Silicon Engineering Group, PRO Unlimited, Manceps, Inc., TalentBurst.	Hillsboro, OR	July 16, 2018.
95,006	Pro-Mark, LLC, Your Employment Solutions	North Salt Lake, UT	July 19, 2018.
95,013	Medtronic Plc, Restorative Therapies Group, Aerotek, Artech Information Systems, ATR, etc.	Goleta, CA	July 23, 2018.
95,028	State Street Corporation, USIS Client Reporting	Boston, MA	July 30, 2018.
95,031	Cenveo Publishing Services, Lancaster Content division, Cenveo Worldwide Limited, Cenveo Incorporated.	Lancaster, PA	July 31, 2018.
95,053	Filson Manufacturing, CC Filson Co., 1741 1st Avenue South	Seattle, WA	August 6, 2018.
95,053A	Filson Manufacturing, CC Filson Co., 1555 4th Avenue South	Seattle, WA	August 6, 2018.
95,093	Norma Kamali Inc.	New York, NY	August 19, 2018.
95,099	Optum Technology, United Healthcare Services, IT Service Desk, etc	Johnston, RI	August 20, 2018.
95,154	Sigue Corporation	Sylmar, CA	September 6, 2018.

TA–W No.	Subject firm	Location	Impact date
95,171	Forever 21, Inc., Human Resources	Los Angeles, CA	September 10, 2018.
95,171A	Forever 21, Inc., Payroll	Los Angeles, CA	September 10, 2018.
95,171B	Forever 21, Inc., Information Technology	Los Angeles, CA	September 10, 2018.
95,173	Virtual Business Office Associates, Tax VBO Division, A Division of Recruiting Solution.	Columbia, SC	September 5, 2018.
95,178	Honeywell International Inc., Safety & Productivity Solutions—Technical Support Job Function, PDS Tech.	Smithfield, RI	September 12, 2018.
95,182	Waitr, Inc., Waitr Holdings Inc., Landcadia Holdings, Inc	Lafayette, LA	September 12, 2018.
95,182A	Waitr, Inc., Waitr Holdings Inc., Landcadia Holdings, Inc	Lake Charles, LA	September 12, 2018.
95,184	Del Monte Foods, Inc., Del Monte Foods Holdings Limited, Express Employment Professionals.	Mendota, IL	September 12, 2018.
95,203	Bose Corporation, Digital Office, Corporate Information Services Department, Randstad, etc.	Stow, MA	March 29, 2019
95,206	Honeywell Safety Products, Safety & Productivity Solutions-Technical Support Job Function, etc.	Franklin, PA	September 23, 2018.
95,227	Franklin Electric, Co. Inc., The Hughes Agency, Express Employment Services.	Little Rock, AR	September 26, 2018.
95,231	Sea World of Florida LLC, Call Center Division, Sea World Parks & Entertainment Inc., Alorica.	Orlando, FL	September 27, 2018.
95,255	Cohu Interface Solutions LLC (Cohu), Everett Charles Technologies, Cohu, Chartwell Staffing Services, etc.	Fontana, CA	October 4, 2018.
95,256	Johnson Controls, Inc., Building Technologies & Solutions division, Johnson Controls International.	Indianapolis, IN	October 4, 2018.
95,270	Emerald Mississippi, Emerald Home Furnishing division, Emerald Home Furnishing.	New Albany, MS	October 9, 2018.
95,272	Molex, Koch Industries, Oasis Staffing, King Bird Facility	Lincoln, NE	October 9, 2018.
95,272A	Molex, Koch Industries, Oasis Staffing, West Bond Facility	Lincoln, NE	October 9, 2018.
95,274	Chelton Inc., Cobham Aerospace Connectivity Division, Cobham Plc, Robert Half.	Lewisville, TX	October 10, 2018.
95,282	Key Safety Systems dba Joyson Safety Systems, Ningbo Joyson Electronic, Randstad US, Express Employment Professionals.	Knoxville, TN	October 11, 2018.
95,284	Tri-Star Electronics International, Inc., Carlisle Internconnect Technologies (CIT) Division, Amtec, Skillset Group.	Riverside, CA	October 15, 2018.
95,289	Hydro Extrusion North America, LLC, Norsk Hydro ASA, Manpower	Kalamazoo, MI	October 16, 2018.
95,290	Aprima Medical Software, Inc., Accounts Receivable department, eMDs, Inc.	Richardson, TX	October 17, 2018.
95,293	Conduent Commercial Solutions, LLC, Conduent Incorporated	Boca Raton, FL	October 17, 2018.
95,297	Providence Health & Services—Washington, Providence St. Joseph Health Shared Services, Talent Acquisition, etc.	Medford, OR	October 17, 2018.
95,297A	Providence Health & Services—Washington, Providence St. Joseph Health Shared Services, Talent Acquisition, etc.	Portland, OR	October 17, 2018.
95,315	IEEE, Editorial Services Department, Publications Unit	Piscataway, NJ	August 12, 2019.
95,315A	Winston Personnel Services, IEEE, Editorial Services Department, Publications Unit.	Piscataway, NJ	October 22, 2018.
95,324	Citibank, N.A., Finance—Global Consumer—Citi Retail Services, Citicorp LLC.	Gray, TN	October 24, 2018.
95,346	Citicorp Credit Services, Inc. (USA), Global Consumer Technology—NAM Application Development & Maintenance, etc.	Elk Grove Village, IL	November 1, 2018.
95,352	Regal Beloit America, Inc., Regal Beloit Corporation, West Plains Division.	West Plains, MO	November 4, 2018.
95,353	The Terminix International Company, L.P., Memphis Contact Center	Memphis, TN	November 4, 2018.
95,373	Certified Oil Company, Euro Garages	Columbus, OH	November 14, 2018.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
94,948	Falcon Transport Co., CP–FTC Holdings LLC, GD Leasing of Indiana LLC.	La Vergne, TN	June 26, 2018.
94,957	Product Assurance Services, Inc	St. Marys, PA	June 28, 2018.

The following certifications have been issued. The requirements of Section 222(e) (firms identified by the International Trade Commission) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
94,556	Aleris Davenport Casting Mill, Robert Half, Team Staffing Solutions, Inc	Davenport, IA	November 15, 2017.

TA–W No.	Subject firm	Location	Impact date
94,557	Aleris Davenport Rolling Mill, Robert Half, Team Staffing Solutions, Inc	Davenport, IA	November 15, 2017.
95,302	Interlake Mecalux, Inc., Mecalux, S.A., Superior Staffing, ClearStaff, UniStaff, Accurate Personnel.	Melrose Park, IL	September 13, 2018.
95,302A	Interlake Mecalux, Inc., Mecalux, S.A., Manpower, Express Employment Professionals, StaffQuick.	Pontiac, IL	September 13, 2018.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for TAA have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both), or (a)(2)(B) (shift in production or services to a foreign country or acquisition of articles or services from a foreign country), (b)(2) (supplier to a firm whose workers are certified eligible to apply for TAA or downstream producer to a firm whose workers are certified eligible to apply for TAA), and (e) (International Trade Commission) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
94,149	GlobalFoundries U.S. Inc., Superior Group, Yoh	Malta, NY.	
94,149A	GlobalFoundries U.S. Inc.	Albany, NY.	
94,546	The Gunlocke Company, HNI Corporation, Remedy Intelligent Staffing	Wayland, NY.	
94,634	Mersen USA, Administrative Duties Division, Mersen USA BN Corporation, Texip, etc.	Newburyport, MA.	

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports), (a)(2)(B) (shift in production or services to a foreign country or acquisition of articles or services from a foreign country), (b)(2) (supplier to a firm whose workers are certified eligible to apply for TAA or downstream producer to a firm whose workers are certified eligible to apply for TAA), and (e) (International Trade Commission) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
94,563	Pyramid Consulting, Inc., AT&T Mobility LLC	San Ramon, CA.	
94,710	Claims Recovery Financial Services LLC	Albion, NY.	
94,719	Johnson Crushers International, Inc., Astec Industries, Inc	Eugene, OR.	
94,813	AEP Generation Resources, Inc., Conesville Plant, AEP Energy Supply, Industrial Contractors Skanska, etc.	Conesville, OH.	
94,980	Erie Coke Corporation, Garner LLC, Spresters Industrial Services, Kirchner LLC.	Erie, PA.	
95,002	P–D Valmiera Glass USA Corp., VALMIERAS STIKLA SKIEDRA, AS, Trace Staffing Solutions.	Dublin, GA.	
95,160	Payless ShoeSource, Inc., North Figueroa Street location, Payless Holdings LLC.	Los Angeles, CA.	
95,160A	Payless ShoeSource, Inc., Burbank Town Center location, Payless Holdings LLC.	Burbank, CA.	
95,169	Corn Plus	Winnebago, MN.	

Determinations Terminating Investigations of Petitions for Trade Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's website, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
94,828	Eni USA R&M Company, Inc.	Cabot, PA.	
95,105	Tomlinson Industries LLC	Garfield Heights, OH.	
95,148	Verso Luke LLC, NewPage Corporation	Luke, MD.	

The following determinations terminating investigations were issued because the worker group on whose behalf the petition was filed is covered under an existing certification.

TA–W No.	Subject firm	Location	Impact date
94,580	Faurecia Emissions Control Technologies USA, LLC, Clean Mobility Division.	Dexter, MO.	
94,847	A123 Systems LLC, Adecco—USA	Livonia, MI.	
95,163	qHub Logistics Corporation, Hon Hai/Foxconn Technology Group	Plainfield, IN.	
95,215	Ruen Drilling, Teck Washington Incorporated, Pend Oreille Operations	Metaline Falls, WA.	
95,230	Kyyba Inc., Harman International Industries, Inc., Samsung Electronics, Connected Car.	Novi, MI.	
95,247	Workers from Palm Springs, California, Gannett Satellite Information Network, LLC, Gannett Technology, Gannett Co.	Palm Springs, CA.	

The following determinations terminating investigations were issued because the petitioning group of workers is covered by an earlier petition that is the subject of an ongoing investigation for which a determination has not yet been issued.

TA–W No.	Subject firm	Location	Impact date
94,716	Zinus	Tracy, CA.	
95,244	Wholesome Harvest Baking LLC Grupo Bimbo	Richmond, CA.	

I hereby certify that the aforementioned determinations were issued during the period of *November 1, 2019 through November 30, 2019.* These determinations are available on the Department's website *https://www.doleta.gov/tradeact/petitioners/taa_search_form.cfm* under the searchable listing determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington DC this 6th day of December 2019.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance

[FR Doc. 2019–27327 Filed 12–18–19; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

Post-Initial Determinations Regarding Eligibility To Apply for Trade Adjustment Assistance

In accordance with Sections 223 and 284 (19 U.S.C. 2273 and 2395) of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (''Act''), as amended, the Department of Labor herein presents Notice of Affirmative Determinations Regarding Application for Reconsideration, summaries of Negative Determinations Regarding Applications for Reconsideration, summaries of Revised Certifications of Eligibility, summaries of Revised Determinations (after Affirmative Determination Regarding Application for Reconsideration), summaries of Negative Determinations (after Affirmative Determination Regarding Application for Reconsideration), summaries of Revised Determinations (on remand from the Court of International Trade), and summaries of Negative Determinations (on remand from the Court of International Trade) regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act (''TAA'') for workers by (TA–W) number issued during the period of *November 1, 2019 through November 30, 2019.* Post-initial determinations are issued after a petition has been certified or denied. A post-initial determination may revise a certification, or modify or affirm a negative determination.

Affirmative/Negative Determinations Regarding Applications for Reconsideration

The certifying officer may grant an application for reconsideration under the following circumstances: (1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous; (2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or (3) If, in the opinion of the certifying officer, a misinterpretation of facts or of the law justifies reconsideration of the determination. See 29 CFR 90.18(c).

Affirmative Determinations Regarding Applications for Reconsideration

The following Applications for Reconsideration have been received and granted. See 29 CFR 90.18(d). The group of workers or other persons showing an interest in the proceedings may provide written submissions to show why the determination under reconsideration should or should not be modified. The submissions must be sent no later than ten days after publication in **Federal Register** to the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW, Washington, DC 20210. See 29 CFR 90.18(f).

TA–W No.	Subject firm	Location
94181	Jet Aviation St. Louis, Inc	Cahokia, IL.

Revised Certifications of Eligibility

The following revised certifications of eligibility to apply for TAA have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination, and the reason(s) for the determination.

The following revisions have been issued.

TA–W No.	Subject firm	Location	Impact date	Reason(s)
94669	Gannett Satellite Information Network, LLC	McLean, VA	3/27/2018	Worker Group Clarification.
94858	Teck Washington Incorporated	Metaline Falls, WA.	5/29/2018	Worker Group Clarification.
94272	Harman International Industries, Inc.	Novi, MI	10/12/2017	Worker Group Clarification.
94441	Hon Hai/Foxconn Technology Group	Plainfield, IN	1/3/2018	Worker Group Clarification.

I hereby certify that the aforementioned determinations were issued during the period of *November 1, 2019 through November 30, 2019.* These determinations are available on the Department's website *https://www.doleta.gov/tradeact/petitioners/taa_search_form.cfm* under the searchable listing determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 6th day of December 2019.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2019–27329 Filed 12–18–19; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: 2020 Adverse Effect Wage Rates for Non-Range Occupations

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this notice to announce the 2020 Adverse Effect Wage Rates (AEWR) for the employment of temporary or seasonal nonimmigrant foreign workers (H–2A workers) to perform agricultural labor or services other than the herding or production of livestock on the range. AEWRs are the minimum wage rates the Department has determined must be offered and paid by employers to H–2A workers and workers in corresponding employment for a particular occupation and area so that the wages and working conditions of similarly employed workers in the United States will not be adversely affected. In this notice, the Department announces the annual update of the AEWRs.

DATES: These rates are applicable January 2, 2020.

FOR FURTHER INFORMATION CONTACT: Thomas M. Dowd, Deputy Assistant Secretary, Employment and Training Administration, Department of Labor, Box #12–200, 200 Constitution Ave. NW, Washington, DC 20210, Telephone: (202) 693–2772 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The U.S. Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer's petition for the admission of H–2A nonimmigrant temporary and seasonal agricultural workers in the United States unless the petitioner has received an H–2A labor certification from the Department. The labor certification provides that: (1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5); 20 CFR 655.100.

Adverse Effect Wage Rates for 2020

The Department's H–2A regulations at 20 CFR 655.122(l) provide that employers must pay their H–2A workers and workers in corresponding employment at least the highest of: (i) The AEWR; (ii) the prevailing hourly wage rate; (iii) the prevailing piece rate; (iv) the agreed-upon collective bargaining wage rate; or (v) the federal or state minimum wage rate in effect at the time the work is performed. Further, when the AEWR is adjusted during a work contract and is higher than the highest of the previous AEWR, the prevailing hourly wage rate, the prevailing piece rate, the agreed-upon collective bargaining wage, the Federal minimum wage rate, or the state minimum wage rate, the employer must pay that adjusted AEWR upon the effective date of the new rate, as provided in the applicable **Federal Register** Notice. *See* 20 CFR 655.122(l) (requiring the applicable AEWR or other wage rate to be paid based on the AEWR or rate in effect ''at the time work is performed'').

The AEWR for all agricultural employment (except for the herding or production of livestock on the range, which is covered by 20 CFR 655.200–235) for which temporary H–2A certification is being sought is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) in the state or region as published annually by the U.S. Department of Agriculture (USDA). 20 CFR 655.120(c) requires that the Administrator of the Office of Foreign Labor Certification publish the USDA field and livestock worker (combined) wage data as AEWRs in a **Federal Register** Notice. Accordingly, the 2020 AEWRs to be paid for agricultural work performed by H–2A and U.S. workers on and after the effective date of this notice are set forth in the table below:

TABLE—2020 ADVERSE EFFECT WAGE RATES

State	2020 AEWRs
Alabama	$11.71
Arizona	12.91
Arkansas	11.83
California	14.77
Colorado	14.26
Connecticut	14.29
Delaware	13.34
Florida	11.71
Georgia	11.71
Hawaii	14.90
Idaho	13.62
Illinois	14.52
Indiana	14.52
Iowa	14.58
Kansas	14.99
Kentucky	12.40
Louisiana	11.83
Maine	14.29
Maryland	13.34
Massachusetts	14.29
Michigan	14.40
Minnesota	14.40
Mississippi	11.83
Missouri	14.58
Montana	13.62
Nebraska	14.99
Nevada	14.26
New Hampshire	14.29
New Jersey	13.34
New Mexico	12.91
New York	14.29
North Carolina	12.67
North Dakota	14.99

TABLE—2020 ADVERSE EFFECT WAGE RATES—Continued

State	2020 AEWRs
Ohio	14.52
Oklahoma	12.67
Oregon	15.83
Pennsylvania	13.34
Rhode Island	14.29
South Carolina	11.71
South Dakota	14.99
Tennessee	12.40
Texas	12.67
Utah	14.26
Vermont	14.29
Virginia	12.67
Washington	15.83
West Virginia	12.40
Wisconsin	14.40
Wyoming	13.62

Pursuant to the H–2A regulations at 20 CFR 655.173, the Department will publish a separate **Federal Register** Notice in early 2020 to announce: (1) The allowable charges for 2020 that employers seeking H–2A workers may charge their workers for providing them three meals a day; and (2) the maximum travel subsistence reimbursement that a worker with receipts may claim in 2020. Also in a separate **Federal Register** Notice, the Department will publish the monthly AEWR for workers engaged to perform herding or production of livestock on the range for 2020.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2019–27410 Filed 12–18–19; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Administrator of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing provided such request is filed in writing with the Administrator, Office of Trade Adjustment Assistance, at the address shown below, no later than December 30, 2019.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Administrator, Office of Trade Adjustment Assistance, at the address shown below, not later than December 30, 2019.

The petitions filed in this case are available for inspection at the Office of the Administrator, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW, Washington, DC 20210.

Signed at Washington, DC, this 6th day of December 2019.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[93 TAA Petitions Instituted between 11/1/19 and 11/30/19]

TA–W No.	Subject firm (petitioners)	Location	Date of institution	Date of petition
95341	Fish People Inc. (State/One-Stop)	Toledo, OR	11/01/19	10/31/19
95342	Siemens Government Technologies, Inc. (State/One-Stop)	Wellsville, NY	11/01/19	10/31/19
95343	Smithfield Fresh Meats Company (State/One-Stop)	Newport News, VA	11/01/19	10/31/19
95344	Synchrony Bank (Company)	Stamford, CT	11/01/19	10/22/19
95345	Cascade Tissue Group—Waterford, a division of Cascades Tissue Group (State/One-Stop).	Waterford, NY	11/04/19	11/01/19
95346	Citicorp Credit Services, Inc. (USA) (Workers)	Elk Grove Village, IL	11/04/19	11/01/19
95347	MTBC Inc. (State/One-Stop)	Somerest, NJ	11/04/19	11/01/19
95348	Sitel (Workers)	Glasgow, KY	11/04/19	11/02/19
95349	Chattem Chemical Inc. (State/One-Stop)	Chattanooga, TN	11/05/19	11/04/19
95350	Church & Dwight Co., Inc. (State/One-Stop)	Colonial Heights, VA	11/05/19	11/04/19
95351	La-Z-Boy West (State/One-Stop)	Redlands, CA	11/05/19	11/04/19
95352	Regal Beloit America, Inc. (State/One-Stop)	West Plains, MO	11/05/19	11/04/19
95353	The Terminix International Company, L.P. (State/One-Stop)	Memphis, TN	11/05/19	11/04/19
95354	Goldman Sachs (State/One-Stop)	New York City, NY	11/06/19	11/05/19
95355	Morgantown Machine & Hydralics of West Virginia Inc. (Union).	Morgantown, WV	11/06/19	11/01/19
95356	RPC Superfos, US Incorporated (State/One-Stop)	Winchester, VA	11/06/19	11/05/19
95357	Simonds Saw LLC (State/One-Stop)	Fitchburg, MA	11/06/19	11/05/19
95358	Unilever (State/One-Stop)	Shelton, CT	11/06/19	11/06/19
95359	Arrow Electronics (State/One-Stop)	Windsor, CT	11/07/19	11/06/19
95360	Leoni Wiring (State/One-Stop)	Tucson, AZ	11/07/19	11/06/19
95361	Vision Ease (State/One-Stop)	Ramsey, MN	11/07/19	11/06/19
95362	WaveFront Technology Inc. (State/One-Stop)	Paramount, CA	11/07/19	11/06/19
95363	99 Cents only Stores (State/One-Stop)	Commerce, CA	11/08/19	11/06/19
95364	Aspect Software (State/One-Stop)	Phoenix, AZ	11/08/19	11/07/19
95365	Jacobs Engineering (State/One-Stop)	Englewood, CO	11/08/19	11/07/19
95366	Distinctive Apparel International (Workers)	Randolph, MA	11/12/19	11/08/19
95367	Flambeau River Papers (Workers)	Park Falls, WI	11/12/19	11/08/19
95368	Drs Foster & Smith Petco (Workers)	Rhinelander, WI	11/12/19	11/11/19
95369	Sap America—Sybase Inc. (State/One-Stop)	San Ramon, CA	11/12/19	11/08/19
95370	Avmed Health Plans (State/One-Stop)	Miami, FL	11/13/19	11/08/19

APPENDIX—Continued

[93 TAA Petitions Instituted between 11/1/19 and 11/30/19]

TA–W No.	Subject firm (petitioners)	Location	Date of institution	Date of petition
95371	Bank of the West (State/One-Stop)	City of Industry, CA	11/13/19	11/12/19
95372	Ferrara Candy Company (State/One-Stop)	Creston, IA	11/13/19	11/12/19
95373	Certified Oil Company (Workers)	Columbus, OH	11/14/19	11/14/19
95374	Formativ Health Management, Inc. (State/One-Stop)	Jacksonville, FL	11/14/19	11/13/19
95375	Henkel Corporation (State/One-Stop)	Chanhassen, MN	11/14/19	11/13/19
95376	Jotun Paints, Inc. (State/One-Stop)	Belle Chasse, LA	11/14/19	11/13/19
95377	Modern Tool Inc. (State/One-Stop)	Coon Rapids, MN	11/14/19	11/13/19
95378	Winona PVD Coatings, LLC (Company)	Warsaw, IN	11/15/19	11/14/19
95379	Alder BioPharmaceuticals (State/One-Stop)	Bothell, WA	11/18/19	11/13/19
95380	Columbian Home Products LLC (State/One-Stop)	Terre Haute, IN	11/18/19	11/15/19
95381	Komar (Workers)	Jersey City, NJ	11/18/19	11/15/19
95382	Rite-Aid (IT Technicians in state of Oregon) (State/One-Stop)	Camp Hill, PA	11/18/19	11/15/19
95383	Superior Steel Fabrication (State/One-Stop)	Eugene, OR	11/18/19	11/15/19
95384	Baptist Health Floyd (State/One-Stop)	New Albany, IN	11/19/19	11/18/19
95385	Cenveo Discount Labels (State/One-Stop)	New Albany, IN	11/19/19	11/18/19
95386	CMC Commercial Metals (State/One-Stop)	Muncie, IN	11/19/19	11/18/19
95387	Concentrix CVG Corporation (State/One-Stop)	Lake Mary, FL	11/19/19	11/18/19
95388	Goodwin Brothers Printing Company (State/One-Stop)	Saint Louis, MO	11/19/19	11/18/19
95389	Northern Trust (Company)	Chicago, IL	11/19/19	11/18/19
95390	AK Steel Butler (State/One-Stop)	Butler, PA	11/20/19	11/19/19
95391	Alorica (State/One-Stop)	Mesa, AZ	11/20/19	11/19/19
95392	Aon Corporation (State/One-Stop)	Lincolnshire, IL	11/20/19	11/19/19
95393	Syniverse Technologies (State/One-Stop)	Tampa, FL	11/20/19	11/19/19
95394	Tamco CMC Commercial Metals (State/One-Stop)	Rancho Cucamonga, CA	11/20/19	11/19/19
95395	API Heat Transfer—Arcade Facility (State/One-Stop)	Arcade, NY	11/21/19	11/15/19
95396	ATI Portland Forge (State/One-Stop)	Portland, IN	11/21/19	11/20/19
95397	Carestream Health Inc. (Workers)	Rochester, NY	11/21/19	11/20/19
95398	Crescent Bank & Trust (State/One-Stop)	Chesapeake, VA	11/21/19	11/20/19
95399	Georgia Pacific (Workers)	Hope, AR	11/21/19	11/20/19
95400	Gibson County Coal (State/One-Stop)	Princeton, IN	11/21/19	11/20/19
95401	GKN Sintered Metals (State/One-Stop)	Emporium, PA	11/21/19	11/20/19
95402	Echo Bay Minerals Company (State/One-Stop)	Republic, WA	11/21/19	11/19/19
95403	Owens-Brockway Glass Container, Inc. (State/One-Stop)	Portland, OR	11/21/19	11/20/19
95404	Shiru Cafe owned by Enrisson Inc. (State/One-Stop)	Amherst, MA	11/21/19	11/20/19
95405	Golden Star Inc. (State/One-Stop)	Atchison, KS	11/22/19	11/22/19
95406	Hikvision USA Inc. (State/One-Stop)	City of Industry, CA	11/22/19	11/21/19
95407	Met Life (State/One-Stop)	Tampa, FL	11/22/19	11/21/19
95408	Regal Beloit Corporation (Company)	Erwin, TN	11/22/19	11/21/19
95409	Rite Aid Corp.—TS Computer Operations (Workers)	Shiremanstown, PA	11/22/19	11/22/19
95410	TE Connectivity Medical Division (State/One-Stop)	Wilsonville, OR	11/22/19	11/21/19
95411	Amphenol TCS (Company)	Nashua, NH	11/25/19	11/22/19
95412	Bluestem Brands Inc. (State/One-Stop)	St. Cloud, MN	11/25/19	11/22/19
95413	Digital Intelligence System (DISYS) (State/One-Stop)	St. Louis, MO	11/25/19	11/22/19
95414	Hillphoenix (State/One-Stop)	Centerville, IA	11/25/19	11/22/19
95415	Integrity Biofuels (State/One-Stop)	Morristown, IN	11/25/19	11/25/19
95416	Line Pipe Systems LLC (Workers)	Rancho Cucamonga, CA	11/25/19	11/22/19
95417	Qualfon DSG LLC (Workers)	Idaho Falls, ID	11/25/19	11/21/19
95418	SAP America, Inc. (Workers)	Newtown Square, PA	11/25/19	11/24/19
95419	Twin City Die Castings (State/One-Stop)	Watertown, SD	11/25/19	11/22/19
95420	Bed, Bath & Beyond Inc. (State/One-Stop)	Union, NJ	11/26/19	11/21/19
95421	Dun & Bradstreet (State/One-Stop)	Tucson, AZ	11/26/19	11/25/19
95422	Eurotherm by Schneider Electric (State/One-Stop)	Ashburn, VA	11/26/19	11/25/19
95423	MN Star Technologies Inc. (State/One-Stop)	Grand Rapids, MN	11/26/19	11/25/19
95424	MotivePower, Inc., a subsidiary of Wabtec Corporation (State/One-Stop).	Boise, ID	11/26/19	11/25/19
95425	Nestle USA (State/One-Stop)	Bordentown, NJ	11/26/19	11/26/19
95426	Nestle USA (State/One-Stop)	Keasbey, NJ	11/26/19	11/26/19
95427	Wyndham Vacation Club (State/One-Stop)	Redmond, WA	11/26/19	11/14/19
95428	Acumed LLC (State/One-Stop)	Hillsboro, OR	11/27/19	11/26/19
95429	Golden State Overnight (GSO) (State/One-Stop)	San Ramon, CA	11/27/19	11/22/19
95430	Icebreaker (State/One-Stop)	Portland, OR	11/27/19	11/26/19
95431	Reyco Granning LLC (State/One-Stop)	Mt. Vernon, MO	11/27/19	11/26/19
95432	State Street Corporation (State/One-Stop)	Quincy, MA	11/29/19	11/27/19
95433	Tenaris Hickman (State/One-Stop)	Blytheville, AR	11/29/19	11/27/19

[FR Doc. 2019–27328 Filed 12–18–19; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Establishing Paid Sick Leave for Federal Contractors

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Wage and Hour Division (WHD) sponsored information collection request (ICR) titled, ''Establishing Paid Sick Leave for Federal Contractors'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before January 21, 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 of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201909-1235-002* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–WHD, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Establishing Paid Sick Leave for Federal Contractors information collection. Please note that the 60-day **Federal Register** Notice proposed respondent burden and cost amounts were found to be underestimated. DOL is presenting the revised respondent burden and cost amounts below in the appropriate sections.

On September 7, 2015, President Barack Obama signed Executive Order 13706 (80 FR 54697, September 10, 2015). The Executive Order established paid sick leave for Federal Contractors. Executive Order 13706 stated that the Federal Government's procurement interests in efficiency and cost savings are promoted when the Federal Government contracts with sources that ensure workers on those contracts can earn paid sick leave. The Executive Order therefore required parties who contract with the Federal Government to provide their employees with up to seven days of paid sick time annually, including paid time allowing for family care. The Final Rule established standards and procedures for implementing and enforcing the paid sick leave requirements of Executive Order 13706. As required by the Order, the Final Rule incorporated, to the extent practicable, existing definitions, procedures, remedies, and enforcement processes under the Fair Labor Standards Act, the McNamara-O'Hara Service Contract Act, the Davis-Bacon Act, the Family and Medical Leave Act, the Violence Against Women Act, and Executive Order 13658, Establishing a Minimum Wage for Contractors.

Among other requirements, the regulations require employers subject to the Order to make and maintain records for notifications to employees on leave accrual and requests to use paid sick leave, dates and amounts of paid sick leave used, written responses to requests to use paid sick leave, records relating to certification and documentation where an employer requires this from an employee using at least three consecutive days of leave, tracking of or calculations related to an employee's accrual or use of paid sick leave, the relevant covered contract, pay and benefits provided to an employee using leave, and any financial payment for unused sick leave made to an employee on separation from employment.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1235–0029.

OMB authorization for an ICR cannot be for more than three (3) years without renewal and the current approval for this collection will expire on December 31, 2019. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 22, 2019 (84 FR 23586).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1235–0029. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–WHD.

Title of Collection: Establishing Paid Sick Leave for Federal Contractors.

OMB Control Number: 1235–0029.

Affected Public: Private Section: Businesses or other for-profits; not-for-profit institutions.

Total Estimated Number of Respondents: 454,067.

Total Estimated Number of Responses: 31,803,436 responses (previously presented as 1,816,268).

Total Estimated Annual Time Burden: 626,406 hours (previously presented as 30,272 hours).

Total Estimated Annual Other Costs Burden: $1,088,156.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: December 13, 2019.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2019–27332 Filed 12–18–19; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Apprenticeship Evidence-Building Portfolio, New Collection

AGENCY: Office of the Assistant Secretary for Policy, Chief Evaluation Office, Department of Labor.

ACTION: Notice of information collection; request for comment.

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 is properly assessed. Currently, the Department of Labor is soliciting comments concerning the collection of data about the Apprenticeship Evidence-Building Portfolio. A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 18, 2020.

ADDRESSES: You may submit comments by either one of the following methods:

Email: ChiefEvaluationOffice@dol.gov; Mail or Courier: Janet Javar, Chief Evaluation Office, OASP, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Janet Javar by email at *ChiefEvaluationOffice@dol.gov* or by phone at (202) 693–5954.

SUPPLEMENTARY INFORMATION:

I. *Background:* The Chief Evaluation Office (CEO) of the U.S. Department of Labor (DOL) intends to design and conduct evaluations of DOL-funded apprenticeship initiatives through the Apprenticeship Evidence-Building Portfolio. The portfolio of initiatives includes the Scaling Apprenticeship Through Sector-Based Strategies grants, Closing the Skills Gap grants, Transitioning Service Member Apprenticeship demonstration, and other DOL investments. The goal of this five-year study is to build evidence on apprenticeship models, practices, and partnership strategies in high-growth occupations and industries.

The overall study is comprised of several components: (1) An implementation study of the Scaling Apprenticeship, Closing the Skill Gaps, and other similar DOL initiatives to develop typologies of apprenticeship models and practices, identify promising strategies across the portfolio, and to better understand the implementation of models to help interpret impact evaluation findings; (2) an impact evaluation to examine the effectiveness of the models on participants' outcomes, such as employment earnings and career advancement; (3) an implementation study on the Transitioning Service Member Apprenticeship demonstration to understand service delivery design and implementation, challenges, and promising practices. DOL will submit additional ICRs for future data collection requests for this overall study.

This **Federal Register** Notice provides the opportunity to comment on proposed data collection instruments that will be used in the evaluations: Baseline survey and informed consent of program participants; baseline survey and informed consent of program staff; interview guide for program staff; interview guide for program partners; focus group guide for program participants; interview guide for military apprenticeship placement counselors; and focus group guide for military participants.

1. *Baseline survey and informed consent of program participants.* Survey of program participants to collect baseline information.

2. *Baseline survey and informed consent of program staff.* Survey of program staff, including supervisors, instructors, and counselors, to collect baseline information.

3. *Interview guide for program staff.* Site visits to approximately 21 Scaling Apprenticeship and Closing the Skills Gaps grantees beginning in spring 2020. These visits will last two and a half days each. During these site visits, we will conduct one-on-one or small-group semi-structured interviews with program staff. We will also observe program activities to help us describe key program components, assess the quality of program delivery, and understand participant needs. The observations will not involve additional burden.

4. *Interview guide for program partners.* Also during these site visits, we will conduct one-on-one or small-group semi-structured interviews with staff from program partners, including employers, training and education providers, and community stakeholders.

5. *Focus group guide for participants.* Also during these site visits, we will conduct one focus group per site with approximately 10 program participants.

6. *Interview guide for military apprenticeship placement counselors.* Site visits to approximately 8 VETS grantees beginning in spring 2020. These visits will last one and a half days each. During these site visits, we will conduct one-on-one interviews with military apprenticeship placement counselors. We will also observe other relevant program activities to help us describe key program components. The observations will not involve additional burden.

7. Focus group guide for military participants. Also during these site visits, we will conduct one focus group per site with approximately 6 program participants.

II. *Desired Focus of Comments:* Currently, DOL is soliciting comments concerning the above data collection for the Apprenticeship Evidence-Building Portfolio. DOL is particularly interested in comments that do the following:

- 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.

• 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—for example, permitting electronic submission of responses.

III. *Current Actions:* At this time, DOL is requesting clearance for the baseline survey and informed consent of participants; baseline survey and informed consent of staff; interview guide for program staff; interview guide for program partners; focus group guide for participants; interview guide for apprenticeship placement counselors; and focus group guide for military participants.

Type of Review: New information collection request.

OMB Control Number: 1290–0NEW.

Affected Public: Program staff, program partners, and participants of the Scaling Apprenticeship Through Sector-Based Strategies grants, Closing the Skills Gap grants, and Transitioning Service Member Apprenticeship demonstration. Additionally, apprenticeship placement counselors of the Transitioning Service Member Apprenticeship demonstration.

Comments submitted in response to this request 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.

ESTIMATED ANNUAL BURDEN HOURS

Type of instrument (form/activity)	Number of respondents	Number of responses per respondent	Total number of responses	Average burden time per response (hours)	Estimated burden hours
Baseline survey and consent—program participants	[1] 5,000	1	5,000	0.25	1,250
Baseline survey and consent—program staff	[2] 200	25	5,000	0.25	1,250
Interview guide—program staff	[3] 28	1	28	1.0	28
Interview guide—program partners	[3] 42	1	42	1.0	42
Focus group guide—program participants	[4] 70	1	70	1.5	105
Interview guide—military apprenticeship placement counselors	6	1	6	1.0	6
Focus group guide—military participants	[5] 16	1	16	1.5	24
Total	5,362		10,162		2,705

[1] Assumes 5,000 participants randomized every year.
[2] Assumes 200 staff assist in participant randomization every year, each serving 25 participants.
[3] Assumes 7 sites visited per year with 4 program staff and 6 partner interviews per site.
[4] Assumes 1 focus group with 10 participants per each site visited.
[5] Assumes 1 focus group with 6 participants in each of 8 sites, spread over three years.

Christina Yancey,

Chief Evaluation Officer, U.S. Department of Labor.

[FR Doc. 2019–27411 Filed 12–18–19; 8:45 am]

BILLING CODE 4510–HX–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request, Employer Adoption of Voluntary Health and Safety Standards, New Collection

AGENCY: Office of the Assistant Secretary for Policy, Chief Evaluation Office, Department of Labor.

ACTION: Notice of Information Collection; request for comment.

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 is properly assessed. Currently, the Department of Labor is soliciting comments concerning the collection of data about Employer Adoption of Voluntary Health and Safety Standards. A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 18, 2020.

ADDRESSES: You may submit comments by either one of the following methods: *Email: ChiefEvaluationOffice@dol.gov; Mail or Courier:* Chayun Yi, Chief Evaluation Office, OASP, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Chayun Yi by email at *ChiefEvaluationOffice@dol.gov* or by phone at (202) 693–5084.

SUPPLEMENTARY INFORMATION: I. *Background:* In recent years, a number of national and international organizations have developed voluntary consensus-based standards designed to help organizations manage workplace safety and health in a systematic way. The first of these, Occupational Health and Safety Assessment Series (OHSAS) 18001, was published in 1999. After its adoption in 2007 as an official British standard, OHSAS 18001 gained broader acceptance worldwide. In 2005, the U.S.

published its first national standard, ANSI/AIHA Z10, which was revised in 2012. Most recently, in 2018, the International Organization for Standardization (ISO) published an international standard, ISO 45001.

All of these are based on principles such as those found in ISO 9001, a standard that help organizations manage quality, and ISO 14001, a standard focused on environmental management. Each promotes a continuous process in which the organization establishes goals, implements programs and actions to achieve those goals, monitors and evaluates its performance and progress, and makes adjustments to improve the system and its performance. Organizations that adopt these standards may choose to have their conformance certified by an accredited third party auditor.

The Chief Evaluation Office (CEO) of the U.S. Department of Labor (DOL) is conducting a study to assess employers' adoption of voluntary consensus-based safety and health standards. The goal of this study is to better understand how these voluntary standards are developed and administered, the types of organizations that adopt such standards and their motivation for doing so, the perceived and actual benefits and costs of their adoption, their relationship to Occupational Safety and Health Administration (OSHA) standards, and the extent to which the standards promote compliance. OSHA's Voluntary Protection Program (VPP) is not included in this study because unlike the standards described above it was not developed through a voluntary industry consensus process.

As part of this effort, CEO intends to collect data from employers who have adopted these standards. Specifically, CEO intends to collect information on:

1. The types of employers that adopt these standards and their motivation for doing so. This will include information that characterize the demographics of the companies that adopt these standards (size, industry sector, etc.) and their health and safety practices.

2. The perceived and actual benefits and costs of adopting voluntary standards. This will include information on the perceived or actual changes in injuries or illnesses, workplace safety, employee morale, productivity, turnover, profitability. CEO will also collect information on the costs of implementing these programs.

CEO intends to compare these data to information from other sources on the companies that have not adopted voluntary safety and health management systems.

This **Federal Register** Notice provides the opportunity to comment on CEO's proposed data collection and the approach that CEO plans to use in collecting these data.

II. *Desired Focus of Comments:* Currently, the Department of Labor is soliciting comments concerning the above data collection for its study to assess employer adoption of voluntary health and safety programs. DOL is particularly interested in comments that do the following:

○ Evaluate whether the proposed collection of information is necessary for the proper performance functions of the agency, including whether the information will have practical utility;

○ evaluate the accuracy of the agency's burden estimate of the proposed information collection, including the validity of the methodology and assumptions;

○ 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—for example, permitting electronic submissions of responses.

III. *Current Actions:* At this time, the Department of Labor is requesting clearance for a survey of companies that have adopted voluntary safety and health management systems.

Type of Review: New information collection request.

OMB Control Number: 1290–0NEW.

Affected Public: Companies that have adopted voluntary safety and health management systems.

Comments submitted in response to this request 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.

ESTIMATED ANNUAL BURDEN HOURS

Type of instrument (form/activity)	Number of respondents	Number of responses per respondent	Total number of responses	Average burden time per response (hours)	Estimated burden hours
Employer Survey	1,000	1	1,000	0.50	500

Christina Yancey,

Chief Evaluation Officer, U.S. Department of Labor.

[FR Doc. 2019–27330 Filed 12–18–19; 8:45 am]

BILLING CODE 4510–HX–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Labor Standards for Federal Service Contracts—Regulations 29 CFR Part 4

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Wage and Hour Division (WHD) sponsored information collection request (ICR) titled, ''Labor Standards for Federal Service Contracts—Regulations,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before January 21, 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 of charge from the *RegInfo.gov* website at *http://*

www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201907-1235-002 (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–WHD, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Labor Standards for Federal Service Contracts—Regulations 29 CFR part 4 information collection. DOL–WHD administers the McNamara-O'Hara Service Contract Act (SCA), 41 U.S.C. 351 *et seq.* The McNamara-O'Hara SCA applies to every contract entered into by the United States or the District of Columbia, the principal purpose of which is to furnish services to the United States through the use of service employees. The SCA requires contractors and subcontractors performing services on covered federal or District of Columbia contracts in excess of $2,500 to pay service employees in various classes no less than the monetary wage rates and to furnish fringe benefits found prevailing in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement. Safety and health standards also apply to such contracts. The compensation requirements of the SCA are enforced by the WHD.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1235–0007.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on December 31, 2019. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 20, 2019 (84 FR 22903).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1235–0007. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–WHD.

Title of Collection: Labor Standards for Federal Service Contracts—Regulations 29 CFR part 4.

OMB Control Number: 1235–0007.

Affected Public: Private Sector: Businesses or other for-profits.

Total Estimated Number of Respondents: 123,333.

Total Estimated Number of Responses: 123,463 responses.

Total Estimated Annual Time Burden: 123,514 hours.

- *Vacation Benefit Seniority List:* 1 hour.
- *Conformance Record:* 30 minutes.
- *Conformance Indexing:* 2 hours.
- *Collective Bargaining Agreement:* 5 minutes.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: December 13, 2019.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2019–27408 Filed 12–18–19; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2020–009]

Records Management; General Records Schedule (GRS); GRS Transmittal 30

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of new General Records Schedule (GRS) Transmittal 30.

SUMMARY: NARA is issuing revisions to the General Records Schedule (GRS). The GRS provides mandatory disposition instructions for administrative records common to several or all Federal agencies. Transmittal 30 includes only changes we have made to the GRS since we published Transmittal 29 in December 2017. Additional GRS schedules remain in effect that we are not issuing via this transmittal.

DATES: This transmittal is applicable December 19, 2019.

ADDRESSES: You can find all GRS schedules, crosswalks, and FAQs at *http://www.archives.gov/records-mgmt/grs.html* (in Word, PDF, and CSV formats). You can download the complete current GRS, in PDF format, from the same location.

FOR FURTHER INFORMATION CONTACT: For more information about this notice or to obtain paper copies of the GRS, contact Kimberly Keravuori, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov* or by telephone at 301.837.3151.

Writing and maintaining the GRS is the GRS Team's responsibility. This team is part of Records Management Services in the National Records

Management Program, Office of the Chief Records Officer at NARA. You may contact NARA's GRS Team with general questions about the GRS at *GRS_Team@nara.gov.*

Your agency's records officer may contact the NARA appraiser or records analyst with whom your agency normally works for support in carrying out this transmittal and the revised portions of the GRS. You may access a list of the appraisal and scheduling work group and regional contacts on our website at *http://www.archives.gov/records-mgmt/appraisal/index.html.*

SUPPLEMENTARY INFORMATION: GRS Transmittal 30 announces changes to the General Records Schedules (GRS) made since we published GRS Transmittal 29 in December 2017. The GRS provide mandatory disposition instructions for records common to several or all Federal agencies. Transmittal 30 includes additions and revisions to eight previously issued schedules. We are no longer issuing crosswalks and FAQs as part of the transmittal. You can find all schedules (in Word and PDF formats), a master crosswalk, FAQs for all schedules, and FAQs about the whole GRS at *http://www.archives.gov/records-mgmt/grs.html.* At the same location, you can also find the entire GRS (just schedules—no crosswalks or FAQs) in a single document you can download.

1. What changes does this transmittal make to the GRS?

GRS Transmittal 30 publishes new items in six schedules:

GRS 1.1	Financial Management and Reporting Records	DAA–GRS–2018–0003
GRS 2.1	Employee Acquisition Records	DAA–GRS–2018–0008
GRS 2.3	Employee Relations Records	DAA–GRS–2018–0002
GRS 2.4	Employee Compensation and Benefits Records	DAA–GRS–2018–0001 and DAA–GRS–2019–0004
GRS 4.1	Records Management Records	DAA–GRS–2019–0003
GRS 4.2	Information Access and Protection Records	DAA–GRS–2019–0001

This transmittal also publishes updates to previously approved items in two schedules:

GRS 1.3	Budgeting Records	DAA–GRS–2015–0006
GRS 5.7	Agency Accountability Records	DAA–GRS–2017–0008

We discuss these new and altered items in the questions below.

2. What changes did we make to GRS 1.1?

We added items 090 and 100 to cover purchase and travel credit card applications/approval, and Small and Disadvantaged Business Utilization records. We removed Item 013, Data submitted to the Federal Procurement Data System (FPDS), because these records no longer exist as a discrete body. Agencies now enter data directly into FPDS.

3. What changes did we make to GRS 1.3?

We added one bullet—carryover requests—to item 020, Budget execution records.

4. What changes did we make to GRS 2.1?

We added items 170, 171, and 180 to cover adverse impact files and recruitment records.

5. What changes did we make to GRS 2.3?

We totally revised this schedule to merge similar items, reducing what was previously 23 items to 13. We also added new items 080 and 100 to cover Merit Systems Protection Board and Federal Labor Relations Authority case files.

6. What changes did we make to GRS 2.4?

We altered the disposition instruction for item 010 to replace the previous event-driven retention period with a uniform retention period of 3 years from creation. We altered the disposition instruction for item 030 to remove authorization to destroy records after GAO audit (agencies must retain the records for 3 years regardless of GAO audit). We added item 035 for records documenting overtime work during phased retirement.

7. What changes did we make to GRS 4.1?

We added item 050 to cover validation records for digitizing temporary records.

8. What changes did we make to GRS 4.2?

We removed from item 001's description the bullet for ''control and accounting for classified documents,'' as this clause duplicated this schedule's item 030. We removed from item 030 a bullet for ''records documenting receipt, internal routing, dispatch, and destruction of unclassified records'' since such records no longer exist. We moved records documenting control of classified and controlled unclassified records from item 040 to item 030. We added item 065 to cover privacy complaint files, and items 190 through 195 to cover records of managing a Controlled Unclassified Information (CUI) program.

9. What changes did we make to GRS 5.7?

We made two edits to item 050, Mandatory reports to external Federal entities regarding administrative matters. We replaced the bullet ''Information Collection Budget'' with ''information collection clearances.'' The White House produces the Information Collection Budget. This item schedules agency input into that document. We also added three bullets to this same item: EEOC reports, analysis and action plans and other reports required by EEOC's MD 715, and No FEAR Act reports. These records were previously covered in former GRS 2.3, item 035, Equal Employment Opportunity reports and employment statistics files. With the revisions to GRS 2.3 (see question 6), we incorporated these mandatory reports into the GRS item designed to cover a variety of reports.

10. How do agencies cite GRS items?

When you send records to an FRC for storage, you should cite the records' legal authority—the ''DAA'' number—in the ''Disposition Authority'' column of the table. Please also include schedule

and item number. For example, ''DAA–GRS–2017–0007–0008 (GRS 2.2, item 070).''

11. Do agencies have to take any action to implement these GRS changes?

NARA regulations (36 CFR 1226.12(a)) require agencies to disseminate GRS changes within six months of receipt.

Per 36 CFR 1227.12(a)(1), you must follow GRS dispositions that state they must be followed without exception.

Per 36 CFR 1227.12(a)(3), if you have an existing schedule that differs from a new GRS item that does *not* require being followed without exception, and you wish to continue using your agency-specific authority rather than the GRS authority, you must notify NARA within 120 days of the date of this transmittal.

If you do not have an already existing agency-specific authority but wish to apply a retention period that differs from that specified in the GRS, you must submit a records schedule to NARA for approval via the Electronic Records Archives.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2019–27326 Filed 12–18–19; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Qualitative Feedback on Agency Service Delivery

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to renew this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by February 18, 2020 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Number: 3145–0215.

Expiration Date of Approval: June 30, 2020.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: The proposed information collection activity provides a means for the National Science Foundation (NSF) to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Agency's commitment to improving service delivery.

By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences, and expectations; provide an early warning of issues with service; or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. This collection will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

NSF will only submit a collection for approval under this generic clearance if it meets the following conditions:

○ The collection is voluntary;

○ The collection is low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and is low-cost for both the respondents and the Federal Government;

○ The collection is non-controversial and does not raise issues of concern to other Federal agencies;

○ The collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;

○ Personally identifiable information (PII) is collected only to the extent necessary and is not retained;

○ Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of NSF (if released, NSF must indicate the qualitative nature of the information);

○ Information gathered will not be used for the purpose of substantially informing influential policy decisions; and

○ Information gathered will yield qualitative information; the collection will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding this study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, this information collection will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Below we provide the National Science Foundation's projected average estimates for the next three years:

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of Activities: 50.

Respondents: 500 per activity.

Annual Responses: 7,500.

Frequency of Response: Once per request.

Average Minutes per Response: 30.

Burden Hours: 12,500.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to 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.

Dated: December 16, 2019.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2019–27412 Filed 12–18–19; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of December 16, 2019.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of December 16, 2019

Tuesday, December 17, 2019

1:25 p.m.—Affirmation Session (Public Meeting) (Tentative)

a. Tennessee Valley Authority (Clinch River Nuclear Site Early Site Permit Application), Docket No. 52–047–ESP, Mandatory Hearing Decision (Tentative)

b. Entergy Nuclear Operations, Inc., Entergy Nuclear Generation Co., Holtec International, and Holtec Decommissioning International, LLC, (Pilgrim Nuclear Power Station)—License Transfer (Tentative)

Additional Information: By a vote of 4–0 on December 16, 2019, the Commission determined pursuant to U.S.C. 552b(e) and '9.107(a) of the Commission's rules that the above referenced Affirmation Session be held with less than one week notice to the public. The meeting is scheduled on December 17, 2019.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://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 *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated at Rockville, Maryland, this 16th day of December 2019.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2019–27443 Filed 12–17–19; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc. Vogtle Electric Generating Plant, Units 3 and 4; Consolidation of Structural Building Inspections, Tests, Analyses, and Acceptance Criteria

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment No. 167 for Unit 3 and No. 165 for Unit 4 to Combined Licenses (COLs), NPF–91 and NPF–92. The COLs were issued to Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia (collectively SNC); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on November 15, 2019.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/*

adams.html. To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated March 29, 2019, revised by letter dated October 10, 2019, and available in ADAMS under Accession No. ML19088A274.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Billy Gleaves, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5848; email: *Bill.Gleaves@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing VEGP Units 3 and 4 License Amendment Nos. 167 and 165 to COLs NPF 91 and NPF–92 and is granting an exemption from Tier 1 information in the generic DCD for the AP1000 design. The AP1000 design is incorporated by reference in appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR). The exemption, granted pursuant to Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' of 10 CFR part 52, appendix D, allows the licensee to depart from the Tier 1 information. With the requested amendment, SNC sought proposed changes that would revise the COLs to address certain duplicative building- and structure-related Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) and to include certain as-built thickness deviations in the reconciliation and thickness reports described in ITAAC acceptance criteria of the VEGP Units 3 and 4 COL Appendix C (and plant-specific Tier 1 information). The requested amendment proposes changes in the form of departures from the current VEGP Units 3 and 4 to plant-specific Tier 1 and corresponding changes to COL Appendix C.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in §§ 50.12, 52.7, and section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The safety evaluation is available in ADAMS under Accession No. ML19164A271.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to SNC for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML19164A265 and ML19164A266, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML19164A267 and ML19164A269, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In an application dated March 29, 2019, revised October 10, 2019, SNC requested from the Commission an exemption to allow departures from Tier 1 information in the certified DCD incorporated by reference in 10 CFR part 52, appendix D, as part of license amendment request 19–005, ''Consolidation of Structural Building ITAAC.''

For the reasons set forth in Section 3.2 of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML19164A271, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information as described in the licensee's request dated March 29, 2019, revised October 10, 2019. This exemption is related to, and necessary for the granting of License Amendment No. 167 [for Unit 3 and No. 165 for Unit 4] which is being issued concurrently with this exemption.

3. As explained in Section 3.2 of the NRC staff's Safety Evaluation (ADAMS Accession No. ML19164A271), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated March 29, 2019, revised October 10, 2019 (ADAMS Accession Nos. ML19088A274 and ML19284C424), SNC requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for 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 COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on May 20, 2019 (84 FR 22907). No comments were received during the 30-day comment period.

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.

IV. Conclusion

Using the reasons set forth in the safety evaluation, the staff granted the exemption and issued the amendment that SNC requested on March 29, 2019 and revised October 10, 2019.

The exemption and amendment were issued to SNC on November 15, 2019, as part of a combined package (ADAMS Package Accession No. ML19164A263).

Dated at Rockville, Maryland, this 16th day of December 2019.

For the Nuclear Regulatory Commission.

Victor E. Hall,

Branch Chief, Vogtle Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–27392 Filed 12–18–19; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–70 and CP2020–69; Docket Nos. MC2020–71 and CP2020–70]

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:* December 20, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–70 and CP2020–69; *Filing Title:* USPS Request to Add Priority Mail Contract 583 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 12, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Gregory Stanton; *Comments Due:* December 20, 2019.

2. *Docket No(s).:* MC2020–71 and CP2020–70; *Filing Title:* USPS Request to Add Priority Mail Contract 584 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 12, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Gregory Stanton; *Comments Due:* December 20, 2019.

[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).

This Notice will be published in the **Federal Register**.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2019–27299 Filed 12–18–19; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–72 and CP2020–71; Docket No. CP2020–72; Docket Nos. MC2020–74 and CP2020–73; Docket Nos. MC2020–75 and CP2020–74; Docket Nos. MC2020–76 and CP2020–75]

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:* December 23, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent

the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–72 and CP2020–71; *Filing Title:* USPS Request to Add Priority Mail Contract 585 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 13, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Jennaca D. Upperman; *Comments Due:* December 23, 2019.

2. *Docket No(s).:* CP2020–72; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 7 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* December 13, 2019; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Jennaca D. Upperman; *Comments Due:* December 23, 2019.

3. *Docket No(s).:* MC2020–74 and CP2020–73; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 1 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 13, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* December 23, 2019.

4. *Docket No(s).:* MC2020–75 and CP2020–74; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 2 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 13, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 23, 2019.

5. *Docket No(s).:* MC2020–76 and CP2020–75; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 3 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 13, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Gregory Stanton; *Comments Due:* December 23, 2019.

This Notice will be published in the **Federal Register**.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2019–27422 Filed 12–18–19; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 19, 2019.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 13, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 585 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–72, CP2020–71.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–27294 Filed 12–18–19; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Transfer of Inbound Market Dominant Exprès Service Agreement 1, Inbound Market Dominant Registered Service Agreement 1, Inbound PRIME Tracked Service Agreement, Australia Post Bilateral, and Canada Post Bilateral to Competitive Product List

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service hereby provides notice that it filed a request with the Postal Regulatory Commission to transfer the Inbound Market Dominant Exprès Service Agreement 1, Inbound Market Dominant Registered Service Agreement 1, Inbound PRIME Tracked Service Agreement, Australian Postal Corporation—United States Postal Service Bilateral Agreement, and Canada Post Corporation—United States Postal Service Bilateral Agreement from the market dominant product list to the competitive product list, which would involve removing the five agreements from the market dominant product list and adding them to the competitive product list.

DATES: December 19, 2019.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, 202–268–7820.

SUPPLEMENTARY INFORMATION: On December 13, 2019, the United States Postal Service® filed with the Postal Regulatory Commission the United States Postal Service Request to Transfer the Inbound Market Dominant Exprès Service Agreement 1, Inbound Market Dominant Registered Service Agreement 1, Inbound PRIME Tracked Service Agreement, Australian Postal Corporation—United States Postal Service Bilateral Agreement, and Canada Post Corporation—United States Postal Service Bilateral Agreement to the Competitive Product List, pursuant to 39 U.S.C. 3642. Documents pertinent to this request are available at *http://www.prc.gov,* Docket No. MC2020–73.

Christopher C. Meyerson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–27386 Filed 12–18–19; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 19, 2019.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 13, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 3 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–76, CP2020–75.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–27335 Filed 12–18–19; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 19, 2019.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 13, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 2 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–75, CP2020–74.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–27333 Filed 12–18–19; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 19, 2019.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 13, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 1 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–74, CP2020–73.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–27336 Filed 12–18–19; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 84 FR 67987, December 12, 2019.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Tuesday, December 17, 2019 at 2:00 p.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Tuesday, December 17, 2019 at 2:00 p.m. has been changed to Tuesday, December 17, 2019 at 1:00 p.m.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: December 16, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–27463 Filed 12–17–19; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87742; File No. SR–CBOE–2019–112]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Fees Schedule

December 13, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 2, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fees schedule in connection with the fees related to orders and auction responses executed in the Automated Improvement Mechanism (''AIM'') and Solicitation Auction Mechanism (''SAM'') Auctions, effective December 2, 2019.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 21% of the market share.[3] Thus, in such a low-concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow. 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 use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to the competitive environment, the Exchange offers specific rates and credits in its fees schedule, like that of other options exchanges' fees schedules, which the Exchange believes provide incentive to Trading Permit Holders (''TPHs'') to increase order flow of certain qualifying orders.

AIM and SAM include functionality in which a Trading Permit Holder (''TPH'') (an ''Initiating TPH'') may electronically submit for execution an order it represents as agent on behalf of a customer,[4] broker dealer, or any other person or entity (''Agency Order'') against any other order it represents as agent, as well as against principal interest in AIM only, (an ''Initiating Order'') provided it submits the Agency Order for electronic execution into the AIM or SAM Auctions.[5] The Exchange may designate any class of options traded on Cboe Options as eligible for AIM or SAM. The Exchange notes that all Users, other than the Initiating TPH, may submit responses to an Auction (''AIM Responses'').[6] AIM and SAM Auctions take into account AIM Responses to the applicable Auction as well as contra interest resting on the Cboe Options Book at the conclusion of the Auction (''unrelated orders''), regardless of whether such unrelated orders were already present on the Book when the Agency Order was received by the Exchange or were received after the Exchange commenced the applicable Auction. If contracts remain from one or more unrelated orders at the time the Auction ends, they are considered for participation in the AIM or SAM order allocation process.

The Exchange notes that it recently updated its rules in connection with the AIM and SAM Auctions to permit all Users to respond to such Auctions; AIM responses were previously restricted to Market-Makers with an appointment in the applicable class and TPHs representing orders at the top of the Book, and SAM responses were previously available to all TPHs, except responses could not be submitted for the account of an away market-maker.[7] Because AIM Responses were limited to certain market participants, the Exchange did not impose separate fees on Auction responders (as it did for the Auction Agency and Contra orders). As a result, the Exchange now proposes to adopt fee codes for certain AIM Responses (the ''AIM Response'' fee as proposed in the fees schedule, which is consistent with other AIM-specific headings and fee codes in the fees schedule that also encompass orders in SAM). Specifically, the Exchange proposes to add: (1) Fee code ''NB'', which would be appended to non-Customer, non-Market-Maker AIM Responses in penny classes and assessed a fee of $0.50 per contract; and (2) and fee code ''NC'', which would be appended to Non-Customer, Non-Market-Maker AIM Responses in non-penny classes and assessed a fee of $1.05. Non-Customer, non-Market-Maker orders include: Clearing Trading Permit Holder (''F'' Capacity Code); non-Trading Permit Holder Affiliate (''L'' Capacity Code); Broker-Dealer (''B'' Capacity Code); Non-Trading Permit Holder Market-Maker (''N'' Capacity Code); Join Back-Office (''J'' Capacity Code); and Professional (''U'' Capacity Code) orders. The Exchange also proposes to add footnote 20, which clarifies that the AIM Responder fee applies to AIM Responses of the aforementioned capacities in all products, except Sector Indexes[8] and Underlying Symbol List A,[9] executed in AIM, SAM, FLEX AIM, and FLEX SAM Auctions. The Exchange notes that the same FLEX AIM and FLEX SAM responses will be assessed the same fee, which is consistent with the structure of the Exchange's current fees for AIM Agency/Primary and AIM Contra orders, which apply uniformly to qualifying orders in AIM, SAM, FLEX AIM, and FLEX SAM.[10] Also, in light of the proposed fee, the Exchange also proposes to exclude non-Customer, non-Market-Maker AIM Responses from the Complex Surcharge, described in footnote 35. The Complex Surcharge is assessed per contract per side for non-customer complex order executions that remove liquidity from the Complex Order Book (''COB'') and auction responses in the Complex Order Auction (''COA'') and AIM in all classes except Sector Indexes and Underlying Symbol List A.

The Exchange also proposes to adopt Break-Up Credits, applicable to Customer Agency orders when traded against a qualifying AIM response (yielding fee code NB or NC, as proposed). Specifically, the Exchange proposes a Break-Up Credit of $0.25 per contract with respect to a Customer Agency order in a Penny Pilot Class and a Break-Up Credit of $0.60 per contract with respect to a Customer Agency order in a Non-Penny Pilot Class.

The proposed AIM Responder fees for non-Customer, non-Market-Maker AIM Responses, which covers the market

[3] *See* Cboe Global Markets U.S. Options Market Volume Summary (November 26, 2019), available at *https://markets.cboe.com/us/options/market_statistics/*.

[4] The term ''customer'' means a Public Customer or a broker-dealer. The term ''Public Customer'' means a person that is not a broker-dealer. *See* Rule 1.1.

[5] *See* Rule 5.37 (AIM); Rule 5.39 (SAM); Rule 5.38 (Complex AIM); Rule 5.40 (Complex SAM); Rule 5.73 (FLEX AIM); and Rule 5.74 (FLEX SAM).

[6] For purposes of this filing and the proposed fee, the term ''AIM Response'' will include responses submitted to AIM and SAM Auctions.

[7] *See* Securities Exchange Act Release No. 87072 (September 24, 2019), 84 FR 51673 (September 30, 2019) (SR–CBOE–2019–045); *and* Securities Exchange Act Release No. 87192 (October 1, 2019), 84 FR 53525 (October 7, 2019) (SR–CBOE–2019–063).

[8] *See* Cboe Exchange, Inc. Fees Schedule, footnote 47.

[9] *See* Cboe Exchange, Inc. Fees Schedule, footnote 34.

[10] *See* Cboe Exchange, Inc. Fees Schedule, footnotes 18 and 19.

participants recently permitted to respond to Auctions, are designed as an additional incentive for Market-Makers to increase their responses to AIM and SAM Auctions. Prior to opening up the Auctions to all market participants, Market-Makers were naturally incentivized to respond to Auctions as they were the exclusive (or among the exclusive) market participants permitted to submit responses. Therefore, the Exchange believes the proposed AIM Responder fees for non-Customer, non-Market-Maker responses will encourage Market-Makers to continue to respond to Auctions and compete to provide price improvement in a competitive auction process, thus contributing to a deeper, more liquid auction process with additional execution opportunities which benefits all market participants. Likewise, the Exchange believes the proposed Break-Up Credits will encourage Customer order flow to Auctions. Increased Customer order flow benefits all market participants because it continues to attract liquidity to the Exchange by providing more trading opportunities. This attracts Market-Makers and other liquidity providers, thus, facilitating price improvement in the auction process, signaling additional corresponding increase in order flow from other market participants, and, as a result, contributing towards a robust, well-balanced market ecosystem.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[11] in general, and furthers the requirements of Section 6(b)(4),[12] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. As stated above, the Exchange operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed fee changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange's price improvement Auctions, which the Exchange believes would enhance market quality to the benefit of all TPHs.

The Exchange believes that its proposed adoption of fees for non-Customer, non-Market-Maker responses and Break-Up Credits for Customer Agency orders is consistent with Section 6(b)(4) of the Act in that the proposal is reasonable, equitable and not unfairly discriminatory. Also, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory in that competing options exchanges,[13] including the Exchange's affiliated options exchanges,[14] offer substantially the same fees and credits in connection with similar price improvement auctions, as the Exchange now proposes.

The Exchange believes that it is reasonable to assess a fee for non-Customer, non-Market-Maker AIM Responses because it is reasonably designed to incentivize Market-Makers to continue to respond, and potentially increase their responses, to AIM and SAM Auctions in light of the recent opening of the Auctions to other market participants not previously permitted to respond to such Auctions. The Exchange believes that encouraging increased Market-Maker order flow will increase liquidity and Auction execution and price improvement opportunities to the benefit of all participants. Deepening the Exchange's liquidity pool and offering additional opportunities enables all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange believes excluding non-Customer, non-Market-Maker AIM Reponses from the Complex Surcharge is reasonable as such market participants will not be assessed the extra surcharge. The Exchange also notes that auction responses in COA and AIM are currently capped at $0.50 per contract for non-customer complex orders in Penny classes (which includes the applicable transaction fee, Complex Surcharge and Marketing Fee (if applicable)).[15] As such, given the proposed fee for AIM Responses is $0.50 per contract, the Complex Surcharge would, in effect, not be assessed for non-customer, non-Market-Maker complex orders in Penny classes. The Exchange also notes that other types of orders are currently excluded from the Complex Surcharge.[16] Similarly, the Exchange believes that applying a Break-Up Credit to Customer Agency orders is a reasonable means to encourage Customer order flow to Exchange Auctions. As stated, increased Customer order flow provides continued liquidity to the Exchange, in that it provides additional transaction opportunities which attract Market-Makers and other liquidity providers (by means of both unrelated orders and responses in connection with the Auctions), thus facilitating price improvement and signals an increase in additional order flow from other market participants. In turn, these increases benefit all market participants by contributing towards a robust and well-balanced market ecosystem.

The Exchange also believes that the proposed fees in connection with AIM Responses and Customer Agency orders does not represent a significant departure from the fees and credits rebates currently offered under the fees schedule for these market participants. For example, under the existing fees schedule orders with F and L Capacity Codes are assessed a fee of $0.43 per contract in Penny Classes and $0.70 per contract in non-Penny Classes, while orders with B, N, U, or J Capacity Codes are assessed a fee of $0.47 per contract in Penny Classes and $0.75 per contract in non-Penny Classes. Additionally, under the existing ''Volume Incentive Program'', Customer orders may receive credits ranging from $0.09 to $0.24 per contract executed in AIM.

The Exchange also believes that the proposed fees are equitable and not unfairly discriminatory because the proposed fee for AIM Responses will apply equally to all non-Customer, non-Market-Maker responses, *i.e.,* all such

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

[13] *See* MIAX Options Fee Schedule, Section 1(a)(v), ''MIAX Price Improvement Mechanism (''PRIME'') Fees, which assesses a fee of $0.50 (Penny Classes) and $0.99 (non-Penny Classes) for PRIME responses, and offers a break-up credit of $0.25 (Penny Classes) and $0.60 (non-Penny Classes) for PRIME Agency orders; *see also* NYSE American Options Fee Schedule, Section I(G), ''CUBE Auction Fees and Credits'', which assesses a fee of $0.50 (Penny Classes) and $0.99 (non-Penny Classes) for CUBE (its Customer Best Execution Auction) responses, and offers a break-up credit of $0.25 (Penny Classes) and $0.60 (non-Penny Classes) for PRIME Agency orders, and an Initiating Participant Credit (akin to an Agency Order) of $0.30 (Penny Pilot) and $0.70 (non-Penny Pilot).

[14] *See* EDGX Options Exchange Fee Schedule, ''Fee Codes and Associated Fees'', fee code BD is appended to AIM Responder Penny Pilot orders and is assessed a fee of $0.50 per share, and fee code BE is appended to AIM Responder Non-Penny Pilot orders and is assessed a fee of $1.05 per share; *and* ''AIM Break-Up Credits'', which offers a credit of $0.25 for AIM Agency Orders in Penny Pilot securities and $0.60 for such orders in non-Penny Pilot securities.

[15] *See* Cboe Options Fees Schedule, Footnote 35.

[16] *See e.g.* Cboe Options Fees Schedule, Footnote 35. Stock-option orders are currently excluded from the Complex Surcharge.

TPHs will be assessed the same amount. Similarly, the exclusion of Aim Responses from the Complex Surcharge is equitable and not unfairly discriminatory as it applies equally to all non-Customer, non-Market-Maker responses. The Exchange also believes that not assessing a fee for Market-Maker responses is equitable and not unfairly discriminatory because Market-Makers, unlike other market participants, take on a number of obligations, including quoting obligations that other market participants do not have. Further, Market-Makers have added market making and regulatory requirements, which normally do not apply to other market participants. For example, Market-Makers have obligations to maintain continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and to not make bids or offers or enter into transactions that are inconsistent with a course of dealing. As stated, the Exchange also recognizes that Market-Makers are the primary liquidity providers in the options markets, thus, the Exchange believes Market-Makers provide the most accurate prices reflective of the true state of the market. Increased Market-Maker liquidity also increases trading opportunities and signals to other participants to increase their order flow, which benefits all market participants. Market-Makers Likewise, the proposed Break-Up Credit will apply equally to all Customer Agency orders that execute in an Auction against qualifying responses. The Exchange notes that while Customer Agency orders will receive the Break-Up Credit, as opposed to other Agency orders, the Exchange believes that this application of the credit is equitable and not unfairly discriminatory because, as stated above, Customer order flow enhances liquidity on the Exchange, in turn providing more trading opportunities and attracting other market participants, thus, facilitating tighter spreads, increased order flow and trading opportunities to the benefit of all market participants. Moreover, the options industry has a long history of providing preferential pricing to Customers, and the Exchange's current fees schedule currently does so in many places, as do the fees structures of multiple other exchanges.[17]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to price improvement auctions of a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution and price improvement opportunities for all TPHs. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [18]

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes will apply uniformly to all non-Customer, non-Market-Maker responses and to all Customer Agency orders, respectively. As described above, different market participants have different circumstances, such as the fact that Market-Makers have quoting obligations that other market participants do not have and have recently lost their exclusive Auction response incentive, as well as the fact that preferential pricing to Customers is a long-standing options industry practice. The proposed fee changes serve to enhance Market-Maker and Customer order flow to the Exchange's Auctions, and, as a result, facilitate increased liquidity and execution opportunities to the benefit of all market participants. In addition to this, the Exchange notes that it currently assesses similar fees for certain non-Customer, non-Market-Maker orders and similar credits for certain Customer orders.

The Exchange also does not believe that the proposed fees will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the Act because, as noted above, competing options exchanges,[19] including the Exchange's affiliated options exchange,[20] currently have substantially similar fees in place in connection with similar price improvement auctions. Additionally, and as previously discussed, the Exchange operates in a highly competitive market. TPHs have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges, many of which offer substantially similar price improvement auctions. Based on publicly available information, no single options exchange has more than 21% of the market share.[21] Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange, and, additionally off-exchange venues, if they deem fee levels at those other venues to be more favorable. Moreover, 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.'' [22] The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[23] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[17] *See* MIAX Options Fee Schedule, Section 1(a)(v), ''MIAX Price Improvement Mechanism (''PRIME'') Fees, and NYSE American Options Fee Schedule, Section I(G), ''CUBE Auction Fees and Credits'', each of which assesses a lower transaction fee for customer orders than that of other market participants for executions in their respective auctions.

[18] Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

[19] *See supra* note 13.

[20] *See supra* note 14.

[21] *See supra* note 3.

[22] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[23] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [24] and paragraph (f) of Rule 19b–4 [25] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–112 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–CBOE–2019–112. 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–CBOE–2019–112 and should be submitted on or before January 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

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[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87744; File No. SR–CboeBYX–2019–024]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Reflect the Financial Crimes Enforcement Network's Adoption of a Final Rule on Customer Due Diligence Requirements for Financial Institutions

December 13, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 5, 2019, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') 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 Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] 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

Cboe BYX Exchange, Inc. (''BYX'' or the ''Exchange'') is filing 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 Exchange, to reflect the Financial Crimes Enforcement Network's (''FinCEN'') adoption of a final rule on Customer Due Diligence Requirements for Financial Institutions (''CDD Rule''). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

I. Background

The Bank Secrecy Act [5] (''BSA''), among other things, requires financial institutions,[6] including broker-dealers, to develop and implement AML programs that, at a minimum, meet the statutorily enumerated ''four pillars.'' [7] These four pillars currently require

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] 31 U.S.C. 5311, *et seq.*

[6] *See* U.S.C. 5312(a)(2) (defining ''financial institution'').

[7] 31 U.S.C. 5318(h)(1).

broker-dealers to have written AML programs that include, at a minimum:

- The establishment and implementation of policies, procedures and internal controls reasonably designed to achieve compliance with the applicable provisions of the BSA and implementing regulations;
- independent testing for compliance by broker-dealer personnel or a qualified outside party;
- designation of an individual or individuals responsible for implementing and monitoring the operations and internal controls of the AML program; and
- ongoing training for appropriate persons.[8]

In addition to meeting the BSA's requirements with respect to AML programs, Exchange Members [9] must also comply with Exchange Rule 5.6, which incorporates the BSA's four pillars, as well as requires Members' AML programs to establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions.

On May 11, 2016, FinCEN, the bureau of the Department of the Treasury responsible for administering the BSA and its implementing regulations, issued the CDD Rule [10] to clarify and strengthen customer due diligence for covered financial institutions,[11] including broker-dealers. In its CDD Rule, FinCEN identifies four components of customer due diligence: (1) Customer identification and verification; (2) beneficial ownership identification and verification; (3) understanding the nature and purpose of customer relationships; and (4) ongoing monitoring for reporting suspicious transactions and, on a risk basis, maintaining and updating customer information.[12] As the first component is already required to be part of a broker-dealers AML program under the BSA, the CDD Rule focuses on the other three components.

Specifically, the CDD Rule focuses particularly on the second component by adding a new requirement that covered financial institutions identify and verify the identity of the beneficial owners of all legal entity customers at the time a new account is opened, subject to certain exclusions and exemptions.[13] The CDD Rule also addresses the third and fourth components, which FinCEN states ''are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements,'' by amending the existing AML program rules for covered financial institutions to explicitly require these components to be included in AML programs as a new ''fifth pillar.''

On November 21, 2017, FINRA published Regulatory Notice 17–40 to provide guidance to member firms regarding their obligations under FINRA Rule 3310 in light of the adoption of FinCEN's CDD Rule. In addition, the Notice summarized the CDD Rule's impact on member firms, including the addition of the new fifth pillar required for member firms' AML programs. FINRA also amended FINRA Rule 3310 to explicitly incorporate the fifth pillar.[14] This proposed rule change amends BYX Rule 5.6 to harmonize it with the FINRA rule and incorporate the fifth pillar.

II. Exchange Rule 5.6 and Amendment to Minimum Requirements for Members' AML Programs

Section 352 of the USA PATRIOT Act of 2001 [15] amended the BSA to require broker-dealers to develop and implement AML programs that include the four pillars mentioned above. Consistent with Section 352 of the PATRIOT Act, and incorporating the four pillars, BYX Rule 5.6 requires each Member to develop and implement a written AML program reasonably designed to achieve and monitor the Member's compliance with the BSA and implementing regulations. Among other requirements, BYX Rule 5.6 requires that each Member firm, at a minimum: (1) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and implementing regulations; (3) provide independent testing for compliance to be conducted by Member personnel or a qualified outside party; (4) designate and identify to BYX an individual or individuals (*i.e.,* AML compliance person(s)) who will be responsible for implementing and monitoring the day-to-day operations and internal controls of the AML program and provide prompt notification to the Exchange of any changes to the designation; and (5) provide ongoing training for appropriate persons.

FinCEN's CDD Rule does not change the requirements of Exchange Rule 5.6, and Members must continue to comply with its requirements.[16] However, FinCEN's CDD Rule amends the minimum regulatory requirements for broker-dealers' AML programs by explicitly requiring such programs to include risk-based procedures for conducting ongoing customer due diligence.[17] Accordingly, the Exchange is proposing to amend Exchange Rule 5.6 to incorporate this ongoing customer due diligence element, or ''fifth pillar'' required for AML programs. Thus, proposed Rule 5.6(b)(6) would provide that the AML programs required by this Rule shall, at a minimum include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to: (A) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (B) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

As stated in the CDD Rule, these provisions are not new and merely codify existing expectations for Members to adequately identify and report suspicious transactions as required under the BSA and encapsulate practices generally already undertaken by securities firms to know and understand their customers.[18] The proposed rule change simply incorporates into Exchange Rule 5.6 the

[8] 31 CFR 1023.210(b).

[9] *See* Exchange Rule 1.5(n).

[10] FinCEN Customer Due Diligence Requirements for Financial Institutions; CDD Rule, 81 FR 29397 (May 11, 2016) (CDD Rule Release); 82 FR 45182 (September 28, 2017) (making technical correcting amendments to the final CDD Rule published on May 11, 2016). FinCEN is authorized to impose AML program requirements on financial institutions and to require financial institutions to maintain procedures to ensure compliance with the BSA and associated regulations. 31 U.S.C. 5318(h)(2) and (a)(2). The CDD Rule is the result of the rulemaking process FinCEN initiated in March 2012. *See* 77 FR 13046 (March 5, 2012) (Advance Notice of Proposed Rulemaking) and 79 FR 45151 (Aug. 4, 2014) (Notice of Proposed Rulemaking).

[11] *See* 31 CFR 1010.230(f) (defining ''covered financial institution'').

[12] *See* CDD Rule Release at 29398.

[13] *See* 31 CFR 1010.230(d) (defining ''beneficial owner'') and 31 CFR 1010.230(e) (defining ''legal entity customer'').

[14] *See* Securities Exchange Act Release No. 83154 (May 2, 2018), 83 FR 20906 (May 8, 2018) (File No. SR–FINRA–2018–016).

[15] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56, 115 Stat. 272 (2001).

[16] FinCEN notes that broker-dealers must continue to comply with FINRA Rules, notwithstanding differences between the CDD Rule and FINRA Rule 3310, which is substantially identical to Exchange Rule 5.6. *See* CDD Rule Release 29421, n. 85.

[17] *See* CDD Rule Release at 29420; 31 CFR 1023.210.

[18] *Id.* at 29419.

ongoing customer due diligence element, or ''fifth pillar,'' required for AML programs by the CDD Rule to aid Members in complying with the CDD Rule's requirements. However, to the extent that these elements, which are briefly summarized below, are not already included in Members' AML programs, the CDD Rule requires Members to update their AML programs to explicitly incorporate them.

III. Summary of Fifth Pillar's Requirements

Understanding the Nature and Purpose of Customer Relationships

FinCEN states in the CDD Rule that firms must necessarily have an understanding of the nature and purpose of the customer relationship in order to determine whether a transaction is potentially suspicious and, in turn, to fulfill their SAR obligations.[19] To that end, the CDD Rule requires that firms understand the nature and purpose of the customer relationship in order to develop a customer risk profile. The customer risk profile refers to information gathered about a customer to form the baseline against which customer activity is assessed for suspicious transaction reporting.[20] Information relevant to understanding the nature and purpose of the customer relationship may be self-evident and, depending on the facts and circumstances, may include such information as the type of customer, account or service offered, and the customer's income, net worth, domicile, or principal occupation or business, as well as, in the case of existing customers, the customer's history of activity.[21] The CDD Rule also does not prescribe a particular form of the customer risk profile.[22] Instead, the CDD Rule states that depending on the firm and the nature of its business, a customer risk profile may consist of individualized risk scoring, placement of customers into risk categories or another means of assessing customer risk that allows firms to understand the risk posed by the customer and to demonstrate that understanding.[23]

The CDD Rule also addresses the interplay of understanding the nature and purpose of customer relationships with the ongoing monitoring obligation discussed below. The CDD Rule explains that firms are not necessarily required or expected to integrate customer information or the customer risk profile into existing transaction monitoring systems (for example, to serve as the baseline for identifying and assessing suspicious transactions on a contemporaneous basis).[24] Rather, FinCEN expects firms to use the customer information and customer risk profile as appropriate during the course of complying with their obligations under the BSA in order to determine whether a particular flagged transaction is suspicious.[25]

Conduct Ongoing Monitoring

As with the requirement to understand the nature and purpose of the customer relationship, the requirement to conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information, merely adopts existing supervisory and regulatory expectations as explicit minimum standards of customer due diligence required for firms' AML programs.[26] If, in the course of its normal monitoring for suspicious activity, the Member detects information that is relevant to assessing the customer's risk profile, the Member must update the customer information, including the information regarding the beneficial owners of legal entity customers.[27] However, there is no expectation that the Member update customer information, including beneficial ownership information, on an ongoing or continuous basis.[28]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[29] of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act[30] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes the proposed rule change will protect investors, because it will aid Members in complying with the CDD Rule's requirement that Members' AML programs include risk-based procedures for conducting ongoing customer due diligence by also incorporating the requirement into Exchange Rule 5.6.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change simply incorporates into Exchange Rule 5.6 the ongoing customer due diligence element, or ''fifth pillar,'' required for AML programs by the CDD Rule. Regardless of the proposed rule change, to the extent that the elements of the fifth pillar are not already included in Members' AML programs, the CDD Rule requires Members to update their AML programs to explicitly incorporate them. In addition, as stated in the CDD Rule, these elements are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements. Further, all Exchange Members that have customers are required to be members of FINRA pursuant to Rule 15b9–1 under the Exchange Act,[31] and are therefore already subject to the requirements of FINRA Rule 3310. Additionally, the proposed rule change is virtually identical[32] to FINRA Rule 3310. The Exchange is not imposing any additional direct or indirect burdens on member firms or their customers through this proposal, and as such, the proposal imposes no new burdens on competition.

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

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the

[19] *Id.* at 29421.

[20] *Id.* at 29422.

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.* at 29402.

[27] *Id.* at 29420–21. See also FINRA Regulatory Notice 17–40 (discussing identifying and verifying the identity of beneficial owners of legal entity customers).

[28] *Id.*

[29] 15 U.S.C. 78f.

[30] 15 U.S.C. 78f(b)(5).

[31] 17 CFR 240.15b9–1.

[32] The Exchange notes that changes between the proposed Rule and FINRA Rule 3310 are non-substantive and relate to cross references.

Act[33] and Rule 19b–4(f)(6)[34] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBYX–2019–024 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–CboeBYX–2019–024. 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–CboeBYX–2019–024 and should be submitted on or before January 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–27346 Filed 12–18–19; 8:45 am]

BILLING CODE 8011–01–P

[33] 15 U.S.C. 78s(b)(3)(A).

[34] 17 CFR 240.19b–4(f)(6).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87738; File No. SR–C2–2019–027]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Rule 6.4 by Extending the Penny Pilot Program Through June 30, 2020

December 13, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 10, 2019, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') proposes to amend Rule 6.4 by extending the Penny Pilot Program through June 30, 2020. The text of the proposed rule change is provided below.

(additions are in italics; deletions are [bracketed])

* * * * *

Rules of Cboe C2 Exchange, Inc.

* * * * *

Rule 6.4. Minimum Increments for Bids and Offers

* * * * *

Interpretations and Policies . . .

.01 No change.

.02 The Exchange may replace any option class participating in the Penny Pilot Program that has been delisted with the next most actively traded, multiply listed option class, based on national average daily volume in the preceding six calendar months, that is not yet included in the Pilot Program. Any replacement class would be added on the second trading day in the first month of each quarter. The Penny Pilot will expire on [December 31, 2019] *June 30, 2020.*

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Penny Pilot Program (the ''Pilot Program'') is scheduled to expire on December 31, 2019. The Exchange proposes to extend the Pilot Program until June 30, 2020. The Exchange believes that extending the Pilot Program will allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future. The Exchange is specifically authorized to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

act jointly with the other options exchanges participating in the Pilot Program in identifying any replacement class. The Exchange also represents that the Exchange has the necessary system capacity to continue to support operation of the Pilot Program. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the proposed rule change allows for an extension of the Pilot Program prior to its expiration on December 31, 2019 for the benefit of market participants. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options. The Exchange notes that this proposal does not propose any new policies or provisions that are unique or unproven, but instead relates to the continuation of an existing program that operates on a pilot basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Pilot Program and a determination of how the Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. In addition, the Exchange has been authorized to act jointly in extending the Pilot Program and believes the other exchanges will be filing similar extensions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder. Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder.

A proposed rule changed filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program.[14] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–C2–2019–027 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–C2–2019–027. 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

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or just shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44).

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–C2–2019–027 and should be submitted on or before January 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–27341 Filed 12–18–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87746; File No. SR–CboeEDGA–2019–022]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Reflect the Financial Crimes Enforcement Network's Adoption of a Final Rule on Customer Due Diligence Requirements for Financial Institutions

December 13, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 5, 2019, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') 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 Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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

Cboe EDGA Exchange, Inc. (''EDGA'' or the ''Exchange'') is filing 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 Exchange, to reflect the Financial Crimes Enforcement Network's (''FinCEN'') adoption of a final rule on Customer Due Diligence Requirements for Financial Institutions (''CDD Rule''). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

I. Background

The Bank Secrecy Act[5] (''BSA''), among other things, requires financial institutions,[6] including broker-dealers, to develop and implement AML programs that, at a minimum, meet the statutorily enumerated ''four pillars.''[7] These four pillars currently require broker-dealers to have written AML programs that include, at a minimum:

- The establishment and implementation of policies, procedures and internal controls reasonably designed to achieve compliance with the applicable provisions of the BSA and implementing regulations;
- independent testing for compliance by broker-dealer personnel or a qualified outside party;
- designation of an individual or individuals responsible for implementing and monitoring the operations and internal controls of the AML program; and
- ongoing training for appropriate persons.[8]

In addition to meeting the BSA's requirements with respect to AML programs, Exchange Members[9] must also comply with Exchange Rule 5.6, which incorporates the BSA's four pillars, as well as requires Members' AML programs to establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions.

On May 11, 2016, FinCEN, the bureau of the Department of the Treasury responsible for administering the BSA and its implementing regulations, issued the CDD Rule[10] to clarify and strengthen customer due diligence for covered financial institutions,[11] including broker-dealers. In its CDD Rule, FinCEN identifies four components of customer due diligence: (1) Customer identification and verification; (2) beneficial ownership identification and verification; (3) understanding the nature and purpose of customer relationships; and (4) ongoing monitoring for reporting suspicious transactions and, on a risk basis, maintaining and updating customer information.[12] As the first component is already required to be part of a broker-dealers AML program under

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] 31 U.S.C. 5311, *et seq.*

[6] *See* U.S.C. 5312(a)(2) (defining ''financial institution'').

[7] 31 U.S.C. 5318(h)(1).

[8] 31 CFR 1023.210(b).

[9] *See* Exchange Rule 1.5(n).

[10] FinCEN Customer Due Diligence Requirements for Financial Institutions; CDD Rule, 81 FR 29397 (May 11, 2016) (CDD Rule Release); 82 FR 45182 (September 28, 2017) (making technical correcting amendments to the final CDD Rule published on May 11, 2016). FinCEN is authorized to impose AML program requirements on financial institutions and to require financial institutions to maintain procedures to ensure compliance with the BSA and associated regulations. 31 U.S.C. 5318(h)(2) and (a)(2). The CDD Rule is the result of the rulemaking process FinCEN initiated in March 2012. *See* 77 FR 13046 (March 5, 2012) (Advance Notice of Proposed Rulemaking) and 79 FR 45151 (Aug. 4, 2014) (Notice of Proposed Rulemaking).

[11] *See* 31 CFR 1010.230(f) (defining ''covered financial institution'').

[12] *See* CDD Rule Release at 29398.

the BSA, the CDD Rule focuses on the other three components.

Specifically, the CDD Rule focuses particularly on the second component by adding a new requirement that covered financial institutions identify and verify the identity of the beneficial owners of all legal entity customers at the time a new account is opened, subject to certain exclusions and exemptions.[13] The CDD Rule also addresses the third and fourth components, which FinCEN states ''are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements,'' by amending the existing AML program rules for covered financial institutions to explicitly require these components to be included in AML programs as a new ''fifth pillar.''

On November 21, 2017, FINRA published Regulatory Notice 17–40 to provide guidance to member firms regarding their obligations under FINRA Rule 3310 in light of the adoption of FinCEN's CDD Rule. In addition, the Notice summarized the CDD Rule's impact on member firms, including the addition of the new fifth pillar required for member firms' AML programs. FINRA also amended FINRA Rule 3310 to explicitly incorporate the fifth pillar.[14] This proposed rule change amends EDGA Rule 5.6 to harmonize it with the FINRA rule and incorporate the fifth pillar.

II. Exchange Rule 5.6 and Amendment to Minimum Requirements for Members' AML Programs

Section 352 of the USA PATRIOT Act of 2001 [15] amended the BSA to require broker-dealers to develop and implement AML programs that include the four pillars mentioned above. Consistent with Section 352 of the PATRIOT Act, and incorporating the four pillars, EDGA Rule 5.6 requires each Member to develop and implement a written AML program reasonably designed to achieve and monitor the Member's compliance with the BSA and implementing regulations. Among other requirements, EDGA Rule 5.6 requires that each Member firm, at a minimum: (1) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and implementing regulations; (3) provide independent testing for compliance to be conducted by Member personnel or a qualified outside party; (4) designate and identify to EDGA an individual or individuals (*i.e.,* AML compliance person(s)) who will be responsible for implementing and monitoring the day-to-day operations and internal controls of the AML program and provide prompt notification to the Exchange of any changes to the designation; and (5) provide ongoing training for appropriate persons.

FinCEN's CDD Rule does not change the requirements of Exchange Rule 5.6, and Members must continue to comply with its requirements.[16] However, FinCEN's CDD Rule amends the minimum regulatory requirements for broker-dealers' AML programs by explicitly requiring such programs to include risk-based procedures for conducting ongoing customer due diligence.[17] Accordingly, the Exchange is proposing to amend Exchange Rule 5.6 to incorporate this ongoing customer due diligence element, or ''fifth pillar'' required for AML programs. Thus, proposed Rule 5.6(b)(6) would provide that the AML programs required by this Rule shall, at a minimum include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to: (A) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (B) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

As stated in the CDD Rule, these provisions are not new and merely codify existing expectations for Members to adequately identify and report suspicious transactions as required under the BSA and encapsulate practices generally already undertaken by securities firms to know and understand their customers.[18] The proposed rule change simply incorporates into Exchange Rule 5.6 the ongoing customer due diligence element, or ''fifth pillar,'' required for AML programs by the CDD Rule to aid Members in complying with the CDD Rule's requirements. However, to the extent that these elements, which are briefly summarized below, are not already included in Members' AML programs, the CDD Rule requires Members to update their AML programs to explicitly incorporate them.

III. Summary of Fifth Pillar's Requirements

Understanding the Nature and Purpose of Customer Relationships

FinCEN states in the CDD Rule that firms must necessarily have an understanding of the nature and purpose of the customer relationship in order to determine whether a transaction is potentially suspicious and, in turn, to fulfill their SAR obligations.[19] To that end, the CDD Rule requires that firms understand the nature and purpose of the customer relationship in order to develop a customer risk profile. The customer risk profile refers to information gathered about a customer to form the baseline against which customer activity is assessed for suspicious transaction reporting.[20] Information relevant to understanding the nature and purpose of the customer relationship may be self-evident and, depending on the facts and circumstances, may include such information as the type of customer, account or service offered, and the customer's income, net worth, domicile, or principal occupation or business, as well as, in the case of existing customers, the customer's history of activity.[21] The CDD Rule also does not prescribe a particular form of the customer risk profile.[22] Instead, the CDD Rule states that depending on the firm and the nature of its business, a customer risk profile may consist of individualized risk scoring, placement of customers into risk categories or another means of assessing customer risk that allows firms to understand the risk posed by the customer and to demonstrate that understanding.[23]

The CDD Rule also addresses the interplay of understanding the nature and purpose of customer relationships with the ongoing monitoring obligation discussed below. The CDD Rule explains that firms are not necessarily required or expected to integrate customer information or the customer

[13] *See* 31 CFR 1010.230(d) (defining ''beneficial owner'') and 31 CFR 1010.230(e) (defining ''legal entity customer'').

[14] *See* Securities Exchange Act Release No. 83154 (May 2, 2018), 83 FR 20906 (May 8, 2018) (File No. SR–FINRA–2018–016).

[15] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56, 115 Stat. 272 (2001).

[16] FinCEN notes that broker-dealers must continue to comply with FINRA Rules, notwithstanding differences between the CDD Rule and FINRA Rule 3310, which is substantially identical to Exchange Rule 5.6. *See* CDD Rule Release 29421, n. 85.

[17] *See* CDD Rule Release at 29420; 31 CFR 1023.210.

[18] *Id.* at 29419.

[19] *Id.* at 29421.

[20] *Id.* at 29422.

[21] *Id.*

[22] *Id.*

[23] *Id.*

risk profile into existing transaction monitoring systems (for example, to serve as the baseline for identifying and assessing suspicious transactions on a contemporaneous basis).[24] Rather, FinCEN expects firms to use the customer information and customer risk profile as appropriate during the course of complying with their obligations under the BSA in order to determine whether a particular flagged transaction is suspicious.[25]

Conduct Ongoing Monitoring

As with the requirement to understand the nature and purpose of the customer relationship, the requirement to conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information, merely adopts existing supervisory and regulatory expectations as explicit minimum standards of customer due diligence required for firms' AML programs.[26] If, in the course of its normal monitoring for suspicious activity, the Member detects information that is relevant to assessing the customer's risk profile, the Member must update the customer information, including the information regarding the beneficial owners of legal entity customers.[27] However, there is no expectation that the Member update customer information, including beneficial ownership information, on an ongoing or continuous basis.[28]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[29] of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act[30] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes the proposed rule change will protect investors, because it will aid Members in complying with the CDD Rule's requirement that Members' AML programs include risk-based procedures for conducting ongoing customer due diligence by also incorporating the requirement into Exchange Rule 5.6.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change simply incorporates into Exchange Rule 5.6 the ongoing customer due diligence element, or ''fifth pillar,'' required for AML programs by the CDD Rule. Regardless of the proposed rule change, to the extent that the elements of the fifth pillar are not already included in Members' AML programs, the CDD Rule requires Members to update their AML programs to explicitly incorporate them. In addition, as stated in the CDD Rule, these elements are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements. Further, all Exchange Members that have customers are required to be members of FINRA pursuant to Rule 15b9–1 under the Exchange Act,[31] and are therefore already subject to the requirements of FINRA Rule 3310. Additionally, the proposed rule change is virtually identical[32] to FINRA Rule 3310. The Exchange is not imposing any additional direct or indirect burdens on member firms or their customers through this proposal, and as such, the proposal imposes no new burdens on competition.

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

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[33] and Rule 19b–4(f)(6)[34] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGA–2019–022 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–CboeEDGA–2019–022. 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

[24] *Id.*

[25] *Id.*

[26] *Id.* at 29402.

[27] *Id.* at 29420–21. See also FINRA Regulatory Notice 17–40 (discussing identifying and verifying the identity of beneficial owners of legal entity customers).

[28] *Id.*

[29] 15 U.S.C. 78f.

[30] 15 U.S.C. 78f(b)(5).

[31] 17 CFR 240.15b9–1.

[32] The Exchange notes that changes between the proposed Rule and FINRA Rule 3310 are non-substantive and relate to cross references.

[33] 15 U.S.C. 78s(b)(3)(A).

[34] 17 CFR 240.19b–4(f)(6).

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–CboeEDGA–2019–022 and should be submitted on or before January 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–27348 Filed 12–18–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87740; File No. SR–CboeBZX–2019–106]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Rule 5.4 by Extending the Penny Pilot Program Through June 30, 2020

December 13, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 10, 2019, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend Rule 5.4 by extending the Penny Pilot Program through June 30, 2020. The text of the proposed rule change is provided below.

(additions are in italics; deletions are [bracketed])

* * * * *

Rules of Cboe BZX Exchange, Inc.

* * * * *

Rule 21.5. Minimum Increments

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Interpretations and Policies

.01 The Exchange will operate a pilot program set to expire on [December 31, 2019]*June 30, 2020* to permit options classes to be quoted and traded in increments as low as $.01. The Exchange will specify which options trade in such pilot, and in what increments, in Information Circulars distributed to Members and posted on the Exchange's website. The Exchange may replace any penny pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the penny pilot, based on trading activity in the previous six months. The replacement issues may be added to the penny pilot on the second trading day in the first month of each quarter.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Penny Pilot Program (the ''Pilot Program'') is scheduled to expire on December 31, 2019. The Exchange proposes to extend the Pilot Program until June 30, 2020. The Exchange believes that extending the Pilot Program will allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future. The Exchange is specifically authorized to act jointly with the other options exchanges participating in the Pilot Program in identifying any replacement class. The Exchange also represents that the Exchange has the necessary system capacity to continue to support operation of the Pilot Program. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the proposed rule change allows for an extension of the Pilot Program prior to its expiration on December 31, 2019 for the benefit of market participants. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options. The Exchange notes that this proposal does not propose any new policies or provisions that are unique or unproven, but instead relates to the continuation of

[35] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

an existing program that operates on a pilot basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Pilot Program and a determination of how the Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. In addition, the Exchange has been authorized to act jointly in extending the Pilot Program and believes the other exchanges will be filing similar extensions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) [9] thereunder. Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) [11] thereunder.

A proposed rule changed filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program.[14] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2019–106 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–2019–106. 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–2019–106 and should be submitted on or before January 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–27343 Filed 12–18–19; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or just shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44).

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87739; File No. SR–CBOE–2019–119]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Rule 5.4 by Extending the Penny Pilot Program Through June 30, 2020

December 13, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 10, 2019, Cboe Exchange, Inc. (the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] 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

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Rule 5.4 by extending the Penny Pilot Program through June 30, 2020. The text of the proposed rule change is provided below.

(additions are in italics; deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 5.4. Minimum Increments for Bids and Offers

* * * * *

Interpretations and Policies

.01–.02 No change.

.03 The Exchange may replace any option class participating in the Penny Pilot Program that has been delisted with the next most actively traded, multiply listed option class, based on national average daily volume in the preceding six calendar months, that is not yet included in the Pilot Program. Any replacement class would be added on the second trading day in the first month of each quarter. The Penny Pilot will expire on [December 31, 2019]*June 30, 2020.*

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Penny Pilot Program (the ''Pilot Program'') is scheduled to expire on December 31, 2019. The Exchange proposes to extend the Pilot Program until June 30, 2020. The Exchange believes that extending the Pilot Program will allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future. The Exchange is specifically authorized to act jointly with the other options exchanges participating in the Pilot Program in identifying any replacement class. The Exchange also represents that the Exchange has the necessary system capacity to continue to support operation of the Pilot Program. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the proposed rule change allows for an extension of the Pilot Program prior to its expiration on December 31, 2019 for the benefit of market participants. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options. The Exchange notes that this proposal does not propose any new policies or provisions that are unique or unproven, but instead relates to the continuation of an existing program that operates on a pilot basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Pilot Program and a determination of how the Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. In addition, the Exchange has been authorized to act jointly in extending the Pilot Program and believes the other exchanges will be filing similar extensions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) [9] thereunder. Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii)

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) [11] thereunder.

A proposed rule changed filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program.[14] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–119 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–CBOE–2019–119. 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–CBOE–2019–119 and should be submitted on or before January 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–27342 Filed 12–18–19; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or just shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44).

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87748; File No. SR–Phlx–2019–55]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Phlx Rule 1034

December 13, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 12, 2019, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 1034 (Minimum Increments) to extend through June 30, 2020 or the date of permanent approval, if earlier, the Penny Pilot Program in options classes in certain issues (''Penny Pilot'' or ''Pilot'').

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Phlx Rule 1034 to extend the Penny Pilot through June 30, 2020 or the date of permanent approval, if earlier.[3]

Under the Penny Pilot, the minimum price variation for all participating options classes, except for options overlying the PowerShares QQQ Trust (''QQQQ''), the SPDR S&P 500 Exchange Traded Fund (''SPY'') and the iShares Russell 2000 Index Fund (''IWM''), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. Options overlying QQQQ, SPY and IWM are quoted in $0.01 increments for all options series. The Penny Pilot is currently scheduled to expire on December 31, 2019.[4] The Exchange now proposes to extend the time period of the Penny Pilot through June 30, 2020 or the date of permanent approval, if earlier.

This filing does not propose any substantive changes to the Penny Pilot Program; all classes currently participating in the Penny Pilot will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the potential increase in quote traffic.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

In particular, the proposed rule change, which extends the Penny Pilot for an additional six months through June 30, 2020 or the date of permanent approval, if earlier, will enable public customers and other market participants to express their true prices to buy and sell options for the benefit of all market participants. This is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, this proposal is pro-competitive because it allows Penny Pilot issues to continue trading on the Exchange.

Moreover, the Exchange believes that the proposed rule change will allow for further analysis of the Pilot and a determination of how the Pilot should be structured in the future; and will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

The Pilot is an industry-wide initiative supported by all other option exchanges. The Exchange believes that extending the Pilot will allow for continued competition between market participants on the Exchange trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)[8] thereunder. Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder.

A proposed rule changed filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program.[13] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[3] The options exchanges in the U.S. that have pilot programs similar to the Penny Pilot (together ''pilot programs'') are currently working on a proposal for permanent approval of the respective pilot programs.

[4] *See* Securities Exchange Act Release No. 86140 (June 18, 2019), 84 FR 29574 (June 24, 2019) (SR–Phlx–2019–24).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or just shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44).

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2019–55 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2019–55. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2019–55 and should be submitted on or before January 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–27350 Filed 12–18–19; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87741; File No. SR–CboeEDGX–2019–074]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 21.5 by Extending the Penny Pilot Program Through June 30, 2020

December 13, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 10, 2019, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to amend Rule 21.5 by extending the Penny Pilot Program through June 30, 2020. The text of the proposed rule change is provided below.

(additions are in italics; deletions are [bracketed])

* * * * *

Rules of Cboe EDGX Exchange, Inc.

* * * * *

Rule 21.5. Minimum Increments

* * * * *

Interpretations and Policies

.01 The Exchange will operate a pilot program set to expire on [December 31, 2019] *June 30, 2020* to permit options classes to be quoted and traded in increments as low as $.01. The Exchange will specify which options trade in such pilot, and in what increments, in Information Circulars distributed to Members and posted on the Exchange's website. The Exchange may replace any penny pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the penny pilot, based on trading activity in the previous six months. The replacement issues may be added to the penny pilot on the second trading day in the first month of each quarter.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Pilot Program is scheduled to expire on December 31, 2019. The Exchange proposes to extend the Pilot Program until June 30, 2020. The Exchange believes that extending the Pilot Program will allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future. The Exchange is specifically authorized to act jointly with the other options exchanges participating in the Pilot Program in identifying any replacement class. The Exchange also represents that the Exchange has the necessary system capacity to continue to support operation of the Pilot Program. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the proposed rule change allows for an extension of the Pilot Program prior to its expiration on December 31, 2019 for the benefit of market participants. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options. The Exchange notes that this proposal does not propose any new policies or provisions that are unique or unproven, but instead relates to the continuation of an existing program that operates on a pilot basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Pilot Program and a determination of how the Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. In addition, the Exchange has been authorized to act jointly in extending the Pilot Program and believes the other exchanges will be filing similar extensions.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder. Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder.

A proposed rule changed filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program.[14] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[15]

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or just shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44).

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2019–074 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–CboeEDGX–2019–074. 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–CboeEDGX–2019–074 and should be submitted on or before January 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–27344 Filed 12–18–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87747; File No. SR–CboeEDGX–2019–073]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Reflect the Financial Crimes Enforcement Network's Adoption of a Final Rule on Customer Due Diligence Requirements for Financial Institutions

December 13, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 5, 2019, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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 Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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

Cboe EDGX Exchange, Inc. (''EDGX'' or the ''Exchange'') is filing 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 Exchange, to reflect the Financial Crimes Enforcement Network's (''FinCEN'') adoption of a final rule on Customer Due Diligence Requirements for Financial Institutions (''CDD Rule''). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

I. Background

The Bank Secrecy Act[5] (''BSA''), among other things, requires financial institutions,[6] including broker-dealers, to develop and implement AML programs that, at a minimum, meet the statutorily enumerated ''four pillars.''[7] These four pillars currently require broker-dealers to have written AML programs that include, at a minimum:

- The establishment and implementation of policies, procedures and internal controls reasonably designed to achieve compliance with the applicable provisions of the BSA and implementing regulations;
- independent testing for compliance by broker-dealer personnel or a qualified outside party;
- designation of an individual or individuals responsible for implementing and monitoring the operations and internal controls of the AML program; and
- ongoing training for appropriate persons.[8]

In addition to meeting the BSA's requirements with respect to AML programs, Exchange Members[9] must also comply with Exchange Rule 5.6, which incorporates the BSA's four pillars, as well as requires Members' AML programs to establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions.

On May 11, 2016, FinCEN, the bureau of the Department of the Treasury responsible for administering the BSA and its implementing regulations, issued the CDD Rule[10] to clarify and strengthen customer due diligence for covered financial institutions,[11] including broker-dealers. In its CDD Rule, FinCEN identifies four components of customer due diligence: (1) Customer identification and verification; (2) beneficial ownership identification and verification; (3) understanding the nature and purpose of customer relationships; and (4) ongoing monitoring for reporting suspicious transactions and, on a risk basis, maintaining and updating customer information.[12] As the first component is already required to be part of a broker-dealers AML program under the BSA, the CDD Rule focuses on the other three components.

Specifically, the CDD Rule focuses particularly on the second component by adding a new requirement that covered financial institutions identify and verify the identity of the beneficial owners of all legal entity customers at the time a new account is opened, subject to certain exclusions and exemptions.[13] The CDD Rule also addresses the third and fourth components, which FinCEN states ''are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements,'' by amending the existing AML program rules for covered

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] 31 U.S.C. 5311, *et seq.*

[6] *See* U.S.C. 5312(a)(2) (defining ''financial institution'').

[7] 31 U.S.C. 5318(h)(1).

[8] 31 CFR 1023.210(b).

[9] *See* Exchange Rule 1.5(n).

[10] FinCEN Customer Due Diligence Requirements for Financial Institutions; CDD Rule, 81 FR 29397 (May 11, 2016) (CDD Rule Release); 82 FR 45182 (September 28, 2017) (making technical correcting amendments to the final CDD Rule published on May 11, 2016). FinCEN is authorized to impose AML program requirements on financial institutions and to require financial institutions to maintain procedures to ensure compliance with the BSA and associated regulations. 31 U.S.C. 5318(h)(2) and (a)(2). The CDD Rule is the result of the rulemaking process FinCEN initiated in March 2012. *See* 77 FR 13046 (March 5, 2012) (Advance Notice of Proposed Rulemaking) and 79 FR 45151 (Aug. 4, 2014) (Notice of Proposed Rulemaking).

[11] *See* 31 CFR 1010.230(f) (defining ''covered financial institution'').

[12] *See* CDD Rule Release at 29398.

[13] *See* 31 CFR 1010.230(d) (defining ''beneficial owner'') and 31 CFR 1010.230(e) (defining ''legal entity customer'').

financial institutions to explicitly require these components to be included in AML programs as a new ''fifth pillar.''

On November 21, 2017, FINRA published Regulatory Notice 17–40 to provide guidance to member firms regarding their obligations under FINRA Rule 3310 in light of the adoption of FinCEN's CDD Rule. In addition, the Notice summarized the CDD Rule's impact on member firms, including the addition of the new fifth pillar required for member firms' AML programs. FINRA also amended FINRA Rule 3310 to explicitly incorporate the fifth pillar.[14] This proposed rule change amends EDGX Rule 5.6 to harmonize it with the FINRA rule and incorporate the fifth pillar.

II. Exchange Rule 5.6 and Amendment to Minimum Requirements for Members' AML Programs

Section 352 of the USA PATRIOT Act of 2001 [15] amended the BSA to require broker-dealers to develop and implement AML programs that include the four pillars mentioned above. Consistent with Section 352 of the PATRIOT Act, and incorporating the four pillars, EDGX Rule 5.6 requires each Member to develop and implement a written AML program reasonably designed to achieve and monitor the Member's compliance with the BSA and implementing regulations. Among other requirements, EDGX Rule 5.6 requires that each Member firm, at a minimum: (1) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and implementing regulations; (3) provide independent testing for compliance to be conducted by Member personnel or a qualified outside party; (4) designate and identify to EDGX an individual or individuals (*i.e.,* AML compliance person(s)) who will be responsible for implementing and monitoring the day-to-day operations and internal controls of the AML program and provide prompt notification to the Exchange of any changes to the designation; and (5) provide ongoing training for appropriate persons.

FinCEN's CDD Rule does not change the requirements of Exchange Rule 5.6, and Members must continue to comply with its requirements.[16] However, FinCEN's CDD Rule amends the minimum regulatory requirements for broker-dealers' AML programs by explicitly requiring such programs to include risk-based procedures for conducting ongoing customer due diligence.[17] Accordingly, the Exchange is proposing to amend Exchange Rule 5.6 to incorporate this ongoing customer due diligence element, or ''fifth pillar'' required for AML programs. Thus, proposed Rule 5.6(b)(6) would provide that the AML programs required by this Rule shall, at a minimum include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to: (A) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (B) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

As stated in the CDD Rule, these provisions are not new and merely codify existing expectations for Members to adequately identify and report suspicious transactions as required under the BSA and encapsulate practices generally already undertaken by securities firms to know and understand their customers.[18] The proposed rule change simply incorporates into Exchange Rule 5.6 the ongoing customer due diligence element, or ''fifth pillar,'' required for AML programs by the CDD Rule to aid Members in complying with the CDD Rule's requirements. However, to the extent that these elements, which are briefly summarized below, are not already included in Members' AML programs, the CDD Rule requires Members to update their AML programs to explicitly incorporate them.

III. Summary of Fifth Pillar's Requirements

Understanding the Nature and Purpose of Customer Relationships

FinCEN states in the CDD Rule that firms must necessarily have an understanding of the nature and purpose of the customer relationship in order to determine whether a transaction is potentially suspicious and, in turn, to fulfill their SAR obligations.[19] To that end, the CDD Rule requires that firms understand the nature and purpose of the customer relationship in order to develop a customer risk profile. The customer risk profile refers to information gathered about a customer to form the baseline against which customer activity is assessed for suspicious transaction reporting.[20] Information relevant to understanding the nature and purpose of the customer relationship may be self-evident and, depending on the facts and circumstances, may include such information as the type of customer, account or service offered, and the customer's income, net worth, domicile, or principal occupation or business, as well as, in the case of existing customers, the customer's history of activity.[21] The CDD Rule also does not prescribe a particular form of the customer risk profile.[22] Instead, the CDD Rule states that depending on the firm and the nature of its business, a customer risk profile may consist of individualized risk scoring, placement of customers into risk categories or another means of assessing customer risk that allows firms to understand the risk posed by the customer and to demonstrate that understanding.[23]

The CDD Rule also addresses the interplay of understanding the nature and purpose of customer relationships with the ongoing monitoring obligation discussed below. The CDD Rule explains that firms are not necessarily required or expected to integrate customer information or the customer risk profile into existing transaction monitoring systems (for example, to serve as the baseline for identifying and assessing suspicious transactions on a contemporaneous basis).[24] Rather, FinCEN expects firms to use the customer information and customer risk profile as appropriate during the course of complying with their obligations under the BSA in order to determine whether a particular flagged transaction is suspicious.[25]

Conduct Ongoing Monitoring

As with the requirement to understand the nature and purpose of the customer relationship, the requirement to conduct ongoing

[14] *See* Securities Exchange Act Release No. 83154 (May 2, 2018), 83 FR 20906 (May 8, 2018) (File No. SR–FINRA–2018–016).

[15] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56, 115 Stat. 272 (2001).

[16] FinCEN notes that broker-dealers must continue to comply with FINRA Rules, notwithstanding differences between the CDD Rule and FINRA Rule 3310, which is substantially identical to Exchange Rule 5.6. *See* CDD Rule Release 29421, n. 85.

[17] *See* CDD Rule Release at 29420; 31 CFR 1023.210.

[18] *Id.* at 29419.

[19] *Id.* at 29421.

[20] *Id.* at 29422.

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information, merely adopts existing supervisory and regulatory expectations as explicit minimum standards of customer due diligence required for firms' AML programs.[26] If, in the course of its normal monitoring for suspicious activity, the Member detects information that is relevant to assessing the customer's risk profile, the Member must update the customer information, including the information regarding the beneficial owners of legal entity customers.[27] However, there is no expectation that the Member update customer information, including beneficial ownership information, on an ongoing or continuous basis.[28]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[29] of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act[30] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes the proposed rule change will protect investors, because it will aid Members in complying with the CDD Rule's requirement that Members' AML programs include risk-based procedures for conducting ongoing customer due diligence by also incorporating the requirement into Exchange Rule 5.6.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change simply incorporates into Exchange Rule 5.6 the ongoing customer due diligence element, or ''fifth pillar,'' required for AML programs by the CDD Rule. Regardless of the proposed rule change, to the extent that the elements of the fifth pillar are not already included in Members' AML programs, the CDD Rule requires Members to update their AML programs to explicitly incorporate them. In addition, as stated in the CDD Rule, these elements are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements. Further, all Exchange Members that have customers are required to be members of FINRA pursuant to Rule 15b9–1 under the Exchange Act,[31] and are therefore already subject to the requirements of FINRA Rule 3310. Additionally, the proposed rule change is virtually identical[32] to FINRA Rule 3310. The Exchange is not imposing any additional direct or indirect burdens on member firms or their customers through this proposal, and as such, the proposal imposes no new burdens on competition.

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

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[33] and Rule 19b–4(f)(6)[34] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeEDGX–2019–073 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–CboeEDGX–2019–073. 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–CboeEDGX–2019–073 and should be submittedon or before January 9, 2020.

[26] *Id.* at 29402.

[27] *Id.* at 29420–21. See also FINRA Regulatory Notice 17–40 (discussing identifying and verifying the identity of beneficial owners of legal entity customers).

[28] *Id.*

[29] 15 U.S.C. 78f.

[30] 15 U.S.C. 78f(b)(5).

[31] 17 CFR 240.15b9–1.

[32] The Exchange notes that changes between the proposed Rule and FINRA Rule 3310 are non-substantive and relate to cross references.

[33] 15 U.S.C. 78s(b)(3)(A).

[34] 17 CFR 240.19b–4(f)(6).

[35] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–27349 Filed 12–18–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87745; File No. SR–CboeBZX–2019–103

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Reflect the Financial Crimes Enforcement Network's Adoption of a Final Rule on Customer Due Diligence Requirements for Financial Institutions

December 13, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 5, 2019, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') 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 Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing 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 Exchange, to reflect the Financial Crimes Enforcement Network's (''FinCEN'') adoption of a final rule on Customer Due Diligence Requirements for Financial Institutions (''CDD Rule''). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

I. Background

The Bank Secrecy Act[5] (''BSA''), among other things, requires financial institutions,[6] including broker-dealers, to develop and implement AML programs that, at a minimum, meet the statutorily enumerated ''four pillars.''[7] These four pillars currently require broker-dealers to have written AML programs that include, at a minimum:

- The establishment and implementation of policies, procedures and internal controls reasonably designed to achieve compliance with the applicable provisions of the BSA and implementing regulations;
- independent testing for compliance by broker-dealer personnel or a qualified outside party;
- designation of an individual or individuals responsible for implementing and monitoring the operations and internal controls of the AML program; and
- ongoing training for appropriate persons.[8]

In addition to meeting the BSA's requirements with respect to AML programs, Exchange Members[9] must also comply with Exchange Rule 5.6, which incorporates the BSA's four pillars, as well as requires Members' AML programs to establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions.

On May 11, 2016, FinCEN, the bureau of the Department of the Treasury responsible for administering the BSA and its implementing regulations, issued the CDD Rule[10] to clarify and strengthen customer due diligence for covered financial institutions,[11] including broker-dealers. In its CDD Rule, FinCEN identifies four components of customer due diligence: (1) Customer identification and verification; (2) beneficial ownership identification and verification; (3) understanding the nature and purpose of customer relationships; and (4) ongoing monitoring for reporting suspicious transactions and, on a risk basis, maintaining and updating customer information.[12] As the first component is already required to be part of a broker-dealers AML program under the BSA, the CDD Rule focuses on the other three components.

Specifically, the CDD Rule focuses particularly on the second component by adding a new requirement that covered financial institutions identify and verify the identity of the beneficial owners of all legal entity customers at the time a new account is opened, subject to certain exclusions and exemptions.[13] The CDD Rule also addresses the third and fourth components, which FinCEN states ''are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements,'' by amending the existing AML program rules for covered financial institutions to explicitly require these components to be included in AML programs as a new ''fifth pillar.''

On November 21, 2017, FINRA published Regulatory Notice 17–40 to provide guidance to member firms regarding their obligations under FINRA Rule 3310 in light of the adoption of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] 31 U.S.C. 5311, *et seq.*

[6] *See* U.S.C. 5312(a)(2) (defining ''financial institution'').

[7] 31 U.S.C. 5318(h)(1).

[8] 31 CFR 1023.210(b).

[9] *See* Exchange Rule 1.5(n).

[10] FinCEN Customer Due Diligence Requirements for Financial Institutions; CDD Rule, 81 FR 29397 (May 11, 2016) (CDD Rule Release); 82 FR 45182 (September 28, 2017) (making technical correcting amendments to the final CDD Rule published on May 11, 2016). FinCEN is authorized to impose AML program requirements on financial institutions and to require financial institutions to maintain procedures to ensure compliance with the BSA and associated regulations. 31 U.S.C. 5318(h)(2) and (a)(2). The CDD Rule is the result of the rulemaking process FinCEN initiated in March 2012. *See* 77 FR 13046 (March 5, 2012) (Advance Notice of Proposed Rulemaking) and 79 FR 45151 (Aug. 4, 2014) (Notice of Proposed Rulemaking).

[11] *See* 31 CFR 1010.230(f) (defining ''covered financial institution'').

[12] *See* CDD Rule Release at 29398.

[13] *See* 31 CFR 1010.230(d) (defining ''beneficial owner'') and 31 CFR 1010.230(e) (defining ''legal entity customer'').

FinCEN's CDD Rule. In addition, the Notice summarized the CDD Rule's impact on member firms, including the addition of the new fifth pillar required for member firms' AML programs. FINRA also amended FINRA Rule 3310 to explicitly incorporate the fifth pillar.[14] This proposed rule change amends BZX Rule 5.6 to harmonize it with the FINRA rule and incorporate the fifth pillar.

II. Exchange Rule 5.6 and Amendment To Minimum Requirements for Members' AML Programs

Section 352 of the USA PATRIOT Act of 2001 [15] amended the BSA to require broker-dealers to develop and implement AML programs that include the four pillars mentioned above. Consistent with Section 352 of the PATRIOT Act, and incorporating the four pillars, BZX Rule 5.6 requires each Member to develop and implement a written AML program reasonably designed to achieve and monitor the Member's compliance with the BSA and implementing regulations. Among other requirements, BZX Rule 5.6 requires that each Member firm, at a minimum: (1) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and implementing regulations; (3) provide independent testing for compliance to be conducted by Member personnel or a qualified outside party; (4) designate and identify to BZX an individual or individuals (*i.e.,* AML compliance person(s)) who will be responsible for implementing and monitoring the day-to-day operations and internal controls of the AML program and provide prompt notification to the Exchange of any changes to the designation; and (5) provide ongoing training for appropriate persons.

FinCEN's CDD Rule does not change the requirements of Exchange Rule 5.6, and Members must continue to comply with its requirements.[16] However, FinCEN's CDD Rule amends the minimum regulatory requirements for broker-dealers' AML programs by explicitly requiring such programs to include risk-based procedures for conducting ongoing customer due diligence.[17] Accordingly, the Exchange is proposing to amend Exchange Rule 5.6 to incorporate this ongoing customer due diligence element, or ''fifth pillar'' required for AML programs. Thus, proposed Rule 5.6(b)(6) would provide that the AML programs required by this Rule shall, at a minimum include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to: (A) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (B) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

As stated in the CDD Rule, these provisions are not new and merely codify existing expectations for Members to adequately identify and report suspicious transactions as required under the BSA and encapsulate practices generally already undertaken by securities firms to know and understand their customers.[18] The proposed rule change simply incorporates into Exchange Rule 5.6 the ongoing customer due diligence element, or ''fifth pillar,'' required for AML programs by the CDD Rule to aid Members in complying with the CDD Rule's requirements. However, to the extent that these elements, which are briefly summarized below, are not already included in Members' AML programs, the CDD Rule requires Members to update their AML programs to explicitly incorporate them.

III. Summary of Fifth Pillar's Requirements

Understanding the Nature and Purpose of Customer Relationships

FinCEN states in the CDD Rule that firms must necessarily have an understanding of the nature and purpose of the customer relationship in order to determine whether a transaction is potentially suspicious and, in turn, to fulfill their SAR obligations.[19] To that end, the CDD Rule requires that firms understand the nature and purpose of the customer relationship in order to develop a customer risk profile. The customer risk profile refers to information gathered about a customer to form the baseline against which customer activity is assessed for suspicious transaction reporting.[20] Information relevant to understanding the nature and purpose of the customer relationship may be self-evident and, depending on the facts and circumstances, may include such information as the type of customer, account or service offered, and the customer's income, net worth, domicile, or principal occupation or business, as well as, in the case of existing customers, the customer's history of activity.[21] The CDD Rule also does not prescribe a particular form of the customer risk profile.[22] Instead, the CDD Rule states that depending on the firm and the nature of its business, a customer risk profile may consist of individualized risk scoring, placement of customers into risk categories or another means of assessing customer risk that allows firms to understand the risk posed by the customer and to demonstrate that understanding.[23]

The CDD Rule also addresses the interplay of understanding the nature and purpose of customer relationships with the ongoing monitoring obligation discussed below. The CDD Rule explains that firms are not necessarily required or expected to integrate customer information or the customer risk profile into existing transaction monitoring systems (for example, to serve as the baseline for identifying and assessing suspicious transactions on a contemporaneous basis).[24] Rather, FinCEN expects firms to use the customer information and customer risk profile as appropriate during the course of complying with their obligations under the BSA in order to determine whether a particular flagged transaction is suspicious.[25]

Conduct Ongoing Monitoring

As with the requirement to understand the nature and purpose of the customer relationship, the requirement to conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information, merely adopts existing supervisory and regulatory expectations as explicit minimum standards of customer due diligence required for firms' AML programs.[26] If, in the course of its normal monitoring for suspicious

[14] *See* Securities Exchange Act Release No. 83154 (May 2, 2018), 83 FR 20906 (May 8, 2018) (File No. SR–FINRA–2018–016).

[15] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56, 115 Stat. 272 (2001).

[16] FinCEN notes that broker-dealers must continue to comply with FINRA Rules, notwithstanding differences between the CDD Rule and FINRA Rule 3310, which is substantially identical to Exchange Rule 5.6. *See* CDD Rule Release 29421, n. 85.

[17] *See* CDD Rule Release at 29420; 31 CFR 1023.210.

[18] *Id.* at 29419.

[19] *Id.* at 29421.

[20] *Id.* at 29422.

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.* at 29402.

activity, the Member detects information that is relevant to assessing the customer's risk profile, the Member must update the customer information, including the information regarding the beneficial owners of legal entity customers.[27] However, there is no expectation that the Member update customer information, including beneficial ownership information, on an ongoing or continuous basis.[28]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[29] of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act[30] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes the proposed rule change will protect investors, because it will aid Members in complying with the CDD Rule's requirement that Members' AML programs include risk-based procedures for conducting ongoing customer due diligence by also incorporating the requirement into Exchange Rule 5.6.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change simply incorporates into Exchange Rule 5.6 the ongoing customer due diligence element, or ''fifth pillar,'' required for AML programs by the CDD Rule. Regardless of the proposed rule change, to the extent that the elements of the fifth pillar are not already included in Members' AML programs, the CDD Rule requires Members to update their AML programs to explicitly incorporate them. In addition, as stated in the CDD Rule, these elements are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements. Further, all Exchange Members that have customers are required to be members of FINRA pursuant to Rule 15b9–1 under the Exchange Act,[31] and are therefore already subject to the requirements of FINRA Rule 3310. Additionally, the proposed rule change is virtually identical[32] to FINRA Rule 3310. The Exchange is not imposing any additional direct or indirect burdens on member firms or their customers through this proposal, and as such, the proposal imposes no new burdens on competition.

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

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[33] and Rule 19b–4(f)(6)[34] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeBZX–2019–103 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–2019–103. 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–2019–103 and should be submitted on or before January 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–27347 Filed 12–18–19; 8:45 am]

BILLING CODE 8011–01–P

[27] *Id.* at 29420–21. See also FINRA Regulatory Notice 17–40 (discussing identifying and verifying the identity of beneficial owners of legal entity customers).

[28] *Id.*

[29] 15 U.S.C. 78f.

[30] 15 U.S.C. 78f(b)(5).

[31] 17 CFR 240.15b9–1.

[32] The Exchange notes that changes between the proposed Rule and FINRA Rule 3310 are non-substantive and relate to cross references.

[33] 15 U.S.C. 78s(b)(3)(A).

[34] 17 CFR 240.19b–4(f)(6).

[35] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability, Notice of Public Comment Period, Notice of Public Meeting, and Request for Comment on the Draft Environmental Assessment for the Titusville-Cocoa Airport Authority Launch Site Operator License

AGENCY: The Federal Aviation Administration (FAA), Department of Transportation (DOT) is the lead agency. The National Aeronautics and Space Administration (NASA) and the U.S. Air Force are cooperating agencies for this Environmental Assessment (EA).

ACTION: Notice of availability, notice of public comment period, notice of public meeting, and request for comment.

SUMMARY: The FAA is announcing the availability of and requesting comments on the Draft Environmental Assessment (EA) for the Titusville-Cocoa Airport Authority (TCAA) Launch Site Operator License. The FAA has prepared the Draft EA to evaluate the potential environmental impacts of the FAA issuing a Launch Site Operator License to TCAA for the operation of a commercial space launch site at the Space Coast Regional Airport (TIX). Under the proposed action, TCAA would operate a commercial space launch site at TIX to offer the site for launches of horizontal takeoff and horizontal landing launch vehicles from TIX. TCAA would also construct facilities related to the proposed launch site. The Draft EA considers the potential environmental impacts of the Proposed Action and the No Action Alternative.

DATES: Comments on the Draft EA must be received on or before January 17, 2020.

The FAA will hold a public meeting on January 8th, 2020, from 5:00 to 8:00 p.m. During this meeting, FAA representatives will have the chance to answer questions about the Draft EA. Members of the public will have the chance to provide written and/or oral comments at the meeting. We invite all interested parties to attend the meeting.

ADDRESSES: The public meeting will be held at the Ralph Poppell Airport Administration Building at Space Coast Regional Airport, 355 Golden Knights Boulevard, Titusville, Florida 32780.

Please submit comments or questions regarding the Draft EA to ICF, Attention: FAA TIX EA, 9300 Lee Highway, Fairfax, VA 22031. Comments may also be submitted by email to *TIX_Spaceport_EA@icf.com.*

FOR FURTHER INFORMATION CONTACT: Ms. Stacey M. Zee, Environmental Protection Specialist, Federal Aviation Administration, 800 Independence Avenue SW, Suite 325, Washington, DC 20591; email *Stacey.Zee@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has prepared the Draft EA in accordance with the National Environmental Policy Act of 1969 (NEPA; 42 United States Code 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations parts 1500–1508), and FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, as part of its licensing process. Concurrent with the NEPA process and to determine the potential effects of the Proposed Action on historic and cultural properties, the FAA has initiated Section 106 Consultation with the Florida State Historic Preservation Office and the following Native America tribes: The Miccosukee Tribe of Indians of Florida, the Mississippi Band of Choctaw Indians, the Muscogee (Creek) Nation, the Poarch Band of Creek Indians, the Seminole Tribe of Florida, and the Seminole Nation of Oklahoma. Through consultation, the Mississippi Band of Choctaw Indians requested to be removed from the list of tribes consulted for this project. Pursuant to the U.S. Department of Transportation Act of 1966, this EA will comply with the requirements of Section 4(f) of the Act.

An electronic version of the Draft EA is available on the FAA Office of Commercial Space Transportation website at: *https://www.faa.gov/about/office_org/headquarters_offices/ast/environmental/nepa_docs/review/documents_progress/space_coast/.*

The FAA encourages all interested agencies, organizations, Native American tribes, and members of the public to submit comments concerning the analysis presented in the Draft EA by January 17, 2020. Comments should be as specific as possible and address the analysis of potential environmental impacts. Reviewers should organize their participation so that it is meaningful and makes the agency aware of the viewer's interests and concerns using quotations and other specific references to the text of the Draft EA and related documents. Matters that could have been raised with specificity during the comment period on the Draft EA may not be considered if they are raised for the first time later in the decision process. This comment procedure is intended to ensure that substantive comments and concerns are made available to the FAA in a timely manner so that the FAA has an opportunity to address them.

Before including your address, phone number, email address, or other personal identifying information in your comment, be advised 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 from the public review your personal identifying information, we cannot guarantee that we will be able to do so.

The FAA has prepared the Draft EA to evaluate the potential environmental impacts of the construction and operation of TIX as a launch location for horizontally launched and landed launch vehicles and issuing a Launch Site Operator License to TCAA at TIX. The EA considers the potential environmental impacts of the Proposed Action and the No Action Alternative. The successful completion of the environmental review process does not guarantee that the FAA Office of Commercial Space Transportation would issue a Launch Site Operator License to TCAA. The project must also meet all FAA requirements of a Launch Site Operator License. Individual launch operators proposing to launch from the site would be required to obtain a separate launch operator license.

Issued in Washington, DC, on December 10, 2019.

Daniel Murray,

Manager, Space Transportation Development Division.

[FR Doc. 2019–27419 Filed 12–18–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Correction on the Notice of Final Federal Agency Actions on Proposed Kirby-Whitten Parkway (Shelby Farms Parkway) Project in Tennessee

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

ACTION: Notice; correction.

SUMMARY: The FHWA is correcting a notice published in the December 6, 2019, **Federal Register** entitled Notice of Final Federal Agency Actions on Proposed Kirby-Whitten Parkway (Shelby Farms Parkway) Project in Tennessee. This correction amends two sentences containing typographical errors in the Dates section of the notice.

FOR FURTHER INFORMATION CONTACT: For FHWA: Ms. Theresa Claxton; Program Development Team Leader; Federal Highway Administration; Tennessee Division Office; 404 BNA Drive, Building 200, Suite 508; Nashville, Tennessee 37217; Telephone (615) 781–5770; email: *Theresa.Claxton@dot.gov.* FHWA Tennessee Division Office's normal business hours are 7:30 a.m. to 4 p.m. (Central Time).

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** at 84 FR 66963 (December 6, 2019), please make the following corrections: In the **DATES** section, correct the second two sentences to read: A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before May 4, 2020. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

Issued on: December 11, 2019.

Pamela M. Kordenbrock,

Division Administrator, Nashville, Tennessee.

[FR Doc. 2019–27421 Filed 12–18–19; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0018]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 11 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions will enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Comments must be received on or before January 21, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2019–0018 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2019-0018.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket 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–2019–0018), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0018.* 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-2019-0018* 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 Operations 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 11 individuals listed in this notice have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at

least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

On July 16, 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for participation would need to meet (57 FR 31458). The current Vision Exemption Program was established in 1998, following the enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 401 (June 9, 1998). Vision exemptions are considered under the procedures established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of § 391.41(b)(10).

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely in intrastate commerce with the vision deficiency for the past three years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at *https://www.regulations.gov/docket?D=FMCSA-1998-3637.*

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrated the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively.[1] The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used three consecutive years of data, comparing the experiences of drivers in the first two years with their experiences in the final year.

III. Qualifications of Applicants

Wayne Brannon

Mr. Brannon, 66, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''I certified that in my medical opinion Mr. Brannon has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Brannon reported that he has driven tractor-trailer combinations for 35 years, accumulating 4.55 million miles. He holds a Class A CDL from North Carolina. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Raymond K. Brubaker

Mr. Brubaker, 59, has optic neuropathy in his left eye due to a vascular event in 2006. The visual acuity in his right eye is 20/15, and in his left eye, 20/70. Following an examination in 2019, his optometrist stated, ''Despite his left eye visual impairment, it is my opinion that Mr. Brubaker has sufficient vision to continue to operate a commercial vehicle.'' Mr. Brubaker reported that he has driven straight trucks for 30 years, accumulating 900,000 miles, and tractor- trailer combinations for 31 years, accumulating 930,000 miles. He holds a class A CDL from Washington. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Fred L.G. Eads, Jr.

Mr. Eads, 43, has had a retinal detachment in his right eye since birth. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''In my medical opinion, the person named above has sufficient vision to perform the driving tasks required to operate a commercial vehicle, subject to having 2 outside mirrors.'' Mr. Eads reported that he has driven straight trucks for 30 years, accumulating 1.8 million miles, and tractor-trailer combinations for three years, accumulating 30,000 miles. He holds a Class A CDL from Missouri. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Joseph L. Gomez III

Mr. Gomez, 37, has glaucoma in his left eye due to a traumatic incident in 2004. The visual acuity in his right eye is 20/20, and in his left eye, counting fingers. Following an examination in 2019, his optometrist stated, ''Patient has sufficient visual acuity to perform driving tasks of a commercial vehicle.'' Mr. Gomez reported that he has driven tractor-trailer combinations for five years, accumulating 53,000 miles. He holds a Class A CDL from Maryland. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Mack D. Jenkins

Mr. Jenkins, 44, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/80. Following an examination in 2019, his optometrist stated, ''In my medical opinion Mr. Jenkins does have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Jenkins reported that he has driven straight trucks for four years, accumulating 133,000 miles and tractor-trailer combinations for five years, accumulating 431,000 miles. He holds a class A CDL from North Carolina. His driving record for the last three years shows one crash, which he was not cited for, and no convictions for moving violations in a CMV.

[1] A thorough discussion of this issue may be found in a FHWA final rule published in the **Federal Register** on March 26, 1996 and available on the internet at *https://www.govinfo.gov/content/pkg/FR-1996-03-26/pdf/96-7226.pdf.*

Timothy B. Jones

Mr. Jones, 49, has a prosthetic in his right eye due to a traumatic incident in 1988. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2019, his ophthalmologist stated, ''In my medical opinion, Timothy has sufficient vision to operate a commercial vehicle.'' Mr. Jones reported that he has driven straight trucks for three years, accumulating 37,500 miles. He holds an operator's license from Pennsylvania. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

James J. Kyler

Mr. Kyler, 37, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/150, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''Because his vision was sufficient to obtain a commercial license in the past, and his condition has not progressed since that time, he has sufficient vision to operate a commercial vehicle.'' Mr. Kyler reported that he has driven straight trucks for nine years, accumulating 270,000 miles. He holds a Class B CDL from Oklahoma. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Robert C. Mock

Mr. Mock, 50, has had degenerative myopia in his right eye since childhood. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''In my medical opinion, I certify that Robert has sufficient vision to perform the driving tasks required to operate a commercial vehicle safely while wearing his spectacle correction.'' Mr. Mock reported that he has driven straight trucks for 13 years, accumulating 58,500 miles. He holds a Class A CDL from Kansas. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

David J. Reed

Mr. Reed, 61, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2019, his optometrist stated, ''In my medical opinion, the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Reed reported that he has driven straight trucks for seven years, accumulating 210,000 miles, and tractor-trailer combinations for one year, accumulating 40,000 miles. He holds a Class AM CDL from Texas. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Derrick A. Robinson

Mr. Robinson, 41, has complete loss of vision in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2019, his ophthalmologist stated, ''In my medical opinion, Mr. Robinson has more than sufficient vision to perform the driving test required to operate a commercial vehicle.'' Mr. Robinson reported that he has driven straight trucks for four years, accumulating 90,000 miles, and tractor-trailer combinations for 17 years, accumulating 1.9 million miles. He holds a Class A CDL from Alabama. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

David A. Simpson

Mr. Simpson, 59, has retinal scars in his right eye due to choroidal neovascularization in 2010. The visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''In my opinion, Mr. Simpson demonstrated no visual limitations other than described above and has no significant risk for operating a commercial vehicle as long as prescribed glasses are worn at all times.'' Mr. Simpson reported that he has driven straight trucks for 23 years, accumulating 598,000 miles. He holds a Class B CDL from Ohio. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments and material received before the close of business on the closing date indicated under the **DATES** section of the notice.

Issued on: December 12, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–27370 Filed 12–18–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2019–0035]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt five individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on November 22, 2019. The exemptions expire on November 22, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=* FMCSA–2019–0035 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 Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process.

DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On October 16, 2019, FMCSA published a notice announcing receipt of applications from five individuals requesting an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) and requested comments from the public (84 FR 55373). The public comment period ended on November 15, 2019, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received one comment in this proceeding. This comment supporting granting the exemptions.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on the 2007 recommendations of the Agency's Medical Expert Panel (MEP). The Agency conducted an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. In addition, the Agency reviewed the treating clinician's medical opinion related to the ability of the driver to safely operate a CMV with a history of seizure and each applicant's driving record found in the Commercial Driver's License Information System for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency (SDLA). A summary of each applicant's seizure history was discussed in the October 16, 2019, **Federal Register** notice (84 FR 55373) and will not be repeated in this notice.

These five applicants have been seizure-free over a range of 22 years while taking anti-seizure medication and maintained a stable medication treatment regimen for the last 2 years. In each case, the applicant's treating physician verified his or her seizure history and supports the ability to drive commercially.

The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers granted this exemption have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the epilepsy and seizure disorder prohibition in § 391.41(b)(8) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the five exemption applications, FMCSA exempts the following drivers from the epilepsy and seizure disorder prohibition, § 391.41(b)(8), subject to the requirements cited above:

Jacob Brenwall (WI)
Frederick Costello (NY)
Robert Davidson (ID)
Joshua Pittman (CA)
Philip Stoddart (NY)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: December 12, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–27373 Filed 12–18–19; 8:45 am]

BILLING CODE 4910–EX–P

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0206]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from eight individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to control a commercial motor vehicle (CMV) to drive in interstate commerce. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: Comments must be received on or before January 21, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Operations Docket No. FMCSA–2019–0206 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2019-0206*. Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket 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–2019–0206), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0206*. 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-2019-0206* 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 Operations 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 eight individuals listed in this notice have requested an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8). 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 for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The criteria states that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the ME in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver has had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.,* drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

As a result of MEs misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified ME based on the physical qualification standards and medical best practices.

On January 15, 2013, FMCSA announced in a Notice of Final Disposition titled, ''Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders,'' (78 FR 3069), its decision to grant requests from 22 individuals for exemptions from the regulatory requirement that interstate CMV drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' Since that time, the Agency has published additional notices granting requests from individuals for exemptions from the regulatory requirement regarding epilepsy found in § 391.41(b)(8).

To be considered for an exemption from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), applicants must meet the criteria in the 2007 recommendations of the Agency's Medical Expert Panel (78 FR 3069).

III. Qualifications of Applicants

Daniel Bretz Jr.

Mr. Bretz is a 44 year-old class C driver in Pennsylvania. He has a history of seizure disorder and has been seizure free since 2011. He takes anti-seizure medication with the dosage and frequency remaining the same since April 2012. His physician states that he is supportive of Mr. Bretz receiving an exemption.

Frank Corino

Mr. Corino is a 43 year-old class D driver in New Jersey. He has a history of seizure disorder and has been seizure free since 2004. He takes anti-seizure medication with the dosage and frequency remaining the same since 2004. His physician states that he is supportive of Mr. Corino receiving an exemption.

Darlene Michael

Ms. Michael is a 64 year-old class B Commercial Learner's Permit driver in Missouri. She has a history of seizure disorder and has been seizure free since 2011. She takes anti-seizure medication with the dosage and frequency remaining the same since 2012. Her physician states that he is supportive of Ms. Michael receiving an exemption.

Sonja Morgan

Ms. Morgan is a 41 year-old class C driver in North Carolina. She has a history of epilepsy and has been seizure free since 2008. She takes anti-seizure medication with the dosage and frequency remaining the same since 2008. Her physician states that he is supportive of Ms. Morgan receiving an exemption.

Pagagrong Newsome

Ms. Newsome is a 51 year-old class C driver in California. She has a history of seizure disorder and has been seizure free since 2009. She takes anti-seizure medication with the dosage and frequency remaining the same since 2015. Her physician states that he is supportive of Ms. Newsome receiving an exemption.

Matthew Scarlata

Mr. Scarlata is a 30 year-old class D driver in New York. He has a history of epilepsy and has been seizure free since 2005. He takes anti-seizure medication with the dosage and frequency remaining the same since 2016. His physician states that he is supportive of Mr. Scarlata receiving an exemption.

Jeffrey Totten

Mr. Totten is a 50 year-old class A, M CDL holder in Kansas. He has a history of seizure disorder and has been seizure free since 2005. He takes anti-seizure medication with the dosage and frequency remaining the same since February 2009. His physician states that he is supportive of Mr. Totten receiving an exemption.

Michael Vitch

Mr. Vitch is a 49 year-old class A CDL holder in Mississippi. He has a history of epilepsy and has been seizure free since 2003. He takes anti-seizure medication with the dosage and frequency remaining the same since 2005. His physician states that he is supportive of Mr. Vitch receiving an exemption.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Issued on: December 12, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–27374 Filed 12–18–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0384; FMCSA–2015–0326]

Qualification of Drivers; Exemption Applications; Hearing

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for three individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on June 10, 2019. The exemptions expire on June 10, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2014-0384* or *http://*

www.regulations.gov/docket?D=FMCSA-2015-0326 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 Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On August 28, 2019, FMCSA published a notice announcing its decision to renew exemptions for four individuals from the hearing standard in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (84 FR 45203). The public comment period ended on September 27, 2019, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing exemptions for three of the individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11). The fourth individual was Mr. Thomas Carr whose name was published twice in error.

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based upon its evaluation of the three renewal exemption applications, FMCSA announces its decision to exempt the following drivers from the hearing requirement in § 391.41(b)(11).

As of June 10, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (84 FR 45203):

Robert Dale Brunett (OK); Thomas M. Carr (PA); Jeffrey Webber (OK)

FMCSA is making a technical amendment for Mr. Thomas M. Carr whose name was published twice in the notice for comment in error.

The drivers were included in docket number FMCSA–2014–0384 and FMCSA–2015–0326. Their exemptions are applicable as of June 10, 2019, and will expire on June 10, 2021.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: December 12, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–27371 Filed 12–18–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0111]

Qualification of Drivers; Exemption Applications; Hearing

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

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 17 individuals for an exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before January 21, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2019–0111 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2019-0011.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket 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–2019–0111), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there

are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0111.* 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-2019-0111* 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 Operations 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 17 individuals listed in this notice have requested an exemption from the hearing requirement in 49 CFR 391.41(b)(11). 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 for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

On February 1, 2013, FMCSA announced in a Notice of Final Disposition titled, ''Qualification of Drivers; Application for Exemptions; National Association of the Deaf,'' (78 FR 7479), its decision to grant requests from 40 individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers. Since that time the Agency has published additional notices granting requests from hard of hearing and deaf individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers.

III. Qualifications of Applicants

Bart Beasom

Mr. Beasom, 55, holds a class A CDL in Pennsylvania.

David Billingsley

Mr. Billingsley, 82, holds a class A CDL in Indiana.

Stephen Daniels

Mr. Daniels, 59, holds a class DL–C CDL in Kansas.

Paul Ditimi

Mr. Ditimi, 66, holds a class D CDL in Connecticut.

Herman Fleck

Mr. Fleck, 62, holds a class A CDL in Pennsylvania.

John Freeman

Mr. Freeman, 61, holds a class D CDL in Massachusetts.

Nicholas Green

Mr. Green, 35, holds a class E CDL in Florida.

Richard Hall

Mr. Hall, 49, holds a class DA CDL in Kentucky.

John Malm

Mr. Malm, 45, holds a class B CDL in Illinois.

Mark Merrow

Mr. Merrow, 61, holds a class CA CDL in Michigan.

Joyann Nipper

Ms. Nipper, 51, holds a class D CDL in Iowa.

Jeffry Patterson

Mr. Patterson, 60, holds a class A CDL in Ohio.

William Ranson

Mr. Ranson, 54, holds a class D CDL in Arkansas.

Michael Steffen

Mr. Steffen, 53, holds operator's license in Indiana.

Justin Stephen

Mr. Stephen, 31, holds a class D CDL in South Carolina.

Michelle Trott

Ms. Trott, 50, holds a class D CDL in Tennessee.

Sherrie Willey

Ms. Willey, 43, holds a class R CDL in Washington.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Issued on: December 12, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–27372 Filed 12–18–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Bank Secrecy Act Advisory Group; Solicitation of Application for Membership

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

ACTION: Notice and request for nominations.

SUMMARY: FinCEN is inviting the public to nominate financial institutions, trade groups, and non-federal regulators or law enforcement agencies for membership on the Bank Secrecy Act Advisory Group. New members will be selected for three-year membership terms.

DATES: Nominations must be received by January 21, 2020.

ADDRESSES: Nominations must be emailed to *BSAAG@fincen.gov.*

FOR FURTHER INFORMATION CONTACT: FinCEN Resource Center at 800–767–2825.

SUPPLEMENTARY INFORMATION: The Annunzio-Wylie Anti-Money Laundering Act of 1992 required the Secretary of the Treasury to establish a Bank Secrecy Act Advisory Group (BSAAG) consisting of representatives from federal regulatory and law enforcement agencies, financial institutions, and trade groups with members subject to the requirements of the Bank Secrecy Act, 31 CFR 1000–1099 *et seq.* or Section 6050I of the Internal Revenue Code of 1986. The BSAAG is the means by which the Treasury receives advice on the operations of the Bank Secrecy Act. As chair of the BSAAG, the Director of FinCEN is responsible for ensuring that relevant issues are placed before the BSAAG for review, analysis, and discussion.

BSAAG membership is open to financial institutions, trade groups, and non-federal regulators and law enforcement agencies. Membership is granted to organizations, not to individuals. Organizational members will be selected to serve a three-year term and must designate one individual to represent that member at plenary meetings. The designated representative should be knowledgeable about Bank Secrecy Act requirements and the representative's organization must be able and willing to devote the personnel time and effort. Examples of expected effort include actively sharing not just anecdotal perspectives, but also quantifiable insights on BSA requirements and industry trends in BSAAG discussions. The organization's representative must be able to attend biannual plenary meetings, generally conducted over one or two days, held in Washington, DC, in May and October. Additional BSAAG meetings are held by phone or in person.

It is important to provide complete answers to the following items, as nominations will be evaluated on the information provided through this application process. There is no formal application; interested organizations may submit their nominations via email or email attachment. Nominations should consist of:

- Name of the organization requesting membership
- Point of contact, title, address, email address and phone number
- Description of the financial institution or trade group and its involvement with the Bank Secrecy Act, 31 CFR 1000–1099 *et seq.*
- Reasons why the organization's participation on the BSAAG will bring value to the group

Organizations may nominate themselves, but nominations for individuals who are not representing an organization will not be considered. Members will not be remunerated for their time, services, or travel. In making the selections, FinCEN will seek to complement current BSAAG members in terms of affiliation, industry, and geographic representation. The Director of FinCEN retains full discretion on all membership decisions. The Director may consider prior years' applications when making selections and does not limit consideration to institutions nominated by the public when making selections.

Jamal El-Hindi,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2019–27358 Filed 12–18–19; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Information Collection Requirements in Connection With the Imposition of a Special Measure Concerning Commercial Bank of Syria, Including Its Subsidiary, Syrian Lebanese Commercial Bank, as a Financial Institution of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), U.S. Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of a continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on a renewal, without change, to information collection requirements finalized on March 15, 2006, imposing a special measure with respect to Commercial Bank of Syria, including its subsidiary, Syrian Lebanese Commercial Bank, as a financial institution of primary money laundering concern. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments are welcome and must be received on or before February 18, 2020.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FinCEN–2019–0009 and the specific Office of Management and Budget (OMB) control number 1506–0036.
- *Mail:* Global Investigations Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FinCEN–2019–0009 and OMB control number 1506–0036.

Please submit comments by one method only. Comments will also be incorporated to FinCEN's retrospective regulatory review process, as mandated by E.O. 12866 and 13563. All comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: FinCEN Resource Center at 1–800–767–2825 or 1–703–905–3591 (not a toll free number) and select option 3 for

regulatory questions. Email inquiries can be sent to *FRC@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

a. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56 (the USA PATRIOT Act). Title III of the USA PATRIOT Act amended the anti-money laundering (AML) provisions of the Bank Secrecy Act (BSA), codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary of the Treasury (the Secretary) to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.[1]

Section 311 of the USA PATRIOT Act (Section 311), codified at 31 U.S.C. 5318A, grants FinCEN the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, financial institution, class of transactions, or type of account is of ''primary money laundering concern,'' to require domestic financial institutions and financial agencies to take certain ''special measures'' to address the primary money laundering concern.

FinCEN may impose one or more of these special measures in order to protect the U.S. financial system from these threats. Special measures one through four, codified at 31 U.S.C. 5318A(b)(1)–(b)(4), impose additional recordkeeping, information collection, and reporting requirements on covered U.S. financial institutions. The fifth special measure, codified at 31 U.S.C. 5318A(b)(5), allows FinCEN to impose prohibitions or conditions on the opening or maintenance of certain correspondent accounts.

b. Overview of the Current Regulatory Provisions Regarding Special Measures Concerning Commercial Bank of Syria.

On March 15, 2006, FinCEN issued a final rule imposing the fifth special measure to prohibit covered financial institutions from opening or maintaining a correspondent account for, or on behalf of, Commercial Bank of Syria.[2] The rule further requires covered financial institutions to apply due diligence to their correspondent accounts that is reasonably designed to guard against their indirect use by Commercial Bank of Syria. See 31 CFR 1010.653.

Information Collection Under the Fifth Special Measure

The notification requirement in section 1010.653(b)(2)(i)(A) is intended to aid cooperation from correspondent account holders in denying Commercial Bank of Syria access to the U.S. financial system. The information required to be maintained by section 1010.653(b)(3)(i) will be used by federal agencies and certain self-regulatory organizations to verify compliance by covered financial institutions with the provisions of section 1010.653.

II. Paperwork Reduction Act (PRA)

Title: Renewal of Information Collection Requirements in connection with the Imposition of a Special Measure concerning Commercial Bank of Syria, including its subsidiary Syrian Lebanese Commercial Bank, as a financial institution of primary money laundering concern.

OMB Control Number: 1506–0036.

Abstract: FinCEN is issuing this notice to renew the OMB control number for the imposition of a special measure concerning Commercial Bank of Syria, including its subsidiary Syrian Lebanese Commercial Bank, as a financial institution of primary money laundering concern pursuant to the authority contained in 31 U.S.C. 5318A.

Type of Review: Renewal without change of a currently approved collection.

Affected Public: Businesses and certain not-for-profit institutions.

Frequency: One time notification. See 31 CFR part 1010.653(b)(2)(i)(A) and 31 CFR part 1010.653(b)(3)(i).

Estimated Number of Respondents: 23,615.[3]

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden: 23,615 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years. Generally, information collected pursuant to the BSA is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

When the final rule was published on March 15, 2006, the number of financial institutions affected by the rule was estimated at 5,000. FinCEN has since revised the estimated number of affected financial institutions upward to account for all domestic financial institutions that could potentially maintain correspondent accounts for foreign banks, and recognizing that, under the final rule, covered financial institutions are required to apply due diligence to their correspondent accounts that is reasonably designed to guard against their indirect use by Commercial Bank of Syria.

There are approximately 23,615 such financial institutions doing business in the United States. As noted, this revision should not have a significant impact on a substantial number of small entities.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

[1] Therefore, references to the authority of the Secretary of the Treasury under Section 311 of the USA PATRIOT Act apply equally to the Director of FinCEN.

[2] References to Commercial Bank of Syria include its Syrian Lebanese Commercial Bank, and any other branch, office, or subsidiary of Commercial Bank of Syria or Syrian Lebanese Commercial Bank. *See* 71 FR, 13260, No. 50, March 15, 2006.

[3] The above Estimated Number of Respondents is based on sum of the following numbers:

- 5,358 banks [Federal Deposit Insurance Corporation, *Key Statistics* web page, April 25, 2019];
- 5,375 federally-insured credit unions [National Credit Union Administration, *Quarterly Credit Union Data Summary,* December 31, 2018];
- 125 privately-insured credit unions [General Accountability Office, *PRIVATE DEPOSIT INUSRANCE: Credit Unions Largely Complied with Disclosure Rules, but Rules Should Be Clarified,* March 2017];
- 1,130 introducing brokers [National Futures Association website, March 31, 2019];
- 64 futures commission merchants [National Futures Association website, March 31, 2019];
- 3,607 securities firms [Financial Industry Regulatory Authority website, December 31, 2018]; and,
- 7,956 U.S. mutual funds [Investment Company Institute, *2018 Factbook,* 2018].

(Authority: Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A))

Jamal El-Hindi,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2019–27359 Filed 12–18–19; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Internal Revenue Service Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before January 21, 2020 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

1. *Title:* Qualified Business Income Deduction Simplified Computation (Form 8995).

OMB Control Number: 1545–NEW.

Type of Review: New collection.

Description: Form 8995 is used by taxpayers to figure the deduction for items of income, gain, deduction, and loss from trades or businesses that are effectively connected with the conduct of a trade or business in the U.S.

Form: 8995.

Affected Public: Individuals and households.

Estimated Number of Respondents: 10,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 10,000.

Estimated Time per Response: 3 hours.

Estimated Total Annual Burden Hours: 30,000.

2. *Title:* Initial and Annual Statements of Qualified Opportunity Fund (QOF) Investments (Form 8997).

OMB Control Number: 1545–NEW.

Type of Review: New collection.

Description: Form 8997 will be used by eligible taxpayers holding a qualified opportunity fund (QOF) investment to report their QOF investments and deferred gains.

Form: 8997.

Affected Public: Individuals and households.

Estimated Number of Respondents: 10,000.

Frequency of Response: Once, Annually.

Estimated Total Number of Annual Responses: 10,000.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 10,000.

3. *Title:* Revenue Procedure 2019–38 Section 199A Trade or Business Safe Harbor: Rental Real Estate.

OMB Control Number: 1545–NEW.

Type of Review: New collection.

Description: Congress enacted section 199A to provide a deduction to non-corporate taxpayers of up to 20 percent of the taxpayer's qualified business income from each of the taxpayer's qualified trades or businesses, including those operated through a partnership, S corporation, or sole proprietorship, as well as a deduction of up to 20 percent of aggregate qualified real estate investment trust (REIT) dividends and qualified publicly traded partnership income.

This revenue procedure provides a safe harbor under which a rental real estate enterprise will be treated as a trade or business for purposes of section 199A of the Internal Revenue Code (Code) and §§ 1.199A–1 through 1.199A–6 of the Income Tax Regulations (26 CFR part I).

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 1,100,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 1,100,000.

Estimated Time per Response: 5 hours.

Estimated Total Annual Burden Hours: 5,500,000.

4. *Title:* Form 4506–T and Form 4506–C Request for Transcript of Tax Return and IVES Request for Transcript of Tax Return.

OMB Control Number: 1545–1872.

Type of Review: Revision of a currently approved collection.

Description: Internal Revenue Code section 7513 allows taxpayers to request a copy of a tax return or related products. Form 4506–T is used to request all products except copies of returns. The information provided will be used to search the taxpayers account and provide the requested information and to ensure that the requestor is the taxpayer or someone authorized by the taxpayer to obtain the documents requested. Form 4506–C is used to permit the cleared and vetted Income Verification Express Service (IVES) participants to request tax return information on the behalf of the authorizing taxpayer.

Form: 4506–T, 4506–C.

Affected Public: Individuals and households.

Estimated Number of Respondents: 18,263,857.

Frequency of Response: Once, On occasion.

Estimated Total Number of Annual Responses: 18,263,857.

Estimated Time per Response: 42 minutes.

Estimated Total Annual Burden Hours: 12,803,169.

5. *Title:* Nonemployee Compensation.

OMB Control Number: 1545–0116.

Type of Review: Reinstatement of a previously approved collection.

Description: Form 1099–NEC is used to report payments made in the course of a trade or business for services performed by someone who is not an employee, cash payments for fish and withholding of federal income tax under the backup withholding rules.

Form: 1099–NEC.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 70,802,480.

Frequency of Response: On occasion, annually.

Estimated Total Number of Annual Responses: 70,802,480.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 5,900,206.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: December 13, 2019.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2019–27352 Filed 12–18–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; U.S. Business Income Tax Return

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit 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, on or after the date of publication of this notice. The public is invited to submit comments on this request.

DATES: Comments should be received on or before January 21, 2020 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

PRA Approval of Forms Used by Business Taxpayers

Today, over 90 percent of all business entity tax returns are prepared using software by the taxpayer or with preparer assistance. These are forms used by business taxpayers. These include Forms *1065, 1066, 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–S, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–REIT, 1120–RIC, 1120–POL,* and related schedules that business entity taxpayers attach to their tax returns (see Appendix A for this notice).

Tax Compliance Burden

Tax compliance burden is defined as the time and money taxpayers spend to comply with their tax filing responsibilities. Time-related activities include recordkeeping, tax planning, gathering tax materials, learning about the law and what you need to do, and completing and submitting the return. Out-of- pocket costs include expenses such as purchasing tax software, paying a third-party preparer, and printing and postage. Tax compliance burden does not include a taxpayer's tax liability, economic inefficiencies caused by sub-optimal choices related to tax deductions or credits, or psychological costs.

PRA Submission to OMB

Title: U.S. Business Income Tax Return.

OMB Number: 1545–0123.

Form Numbers: Forms 1065, 1066, 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–S, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–REIT, 1120–RIC, 1120–POL and all attachments to these forms (see the Appendix to this notice).

Abstract: These forms are used by businesses to report their income tax liability.

Current Actions: The change in estimated aggregate compliance burden can be explained by three major sources—technical adjustments, statutory changes, and discretionary agency (IRS) actions.

Type of Review: Revision of currently approved collections.

Affected Public: Corporations and Pass-Through Entities.

Estimated Number of Respondents: 12,000,000.

Total Estimated Time: 3.344 billion hours (3,344,000,000 hours).

Estimated Time per Respondent: 279 hours (278.666667 hours).

Total Estimated Out-of-Pocket Costs: $61.558 billion ($61,558,000,000).

Estimated Out-of-Pocket Cost per Respondent: $5,130.

Total Monetized Burden: 190,981 billion.

Estimated Total Monetized Burden per Respondent: $15,915.

Tables 1, 2, and 3 below show the burden model estimates for each of the three classifications of business taxpayers: Partnerships (Table 1), corporations (Table 2) and S corporations (Table 3). As the tables show, the average filing compliance is different for the three forms of business. Showing a combined average burden for all businesses would understate the burden for taxable corporations and overstate the burden for the two pass-through entities (partnerships and corporations). In addition, the burden for small and large businesses is shown separately for each type of business entity in order to clearly convey the substantially higher burden faced by the largest businesses.

TABLE 1—TAXPAYER BURDEN FOR PARTNERSHIPS

[Forms 1065, 1066, and all attachments]

Primary form filed or type of taxpayer	Total number of returns	Average time	Average cost	Average monetized burden
All Partnerships	4.5	290	5,900	17,800
Small	4.2	270	4,400	13,200
Large *	0.3	610	29,000	89,300

TABLE 2—TAXPAYER BURDEN FOR TAXABLE CORPORATIONS

[Forms 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–POL and all attachments]

Primary form filed or type of taxpayer	Total number of returns	Average time	Average cost	Average monetized burden
All Taxable Corporations	2.1	335	7,700	23,500
Small	2.0	280	4,000	13,500

TABLE 2—TAXPAYER BURDEN FOR TAXABLE CORPORATIONS—Continued

[Forms 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–POL and all attachments]

Primary form filed or type of taxpayer	Total number of returns	Average time	Average cost	Average monetized burden
Large *	0.1	1,255	70,200	194,800

TABLE 3—TAXPAYER BURDEN PASS-THROUGH CORPORATIONS

[Forms 1120–REIT, 1120–RIC, 1120–S and all attachments]

Primary form filed or type of taxpayer	Total number of returns	Average time	Average cost	Average monetized burden
All Pass-Through Corporations	5.4	245	3,500	11,300
Small	5.3	240	3,100	10,200
Large *	0.1	610	30,900	91,500

* A large business is defined as one having end-of-year assets greater than $10 million. A large business is defined the same way for partnerships, taxable corporations, and pass-through corporations. A small business is any business that doesn't meet the definition of a large business.

Tables 1A—3A show the average burden estimate for business entities by *total positive income.* Total positive income is defined as the sum of all positive income amounts reported on the return.

TABLE 1A—TAXPAYER BURDEN FOR PARTNERSHIPS

[Forms 1065, 1066, and all attachments]

Total positive income *	Average time (hrs)	Average money ($)	Total average monetized burden ($)
<$100,000	250	3,500	9,000
$100,000 to $999,999	330	7,500	24,200
$1,000,000 to $9,999,999	425	14,300	57,300
$10,000,000 to $99,999,999	960	52,800	153,900
>$100,000,000	2,540	208,900	476,200

TABLE 2A—TAXPAYER BURDEN FOR TAXABLE CORPORATIONS

[Forms 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–POL and all attachments]

Total positive income *	Average time (hrs)	Average money ($)	Total average monetized burden ($)
<$100,000	265	3,000	7,500
$100,000 to $999,999	345	6,400	20,600
$1,000,000 to $9,999,999	385	14,400	55,900
$10,000,000 to $99,999,999	1,090	69,100	194,800
>$100,000,000	4,620	385,300	915,400

TABLE 3A—TAXPAYER BURDEN PASS-THROUGH CORPORATIONS

[Forms 1120–REIT, 1120–RIC, 1120–S and all attachments]

Total positive income *	Average time (hrs)	Average money ($)	Total average monetized burden ($)
<100,000	215	1,900	5,000
$100,000 to $999,999	270	3,800	12,500
$1,000,000 to $9,999,999	285	8,600	35,300
$10,000,000 to $99,999,999	660	36,000	103,100
>$100,000,000	1,770	146,700	326,400

* Total positive income is the sum of all positive income amounts reported on the return.
Source: RAAS:KDA (12–2–19).

Note: The data shown are the best estimates for 2019 business entity income tax returns. Reported time and cost burdens are national averages and do not reflect a ''typical'' case. Most taxpayers experience lower than average burden varying considerably by taxpayer type. The estimates are subject to change as new forms and data become available.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: December 13, 2019.

Spencer W. Clark,

Treasury PRA Clearance Officer.

APPENDIX A

Product	Title
Form 1042	Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.
Form 1042–S	Foreign Person's U.S. Source Income Subject to Withholding.
Form 1042–T	Annual Summary and Transmittal of Forms 1042–S.
Form 1065	U.S. Return of Partnership Income.
Form 1065 (SCH B–1)	Information for Partners Owning 50% or More of the Partnership.
Form 1065 (SCH B–2)	Election Out of the Centralized Partnership Audit Regime.
Form 1065 (SCH C)	Additional Information for Schedule M–3 Filers.
Form 1065 (SCH D)	Capital Gains and Losses.
Form 1065 (SCH K–1)	Partner's Share of Income, Deductions, Credits, etc.
Form 1065 (SCH M–3)	Net Income (Loss) Reconciliation for Certain Partnerships.
Form 1065–X	Amended Return or Administrative Adjustment Request (AAR).
Form 1066	U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return.
Form 1066 (SCH Q)	Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation.
Form 1118	Foreign Tax Credit-Corporations.
Form 1118 (SCH I)	Reduction of Foreign Oil and Gas Taxes.
Form 1118 (SCH J)	Adjustments to Separate Limitation Income (Loss) Categories for Determining Numerators of Limitation Fractions, Year-End Recharacterization Balances, and Overall Foreign and Domestic Loss Account Balances.
Form 1118 (SCH K)	Foreign Tax Carryover Reconciliation Schedule.
Form 1120	U.S. Corporation Income Tax Return.
Form 1120 (SCH B)	Additional Information for Schedule M–3 Filers.
Form 1120 (SCH D)	Capital Gains and Losses.
Form 1120 (SCH G)	Information on Certain Persons Owning the Corporation's Voting Stock.
Form 1120 (SCH H)	Section 280H Limitations for a Personal Service Corporation (PSC).
Form 1120 (SCH M–3)	Net Income (Loss) Reconciliation for Corporations With Total Assets of $10 Million of More.
Form 1120 (SCH N)	Foreign Operations of U.S. Corporations.
Form 1120 (SCH O)	Consent Plan and Apportionment Schedule for a Controlled Group.
Form 1120 (SCH PH)	U.S. Personal Holding Company (PHC) Tax.
Form 1120 (SCH UTP)	Uncertain Tax Position Statement.
Form 1120–C	U.S. Income Tax Return for Cooperative Associations.
Form 1120–F	U.S. Income Tax Return of a Foreign Corporation.
Form 1120–F (SCH H)	Deductions Allocated to Effectively Connected Income Under Regulations Section 1.861–8.
Form 1120–F (SCH I)	Interest Expense Allocation Under Regulations Section 1.882–5.
Form 1120–F (SCH M1 & M2)	Reconciliation of Income (Loss) and Analysis of Unappropriated Retained Earnings per Books.
Form 1120–F (SCH M–3)	Net Income (Loss) Reconciliation for Foreign Corporations With Reportable Assets of $10 Million or More.
Form 1120–F (SCH P)	List of Foreign Partner Interests in Partnerships.
Form 1120–F (SCH S)	Exclusion of Income From the International Operation of Ships or Aircraft Under Section 883.
Form 1120–F (SCH V)	List of Vessels or Aircraft, Operators, and Owners.
Form 1120–FSC	U.S. Income Tax Return of a Foreign Sales Corporation.
Form 1120–FSC (SCH P)	Transfer Price or Commission.
Form 1120–H	U.S. Income Tax Return for Homeowners Associations.
Form 1120–IC–DISC	Interest Charge Domestic International Sales Corporation Return.
Form 1120–IC–DISC (SCH K)	Shareholder's Statement of IC–DISC Distributions.
Form 1120–IC–DISC (SCH P)	Intercompany Transfer Price or Commission.
Form 1120–IC–DISC (SCH Q)	Borrower's Certificate of Compliance With the Rules for Producer's Loans.
Form 1120–L	U.S. Life Insurance Company Income Tax Return.
Form 1120–L (SCH M–3)	Net Income (Loss) Reconciliation for U.S. Life Insurance Companies With Total Assets of $10 Million or More.
Form 1120–ND*	Return for Nuclear Decommissioning Funds and Certain Related Persons.
Form 1120–PC	U.S. Property and Casualty Insurance Company Income Tax Return.
Form 1120–PC (SCH M–3)	Net Income (Loss) Reconciliation for U.S. Property and Casualty Insurance Companies With Total Assets of $10 Million or More.
Form 1120–POL	U.S. Income Tax Return for Certain Political Organizations.
Form 1120–REIT	U.S. Income Tax Return for Real Estate Investment Trusts.
Form 1120–RIC	U.S. Income Tax Return for Regulated Investment Companies.
Form 1120–S	U.S. Income Tax Return for an S Corporation.
Form 1120–S (SCH B–1)	Information on Certain Shareholders of an S Corporation.
Form 1120–S (SCH D)	Capital Gains and Losses and Built-In Gains.
Form 1120–S (SCH K–1)	Shareholder's Share of Income, Deductions, Credits, etc.
Form 1120–S (SCH M–3)	Net Income (Loss) Reconciliation for S Corporations With Total Assets of $10 Million or More.
Form 1120–SF	U.S. Income Tax Return for Settlement Funds (Under Section 468B).
Form 1120–W	Estimated Tax for Corporations.
Form 1120–X	Amended U.S. Corporation Income Tax Return.
Form 1122	Authorization and Consent of Subsidiary Corporation to be Included in a Consolidated Income Tax Return.

APPENDIX A—Continued

Product	Title
Form 1125–A	Cost of Goods Sold.
Form 1125–E	Compensation of Officers.
Form 1127	Application for Extension of Time for Payment of Tax Due to Undue Hardship.
Form 1128	Application to Adopt, Change, or Retain a Tax Year.
Form 1138	Extension of Time For Payment of Taxes By a Corporation Expecting a Net Operating Loss Carryback.
Form 1139	Corporation Application for Tentative Refund.
Form 2220	Underpayment of Estimated Tax By Corporations.
Form 2438	Undistributed Capital Gains Tax Return.
Form 2439	Notice to Shareholder of Undistributed Long-Term Capital Gains.
Form 2553	Election by a Small Business Corporation.
Form 2848	Power of Attorney and Declaration of Representative.
Form 3115	Application for Change in Accounting Method.
Form 3468	Investment Credit.
Form 3520	Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.
Form 3520–A	Annual Return of Foreign Trust With a U.S. Owner.
Form 3800	General Business Credit.
Form 4136	Credit for Federal Tax Paid on Fuels.
Form 4255	Recapture of Investment Credit.
Form 4466	Corporation Application for Quick Refund of Overpayment of Estimated Tax.
Form 4562	Depreciation and Amortization (Including Information on Listed Property).
Form 4684	Casualties and Thefts.
Form 4797	Sales of Business Property.
Form 4810	Request for Prompt Assessment Under Internal Revenue Code Section 6501(d).
Form 4876–A	Election to Be Treated as an Interest Charge DISC.
Form 5452	Corporate Report of Nondividend Distributions.
Form 5471	Information Return of U.S. Persons With Respect To Certain Foreign Corporations.
Form 5471 (SCH E)	Income, War Profits, and Excess Profits Taxes Paid or Accrued.
Form 5471 (SCH H)	Current Earnings and Profits.
Form 5471 (SCH I–1)	Information for Global Intangible Low-Taxed Income.
Form 5471 (SCH J)	Accumulated Earnings and Profits (E&P) of Controlled Foreign Corporation.
Form 5471 (SCH M)	Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons.
Form 5471 (SCH O)	Organization or Reorganization of Foreign Corporation, and Acquisitions and Dispositions of its Stock.
Form 5471 (SCH P)	Previously Taxed Earnings and Profits of U.S. Shareholder of Certain Foreign Corporations.
Form 5472	Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.
Form 56	Notice Concerning Fiduciary Relationship.
Form 56–F	Notice Concerning Fiduciary Relationship of Financial Institution.
Form 5713	International Boycott Report.
Form 5713 (SCH A)	International Boycott Factor (Section 999(c)(1)).
Form 5713 (SCH B)	Specifically Attributable Taxes and Income (Section 999(c)(2)).
Form 5713 (SCH C)	Tax Effect of the International Boycott Provisions.
Form 5735	American Samoa Economic Development Credit.
Form 5735 Schedule P	Allocation of Income and Expenses Under Section 936(h)(5).
Form 5884	Work Opportunity Credit.
Form 5884–A	Credits for Affected Midwestern Disaster Area Employers (for Employers Affected by Hurricane Harvey, Irma, or Maria or Certain California Wildfires).
Form 6198	At-Risk Limitations.
Form 6478	Biofuel Producer Credit.
Form 6627	Environmental Taxes.
Form 6765	Credit for Increasing Research Activities.
Form 6781	Gains and Losses From Section 1256 Contracts and Straddles.
Form 7004	Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns.
Form 8023	Elections Under Section 338 for Corporations Making Qualified Stock Purchases.
Form 8050	Direct Deposit Corporate Tax Refund.
Form 8082	Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).
Form 8275	Disclosure Statement.
Form 8275–R	Regulation Disclosure Statement.
Form 8283	Noncash Charitable Contributions.
Form 8288	U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests.
Form 8288–A	Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests.
Form 8288–B	Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests.
Form 8300	Report of Cash Payments Over $10,000 Received In a Trade or Business.
Form 8302	Electronic Deposit of Tax Refund of $1 Million or More.
Form 8308	Report of a Sale or Exchange of Certain Partnership Interests.
Form 8329	Lender's Information Return for Mortgage Credit Certificates (MCCs).
Form 8404	Interest Charge on DISC-Related Deferred Tax Liability.
Form 8453–C	U.S. Corporation Income Tax Declaration for an IRS e-file Return.
Form 8453–I	Foreign Corporation Income Tax Declaration for an IRS e-file Return.

APPENDIX A—Continued

Product	Title
Form 8453–PE	U.S. Partnership Declaration for an IRS e-file Return.
Form 8453–S	U.S. S Corporation Income Tax Declaration for an IRS e-file Return.
Form 851	Affiliations Schedule.
Form 8586	Low-Income Housing Credit.
Form 8594	Asset Acquisition Statement Under Section 1060.
Form 8609	Low-Income Housing Credit Allocation and Certification.
Form 8609–A	Annual Statement for Low-Income Housing Credit.
Form 8611	Recapture of Low-Income Housing Credit.
Form 8621	Information Return By Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
Form 8621–A	Return by a Shareholder Making Certain Late Elections to End Treatment as a Passive Foreign Investment Company.
Form 8655	Reporting Agent Authorization.
Form 8697	Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.
Form 8703	Annual Certification of a Residential Rental Project.
Form 8716	Election To Have a Tax Year Other Than a Required Tax Year.
Form 8752	Required Payment or Refund Under Section 7519.
Form 8804	Annual Return for Partnership Withholding Tax (Section 1446).
Form 8804 (SCH A)	Penalty for Underpayment of Estimated Section 1446 Tax for Partnerships.
Form 8804–C	Certificate of Partner-Level Items to Reduce Section 1446 Withholding.
Form 8804–W	Installment Payments of Section 1446 Tax for Partnerships.
Form 8805	Foreign Partner's Information Statement of Section 1446 Withholding tax.
Form 8806	Information Return for Acquisition of Control or Substantial Change in Capital Structure.
Form 8810	Corporate Passive Activity Loss and Credit Limitations.
Form 8813	Partnership Withholding Tax Payment Voucher (Section 1446).
Form 8816	Special Loss Discount Account and Special Estimated Tax Payments for Insurance Companies.
Form 8819	Dollar Election Under Section 985.
Form 8820	Orphan Drug Credit.
Form 8822–B	Change of Address—Business.
Form 8824	Like-Kind Exchanges.
Form 8825	Rental Real Estate Income and Expenses of a Partnership or an S Corporation.
Form 8826	Disabled Access Credit.
Form 8827	Credit for Prior Year Minimum Tax-Corporations.
Form 8830	Enhanced Oil Recovery Credit.
Form 8832	Entity Classification Election.
Form 8833	Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).
Form 8834	Qualified Electric Vehicle Credit.
Form 8835	Renewable Electricity, Refined Coal, and Indian Coal Production Credit.
Form 8838	Consent to Extend the Time To Assess Tax Under Section 367—Gain Recognition Agreement.
Form 8838–P	Consent To Extend the Time To Assess Tax Pursuant to the Gain Deferral Method (Section 721(c)).
Form 8842	Election to Use Different Annualization Periods for Corporate Estimated Tax.
Form 8844	Empowerment Zone Employment Credit.
Form 8845	Indian Employment Credit.
Form 8846	Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.
Form 8848	Consent to Extend the Time to Assess the Branch Profits Tax Under Regulations Sections 1.884–2(a) and (c).
Form 8858	Information Return of U.S. Persons With Respect to Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs).
Form 8858 (SCH M)	Transactions Between Foreign Disregarded Entity of a Foreign Tax Owner and the Filer or Other Related Entities.
Form 8864	Biodiesel and Renewable Diesel Fuels Credit.
Form 8865	Return of U.S. Persons With Respect to Certain Foreign Partnerships.
Form 8865 (SCH G)	Statement of Application for the Gain Deferral Method Under Section 721(c).
Form 8865 (SCH H)	Acceleration Events and Exceptions Reporting Relating to Gain Deferral Method Under Section 721(c).
Form 8865 (SCH K–1)	Partner's Share of Income, Deductions, Credits, etc.
Form 8865 (SCH O)	Transfer of Property to a Foreign Partnership.
Form 8865 (SCH P)	Acquisitions, Dispositions, and Changes of Interests in a Foreign Partnership.
Form 8866	Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.
Form 8869	Qualified Subchapter S Subsidiary Election.
Form 8873	Extraterritorial Income Exclusion.
Form 8874	New Markets Credit.
Form 8875	Taxable REIT Subsidiary Election.
Form 8878–A	IRS e-file Electronic Funds Withdrawal Authorization for Form 7004.
Form 8879–C	IRS e-file Signature Authorization for Form 1120.
Form 8879–I	IRS e-file Signature Authorization for Form 1120–F.
Form 8879–PE	IRS e-file Signature Authorization for Form 1065.
Form 8879–S	IRS e-file Signature Authorization for Form 1120–S.
Form 8881	Credit for Small Employer Pension Plan Startup Costs.
Form 8882	Credit for Employer-Provided Childcare Facilities and Services.
Form 8883	Asset Allocation Statement Under Section 338.

APPENDIX A—Continued

Product	Title
Form 8886	Reportable Transaction Disclosure Statement.
Form 8896	Low Sulfur Diesel Fuel Production Credit.
Form 8900	Qualified Railroad Track Maintenance Credit.
Form 8902	Alternative Tax on Qualified Shipping Activities.
Form 8903	Domestic Production Activities Deduction.
Form 8906	Distilled Spirits Credit.
Form 8908	Energy Efficient Home Credit.
Form 8910	Alternative Motor Vehicle Credit.
Form 8911	Alternative Fuel Vehicle Refueling Property Credit.
Form 8912	Credit to Holders of Tax Credit Bonds.
Form 8916	Reconciliation of Schedule M–3 Taxable Income with Tax Return Taxable Income for Mixed Groups.
Form 8916–A	Supplemental Attachment to Schedule M–3.
Form 8918	Material Advisor Disclosure Statement.
Form 8923	Mining Rescue Team Training Credit.
Form 8925	Report of Employer-Owned Life Insurance Contracts.
Form 8927	Determination Under Section 860(e)(4) by a Qualified Investment Entity.
Form 8932	Credit for Employer Differential Wage Payments.
Form 8933	Carbon Oxide Sequestration Credit.
Form 8936	Qualified Plug-In Electric Drive Motor Vehicle Credit.
Form 8937	Report of Organizational Actions Affecting Basis of Securities.
Form 8938	Statement of Foreign Financial Assets.
Form 8941	Credit for Small Employer Health Insurance Premiums.
Form 8947	Report of Branded Prescription Drug Information.
Form 8966	FATCA Report.
Form 8966–C	Cover Sheet for Form 8966 Paper Submissions.
Form 8979	Partnership Representative Revocation/Resignation and Designation.
Form 8990	Limitation on Business Interest Expense IRC 163(j).
Form 8991	Tax on Base Erosion Payments of Taxpayers with Substantial Gross Receipts.
Form 8992	U.S Shareholder Calculation of Global Intangible Low-Taxed Income (GILTI).
Form 8993	Section 250 Deduction for Foreign-Derived Intangible Income (FDII) and Global Intangible Low-Taxed Income (GILTI).
Form 8994	Employer Credit for Paid Family and Medical Leave.
Form 8996	Qualified Opportunity Fund.
Form 926	Return by a U.S. Transferor of Property to a Foreign Corporation.
Form 965	Inclusion of Deferred Foreign Income Upon Transition to Participation Exemption System.
Form 965–B	Corporate and Real Estate Investment Trust (REIT) Report of Net 965 Tax Liability and REIT Report of Net 965 Inclusion.
Form 965 (SCH–A)	U.S. Shareholder's Section 965(a) Inclusion Amount.
Form 965 (SCH–B)	Deferred Foreign Income Corporation's Earnings and Profits (E&P).
Form 965 (SCH–C)	U.S. Shareholder's Aggregate Foreign Earnings and Profits Deficit.
Form 965 (SCH–D)	U.S. Shareholder's Aggregate Foreign Cash Position.
Form 965 (SCH–E)	U.S. Shareholder's Aggregate Foreign Cash Position Detail.
Form 965 (SCH–F)	Foreign Taxes Deemed Paid by Domestic Corporation (for U.S. Shareholder Tax).
Form 965 (SCH–G)	Foreign Taxes Deemed Paid by Domestic Corporation (for U.S. Shareholder Tax Year Ending in 2017).
Form 965 (SCH–H)	Disallowance of Foreign Tax Credit and Amounts Reported on Forms 1116 and 1118.
Form 966	Corporate Dissolution or Liquidation.
Form 970	Application to Use LIFO Inventory Method.
Form 972	Consent of Shareholder to Include Specific Amount in Gross Income.
Form 973	Corporation Claim for Deduction for Consent Dividends.
Form 976	Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust.
Form 982	Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment).
Form SS–4	Application for Employer Identification Number.
Form SS–4PR	Solicitud de Número de Identificación Patronal (EIN).
Form T (TIMBER)	Forest Activities Schedule.
Form W–8BEN	Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (Individual).
Form W–8BEN (E)	Certificate of Entities Status of Beneficial Owner for United States Tax Withholding (Entities).
Form W–8ECI	Certificate of Foreign Person's Claim That Income is Effectively Connected With the Conduct of a Trade or Business in the United States.
Form W–8IMY	Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding.

[FR Doc. 2019–27297 Filed 12–18–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee; Public Meeting

ACTION: Notification of Citizens Coinage Advisory Committee January 21, 2020, public meeting.

SUMMARY: The United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for January 21, 2020.

Date: January 21, 2020.

Time: 12:00 p.m. to 2:00 p.m.

Location: 2nd Floor Conference Room A&B, United States Mint, 801 9th Street NW, Washington, DC 20220.

Subject: Review and discussion of candidate designs for gold coins and silver and bronze medals commemorating the 75th anniversary of the end of World War II.

Interested members of the public may either attend the meeting in person or dial in to listen to the meeting at (866) 564–9287/Access Code: 62956028.

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and room location.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by email to *info@ccac.gov.*

The CCAC advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals; advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made; and makes recommendations with respect to the mintage level for any commemorative coin recommended.

Members of the public interested in attending the meeting in person will be admitted into the meeting room on a first-come, first-serve basis as space is limited. Conference Room A&B can accommodate up to 50 members of the public at any one time. In addition, all persons entering a United States Mint facility must adhere to building security protocol. This means they must consent to the search of their persons and objects in their possession while on government grounds and when they enter and leave the facility, and are prohibited from bringing into the facility weapons of any type, illegal drugs, drug paraphernalia, or contraband.

The United States Mint Police Officer conducting the screening will evaluate whether an item may enter into or exit from a facility based upon Federal law, Treasury policy, United States Mint policy, and local operating procedure; and all prohibited and unauthorized items will be subject to confiscation and disposal.

FOR FURTHER INFORMATION CONTACT: Jennifer Warren, United States Mint Liaison to the CCAC; 801 9th Street NW; Washington, DC 20220; or call 202–354–7200.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: December 13, 2019.

David J. Ryder,

Director, United States Mint.

[FR Doc. 2019–27401 Filed 12–18–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Reasonable Charges for Medical Care or Services; v3.27 and National Average Administrative Prescription Drug Charge; Calendar Year 2020 Update

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This Department of Veterans Affairs (VA) notice updates the data for calculating the ''Reasonable Charges'' collected or recovered by VA for medical care or services. This notice also updates the ''National Average Administrative Prescription Costs'' for purposes of calculating VA's charges for prescription drugs that were not administered during treatment, but provided or furnished by VA to a veteran.

FOR FURTHER INFORMATION CONTACT: Romona Greene, Office of Community Care, Revenue Operations, Payer Relations and Services, Rates and Charges (10D1C1), Veterans Health Administration (VHA), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 382–2521. (This is not a toll free number).

SUPPLEMENTARY INFORMATION: Section (§) 17.101(a)(1) of 38 Code of Federal Regulations (CFR) sets forth the ''Reasonable Charges'' for medical care or services provided or furnished by VA to a veteran: ''for a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses for care) under a health plan contract; for a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or for a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.'' Section 17.101 provides the methodologies for establishing billed amounts for several types of charges; however, this notice will only address partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by Healthcare Common Procedure Coding System (HCPCS) Level II codes.

Section 17.101(a)(2) provides that the actual charge amounts at individual VA medical facilities based on these methodologies and the data sources used for calculating those actual charge amounts will either be published as a notice in the **Federal Register** or will be posted on VA's Community Care website at *https://www.va.gov/communitycare/revenue_ops/payer_rates.asp.*

Certain charges are hereby updated as stated in this notice and will be effective on January 1, 2020.

In cases where VA has not established charges for medical care or services provided or furnished at VA expense (by either VA or non-VA providers) under other provisions or regulations, the method for determining VA's charges is set forth at 38 CFR 17.101(a)(8).

Based on the methodologies set forth in § 17.101, this notice provides an update to charges for Calendar Year (CY) 2020 HCPCS Level II and Current Procedural Terminology codes. Charges are also being updated based on more recent versions of data sources for the following charge types: Partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II codes. As of the date of

this notice, the actual charge amounts at individual VA medical facilities based on the methodologies in § 17.101 will be posted on VA's Community Care website at *https://www.va.gov/communitycare/revenue_ops/payer_rates.asp* under the heading ''Reasonable Charges Data Tables'' and identified as ''v3.27 Data Tables (Outpatient and Professional).''

The list of data sources used for calculating the actual charge amounts listed above also will be posted on VA's Community Care website under the heading ''Reasonable Charges Data Sources'' and identified as ''Reasonable Charges v3.27 Data Sources (Outpatient and Professional) (PDF).''

Acute inpatient facility charges and skilled nursing facility/sub-acute inpatient facility charges remain the same as set forth in 84 FR 51727 published on September 30, 2019.

We are also updating the list of VA medical facility locations. The list of VA medical facility locations, including the first three digits of their zip codes as well as provider-based/non-provider-based designations, will be posted on VA's Community Care website under the heading ''VA Medical Facility Locations'' and identified as ''v3.27 (Jan20).''

As indicated in 38 CFR 17.101(m), when VA provides or furnishes prescription drugs not administered during treatment, ''charges billed separately for such prescription drugs will consist of the amount that equals the total of the actual cost to VA for the drugs and the national average of VA administrative costs associated with dispensing the drugs for each prescription.'' Section 17.101(m) includes the methodology for calculating the national average administrative cost for prescription drug charges not administered during treatment.

VA determines the amount of the national average administrative cost annually for the prior fiscal year (October through September) and then applies the charge at the start of the next calendar year. The national average administrative drug cost for CY 2020 is $18.38. This change will be posted on VA's Community Care website at *https://www.va.gov/COMMUNITYCARE/revenue_ops/admin_costs.asp* under the heading ''CY 2020 Average Administrative Cost for Prescriptions.''

Consistent with § 17.101, the national average administrative cost, the updated data, and supplementary tables containing the changes described in this notice will be posted online, as indicated in this notice. This notice will be posted on VA's Community Care website at *https://www.va.gov/communitycare/revenue_ops/payer_rates.asp* under the heading ''Reasonable Charges Rules, Notices, and **Federal Register**'' and identified as ''v3.27 **Federal Register** Notice 01/01/20 (Outpatient and Professional), and National Average Administrative Cost (PDF).'' The national average administrative cost, updated data, and supplementary tables containing the changes described will be effective until changed by a subsequent FR notice.

Signing Authority

The Secretary of Veterans Affairs 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 December 12, 2019, for publication.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2019–27325 Filed 12–18–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans and Community Oversight and Engagement Board, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act the Veterans and Community Oversight and Engagement Board will meet on January 15–16, 2020 at 11301 Wilshire Boulevard, Building 500, Room 1281, Los Angeles, CA. The meeting sessions will begin and end as follows:

Date	Time
January 15, 2020 ...	8:00 a.m. to 5:00 p.m.—Pacific Standard Time (PST).
January 16, 2020 ...	8:00 a.m. to 5:00 p.m.—PST.

The meeting sessions are open to the public.

The Board was established by the West Los Angeles Leasing Act of 2016 on September 29, 2016. The purpose of the Board is to provide advice and make recommendations to the Secretary of Veterans Affairs on: Identifying the goals of the community and Veteran partnership; improving services and outcomes for Veterans, members of the Armed Forces, and the families of such Veterans and members; and on the implementation of the Draft Master Plan approved by the Secretary on January 28, 2016, and on the creation and implementation of any successor master plans.

On Wednesday, January 15, 2020, the agenda will include briefings from senior VA officials, to include comprehensive status update from the West Los Angeles Collective, on infrastructure assessment, housing metrics, reporting requirements, and topics related to the Overall Community Plan. The Board will receive an informative briefing from Operation Fire for Effect representatives on a proposed Framework of the Principles of the Veterans Master Plan. A public comment session will occur from 3:30 p.m. to 4:30 p.m. followed by a wrap up of Public Comment session.

On Thursday, January 16, 2020, the Board will receive additional briefings from the VA Boston Healthcare System on Moral Injury. A comprehensive review and analysis briefing on the Homeless Gap Analysis in Los Angeles will be provided by both the Community Engagement and Reintegration Services team form VA Greater Los Angeles Healthcare System (VALAHS) and the Los Angeles Homeless Services Authority (LAHSA). The Board's subcommittees on Outreach and Community Engagement with Services and Outcomes, and Master Plan with Services and Outcomes will meet to finalize reports on activities since the last meeting, followed by an out brief to the full Board and update on draft recommendations considered for forwarding to the SECVA. Individuals wishing to make public comments should contact Chihung Szeto at (562) 708–9959 or at *Chihung.Szeto@va.gov* and are requested to submit a 1–2-page summary of their comments for inclusion in the official meeting record. In the interest of time, each speaker will be held to 5-minute time limit.

Any member of the public seeking additional information should contact Mr. Eugene W. Skinner Jr. at (202) 631–7645 or at *Eugene.Skinner@va.gov.*

Dated: December 16, 2019.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–27388 Filed 12–18–19; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Part 68

Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[EPA–HQ–OEM–2015–0725; FRL–10002–69–OLEM]

RIN 2050–AG95

Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is revising regulations that are designed to reduce the risk of accidental releases of hazardous chemicals. These regulations are part of the EPA's Risk Management Program (RMP), which the Agency established under authority in the Clean Air Act and recently amended on January 13, 2017. After a process of reconsidering several parts of the 2017 rule, EPA has concluded that a better approach is to improve the performance of a subset of facilities by achieving greater compliance with RMP regulations instead of imposing additional regulatory requirements on the larger population of facilities that is generally performing well in preventing accidental releases. For this and other reasons, EPA is rescinding recent amendments to these regulations that we no longer consider reasonable or practicable relating to safer technology and alternatives analyses, third-party audits, incident investigations, information availability, and several other minor regulatory changes. EPA is also modifying regulations relating to local emergency coordination, emergency response exercises, and public meetings. In addition, the Agency is changing compliance dates for some of these provisions.

DATES: This final rule is effective on December 19, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OEM–2015–0725. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: James Belke, United States Environmental Protection Agency, Office of Land and Emergency Management, 1200 Pennsylvania Ave. NW (Mail Code 5104A), Washington, DC 20460; telephone number: (202) 564–8023; email address: *belke.jim@epa.gov,* or: William Noggle, United States Environmental Protection Agency, Office of Land and Emergency Management, 1200 Pennsylvania Ave. NW (Mail Code 5104A), Washington, DC 20460; telephone number: (202) 566–1306; email address: *noggle.william@epa.gov*.

Electronic copies of this document and related news releases are available on EPA's website at *http://www.epa.gov/rmp*. Copies of this final rule are also available at *http://www.regulations.gov*.

SUPPLEMENTARY INFORMATION: *Good cause finding.* The EPA finds that there is good cause under Administrative Procedures Act (APA) section 553(d)(3) for this rule to become effective on the date of publication of this action. Section 553(d)(3) of the APA allows an effective date of less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Most provisions of this final rule rescind regulatory requirements or revise regulatory requirements that sources are not yet required to comply with. The rule does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. For these reasons, the EPA finds good cause under APA section 553(d)(3) for this rule to become effective on the date of publication of this action.

Acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

AAH Air Alliance Houston
ACC American Chemistry Council
BATF Bureau of Alcohol, Tobacco, Firearms, and Explosives
CAA Clean Air Act
CAAA Clean Air Act Amendments of 1990
CalARP California Accidental Release Prevention
CBI confidential business information
CCC Contra Costa County
CCPS Center for Chemical Process Safety
CFATS Chemical Facility Anti-Terrorism Standards
CFR Code of Federal Regulations
CSB U.S. Chemical Safety and Hazard Investigation Board
CSAG Chemical Safety Advocacy Group
CSISSFRRA Chemical Safety Information, Site Security and Fuels Regulatory Relief Act
CVI Chemical-terrorism Vulnerability Information
DHS Department of Homeland Security
DOJ Department of Justice
DOL Department of Labor
DOT Department of Transportation
EJ environmental justice
E.O. Executive Order
EPA Environmental Protection Agency
EPCRA Emergency Planning & Community Right-To-Know Act
FOIA Freedom of Information Act
FR Federal Register
ICR information collection request
ICS Incident Command System
ISD inherently safer design
ISO Industrial Safety Ordinance
ISSA inherently safer systems analysis
IST inherently safer technology
LEPC local emergency planning committee
NAAQS National Ambient Air Quality Standards
NAICS North American Industrial Classification System
NESHAP National Emissions Standards for Hazardous Air Pollutants
NIMS National Incident Management System
NPRM Notice of Proposed Rulemaking
NSI National Security Information
NRC National Response Center
OCA offsite consequences analysis
OLEM Office of Land and Emergency Management
OMB Office of Management and Budget
OSHA Occupational Safety and Health Administration
PCII Protected Critical Infrastructure Information
PHA process hazard analysis
PRA Paperwork Reduction Act
PSI process safety information
PSM Process Safety Management
RIA Regulatory Impact Analysis
RFA Regulatory Flexibility Act
RFI request for information
RMP Risk Management Program or risk management plan
RTC Response to Comments
SBAR Small Business Advocacy Review
SBREFA Small Business Regulatory Enforcement Fairness Act
SDS safety data sheet
SSI Sensitive Security Information
STAA safer technology and alternatives analysis
TCPA Toxic Catastrophe Prevention Act
TCEQ Texas Commission on Environmental Quality
TQ threshold quantity
TRI Toxic Release Inventory
TURA Toxic Use Reduction Act
UMRA Unfunded Mandates Reform Act
U.S.C. United States Code

USCA United States Court of Appeals
US SOC United States Special Operations Command

Organization of this document. The contents of this preamble are:

I. General Information
A. What is the Risk Management Program?
B. Does this action apply to me?
C. What action is the Agency taking?
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II. Background
A. Overview of EPA's Risk Management Program Regulations
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C. Discussion of Comments and Basis for Final Rule Provisions
VIII. Revised Emergency Response Contacts Provided in Risk Management Plan
A. Summary of Proposed Rulemaking
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IX. Revised Compliance Dates
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I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
J. National Technology Transfer and Advancement Act (NTTAA)
K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
L. Congressional Review Act (CRA)

I. General Information

A. What is the Risk Management Program?

The Risk Management Program regulations (40 CFR part 68) aim to prevent or minimize the consequences of accidental chemical releases. These regulations require facilities that use, manufacture and store particular hazardous chemicals to implement management program elements that integrate technologies, procedures, and management practices. In addition, the RMP rule requires covered sources to submit (to EPA) a document summarizing the source's risk management program—called a risk management plan (or RMP).

B. Does this action apply to me?

This rule applies to those facilities (referred to as ''stationary sources'' under the CAA) that are subject to the chemical accident prevention requirements at 40 CFR part 68. This includes stationary sources holding more than a threshold quantity (TQ) of a regulated substance in a process. Table 1 provides industrial sectors and the associated North American Industrial Classification System (NAICS) codes for entities potentially affected by this action.

The Agency's goal is to provide a guide for readers to consider regarding entities that potentially could be affected by this action. However, this action may affect other entities not listed in this table. If you have questions regarding the applicability of this action to a particular entity, consult the person(s) listed in the introductory section of this action under the heading entitled **FOR FURTHER INFORMATION CONTACT**.

TABLE 1—INDUSTRIAL SECTORS AND ASSOCIATED NAICS CODES FOR ENTITIES POTENTIALLY AFFECTED BY THIS ACTION

Sector	NAICS code
Administration of Environmental Quality Programs	924
Agricultural Chemical Distributors:	
Crop Production	111
Animal Production and Aquaculture	112
Support Activities for Agriculture and Forestry Farm	115
Supplies Merchant Wholesalers	42491
Chemical Manufacturing	325
Chemical and Allied Products Merchant Wholesalers	4246
Food Manufacturing	311
Beverage Manufacturing	3121
Oil and Gas Extraction	211
Other [1]	44, 45, 48, 54, 56, 61, 72
Other manufacturing	313, 326, 327, 33
Other Wholesale:	
Merchant Wholesalers, Durable Goods	423
Merchant Wholesalers, Nondurable Goods	424
Paper Manufacturing	322
Petroleum and Coal Products Manufacturing	324
Petroleum and Petroleum Products Merchant Wholesalers	4247

TABLE 1—INDUSTRIAL SECTORS AND ASSOCIATED NAICS CODES FOR ENTITIES POTENTIALLY AFFECTED BY THIS ACTION—Continued

Sector	NAICS code
Utilities	221
Warehousing and Storage	493

C. What action is the Agency taking?

1. Purpose of the Regulatory Action

The purpose of this action is to make changes to the Risk Management Program regulations (40 CFR part 68) to reduce chemical facility accidents without disproportionately increasing compliance costs or otherwise imposing regulatory requirements that are not reasonable or practicable. This rule addresses issues raised in three petitions for EPA to reconsider amendments EPA made to the RMP regulations in 2017 and other issues that EPA believed warranted reconsideration.

On January 13, 2017, the EPA issued a final rule (82 FR 4594) amending 40 CFR part 68, the chemical accident prevention provisions under section 112(r) of the CAA (42 U.S.C. 7412(r)). The 2017 rule addressed various aspects of risk management programs, including prevention programs at stationary sources, emergency response preparedness requirements, information availability, and various other changes to clarify and otherwise technically correct the underlying rules. This rulemaking is known as the ''Risk Management Program Amendments'' or ''RMP Amendments'' rule.

Prior to the RMP Amendments rule taking effect, EPA received three petitions for reconsideration of the rule under CAA section 307(d)(7)(B), two from industry groups [2] and one from a group of states.[3] Under that provision, the Administrator is to commence a reconsideration proceeding if, in the Administrator's judgement, the petitioner raises an objection to a rule that was impracticable to raise during the comment period or if the grounds for the objection arose after the comment period but within the period for judicial review. In either case, to convene a proceeding for reconsideration, the Administrator must also conclude that the objection is of central relevance to the outcome of the rule.

In a letter dated March 13, 2017, the Administrator responded to the first of the reconsideration petitions received by announcing the convening of a proceeding for reconsideration of the RMP Amendments.[4] As explained in that letter, having considered the objections raised in the petition, the Administrator determined that the criteria for reconsideration had been met for at least one of the objections. This action addresses the issues raised in all three petitions for reconsideration, as well as other issues that EPA believed warranted reconsideration.

2. Summary of the Provisions of the Regulatory Action

The major provisions of this rule include rescinding amendments made to the Risk Management Program in 2017 relating to safer technology and alternatives analyses, third-party audits, incident investigations, information availability, and several other minor provisions. EPA is also modifying regulations relating to local emergency coordination, emergency response exercises, and public meetings after an accident, changing the compliance dates for some of these provisions and modifying risk management plan and air permit requirements relating to rescinded or modified provisions.

a. Chemical Accident Prevention Provisions

This action rescinds almost all the requirements added in 2017 to the accident prevention program provisions of Subparts C (for Program 2 processes) and D (for Program 3 processes). EPA is rescinding all requirements for third-party compliance audits (§§ 68.58, 68.59, 68.79 and 68.80), safer technology and alternatives analysis (STAA) (§ 68.67(c)(8)) for facilities with Program 3 regulated processes in NAICS codes 322 (paper manufacturing), 324 (petroleum and coal products manufacturing), and 325 (chemical manufacturing) and removing the words ''for each covered process'' from the compliance audit provisions in §§ 68.58 and 68.79. This action also rescinds the requirement in § 68.50(a)(2) for the hazard review to include findings from incident investigations. For incident investigations (§§ 68.60 and 68.81), this action rescinds the following requirements added in 2017:

1. Conducting root cause analysis;
2. Added data elements for incident investigation reports, including a schedule to address recommendations and a 12-month completion deadline, and
3. Investigating any incident resulting in a catastrophic release that also results in the affected process being decommissioned or destroyed.

In §§ 68.60 and 68.81, EPA is also removing text ''(*i.e.,* was a near miss)'' that EPA added in 2017 to describe an incident that could reasonably have resulted in a catastrophic release. In § 68.60, EPA is retaining the term ''report(s)'' instead of replacing with the word ''summary(ies)'' and is retaining the requirement for Program 2 processes to establish an incident investigation team consisting of at least one person knowledgeable in the process involved and other persons with experience to investigate an incident.

This action removes the language added to the Program 2 (§ 68.54) and Program 3 (§ 68.71) training requirements, which more explicitly included supervisors and others involved in operating a process. This action also rescinds minor wording changes in § 68.54 describing employees involved in operating a process. EPA is also rescinding the requirement in § 68.65 for the owner or operator to keep process safety information up-to-date and the requirement in § 68.67(c)(2) for the process hazard analysis to address the findings from all incident investigations required under § 68.81, as well as any other potential failure scenarios. EPA will retain two changes that revised the term ''Material Safety Data Sheets'' to ''Safety Data Sheets (SDS)'' in §§ 68.48 and 68.65.

[1] For descriptions of NAICS codes, see *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[2] RMP Coalition's Petition for Reconsideration and Request for Agency Stay Pending Reconsideration of Final RMP rule (82 FR 4594, January 13, 2017), February 28, 2017. Hogan Lovells US LLP, Washington, DC. Document ID: EPA–HQ–OEM–2015–0725–0759 and Chemical Safety Advocacy Group (CSAG)'s Petition and Reconsideration and Stay Request of the Final RMP rule (82 FR 4594, January 13, 2017) March 13, 2017, Hunton & Williams, San Francisco, CA, EPA–HQ–OEM–2015–0725–0766 and EPA–HQ–OEM–2015–0725–0765 (supplemental petition).

[3] Petition for Reconsideration and Stay on behalf of States of Louisiana, Arizona, Arkansas, Florida, Kansas, Texas, Oklahoma, South Carolina, Wisconsin, West Virginia, and the Commonwealth of Kentucky with respect to Risk Management Program Final Rule, (82 FR 4594, January 13, 2017), March 14, 2017. State of Louisiana, Department of Justice, Attorney General. EPA–HQ–OEM–2015–0725–0762.

[4] EPA–HQ–OEM–2015–0725–0758.

This action rescinds the following definitions in § 68.3: Active measures, inherently safer technology or design, passive measures, practicability, and procedural measures related to amendments to requirements in § 68.67; root cause related to amendments to requirements in § 68.60 and § 68.81; and third-party audit related to amendments to requirements in §§ 68.58 and 68.79 and added in §§ 68.59 and 68.80.

b. Emergency Response Provisions

This action modifies the local emergency response coordination amendments by replacing the phrase in § 68.93(b) that requires facilities to share information that local emergency planning and response organizations identify as relevant to local emergency response planning with revised language pertaining to sharing information necessary for developing and implementing the local emergency response plan.

EPA is retaining the requirement for owners or operators to provide the local emergency planning and response organizations with the stationary source's emergency response plan (if one exists), emergency action plan, and updated emergency contact information, as well as the requirement for the owner or operator to request an opportunity to meet with the local emergency planning committee (or equivalent) and/or local fire department as appropriate to review and discuss these materials. EPA is also incorporating appropriate classified and restricted information protections to regulated substance and stationary source information required to be provided under § 68.93 and revising the existing classified information provision of § 68.210 to incorporate protections for restricted information identical to those in § 68.93. Restricted information includes Sensitive Security Information (SSI), Protected Critical Infrastructure Information (PCII), Chemical-terrorism Vulnerability Information (CVI), and any other information restricted by Federal statutes or laws.

This action is modifying the exercise program provisions of § 68.96(b), by removing the minimum frequency requirement for field exercises. EPA is also establishing more flexible scope and documentation provisions for both field and tabletop exercises by only recommending, and not requiring, items specified for inclusion in exercises and exercise evaluation reports, while still requiring documentation of both types of exercises. This action retains the notification exercise requirement of § 68.96(a) and the provision for alternative means of meeting exercise requirements of § 68.96(c).

c. Public Information Availability Provisions

This action rescinds the requirements for providing to the public upon request, chemical hazard information and access to community emergency preparedness information in § 68.210(b) through (d), as well as the requirement to provide specific chemical hazard information at public meetings required under § 68.210(e).

This action modifies the requirement in § 68.210(e) [now redesignated as § 68.210(b) because former paragraphs (b) through (d) are rescinded] for the owner/operator of a stationary source to hold a public meeting to provide accident information required under § 68.42(b) by only requiring a public meeting following the occurrence of a risk management plan (or RMP [5]) reportable accident with offsite impacts specified in § 68.42(a) (*i.e.,* known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage). This is a modification to the RMP Amendments rule that required a public meeting after any accident subject to reporting under § 68.42, including accidents that resulted in on-site impacts only.

EPA will retain the requirement that public meetings required under § 68.210(e) [now redesignated as § 68.210(b)] occur within 90 days of an accident. EPA will also retain the change to § 68.210(a) that added 40 CFR part 1400 as a limitation on RMP availability (part 1400 addresses restrictions on disclosing RMP offsite consequence analysis information under CSISSFRRA),[6] and the provision for control of classified information in § 68.210(f) [now redesignated as § 68.210(c)], with a modification to address restricted information under the provision (*e.g.,* PCII, SSI, and CVI). This action deletes the provision for CBI in § 68.210(g), because the only remaining information required to be provided at the public meeting is the source's five-year accident history, which § 68.151(b)(3) prohibits the owner or operator from claiming as CBI.

[5] 40 CFR part 68 is titled, ''Chemical Accident Prevention Provisions,'' but is more commonly known as the ''RMP regulation,'' the ''RMP rule,'' or the ''Risk Management Program.'' This document uses all three terms to refer to 40 CFR part 68. The term ''RMP'' is also used to refer to the document required to be submitted under subpart F of 40 CFR part 68, the risk management plan. See *https://www.epa.gov/rmp* for more information on the Risk Management Program.

[6] Chemical Safety Information, Site Security and Fuels Regulatory Relief Act, Public Law 106–40. EPA–HQ–OEM–2015–0725–0135.

d. Risk Management Plan

This action rescinds requirements to report in the risk management plan any information associated with the rescinded provisions of third-party audits, incident investigation, safer technology and alternatives analysis, and information availability to the public (except that pertaining to the public meeting requirement now in § 68.210(b)). The list of RMP registration information in § 68.151(b)(1) excluded from being claimed as CBI, is modified by the final rule to also exclude from CBI claims, whether a public meeting was held following an RMP accident, pursuant to § 68.210(b). This public meeting reporting is to be included in the RMP under § 68.160(b)(21). This action also slightly modifies the emergency response contact information required by § 68.180(a)(1) to be provided in a facility's RMP.

e. Compliance Dates

This action requires compliance with the revised emergency response coordination requirements on the effective date of the final rule. This action retains the compliance date for public meetings established in the final Amendments rule and therefore requires that the owner or operator comply with the revised public meeting requirements following any RMP reportable accident with offsite impacts specified in § 68.42(a) that occurs after March 15, 2021. This action delays the rule's compliance dates in § 68.10 and § 68.96 as follows:

i. Emergency response exercises:

A. *Planning and Scheduling.* Owners and operators will be required to have exercise plans and schedules meeting the requirements of §§ 68.93 and 68.96 in place by December 19, 2023;

B. *Notification exercise.* Perform first notification exercise by December 19, 2024;

C. Perform first tabletop exercise by December 21, 2026; and

D. *Field exercise.* There is no specified deadline to perform the first field exercise, other than that established by the owner or operator's exercise schedule in coordination with local response agencies; and

ii. Updating risk management plan provisions for the following, only for initial RMP submissions or when re-submission or update for an existing RMP is required under § 68.190:

A. Reporting under § 68.160(b)(21) after December 19, 2024, whether a public meeting required by § 68.210(b) occurred; and

B. Reporting after December 19, 2024, emergency response program information specified in § 68.180 as revised by the January 13, 2017 final Amendments rule and this final rule.

For a detailed review of the changes from the regulatory text (which has the

2017 Amendments rule changes incorporated), EPA has provided a copy of 40 CFR part 68 with changes shown in redline/strikeout format, which is available in the rulemaking docket.[7]

D. What is the Agency's authority for taking this action?

The statutory authority for this action is provided by section 112(r) of the CAA (42 U.S.C. 7412(r)). Each of the portions of the Risk Management Program rule we are modifying in this document is based on section 112(r) of the CAA. EPA's authority for convening a reconsideration proceeding for certain issues is found under CAA section 307(d)(7)(B) or 42 U.S.C. 7607(d)(7)(B). The Agency's procedures in this rulemaking are controlled by CAA section 307(d). EPA's authority for convening a reconsideration proceeding for certain issues is found under CAA section 307(d)(7)(B) or 42 U.S.C. 7607(d)(7)(B). A more detailed explanation of these authorities can be found in Section II.C. of this preamble, *EPA's authority to reconsider and revise the RMP Amendments rule*.

E. What are the incremental costs and benefits of taking this action?

1. Summary of Potential Cost Savings

Approximately 12,500 facilities have filed current RMPs with EPA and are potentially affected by this action. These facilities range from petroleum refineries and large chemical manufacturers to water and wastewater treatment systems; chemical and petroleum wholesalers and terminals; food manufacturers, packing plants, and other cold storage facilities with ammonia refrigeration systems; agricultural chemical distributors; midstream gas plants; and a limited number of other sources, including Federal installations, that use RMP regulated substances.

Table 2 presents the number of facilities according to the RMP reporting as of February 2015 by industrial sector and chemical use.

TABLE 2—NUMBER OF AFFECTED FACILITIES BY SECTOR

[As of February 2015]

Sector	NAICS codes	Total facilities	Chemical uses
Administration of environmental quality programs (*i.e.*, governments).	924	1,923	Use chlorine and other chemicals for treatment.
Agricultural chemical distributors/wholesalers	111, 112, 115, 42491	3,667	Store ammonia for sale; some in NAICS 111 and 115 use ammonia as a refrigerant.
Chemical manufacturing	325	1,466	Manufacture, process, store.
Chemical wholesalers	4246	333	Store for sale.
Food and beverage manufacturing	311, 312	1,476	Use mostly ammonia as a refrigerant.
Oil and gas extraction	211	741	Intermediate processing (mostly regulated flammable substances and flammable mixtures).
Other	44, 45, 48, 54, 56, 61, 72	248	Use chemicals for wastewater treatment, refrigeration, store chemicals for sale.
Other manufacturing	313, 326, 327, 33	384	Use various chemicals in manufacturing process, waste treatment.
Other wholesale	423, 424	302	Use (mostly ammonia as a refrigerant).
Paper manufacturing	322	70	Use various chemicals in pulp and paper manufacturing.
Petroleum and coal products manufacturing	324	156	Manufacture, process, store (mostly regulated flammable substances and flammable mixtures).
Petroleum wholesalers	4247	276	Store for sale (mostly regulated flammable substances and flammable mixtures).
Utilities	221	343	Use chlorine (mostly for water treatment), ammonia and other chemicals.
Warehousing and storage	493	1,056	Use mostly ammonia as a refrigerant.
Water/wastewater Treatment systems	22131, 22132	102	Use chlorine and other chemicals.
Total		12,542	

Table 3 presents a summary of the annualized cost savings estimated in the regulatory impact analysis.[8] In total, EPA estimates annualized cost savings of $87.4 million at a 3% discount rate and $87.8 million at a 7% discount rate.

TABLE 3—SUMMARY OF ANNUALIZED COST SAVINGS

[Millions, 2015 dollars]

Provision	3%	7%
Third-party Audits	(9.8)	(9.8)
Incident Investigation/Root Cause	(1.8)	(1.8)
STAA	(70.0)	(70.0)
Information Availability	(3.1)	(3.1)
Public Meetings	(0.28)	(0.28)

[7] EPA. 40 CFR part 68 Regulatory Text Redline/Strikeout Changes for Final RMP Reconsideration Rule.

[8] A full description of costs and benefits for this rule can be found in the Regulatory Impact Analysis—Reconsideration of the 2017 Amendments to the Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, section 112(r)(7). This document is available in the docket for this rulemaking (Docket ID Number EPA–HQ–OEM–2015–0725).

TABLE 3—SUMMARY OF ANNUALIZED COST SAVINGS—Continued

[Millions, 2015 dollars]

Provision	3%	7%
Rule Familiarization (net)	(2.4)	(2.8)
Total Cost Savings *	(87.4)	(87.8)

* Values may not sum due to rounding.

Most of the annual cost savings under this action are due to the repeal of the STAA provision (annual savings of $70 million), followed by third-party audits (annual savings of $9.8 million), information availability (annual savings of $3.1 million), rule familiarization (annual net savings of $2.8 million), root-cause incident investigation (annual savings of $1.8 million), and public meetings (annual savings of $0.28 million).

2. Summary of Potential Benefits and Benefit Reductions

The January 2017 RMP Amendments rule was estimated to result in a variety of benefits from prevention and mitigation of future RMP and non-RMP accidents at RMP facilities, avoided catastrophes at RMP facilities, and easier access to facility chemical hazard information. This final Reconsideration rule will largely retain the revised local emergency coordination and exercise provisions of the RMP Amendments rule, which convey mitigation benefits. The rescission of the prevention program requirements (*i.e.,* third-party audits, incident investigation, STAA), will result in a reduction in the magnitude of accident prevention benefits that we projected would have accrued under the RMP Amendments. As discussed in this notice and supporting documents, in developing this final rule, we have received data and conducted analyses that call into question whether some of the originally projected accident reduction benefits claimed by the Agency when promulgating the RMP Amendments would have been likely to occur. The rescission of the chemical hazard information availability provision will result in a reduction of the information sharing benefit, although a portion of this benefit from the RMP Amendments rule would still be conveyed by the public meeting, emergency coordination and exercise provisions. This action will also convey the benefit of improved chemical site security, by modifying previously open-ended information sharing provisions of the RMP Amendments rule that might have resulted in an increased risk of terrorism against regulated sources. See the RIA for additional information on benefits and benefit reductions.

F. What are the procedures for judicial review?

Under CAA section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit (the Court) by February 18, 2020. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review.

II. Background

A. Overview of EPA's Risk Management Program Regulations

EPA's RMP regulations were initially published in two stages. The Agency first published the list of regulated substances and TQs in 1994 (59 FR4478, January 31, 1994) (the ''list rule'').[9] EPA then published the RMP final regulation, containing risk management requirements for covered sources, in 1996 (61 FR 31668, June 20, 1996) (the ''RMP rule'').[10] [11] Subsequent modifications to the list rule and RMP rule were made as discussed in the RMP Amendments rule (82 FR 4594, January 13, 2017 at 4600). Prior to development of EPA's 1996 RMP rule, the Occupational Safety and Health Administration (OSHA) published its Process Safety Management (PSM) standard in 1992 (57 FR 6356, February 24, 1992), as required by section 304 of the 1990 CAAA, using its authority under 29 U.S.C. 653. The OSHA PSM standard can be found in 29 CFR 1910.119. The EPA RMP rule and the OSHA PSM standard aim to prevent or minimize the consequences of accidental chemical releases through implementation of management program elements that integrate technologies, procedures, and management practices. In addition, the EPA RMP rule requires covered sources to submit (to EPA) a document summarizing the source's risk management program—called a risk management plan (or RMP).

The EPA's risk management program requirements include the following: (1) Conducting a worst-case release scenario analysis, alternative release scenario analyses, and a review of accident history; (2) coordinating emergency response procedures with local response organizations; (3) conducting a hazard assessment; (4) documenting a management system; (5) implementing a prevention program and an emergency response program; and (6) submitting a risk management plan that addresses all aspects of the risk management program for all covered processes and chemicals. A process at a source is covered under one of three different prevention programs (Program1, Program 2 or Program 3) based on the threat posed to the community and the environment. Program 1 has minimal requirements and is for processes that have not had an accidental release with specified off-site consequences in the last five years prior to submission of the source's risk management plan, and that have no public receptors within the worst-case release scenario vulnerable zone for the process. Program 3 has the most requirements and applies to processes not eligible for RMP Program 1 and covered by the OSHA PSM standard or classified in specified industrial sectors.[12] Program 2 has fewer requirements than Program 3 and applies to any process not covered under Programs 1 or 3. Programs 2 and

[9] Documents and information related to development of the list rule can be found in the EPA docket for the rulemaking, docket number A–91–74.

[10] Documents and information related to development of the RMP rule can be found in EPA docket number A–91–73.

[11] 40 CFR part 68 applies to owners and operators of stationary sources that have more than a TQ of a regulated substance within a process. The regulations do not apply to chemical hazards other than listed substances held above a TQ within a regulated process.

[12] See ten industry NAICS codes listed at § 68.10(d)(1) [redesignated as § 68.10(h)(1) in this final rule] representing pulp mills, petroleum refineries, petrochemical manufacturing, alkalies and chlorine manufacturing, all other basic inorganic chemical manufacturing, cyclic crude and intermediates manufacturing, all other basic chemical manufacturing, plastic material and resin manufacturing, nitrogenous fertilizer manufacturing and pesticide and other agricultural chemicals manufacturing.

3 both require a hazard assessment, a prevention program and an emergency response program, although Program 2 prevention program requirements are less extensive and more streamlined. For example, the Program 2 prevention program was intended to cover simpler processes located at smaller businesses and does not require the following process safety elements: Management of change, pre-startup review, contractors, employee participation and hot work permits. The Program 3 prevention program is fundamentally identical to the OSHA PSM standard and designed to cover those processes in the chemical industry. For further explanation and comparison of the PSM standard and RMP requirements, see the ''Process Safety Management and Risk Management Plan Comparison Tool'' published by OSHA and EPA in October 2016.[13]

B. Events Leading to This Action

1. 2017 Final Rule

On January 13, 2017, the EPA issued a final rule amending 40 CFR part 68, the chemical accident prevention provisions under section 112(r) of the CAA (42 U.S.C. 7412(r)) (*i.e.,* the ''RMP Amendments'' rule). The RMP Amendments addressed various aspects of risk management programs, including prevention programs at stationary sources, emergency response preparedness requirements, information availability, and various other changes to clarify and otherwise technically correct the underlying rules.

a. Accident Prevention Program Requirements

The RMP Amendments added new accident prevention program provisions in 40 CFR 68 Subparts C (for Program 2 processes) and D (for Program 3 processes), including:

i. A requirement in § 68.60 and § 68.81 for all facilities with Program 2 or 3 processes to conduct a root cause analysis using a recognized method as part of an incident investigation of a catastrophic release or an incident that could have reasonably resulted in a catastrophic release (*i.e.,* a near-miss).

ii. Requirements in § 68.58 and§ 68.79 for regulated facilities with Program 2 or Program 3 processes to contract with an independent third-party, or assemble an audit team led by an independent third-party, to perform a compliance audit after the facility has an RMP reportable accident or when an implementing agency requires a third-party audit due to conditions at the stationary source that could lead to an accidental release of a regulated substance, or when a previous third-party audit failed to meet the specified competency or independence criteria. Requirements were established in new § 68.59 and § 68.80 for third-party auditor competency, independence, and responsibilities and for third-party audit reports and audit findings response reports.

iii. A requirement in § 68.67(c)(8) for facilities with Program 3 regulated processes in NAICS codes 322 (paper manufacturing), 324 (petroleum and coal products manufacturing), and 325 (chemical manufacturing) to conduct a safer technologies and alternatives analysis (STAA) as part of their process hazard analysis (PHA).

The RMP Amendments rule also made several other minor changes to the Subparts C and D prevention program requirements.

b. New Emergency Response Requirements

The RMP Amendments added new emergency response program requirements in 40 CFR 68 Subpart E, including:

i. Requirements for owners or operators of ''responding'' and ''non-responding'' stationary sources to perform emergency response coordination activities under new § 68.93. These activities included coordinating response needs at least annually with local emergency planning and response organizations, as well as documenting these coordination activities.

ii. Requirements for owners and operators of responding facilities to conduct exercises under a new § 68.96—Emergency response exercises. Required exercises included annual notification exercises, tabletop exercises at least once every three years, and field exercises at least once every ten years. Exercises schedules and plans are required to be coordinated with local emergency response officials, and the owner or operator must also document completed exercises.

The RMP Amendments also made other minor changes to the emergency response provisions of Subpart E.

c. New Information Availability Requirements

The RMP Amendments added new information availability requirements in 40 CFR 68 Subpart H, including:

i. A requirement for the owner or operator to provide, within 45 days of receiving a request by any member of the public, specified chemical hazard information for all regulated processes. The provision requires the owner or operator to provide ongoing notification on a company website, social media platforms, or through other publicly accessible means that the information is available to the public upon request, along with the information elements that may be requested and instructions for how to request the information.

ii. A requirement for the owner or operator of any facility having an accident meeting RMP reporting criteria to hold a public meeting within 90 days of the accident to provide information about the accident to members of the public.

iii. New provisions in § 68.210 to address classified information and confidential business information (CBI) claims for information required to be provided to the public.

The RMP Amendments also made other minor changes to Subpart H.

d. Updated Facility Risk Management Plan Requirements

Lastly, the RMP Amendments contained a requirement to update a facility's risk management plan to reflect information associated with new provisions, made other minor changes and technical corrections to 40 CFR part 68, and established various compliance dates for new provisions. For further information on the RMP Amendments, see 82 FR 4594 (January 13, 2017).

2. Delay-Related Actions and Requests to Reconsider

On January 26, 2017, the EPA published a final rule delaying the effective date of the RMP Amendments from March 14, 2017 to March 21, 2017, see 82 FR 8499. This revision to the effective date of the RMP Amendments was part of an EPA final rule implementing a memorandum dated January 20, 2017, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Freeze Pending Review.'' This memorandum directed the heads of agencies to postpone, until 60 days after the date of its issuance, the effective date of rules that were published prior to January 20, 2017, but which had not yet become effective.

In a letter dated February 28, 2017, a group known as the ''RMP Coalition,'' submitted a petition for reconsideration of the RMP Amendments (''RMP Coalition Petition'') as provided for in CAA section 307(d)(7)(B) (42 U.S.C.7607(d)(7)(B)).[14] Under that

[13] Available at *https://www.osha.gov/chemicalexecutiveorder/psm_terminology.html.* EPA–HQ–OEM–2015–0725–0922.

[14] RMP Coalition's Petition for Reconsideration and Request for Agency Stay Pending Reconsideration of Final RMP rule (82 FR 4594, January 13, 2017), February 28, 2017. Hogan Lovells

provision, the Administrator is to commence a reconsideration proceeding if, in the Administrator's judgement, the petitioner raises an objection to a rule that was impracticable to raise during the comment period or if the grounds for the objection arose after the comment period but within the period for judicial review and if the objection is of central relevance to the outcome of the rule. The Administrator may stay the effective date of the rule for up to three months during such a reconsideration. On March 13, 2017, the Chemical Safety Advocacy Group (''CSAG'') also submitted a petition (''CSAG Petition'') for reconsideration and stay (including a March 14, 2017 supplement to the CSAG Petition).[15] On March 14, 2017, the EPA received a third petition for reconsideration and stay from the State of Louisiana, joined by Arizona, Arkansas, Florida, Kansas, Oklahoma, South Carolina, Texas, Wisconsin, West Virginia, and the Commonwealth of Kentucky (the ''States Petition'').[16] The Petitioners CSAG and States also requested that EPA delay the various compliance dates of the RMP Amendments.

In a letter dated March 13, 2017, the Administrator announced the convening of a proceeding for reconsideration of the Risk Management Program Amendments (a copy of this letter is included in the docket for this rule, Docket ID No. EPA–HQ–OEM–2015–0725).[17] As explained in that letter, having considered the objections raised in the RMP Coalition Petition, the Administrator determined that the criteria for reconsideration had been met for at least one of the objections. EPA issued a three-month (90-day) administrative stay of the effective date of the Risk Management Program Amendments until June 19, 2017 (82 FR 13968, March 16, 2017). EPA subsequently further delayed the effective date of the Risk Management Program Amendments until February 19, 2019, via notice and comment rulemaking, referred to herein as the ''Delay Rule'' (82 FR 27133, June 14, 2017). The purpose of the Delay Rule was to allow EPA to conduct a reconsideration proceeding and to consider other issues that may benefit from additional comment. On August 17, 2018, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision in *Air Alliance Houston, et. al.,* v *EPA,* 906 F.3d 1049 (D.C. Cir. 2018), vacating the Delay Rule, and on September 21, 2018, the Court issued its mandate which made the RMP Amendments rule immediately effective.

3. 2018 RMP Reconsideration Proposed Rule

EPA published a proposed rulemaking to reconsider the RMP Amendments on May 30, 2018 (83 FR 24850). The proposed rule (Reconsideration proposal) proposed several changes to the RMP Amendments. These included:

a. Rescinding the accident prevention program provisions of the RMP Amendments rule (*i.e.,* third-party audits, STAA, incident investigation root cause analysis, and most other minor changes to the prevention program).

b. Rescinding the public information availability provisions to provide chemical hazard information, exercise schedules, local emergency contacts and community preparedness information to the public upon request.

c. Modifying the public meeting provision by retaining the requirement for the facility to provide accident history elements but eliminating the requirement to provide ''other relevant chemical hazard information'' at the meeting.

d. Modifying the emergency coordination and exercise provisions of the Amendments rule to address security concerns raised by petitioners and give more flexibility to regulated facilities in complying with these provisions.

e. Extending compliance dates for modified provisions to provide additional time for regulated sources to comply with revised provisions. For additional information on the proposed Reconsideration rule, see 83 FR 24850, May 30, 2018.

EPA hosted a public hearing on June 14, 2018[18] to provide interested parties the opportunity to present data, views or arguments concerning the proposed action. EPA received a total of 77,360 public comments on the proposed rulemaking. Several public comments were the result of various mass mail campaigns and contained numerous copies of letters or petition signatures. Approximately 76,355 letters and signatures were contained in these several comments, related to 12 different form letter campaigns. The remaining comments include 987 submissions with unique content, 13 duplicate submissions, and 5 non-germane submissions. Included in this count of public submissions are written comments and verbal comments from 38 members of the public that provided verbal comments at a public hearing on June 14, 2018. Discussion of public comments can be found in topics included in this final rule and in the Response to Comments document,[19] available in the docket for this rulemaking.

C. EPA's Authority To Reconsider and Revise the 2017 RMP Amendments Rule

1. Procedural Requirements for Reconsidering RMP Amendments

Congress granted the EPA the authority for rulemaking on the prevention of chemical accidental releases as well as the correction or response to such releases in subparagraphs (A) and (B) of CAA section 112(r)(7). The substantive scope of this authority is discussed in more detail in the next section. The EPA has used its authority under CAA section 112(r)(7) to issue the RMP Rule (61 FR 31668, June 20, 1996), the RMP Amendments rule, and this Reconsideration rulemaking.

When promulgating rules under CAA section 112(r)(7)(A) and (B), the EPA must follow the procedures for rulemaking set out in CAA section 307(d). See CAA sections 112(r)(7)(E) *and* 307(d)(1)(C). Among other things, section 307(d) sets out requirements for the content of proposed and final rules, the docket for rulemakings, requirement to provide an opportunity for oral testimony on the proposed rulemaking, the length of time for comments, and judicial review. Only objections raised with reasonable specificity during the public comment period may be raised during judicial review. Section 307(d) has a provision that requires the EPA to convene a reconsideration proceeding when the person makes an objection that meets specific criteria set out in

US LLP, Washington, DC. Document ID: EPA–HQ–OEM–2015–0725–0759.

[15] Chemical Safety Advocacy Group (CSAG)'s Petition and Reconsideration and Stay Request of the Final RMP rule (82 FR 4594, January 13, 2017) March 13, 2017, Hunton & Williams, San Francisco, CA, EPA–HQ–OEM–2015–0725–0766 and EPA–HQ–OEM–2015–0725–0765 (supplemental petition).

[16] Petition for Reconsideration and Stay on behalf of States of Louisiana, Arizona, Arkansas, Florida, Kansas, Texas, Oklahoma, South Carolina, Wisconsin, West Virginia, and the Commonwealth of Kentucky with respect to Risk Management Program Final Rule, (82 FR 4594, January 13, 2017), March 14, 2017. State of Louisiana, Department of Justice, Attorney General. EPA–HQ–OEM–2015–0725–0762.

[17] EPA–HQ–OEM–2015–0725–0758.

[18] See written transcript of public meeting, EPA–HQ–OEM–2015–0725–0985.

[19] Response to Comments on the 2018 Proposed Rule (May 30, 2018; 83 FR 24850) Reconsidering EPA's Risk Management Program 2017 Amendments Rule (January 13, 2017; 82 FR 4594). This document is available in the docket for this rulemaking, EPA–HQ–OEM–2015–0725.

CAA section307(d)(7)(B). The statute provides:

> If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within [the comment period] or if the grounds for such objection arose after the period for public comment (but within the time period specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed.

As noted in the previous section, when several parties petitioned for reconsideration of the RMP Amendments, the Administrator found that at least one objection the petitioners raised met the specific criteria for mandatory reconsideration and therefore he convened a proceeding for reconsideration under CAA section 307(d)(7)(B). While section 307(d)(7)(B) sets out criteria for when the Agency must conduct a reconsideration, the Agency has the discretion to reopen, revisit, amend and revise a rule under the rulemaking authority granted in CAA section 112(r)(7) by following the procedures of CAA 307(d) at any time, including while it conducts a reconsideration proceeding required by CAA section 307(d)(7)(B). In light of the fact that EPA must already grant petitioners ''the same procedural rights as would have been afforded had the information been available at the time the rule was proposed,'' it is efficient to conduct a discretionary amendment proceeding simultaneously with the reconsideration proceeding.

As previously noted, EPA issued a rule delaying the effectiveness of the RMP Amendments in 2017 only to have the rule vacated in *Air Alliance Houston* v. *EPA,* 906 F.3d 1049 (D.C. Cir. 2018). The Court held that EPA could not delay the effective date of provisions of a CAA section 112(r)(7) rule beyond three months for the purpose of allowing itself a longer period of time to conduct a CAA section 307(d)(7)(B) reconsideration. *Id.* at 1063. The Court also found EPA's action was inconsistent with the mandate in CAA section 112(r)(7)(A) that we set effective dates that ''assur[e] compliance as expeditiously as practicable'' when our delay of effectiveness merely delayed the Amendments ''based on speculation about future amendments,'' rather than new evidence or a new substantive conclusion regarding preventing accidents. *Id.* at 1065. Finally, the Court found EPA's reasoning to be arbitrary and capricious because we failed to explain why the rule could not become effective while we conducted our reconsideration, did not contradict the previous conclusions about how long was needed for compliance, and did not limit delays based on the late finding regarding the West Fertilizer incident [20] to provisions clearly implicated by that report. *See id.* at 1066–69.

2. EPA's Substantive Authority Under Clean Air Act Section 112(r)(7)

Congress granted EPA authority for accident prevention rules under two provisions in CAA section 112(r)(7). Under subparagraph (A) of CAA section 112(r)(7), EPA may set rules addressing the prevention, detection, and correction of accidental releases of substances listed by EPA by rule (''regulated substances'' listed in the tables in 40 CFR 68.130). Such rules may include data collection, training, design, equipment, work practice, and operational requirements. EPA has discretion regarding the effective date (''as determined by the Administrator, assuring compliance as expeditiously as practicable'').

Under subparagraph (B) of CAA section 112(r)(7), Congress authorized EPA to develop ''reasonable regulations and appropriate guidance'' that provide for the prevention and detection of accidental releases and the response to such releases, ''to the greatest extent practicable.'' Congress required an initial rulemaking under this subparagraph by November 15, 1993. Subparagraph (B) sets out a series of mandatory subjects to address, interagency consultation requirements, and discretionary provisions that allowed EPA to tailor requirements to make them reasonable and practicable. For example, the regulations needed to address ''storage, as well as operations'' and ''emergency response after accidental releases;'' EPA was to use the expertise of the Secretaries of Labor and Transportation in promulgating the regulations; and EPA had the discretion (''shall, as appropriate'') to recognize differences in ''size, operations, processes . . . and the voluntary actions'' of regulated sources to prevent and respond to accidental releases (CAA section 112(r)(7)(B)(i)). At a minimum, the regulations had to require stationary sources with more than a ''threshold quantity to prepare and implement a risk management plan.'' Such plans needed to provide for compliance with rule requirements under CAA section 112(r) and include a hazard assessment with release scenarios and an accident history, a release prevention program, and a response program (CAA section 112(r)(7)(B)(ii)). Plans were to be registered with EPA and submitted to various planning entities (CAA section 112(r)(7)(B)(iii)). The rules would apply to sources three years after promulgation or three years after a substance was first listed for regulation under CAA section 112(r). (CAA section 112(r)(7)(B)(i)).

In addition to the direction to use the expertise of the Secretaries of Labor and Transportation in subparagraph (B) of CAA section 112(r)(7), the statute requires EPA to consult with these secretaries when carrying out the authority of CAA section 112(r)(7) and to ''coordinate any requirements under [CAA section 112(r)(7)] with any requirements established for comparable purposes by'' OSHA. (CAA section 112(r)(7)(D)). This consultation and coordination language derives from and expands upon provisions on hazard assessments in the bill that eventually passed the Senate as its version of the 1990 CAAA, section 129(e)(4) of S. 1630. The Senate committee report on this language notes that the purpose of the coordination requirement is to ensure that ''requirements imposed by both agencies to accomplish the same purpose are not unduly burdensome or duplicative.'' Senate Report at 244.[21] The mandate for coordination in the area of safer chemical processes was incorporated into the CAA in section 112(r)(7)(D). In the same legislation, Congress directed OSHA to promulgate a process safety standard that became the PSM standard. See CAAA of 1990 section 304.

The 2017 RMP Amendments and this reconsideration rule address the following three requirements of the Risk Management Program: Prevention programs, emergency response provisions, and information disclosure requirements. The prevention program provisions rescinded in this rule (third-party auditing, incident investigation, and safer technologies and alternatives analysis) address the ''prevention and detection of accidental releases.'' The emergency coordination and exercises provisions in this rule modify existing provisions that provide for ''response to such releases by the owners or operators of the sources of such releases.'' The

[20] On May 11, 2016, the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATF) announced its conclusion that the fire at the West Fertilizer facility was intentionally set. See EPA–HQ–OEM–2015–0725–0641.

[21] Clean Air Act Amendments of 1989, Report of the Committee on Environment and Public Works, U.S. Senate together with Additional and Minority Views to Accompany S. 1630. S. Report No. 101–228. 101st Congress, 1st Session, December 20, 1989.—''Senate Report'' EPA–HQ–OEM–2015–0725–0645.

information disclosure provisions that are rescinded or modified in this document are related to the development of ''procedures and measures for emergency response after an accidental release of a regulated substance in order to protect human health and the environment.'' [22] (CAA section 112(r)(7)(B)(i)).

In considering whether it is legally permissible for the Agency to rescind and/or modify provisions of the RMP Amendments rule while continuing to meet EPA's obligations under CAA section 112(r), EPA notes that the CAA did not require EPA to promulgate the RMP Amendments rule. There are four provisions of CAA section 112(r) that require or authorize the Administrator to promulgate regulations. The first two relate to the list of regulated substances and their threshold quantities. CAA section 112(r)(3) required EPA to promulgate a list of at least 100 regulated substances. Section 112(r)(5) required EPA to establish, by rule, a threshold quantity for each listed substance. EPA met these obligations in 1994 with the publication of the list of regulated substances and threshold quantities (59 FR 4493, January 31, 1994). Section 112(r)(7) contains the other two regulatory provisions. Section 112(r)(7)(B) required EPA to publish accidental release prevention, detection, and response requirements and guidance. EPA met this obligation in 1996 with the publication of the original RMP rule (61 FR 31668, June 20, 1996), and associated guidance documents published in the late 1990s. The other regulatory promulgation provision of section 112(r)(7)—section 112(r)(7)(A)—is permissive. Subparagraph (A) authorizes EPA to promulgate regulations but does not require it.

Therefore, EPA had met all of its mandatory duty regulatory obligations under section 112(r) prior to promulgating the RMP Amendments rule. In promulgating the RMP Amendments rule, EPA took a discretionary regulatory action in response to Executive Order 13650, ''Improving Chemical Safety and Security.'' [23] We have made discretionary amendments to the RMP rule several times without a dispute over our authority to issue discretionary amendments. See 64 FR 964 (January 6, 1999); 64 FR 28696 (May 26, 1999); 69 FR 18819 (April 9, 2004). As EPA's action in the 2017 RMP Amendments rule was discretionary, the Agency may take additional action to rescind or modify provisions adopted in the 2017 rule if the Agency finds that it is reasonable to do so. The *Air Alliance Houston (AAH)* decision noted that ''EPA retains the authority under Section 7412(r)(7) [CAA section 112(r)(7)] to substantively amend the programmatic requirements of the [2017 RMP Amendments] . . . subject to arbitrary and capricious review.'' 906 F.3d at 1066. This rule makes substantive amendments to 40 CFR part 68. Our action is authorized by both CAA 112(r)(7)(A) and (B), as explained herein.

D. EPA's Principal Rationale for Final Rule Actions

The Supreme Court has recognized that agencies may change policy when such changes are ''permissible under the statute, . . . there are good reasons for [them], and that the agency *believes* [them] to be better'' than prior policies. *See FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009) (emphasis original). As discussed in detail below, there are good reasons for the policies adopted in this rule and the EPA believes they are better than policies we are rescinding or amending.

In the 2017 RMP Amendments rule, we found that the costs of the changes we made were reasonable in comparison to what we called the ''likely benefits,'' which included non-monetized benefits and some unspecified portion of accidents that we did monetize that we believed would be prevented. 82 FR 4598 (January 13, 2017). After taking comment on the issue of the reasonableness of the burdens and the appropriate role of cost in our decision-making, we remain convinced that a more reasonable and practicable approach to accident prevention is to emphasize case-specific oversight of those facilities that are performing poorly over regulatory changes that increase compliance costs for the entire regulated community. Such an approach recognizes that, because a relatively small number of facilities have accidental releases, the Agency can best prevent future accidents by enhancing safety measures at the poorest performers, through tailored injunctive relief when appropriate, to best suit the circumstances of each case rather than imposing broad regulatory requirements that unreasonably impose additional burdens on the vast majority of regulated facilities that have performed well. We previously labeled this approach as ''enforcement-led,'' but is better described as ''compliance-driven'' because it involves both routine compliance oversight of all facilities and more intensive post-accident oversight of weaker performers, including requiring additional safety measures as injunctive relief in enforcement actions.

Furthermore, we believe it is better not to impose substantial new regulatory requirements on all facilities in the RMP program on the basis of information about individual incidents and opinions where available, more comprehensive data does not demonstrate the efficacy of such a requirement across the board. EPA considered stakeholder input that both favored and opposed the rescission of the prevention program elements adopted in 2017 and considered data submitted by commenters. We also analyzed multiple years of accident history data in the RMP database, both nationally and in states and localities with programs that contain some or all the elements of the prevention program provisions. Based on this assessment, it cannot be established that regulatory programs that emphasize inherently safer technologies (IST) methods, such as chemical substitution and process redesign, have resulted in a reduction in accident rates involving RMP chemicals. This evidence suggests that IST regulations would not likely be effective at reducing accidents if applied on a national scale.

We do not dispute that there may be circumstances where the prevention program measures we adopted in the RMP Amendments rule are effective. However, we believe that many of the sources that would have had to conduct STAA and the other 2017 prevention measures already have successful prevention programs. The data support the conclusion that incorporating STAA into all such programs will not clearly reduce accidents (see *section IV.C* for further discussion of data relating to the effectiveness of STAA). Thus, rather than take a rule-driven approach that requires an STAA and/or new auditing and investigation requirements at all facilities, we have concluded that we can obtain accident-prevention benefits at lower cost through implementing and enforcing the pre-2017 RMP prevention program rules, and that the finalized regulatory changes in 2017 were a less appropriate execution of the statutory direction to establish reasonable regulations that promote the prevention, detection, and response to accidents to

[22] Incident investigation, compliance auditing, and STAA are also authorized as release prevention requirements pertaining to stationary source ''design, equipment . . . and work practice'' as well as ''record-keeping [and] reporting.'' Information disclosure is also authorized as ''reporting.'' CAA section 112(r)(7)(A).

[23] See 82 FR 4594, January 13, 2017: ''Section 6(c) of Executive Order 13650 requires the Administrator of EPA to review the chemical hazards covered by the Risk Management Program and expand, implement and enforce the Risk Management Program to address any additional hazards.''

the greatest extent practicable than the measures in this final rule. Through oversight on a source-specific basis, when we identify a facility that is not implementing a successful prevention program, we have the ability to seek injunctive relief that includes appropriate safety measures. This approach is supported by the observed reduction in the rate of RMP-reportable accidents over many years.

Reconsideration petitioners asserted that EPA failed to sufficiently coordinate the changes to the RMP regulations with OSHA, and that the regulations as revised by the Amendments rule left important gaps and created compliance uncertainties. Our approach in the final rule is more consistent with our historic practice to keep the EPA and OSHA prevention programs in alignment to the extent we are able to do so consistent with each Agency's statutory mission. It is plain from the legislative history and text of the statute that the interaction of the two programs was a concern of Congress at the time of the 1990 Clean Air Act Amendments. EPA does not delegate to OSHA or assign it primacy in the subject matter. We do not take the position that neither agency can act without the other moving in synch. Rather, reflecting on the potential burden of the changes adopted in the RMP Amendments as well as the lack of data concerning the benefits of the rule-driven approach adopted in the Amendments, we believe more work with OSHA on the issues being addressed would lead to better accident prevention.

We also believe that it is better to reduce the costs of compliance with regulatory requirements, when that is reasonable and practicable and has no significant impact on accidental release prevention and response. We recognize the terms of the statute allow for many policy considerations in deciding what is reasonable and practicable. To the extent the statute provides us with the flexibility to reflect the considerations in numerous executive orders, the Administrator has decided to use his discretion to take actions consistent with those executive orders. Of greatest concern to commenters has been executive orders issued by President Trump, but the rule also reflects consideration of other executive orders that predate this Administration. The decision to reduce regulatory burden by eliminating many of the prevention program provisions, as well as largely redundant information disclosures, is consistent not only with the executive orders but also is consistent with what may be considered as reasonable and practicable under the statute.

The final rule also addresses important security concerns that were raised in reconsideration petitions and by numerous commenters. We granted the RMP Coalition's request for reconsideration of the 2017 Amendments in part because of the timing of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATF) finding that the West Fertilizer incident was caused by a criminal act. In the proposed rule, EPA requested additional comment on the import of that finding. See 83 FR 24870, May 30, 2018. After weighing comments received on this issue, we reaffirm our view of the importance of balancing the public's need for chemical hazard information with chemical facility security. From the beginning of the Risk Management Program, one of its objectives has been to improve the availability of information about chemical hazards to community members and emergency planners in order to improve emergency preparedness. However, the sensitivity of certain information elements associated with RMP-regulated facilities has required Congress and EPA to strike a balance between a community's right-to-know and facility security. The Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (CSISSFRRA), Public Law 106–40, recognized the need for such a balance by restricting the availability of certain information relating to the potential offsite effects of releases while also requiring it to be made available under controlled circumstances (*i.e.,* dissemination at public meetings and availability in reading rooms). EPA's final rule action addresses these issues in similar fashion—the final rule makes minor changes to the emergency coordination and public meeting provisions of the Amendments to avoid potential security risks associated with two open-ended information disclosure provisions. EPA does not believe these changes will impede the ability of local emergency planners and responders or members of the public to obtain necessary information about chemical facility hazards.

There are good reasons to retain the improvements to the emergency response provisions adopted in 2017, but with a few changes that make these provisions better. The West Fertilizer incident and others showed that improvements in the rule's emergency response provisions were necessary, and we reaffirm this view with this action. The final rule therefore retains the enhanced emergency coordination provisions adopted in 2017 with minor changes as described above and below. The emergency exercise provisions of the RMP Amendments rule are also mostly retained. However, EPA's final rule changes in this area are intended to allow facilities and local responders greater time and flexibility in meeting the exercise provisions. We believe these changes are particularly important in communities with multiple RMP-regulated facilities, where the RMP Amendments rule's exercise provisions could have overburdened local responders with requests to participate in exercises.

III. General Comments and Legal Authority

After EPA solicited public comments, commenters raised numerous issues that included discussion on:

1. Statutory authority and procedural issues;
2. Costs and benefits of various regulatory provisions;
3. EPA's rationale for rescinding or modifying various regulatory provisions;
4. Maintaining consistency with the OSHA PSM standard;
5. Numbers of accidents and accident rates;
6. Accidents occurring during adverse weather events;
7. Security concerns regarding accident prevention, emergency response coordination and information availability provisions;
8. Timing and scope of public meetings after an accident;
9. Information disclosure during local emergency coordination;
10. Frequency, scope, documentation and other aspects of emergency exercises; and
11. Concerns from communities about the impact of accidents, especially those affecting low-income and minority populations.

We have structured the discussion of comments as they correspond to various topics: Statutory authority and procedural issues, accident prevention provisions, information availability provisions (including public meetings), local emergency coordination, emergency response exercises and compliance dates.

This section focuses on general comments regarding procedural aspects of the reconsideration rulemaking, EPA's authority under the statute to revise the RMP Amendments and to rescind aspects of that rule, and general comments on costs and benefits. Procedural objections include claims that EPA violated notice and comment requirements. Commenters also identified purported docketing deficiencies, raised claims of impermissible bias on the part of various decisionmakers, and found fault with EPA's choice to follow various

executive orders in its decision making. General substantive authority issues discussed below include whether EPA may emphasize compliance and enforcement rather than new regulations under the CAA, whether EPA has the authority to consider costs under CAA section 112(r)(7), whether EPA's approach is consistent with the requirement that reasonable regulations provide for the preventing and mitigating of accidents ''to the greatest extent practicable,'' and whether EPA may rescind provisions purportedly related to CSB recommendations. Cost and benefit issues include whether the vacatur of the Delay rule should affect estimated cost savings, cost impacts to fence line communities, accident data submitted by commenters relating to estimated accident costs, and other arguments for and against EPA's cost-benefit analysis and cost-saving rationale. Some cost/benefit issues that relate to specific regulatory provisions are discussed in subsequent sections relating to those provisions.

A. Discussion of Comments on Procedural Requirements

1. Claims That EPA Violated Notice-and-Comment Requirements

Several advocacy groups asserted that EPA failed to consider what additional steps were necessary to allow for environmental justice communities a ''reasonable period for public participation,'' as required by 42 U.S.C. 7607(h). A joint submission from multiple advocacy groups argues that EPA's statement that its proposal ''does not impose any additional costs on affected communities'' is incorrect and arbitrary because EPA's own record highlights the costs for fence-line communities in the form of deaths, injuries, toxic exposure, and other harm related to shelter-in-place and evacuation orders, as well as property value and other economic harms. The commenter asserted that the CAA requires EPA to provide a reasonable opportunity for an oral presentation of data, views, or arguments, and that EPA has failed to do so by providing insufficient time to register for the public hearing and holding a hearing in one location only. The commenter also contended that EPA's justification for not performing any additional engagement activities, and not providing any community-based public hearings or listening sessions contravenes the statutory requirement for a ''reasonable period for public participation,'' and is arbitrary and capricious.

The same commenter contended that EPA did not provide 30 days' notice of the public hearing scheduled for June 14, 2018 because the notice of hearing was published on May 30, 2018 and CAA 7607(h) requires EPA to ''ensure a reasonable period for public participation of at least 30 days'' in conjunction with giving interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions.'' 42 U.S.C. 7607(d)(5). This commenter noted that because the hearing notice also stated that ''[t]he last day to preregister in advance to speak at the hearing is June 8, 2018,'' this implied that participants should register to ensure they could participate in that hearing and gave communities only nine days to do so. This commenter stated that EPA refused to hold public hearings elsewhere or to provide a second public hearing, despite requests from stakeholders to do so. This commenter argued that EPA provided no opportunity for telephone presentation/participation and agreed to provide a ''listen-only'' phone line. The commenter argued that only communities that had been in contact with EPA or were checking the EPA website were made aware of this line because EPA gave no public notice of the listen-only phone line.

The commenter also argued that EPA held two rounds of public comment and included eight public listening sessions in the first round of participation for the RMP Amendments rule, but the Agency's decision to hold only a single public hearing (in D.C.) makes this rulemaking process inadequate and its proposed action arbitrary. This commenter maintains having only one hearing was contrary to EPA's original practice on this rule and its own recognition previously that it is necessary and important to consider input from the most affected and most-exposed community members who live and work near RMP facilities.

The commenter also contended that EPA refused to give the minimum of 30 days' accurate notice even though the REAL ID Act requirements it had provided in its initial notice were incorrect, as they stated that if a participant had a driver's license from 12 listed states or territories, that additional identification would be required to attend the hearing. This commenter stated that EPA admitted the public notice was incorrect after receiving questions from the public and then published on its website, but not in the **Federal Register**, the information that no state residents, and only American Samoa residents, would be required to provide an additional form of identification. This commenter argues that EPA's failure to provide public notice of this error and to delay its hearing or hold a second hearing in response renders its process unlawful and arbitrary because REAL ID Act requirements pose an additional and disproportionate barrier to individuals who do not speak English as their first language and the lack of adequate notice by EPA made it impossible for them to participate.

EPA Response: EPA disagrees with these comments. The Agency met the statutory requirement to provide a ''reasonable period for public participation.'' We believe the initial notice and hearing were sufficient to satisfy the requirements of CAA section 307(d) and other relevant rulemaking procedures that apply to this rulemaking. The ''reasonable period for public participation'' referred to in CAA 307(h) is the presumptive minimum comment period for a proposed rule and not a mandatory minimum period before a public hearing. Regarding the commenter's contention that EPA was required to give more than 15-days' notice prior to the hearing, the Federal Register Act provides that a notice of a hearing required by statute ''shall be deemed to have been given to all persons'' when the notice is published in the **Federal Register** ''not less than fifteen days'' prior to the date of the hearing, ''without prejudice, however, to the effectiveness of a notice of less than fifteen days where the shorter period is reasonable.'' 44 U.S.C. 1508. The public hearing for the RMP Reconsideration Proposal was held on June 14, 2018, 15 days after publication of the notice of proposed rulemaking (NPRM) in the **Federal Register**. Additionally, EPA notes that the date and location of the public hearing were fixed in advanced, and web-accessible copies of the NPRM were made available to the public a few hours after the Administrator's signature on the NPRM on May 17, 2018.

Another public participation provision of the CAA requires that the rulemaking docket must remain open for public comment at least 30 days after the last hearing (CAA section 307(d)(5)). The initial close of comment period was July 30, 2018 (60 days after notice), and the comment period was later extended to August 23, 2018. Therefore, the statutory requirement for public participation of at least 30 days was met.

The implication made by the commenter that hearing participants had to register by June 8, 2018 in order

to participate in the hearing is incorrect. The May 30, 2018 **Federal Register** notice (83 FR 24850) for the hearing made clear that pre-registration was intended to assist EPA and participants to determine preferences on speaking time and how they could fit into the hearing schedule. The FR notice explained that requests to speak would also be taken at the day of the hearing at the registration desk and anyone wishing to make a comment as a walk-in registrant would be heard after any scheduled speakers. Thus, speakers at the hearing were not required to pre-register.

EPA did decline a request from an advocacy group for additional public hearings. EPA believes that holding a public hearing in Washington, DC, on June 14, 2018, and the notice announcing the hearing, meet the requirements of CAA section 307(d), as well as other relevant federal statutes.

While EPA did provide listening-only telephone participation for this hearing, this was beyond what is necessary for compliance with proper rulemaking procedure, and EPA did so to facilitate additional participation.

The procedures EPA followed here are consistent with how the Agency proceeds in other rulemakings under section 307(d). For example, providing fifteen days between publication of an NPRM and a public hearing is routine, and holding one hearing at EPA headquarters is also not uncommon even when all the affected communities are outside Washington.

The commenter is incorrect that EPA held two rounds of public hearings for the Amendments rule, and EPA disagrees that having only one hearing for the RMP Reconsideration rule was contrary to EPA's original practice on the RMP Amendments rule. EPA had only one public hearing on the RMP Amendments rule content, which was held on March 29, 2016. EPA held another hearing (April 18, 2017) for a separate rulemaking on the delay of the effective date for the RMP Amendments while the Agency began the reconsideration process for the RMP Amendments rule. Therefore, the opportunity to comment on the RMP Reconsideration proposed rule was similar to the opportunity to comment on the proposal underlying the RMP Amendments.

The eight public listening sessions to which the commenter refers were held prior to EPA proposing the RMP Amendments and were not part of the comment period for the Amendments rulemaking. Rather, these listening sessions were part of the Agency's input-gathering process under Executive Order 13650, which was a broader initiative directing the federal government to improve the safety and security of chemical facilities and reduce the risks of hazardous chemicals to workers and communities.

EPA disagrees that community members who live and work near RMP facilities did not have sufficient opportunity to participate in the proposed Reconsideration rule public hearing held on June 14, 2018. Holding a hearing in Washington, DC represented a reasonable balance of the need to have agency personnel familiar with the rule at the hearing, as well as accessibility to representatives of various stakeholders. With approximately 12,500 stationary sources in over 1,000 counties subject to the RMP rule, it would have been impossible to conduct hearings in all locales.

Furthermore, participation in the public hearing for the proposed RMP Reconsideration rule was larger (38 speakers) than the public hearing held for the proposed RMP Amendments rule (22 speakers) or the public hearing for the proposed Delay rule held on April 19, 2017 (28 speakers). Local and state advocacy and community groups were well represented at the Reconsideration rule hearing, numbering 13 of the 38 speakers. EPA also notes that states that had not previously commented on the Amendments rule and that had not sought to implement the RMP program through delegation were active in this rulemaking and testified during the June 14, 2018 public hearing.

Regarding the commenter's contention that the REAL ID Act requirements posed an additional and disproportionate barrier to individuals who do not speak English as their first language, EPA must follow these requirements for persons entering Federal buildings. The REAL ID Act requirements allow for other types of IDs to be used as acceptable alternative forms of identification. Once EPA made further inquiries about the ID requirements and discovered that many of the ID restrictions for 11 of the 12 states and territories had been removed, EPA provided the updated REAL ID Act requirements on the public hearing registration web page whose internet address was provided in the FR notice to direct potential hearing speakers to pre-register. The number of states/territories with restrictions on type of ID accepted were less than indicated by the FR notice, so providing valid ID for the hearing should not have been problematic. EPA was not contacted by or made aware of any potential speakers who were deterred by the REAL ID Act requirements.

2. Claims of Omitted Documents in Rulemaking Docket

A joint comment submission from multiple advocacy groups and other commenters argued that EPA violated notice- and comment requirements by failing to provide a meaningful opportunity for public participation in the rulemaking by omitting key documents from the public docket, including a March 2018 version of the RMP database, query techniques used to obtain facility counts from the RMP database, and spreadsheet outputs of queries.

EPA Response: Regarding the commenters' claim that EPA omitted key documents from the public docket, EPA disagrees with this claim. EPA docketed a November 2017 version of the RMP database that was used to obtain facility statistics for the 2014–2016 period on July 11, 2018 (Docket ID EPA–HQ–OEM–2015–0725–0989) and provided it directly to one of these commenters a day earlier. EPA also, on a notice of data availability published on July 24, 2018,[24] extended the comment period for the proposed rule from July 30 to August 23, 2018, to give other members of the public an opportunity to obtain the more recent database if they so desired. Furthermore, as EPA explained in the notice of data availability for the November 2017 database, because the November 2017 database was used mostly for corroboration, we do not believe there were fundamental data about sources subject to the RMP Rule that could not have been observed in the 2015 database that was already in the docket.

In addition to docketing an updated version of the database at the request of a commenter, EPA used a March 2018 version of the RMP database only to extract accident statistics for the 2014–2016 period, which were presented in the RIA. Because EPA used this version of the database only for accident information, instead of docketing the entire database, EPA docketed an Excel spreadsheet output of accident records for 2014–2016 derived from this version of the database prior to publishing the proposed rule. See Docket ID: EPA–HQ–OEM–2015–0725–0909. The accident counts from this spreadsheet were presented in the RIA to corroborate the decline in accidents seen in the 2004–2013 period. On October 3, 2018, EPA also docketed a spreadsheet containing

[24] 83 FR 34967, July 24, 2018, EPA–HQ–OEM–2015–0725–1389.

RMP facility accidents that occurred during 2017, extracted from the September 2018 version of the RMP database. EPA docketed this spreadsheet to corroborate the continued decline in RMP facility accidents in 2017 (there were 94 RMP facility accidents reported to EPA in 2017). See Docket ID: EPA–HQ–OEM–2015–0725–1974.

EPA also disagrees that it failed to adequately explain query techniques used to obtain information from the RMP database. At the request of a commenter, EPA held an information session for the commenter and other associated commenters on July 26, 2018, where EPA demonstrated methods and techniques for querying the RMP database and demonstrated how EPA obtained facility, process and accident counts from the database.[25] During that session, commenters noted no errors associated with EPA's query methods or results. A record of this meeting and a copy of the presented materials were placed in the docket on August 6, 2018.[26] EPA notes that other commenters were able to extract information from the docketed database and provide it in their public comments without apparent difficulty.

3. Claims That Trump Administration Executive Orders Undermined the Rulemaking Process

A joint comment submission from multiple advocacy groups and other commenters argued that the presence of E.O.s 13771, 13777, and 13783[27] in EPA's decision-making process undermined the integrity of the agency rulemaking process and violated the Due Process clause by forcing the agency to act with an unalterably closed mind. The commenters cited the legal standard established in *Air Transp. Ass'n of Am., Inc.* v. *Nat'l Mediation Bd.,* (663 F.3d 476, 487 (D.C. Cir. 2011)), asserting that the Executive Orders left EPA with no option but to deregulate (or else be forced to promulgate significant deregulatory actions elsewhere to balance out the cost), leaving the EPA unwilling or unable to rationally consider arguments. The commenters concluded that this limitation on EPA's decision-making is antithetical to reasoned decision making, making the proposed rule arbitrary and capricious and in violation of the Due Process Clause.

EPA Response: EPA disagrees that the Agency's consideration of E.O.s 13771, 13777, and 13783 undermines the integrity of the rulemaking process, violates the Due Process Clause, or is otherwise unconstitutional, unlawful, or irrational. EPA agrees that the Agency may not rely on executive orders as the basis for rulemaking—the Agency must have statutory authority to issue regulations, as it does in this case. While the action we take is consistent with the executive orders as a matter of policy, we have not acted inconsistently with CAA section 112(r) and other statutes in this rulemaking, nor have we relied on the executive orders as a source of authority to take this action. The E.O.s do not supersede any provision of the CAA, and they are not the cause or legal basis of EPA's decision to undergo this rulemaking or the outcome reached in the final rule. Nevertheless, we believe the orders themselves can be seen as identifying reasonable concerns about how we implement our underlying authority, much like E.O. 13132 (Federalism), E.O. 13175 (Consultation and Coordination with Indian Tribal Governments), E.O. 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations), and other E.O.s To the extent the underlying statutes allow, we may consider the policies of the E.O.s in determining how to reasonably exercise our authority.

As the proposal notes, E.O.s 13771, 13777, and 13783 all support a policy direction of carefully examining the economic burden of regulations, which is ''directly relevant to whether the Amendments are 'practicable' for sources, as that term is used in CAA section 112(r)(7).'' 83 FR 24871. We have placed greater weight on the lack of demonstrable accident prevention benefits than we had at the time of promulgating the 2017 RMP Amendments. Id. The accident history analyses in the record support the conclusion that the economic burdens of the 2017 Amendments' prevention provisions were unreasonably disproportionate to the accident prevention benefits. While our further analysis of the burdens of the rule are in keeping with the themes or general direction of the E.O.s, assessing the reasonableness and practicability of the 2017 Amendments is consistent with CAA section 112(r)(7) and would be appropriate regardless of the E.O.s *Id.*

The Agency's rationale for rescissions and modifications to the Amendments rule is multifaceted—it includes maintaining consistency in accident prevention requirements with the OSHA PSM standard, addressing security concerns with the Amendments, and reducing unnecessary regulations and regulatory costs, consistent with EPA's statutory authority. If EPA had relied on these E.O.s without other considerations and was acting with an ''unalterably closed mind,'' the Agency would have simply rescinded the entire Amendments rule, rather than retain significant portions of it. EPA's actions in the final rule demonstrate that the Agency carefully and rationally considered public comments and arguments. For example, EPA carefully analyzed available data relating to the Amendments rule's prevention provisions prior to rescinding them, made narrowly-tailored changes to the emergency coordination, emergency exercise, and public meeting provisions, and carefully considered security and burden concerns prior to rescinding the information availability provisions. Further evidence that EPA did not approach this rule with an unalterably closed mind can be seen from EPA not going forward with various proposed deregulatory revisions as a result of comments. For example, while we proposed deletion of the requirement to provide information to local emergency planners upon request altogether, we finalized an amendment that required sources to provide information necessary for the emergency plan upon request.

B. Discussion of Comments on EPA's Substantive Authority Under CAA Section 112(r)

While many commenters agreed that EPA has ample authority to make substantive changes to the RMP rules, various other commenters suggested that particular provisions of the proposed rulemaking were not consistent with or violated CAA section 112(r) or other relevant statutes. We address these comments in each relevant section of the preamble and in the Response to Comments document,[28] available in the docket for this rulemaking.

[25] EPA. July 26, 2018. Summary of Meeting between EPA and Earthjustice, Union of Concerned Scientists and NY Attorney General's Office regarding Analysis of RMP Database. EPA–HQ–OEM–2015–0725–1463.

[26] EPA–HQ–OEM–2015–0725–1463.

[27] E.O. 13771 ''Reducing Regulation and Controlling Regulatory Costs'', January 30, 2017; E.O. 13777 ''Enforcing the Regulatory Reform Agenda'', February 24, 2017 and E.O. 13783 ''Promoting Energy Independence and Economic Growth'', March 28, 2017. EPA–HQ–OEM–2015–0725–0863, –0864, and –0865.

[28] EPA. Response to Comments on the 2018 Proposed Rule Reconsidering EPA's Risk Management Program 2017 Amendments Rule. This document is available in the docket for this rulemaking.

1. Claims That Prioritizing Compliance With Existing Regulations Over Imposing New Requirements Violates CAA

Several commenters, including advocacy groups and State elected officials, stated that EPA's proposal to prioritize enforcement of the pre-2017 RMP rule over the additional requirements of the 2017 RMP Amendments rule was inconsistent with Congress's mandate in the CAA. These commenters stated that the emphasis on compliance oversight proposed by EPA violates the statute because the CAA requires EPA to promulgate ''regulations'' that provide ''to the greatest extent practicable'' for the prevention of chemical disasters. Another commenter stated that Congress clearly intended that accident risk be minimized at the outset, not only after an accident has occurred, which the commenter argued could not be achieved through enforcement alone.

EPA Response: EPA disagrees with these comments. The relevant statutory phrase describing EPA's authority to regulate under CAA 112(r)(7)(B)(i), authorizes ''reasonable regulations . . . to provide, to the greatest extent practicable,'' for the prevention and detection of and response to accidental releases of substances listed in 40 CFR 68.130 (''regulated substances,'' as the phrase is used in CAA 112(r)). An interpretation of the statute that does not give meaning to the qualifier ''reasonable'' to the authority to regulate ''to the greatest extent practicable,'' as the commenters suggest, is not in keeping with the structure of the statute. As recognized by the Supreme Court in *Michigan* v. *EPA,* 135 S. Ct. 2699, 2707 (2015), ''reasonable regulation'' generally involves some sort of examination of the benefits and the burdens of a rule.

EPA recognizes that the ''reasonable regulations'' should promote the prevention, detection, and response to accidents to the greatest extent practicable, but we must also construe ''practicable'' when developing regulations under CAA 112(r)(7)(B). We interpret the term practicable to include concepts such as cost-effectiveness of the regulatory and implementation approach, as well as the availability of relevant technical expertise and resources to the implementing and enforcement agencies and the owners and operators who must comply with the rule. While the Supreme Court recognized in the *Michigan* case that phrases that ordinarily encompass cost as a consideration may be further constrained in specific settings, because of the inclusion of the word ''practicable,'' we do not read ''to the greatest extent practicable'' to be such a constraint.

We interpret the CAA to give us the discretion, when assessing whether specific provisions (such as the STAA) are in fact ''reasonable regulations,'' to consider the prior rule structure and the enforcement and implementation program under it, and then determine, based on data on accident history required to be collected by the statute, that the STAA provision is not reasonable because it targets entire sectors rather than the facilities within those sectors that have problematic prevention programs.

The RMP accident data show that over a ten-year period, at least 90% of the RMP facilities have had no reported accidents, 6% had only one accident, and about 2% had two or more accidents. Nearly half of the total reportable accidents were from less than 2% of the RMP facilities, which reported multiple releases.[29]

Given the relatively small number of facilities that have RMP-reportable accidents, rather than imposing new requirements on all facilities that are costly and diffuse in targeting, a better approach is to retain the RMP rule as it stood prior to the 2017 RMP Amendments rule and improve compliance with that rule in the population of sources that are underperforming. This is both reasonable and addresses accidents to the greatest extent ''practicable.'' Broad regulatory requirements that unnecessarily impose burdens on the vast majority of regulated facilities that are performing well are not reasonable regulations. Reasonable and practicable prevention, protection, and response can be achieved by requiring those facilities that are not complying with the RMP rules to improve regulatory compliance through injunctive relief in enforcement actions. Such an approach is more practicable than the rescinded prevention provisions because EPA can tailor relief to best suit the circumstances of the case without unduly burdening sources that are implementing effective prevention programs.

[29] EPA. March 9, 2017. Notes and Documentation Related to a March 9, 2017 Meeting between the Risk Management Programs (RMP) Coalition and EPA regarding a Petition for Reconsideration of the RMP Amendments rule (82 FR 4594, January 13, 2017). EPA–HQ–OEM–2015–0725–0929 and American Chemistry Council public comments, August 17, 2018. EPA–HQ–OEM–2015–0725–1628.

2. EPA's Authority To Consider Regulatory Costs

A few commenters stated that the CAA does not permit EPA to rescind provisions of the RMP Amendments rule based on cost. These commenters stated that EPA has failed to identify its authority to consider cost in its analysis of whether or not to revise the RMP Amendments rule. Some commenters argued that the reduction of cost is an unlawful consideration and irrelevant because the CAA requires regulation based on certain factors, which do not include cost.

EPA Response: EPA disagrees with these comments. The common definitions of the words ''reasonable'' and ''practicable'' permit the consideration of cost. Merriam-Webster provides ''not too expensive'' as one definition for ''reasonable'' and indicates ''Practicable implies that something may be effected by available means or under current conditions.'' See *https://www.merriam-webster.com/dictionary/reasonable; https://www.merriam-webster.com/dictionary/practicable.* In *Michigan* v. *EPA,* the Supreme Court held that ''reasonable regulation ordinarily requires paying attention to the advantages *and* the disadvantages of agency decisions.'' *Michigan* v. *EPA,* 135 S. Ct. at 2707 (2015) (original emphasis). A practicable measure would be one that can come to fruition without imposing unreasonable demands. See *https://thelawdictionary.org/practicable/.* Synonyms not only include terms like feasible and possible but also viable and workable. See *https://www.merriam-webster.com/dictionary/practicable.* The lack of a specific reference to cost as a statutory factor should not be read to prohibit EPA from considering cost when the word ''reasonable'' ordinarily requires such consideration and what is ''practicable'' has the flexibility to encompass what is workable and not unreasonable. Cf. *Entergy Corp.* v. *Riverkeeper, Inc.,* 556 U.S. 208, 222 (2009) (silence regarding cost and other factors, without more, does not prohibit their consideration in standard-setting).

The legislative history of section 112(r) supports this reading. The House Energy and Commerce (HE&C) Committee version of the accident prevention provisions contained the phrase ''reasonable regulations . . . to provide, to the greatest extent practicable, for the prevention and detection of accidental releases.'' [House Rep. at 87 (HR 3030 section 112(m)].[30]

[30] CRS. November 1993. A Legislative History of the Clean Air Act Amendments of 1990 S. Prt. 103–38 *Committee Print,* Volume II, Report

The HE&C Committee Report explains that its bill would create a program to ''prevent and detect accidental releases to the maximum extent practicable.'' [House Rep. at 157.] While the reasonable regulations/greatest extent practicable language was ultimately retained in CAA section 112(r)(7)(B)(i), additional language not in the House committee version of the accident prevention provisions emerged at various stages of Senate and House consideration of the 1990 CAA Amendments that clarified that one of the goals of Congress was to have EPA consider the burden it would be imposing when it drafted its accident prevention Risk Management Program. As noted in the proposed rule preamble (83 FR 24864–5, May 30, 2018), in discussing the purpose of the coordination language of section 112(r)(7)(D), the Senate Committee asked both EPA and OSHA to coordinate to ensure the regulations would not be ''unduly burdensome.'' Senate Rep. at 244. Clean Air Act Amendments of 1989, Report of the Committee on Environment and Public Works, U.S. Senate together with Additional and Minority Views to Accompany S. 1630. S. Report No. 101–228. 101st Congress, 1st Session, December 20, 1989. EPA–HQ–OEM–2015–0725–0645.

Section 112(r)(7)(C) also requires that the regulations be consistent with third-party-set standards and recommendations ''to the maximum extent practicable,'' and that EPA take into account the concerns of small businesses. The Senate Committee report discussion of the hazard assessment provisions that are early versions of section 112(r)(7)(C) show that the Senate was concerned about minimizing the burden of its hazard assessment provisions. Senate Rep. at 226–27. In the context of the overall requirements for accident prevention regulations, it would be difficult to prohibit EPA from considering the burdens associated with the regulations authorized by CAA section 112(r)(7) and still fulfill these portions of the statute. Therefore, we believe that an interpretation that allows EPA to consider cost issues and other burdens of compliance among the factors in deciding what is a reasonable regulation to prevent accidents better fulfills the intent of the statute than the position offered by the commenters.

accompanying H.R. 3030 (H. Rept. 101–490). Prepared by the Congressional Research Service (CRS) for U.S. Senate Committee on Environment and Public Works. 103d Congress, 1st Session, available in the rulemaking docket.

3. Regulations Must Prevent and Mitigate Accidents ''to the Greatest Extent Practicable''

A few commenters stated that the Reconsideration rule is inconsistent with CAA requirement that regulations prevent and minimize risks from chemical accidents ''to the greatest extent practicable.'' One commenter stated that none of EPA's rationales demonstrate the legal or rational justification needed for EPA to be able to finalize the proposal or satisfy the CAA's requirements to prevent and reduce chemical releases. The commenters also stated that EPA may not rely on any generalized justification without explaining how or why the rationale provides a reasoned explanation for each of EPA's specific proposed actions, based on the record. One commenter stated that rescinding portions of the Amendments rule based on a rationale that accident rates at RMP facilities have declined would be entirely inconsistent with the EPA's statutory obligation for an RMP program that prevents and mitigates accidents ''to the greatest extent practicable.''

EPA Response: EPA disagrees with these comments. As discussed above, the concept of ''to the greatest extent practicable'' allows for EPA to consider burden issues for sources and implementing agencies as well as other factors that would lead EPA to consider the rules workable and effective at preventing accidents and providing for response. For example, imposing the burden of the new STAA assessments on whole industry sectors when most individual sources have successful accident prevention programs may be less workable and effective, even counterproductive for safety, than a compliance-driven alternative if the STAA requirement requires a source with an effective prevention program to divert resources from implementing another safety measure. *See Entergy Corp.,* 556 U.S. at 232–233 (Breyer, J., concurring in part and dissenting in part) (''an absolute prohibition [on the consideration of costs and benefits] would bring about irrational results . . . in an age of limited resources available to deal with grave environmental problems, where too much wasteful expenditure devoted to one problem may well mean considerably fewer resources available to deal effectively with other (perhaps more serious) problems''). In another example discussed below, EPA views a requirement for sources to have field exercises at least every 10 years to be impracticable because the burden it would impose on many local emergency response organizations with multiple RMP-covered facilities would discourage the participation of such organizations in the exercises; in other words, it would not be workable and effective.

Moreover, even before considering practicability, the regulations must be reasonable. In this rulemaking, EPA has concluded that some of the provisions adopted in 2017 are not ''reasonable regulations'' on one or more of the following grounds: (1) The requirement has burdens that are disproportionate to the accident prevention benefits that can be established; (2) the requirement increases the potential for chemical disasters through the creation of heightened security risks; or (3) the regulation diverges from OSHA's PSM requirements without demonstrably improving prevention performance.

Where a regulation is clearly not reasonable, then we need not assess whether it provides protection to the greatest extent practicable. However, among those regulatory options that are reasonable, the statute directs that EPA provide the greatest level of practicable protection in its regulations. We consider the workability, effectiveness, and reasonableness of demands on impacted entities when assessing if an option is practicable.

In considering whether regulations are both reasonable and practicable, burdens we considered included not only costs to regulated entities but also impacts on local emergency response organizations and their ability to carry out coordinated planning for response. Benefits and disbenefits to impacted entities (*e.g.,* the public, workers, or the sources themselves) that we considered include improvements in or lessening of incident prevention. These principles drawn from the terms ''reasonable'' and ''practicable'' guided our decisions on the prevention program and other aspects of this rule.

4. Rescinding Provisions Relating to Chemical Safety Board Recommendations

A joint submission from multiple advocacy groups and other commenters stated that EPA's failure to acknowledge that it is rescinding provisions that responded to rule changes recommended by the Chemical Safety Board (CSB) based on their review of specific incidents also renders the proposed rescissions arbitrary and capricious. The commenters cite page 246 of the Amendments RTC document, which states: ''Several of the amendments respond to CSB's suggested rule changes based on their review of specific incidents, which is

consistent with the structure of CAA 112(r)(6)(C)(ii) and EPA's rulemaking authority in CAA 112(r)(7).'' The commenters argued that to create a valid regulation, EPA must acknowledge these recommendations, citing as an example the investigation recommendations from the Tesoro Refinery accident in Anacortes, Washington, and explain how its newly proposed regulations will respond to them. Relatedly, the commenters argued that the EPA generally failed to consider evidence from experts like the CSB on the increased, foreseeable, and preventable health and safety threats at chemical facilities.

EPA Response: EPA disagrees with this comment. Since the CSB became operational, it has been the practice of EPA to respond to individual incident investigation reports with letters to the CSB as called for in CAA 112(r)(6)(I). In the excerpt from the RMP Amendments rule response to comment (RTC) document cited by commenters, EPA uses the term ''respond'' in the sense of being responsive, rather than constituting the Agency's official response as required under CAA 112(r)(6)(I). Our response letters did not commit to implement these recommendations in full or in part in a rule. EPA therefore disagrees with the assertion that we are rescinding provisions that were our required response to CSB recommendations. Although the STAA provision of the RMP Amendments rule may have been responsive to a CSB recommendation in the sense it addresses the same matter raised by the CSB, EPA has reexamined its position taken in 2017 and concluded that the STAA requirement is not a reasonable regulation because its costs are disproportionate to its benefits.

EPA also disagrees that, as a general matter, the Agency failed to consider input from the CSB in the final rule. This preamble and the response to comments contain multiple discussions of specific CSB investigations and recommendations that EPA has considered as input from the CSB along with other public comments on the Reconsideration proposal. (See the RTC document for additional responses to public comments.) We recognize that the proposed and final RMP Amendments contain extensive citations to incident investigation reports of the CSB for both factual descriptions of incidents and recommendations resulting from investigations. Nevertheless, EPA disagrees that rescinding provisions that are based in part on CSB report recommendations renders the rescissions arbitrary and capricious. The record as a whole as discussed in the Reconsideration proposed and final rules and supporting documents explains the basis for changing our position on the need for new regulation. EPA's responses to CSB recommendations did not commit the Agency to making specific regulatory changes, and the Clean Air Act does not require EPA to implement every recommendation received from the CSB.

Among the CSB recommendations issued under CAA 112(r)(6)(C)(ii), the one most directly related to the RMP Amendments rule prevention provisions is the STAA/IST recommendation from the CSB's investigation of the Tesoro Refinery accident in Anacortes, Washington. Our statutorily required response to the Tesoro recommendation indicated that we would evaluate and determine whether regulatory changes should be made.[31] In the case of the Tesoro Refinery accident, cited by the commenter, the CSB recommended that EPA revise 40 CFR part 68 to ''require the documented use of inherently safer systems analysis and the hierarchy of controls to the greatest extent feasible when facilities are establishing safeguards for identified process hazards.'' The CSB also recommended that EPA ''enforce through the Clean Air Act's General Duty Clause, section 112(r)(1), 42 U.S.C.§ 7412(r)(1), the use of inherently safer systems analysis and the hierarchy of controls to the greatest extent feasible when facilities are establishing safeguards for identified process hazards.''

Our response to the CSB indicated that EPA would develop an alert and voluntary guidance on safer technology and alternatives analysis and consider regulatory options. Our response did not commit to adoption of the CSB recommendation via rulemaking. Regardless of whether EPA's RMP Amendments rule STAA provision addressed the same issues as CSB's Tesoro incident recommendations, EPA's more recent analysis of data relevant to the 2017 RMP Amendments rule's STAA requirement indicates that such requirements have not been effective at improving accidental release prevention rates when enacted at the state level, while their costs remain high. *See* sections III.C.2 and IV.C.2.c, below. Therefore, notwithstanding any CSB recommendations on this subject, EPA's view is that it is not reasonable or practicable to impose the 2017 STAA requirement through a generally-applicable regulation.

C. Discussion of General Comments on Costs and Benefits

1. Effect of Delay Rule Vacatur on Estimated Costs

Multiple state elected officials stated that the assumptions underlying EPA's estimate of the proposal's costs and benefits are no longer accurate since the D.C. Circuit Court vacated the Delay rule in *Air Alliance Houston et al.* v. *EPA et al.* The commenter stated that the proposed rule assumes that the Amendments rule will not go into effect, but with the court ruling on the delay, those provisions will go into effect, therefore influencing the cost-benefit analysis. An advocacy group commented that this assumption directly overlooks numerous benefits to the information availability provisions in the Amendments rule.

EPA Response: EPA disagrees that the Delay rule vacatur materially impacts EPA's estimates in the cost benefit analysis. The Court of Appeals issued the *AAH* decision on August 17, 2108, and the vacatur of the RMP Delay rule made the Amendments rule effective on September 21, 2018. At that time, the only major provision of the Amendments rule that required immediate compliance was the emergency coordination provision.[32] All other major provisions of the Amendments rule had compliance dates in 2021 or later. By the time of the Delay rule vacatur, EPA had already proposed to rescind or modify most of the Amendments rule's provisions.

Our estimates of the cost and benefit impact of this final rule reflect reasonable judgments about the behavior of affected entities during the reconsideration process, including that period before the *AAH* decision vacated the Delay rule. In the Reconsideration RIA, EPA assumed a new cost associated with the labor of becoming familiar with the non-rescinded and revised provisions of the 2017 Amendments rule, and a cost savings associated with regulated facilities not being required to become familiar with the provisions of the 2017 RMP Amendments final rule. The emergency coordination provision is not rescinded in this rulemaking and therefore rule

[31] EPA. February 25, 2015. Letter from Mathy Stanislaus, EPA, Office of Land and Emergency Management to Rafael Moure-Eraso, Ph.D., Chemical Safety and Hazard Investigation Board (CSB) responding to CSB's recommendations on the April 2, 2010 accident at Tesoro Refinery in Anacortes. Washington. pp 2 and 5. Available in the rulemaking docket.

[32] Various other provisions that we have labelled the ''minor changes'' also became effective, but the RIA for the 2017 Amendments rule did not attribute costs to these provisions and the RIA for this final rule attributes no cost savings to those minor changes that we rescind in this rule.

familiarization burden for this provision is accounted for in the Reconsideration RIA. With EPA's proposal, regulated facilities could reasonably expect that Amendments rule provisions with future compliance dates might either be rescinded or modified before the original compliance date occurred.[33] Given this regulatory landscape, most sources would reasonably choose to delay complying with or preparing to comply with remaining Amendments rule provisions (*i.e.,* all major prevention provisions and the information disclosure provisions excluding public meetings) except those requiring immediate compliance due to the Delay rule vacatur. Therefore, it is reasonable for EPA to assume that the Delay rule vacatur has had a de minimis impact on EPA's estimates in the cost benefit analysis.

EPA has acknowledged in the Reconsideration RIA that the elimination of the Amendments rule information availability provisions will reduce the magnitude of the rule's information disclosure benefits. EPA notes, however, that almost all of the information elements provided under the Amendments rule were already publicly available via other means, so this loss of benefits should be small. EPA has decided to rescind the information availability provisions of the Amendments to address facility security concerns. In the preamble to the proposed Reconsideration rule, EPA stated that ''EPA in the final amendments may not have struck the appropriate balance between various relevant policy concerns, including information availability, community right to know, minimizing facility burden, and minimizing information security risks. EPA agrees with petitioners that requiring unlimited disclosure of the chemical hazard information elements required under the RMP Amendments may create additional policy concerns, particularly with regard to the potential security risks created by disclosing such information.'' Despite the acknowledgement that some of the benefits of the information availability provisions will be lost, EPA determined that the rescission of these provisions was necessary to more appropriately balance these benefits with facility security concerns.

[33] We also note that, prior to the vacatur of the Delay rule, sources had a basis to believe that compliance with the 2017 RMP Amendments would not be required so long as the rule had not become effective.

2. Comments Regarding EPA's Cost-Saving Rationale

Some commenters supported EPA's approach in the proposed Reconsideration rule to reducing unnecessary regulations and regulatory costs. An industry trade association, supporting the proposed rule, stated that the Amendments rule provided no quantifiable benefits relative to its high compliance costs. Another commenter stated that the proposed rule is necessary because the Amendments would be costly to regulated entities and do little to prevent chemical accidents. Similarly, two industry trade associations expressed support for EPA's reconsideration proposal because the costs of the Amendments rule far exceeded the benefits of the rulemaking, and another industry trade association stated that while it supports the Reconsideration rulemaking, they believe the rulemaking understates the costs and overstates the benefits of the Amendments rule. Another industry trade association stated that the Amendments rule would substantially increase the burdens and costs associated with RMP compliance and would not help the cause of process safety. A trade association commented that the benefits of the Reconsideration rulemaking are clear, due to the heavy cost burden placed on regulated entities in the Amendments rule.

In contrast, other commenters disagreed with EPA's cost-saving rationale. An advocacy group and several other commenters stated that the proposed rule emphasized industry cost savings over public safety and that the costs in the Amendments rule are small when spread across thousands of regulated facilities. The advocacy group also stated that EPA does not and cannot show that the cost savings to the facilities that pose the risk of accidental releases would be greater than the foregone benefits to the public and environment that bear the risk.

Several commenters, including State elected officials and a State government, argued that the proposed rescissions in the Reconsideration rule are arbitrary and capricious. Multiple State elected officials commented that EPA's cost-saving rationale does not provide the ''more detailed justification'' necessary for EPA to disregard its previous findings to the contrary. An advocacy group argued that a lopsided focus on the compliance costs of a regulatory action is arbitrary and capricious. Specifically, the commenter stated that EPA's emphasis on reducing regulatory burden above the benefits of the protections provided by the rule is unreasonable. A joint submission from multiple advocacy groups and other commenters stated that EPA's preference to avoid cost on industry, while neglecting the health and financial cost to communities, prioritizes industry's interest over people and is arbitrary and capricious. The commenters also argued that the proposed rule and Regulatory Impact Analysis (RIA) are unlawful and arbitrary because EPA failed to meet its own cost-benefit goals of finding that the benefits of the Reconsideration rule outweigh the costs, and its statements disregarding the benefits of the Amendments rule because of uncertainty are unsupported and contradictory to the record. A joint submission from multiple advocacy groups and other commenters stated that EPA's adoption of the enforcement-led approach in the proposed Reconsideration rule is arbitrary and capricious because the Agency has not provided a reasoned explanation for the change or the requisite detailed explanation for abandoning its prior findings in the Amendments rule that the enforcement-led approach was insufficient. This commenter also stated that it would be arbitrary and capricious for EPA to proceed with the proposed Reconsideration rule because it runs directly counter to the effective and efficient measures that several State and local developments represent (referring to the New Jersey TCPA, Massachusetts TURA, and CCC ISO regulatory programs), and that it would be arbitrary and capricious to proceed with the rule without fully evaluating those initiatives. And, for the State and local initiatives that EPA had relied upon as a rationale for the Amendments rule, the commenters argued that EPA has provided no basis to change its opinion that these initiatives demonstrate the need and likely benefits of the Amendments rule.

EPA Response: The Agency has provided a detailed rationale for rescission of each of the Amendments rule provisions removed by the final rule. Regulatory costs are an important consideration in the rescission of some provisions, but EPA's decision also considered other factors, including the potential lack of effectiveness of some provisions, EPA's ability to obtain the benefits of certain provisions without imposing regulatory mandates, the desire for regulatory consistency with the OSHA PSM standard, and security risks.

In the Amendments rule, EPA indicated that ''The 10-year RMP baseline suggests that considering only the monetized impacts of RMP

accidents would mean that the rule's costs may outweigh the portion of avoided impacts from improved prevention and mitigation that were monetized.'' EPA also noted that the monetized impacts omitted other categories of accident impacts, including lost productivity, the costs of emergency response, transaction costs, property value impacts in the surrounding community, environmental impacts, and the impacts of non-RMP accidents at RMP facilities and any potential impacts of rare high consequence catastrophes. However, EPA had no data on any of these additional benefit categories and some of them were speculative, in the sense there was an argument that the benefit would exist but no studies confirming its existence. For example, EPA is aware of no studies of property value impacts in areas surrounding RMP facilities that have had accidents, and no studies quantifying the reduction, if any, in non-RMP accidents at RMP facilities. Were these benefits sizeable, we think the multiple rounds of comments on the RFI, the 2017 Amendments rule, and the Reconsideration would have highlighted to us relevant studies. Therefore, even prior to initiating the Reconsideration proceeding, EPA believed that absent other non-monetized benefits, the Amendments rule provisions would need to prevent a large fraction of the annual average number of RMP-facility accidents in the 10-year baseline in order to be cost effective. (82 FR 4597–8, Jan. 13, 2017).

EPA now believes that its previous estimate of the benefits of the Amendments rule was overly optimistic, for two reasons. First, the average number of accidents in the baseline (whose costs were used as a proxy for the possible monetized benefits of preventing RMP facility accidents), and their impacts, likely overestimates the actual number and impact of accidents that will occur under the final Reconsideration rule going forward. Over the pre-Amendments rule ten-year baseline, RMP facility accidents did not occur at a steady rate but declined in frequency. EPA's RIA for the Reconsideration rule shows that from 2004 through 2016, RMP facility accidents declined at a rate of approximately 3.5% per year. The most recent three-years of accident data available in the docket show that the number of RMP facility accidents in the years 2014–2016 were 128, 113, and 99, respectively. While these numbers may increase slightly due to late reporting, they indicate that the declining trend in accident frequency seen under the pre-Amendments rule continues. Two commenters (ACC and CSAG) presented additional analysis showing that the impacts of accidents, as measured by deaths, injuries, and property damage, have also declined. While the costs of some Amendments rule provisions (*e.g.,* third-party audits, root cause analysis) also scale with the number of accidents, and would therefore also decline with fewer accidents, most of the costs of the Amendments rule were ''fixed'' in that they were imposed on regulated facilities whether an accident occurred or not. For example, the costliest provision of the Amendments rule—STAA—would have impacted all facilities with Program 3 processes in NAICS 322, 324, and 325. Also, even for provisions such as root cause analysis or third-party audits, that are triggered by an accident, some costs, such as investigator training or auditor screening, may occur without any accident occurring.

This means that to have costs that are not disproportionate to their benefits, Amendments rule provisions would have needed to prevent a greater share of future accidents than previously thought. For example, if the future rate of RMP-facility accidents under the pre-Amendments rule has declined to about 100 accidents per year, and the consequences of accidents remain at the level seen during the baseline, the Amendments rule would have needed to prevent more than 70% of future accidents to be cost effective, absent other non-monetized impacts. But since the consequences of accidents have also declined, as indicated by commenters' analyses [34] and corroborated by EPA's own analysis,[35] the Amendments rule would need to prevent an even greater share of accidents to not have unreasonable, disproportionate costs.

However, EPA now believes the Amendments rule was likely to be less effective at preventing accidents than the Agency previously believed. Prior to its reconsideration of the Amendments, EPA had not attempted to quantify the effects of state level regulations that are comparable to the Amendments rule's STAA provision. EPA has now conducted a detailed analysis of RMP-facility accident rates in New Jersey and Massachusetts—two states with long-established state-level regulations comparable to the Amendments rule STAA provision—and found that accident rates in these states have not improved more than accident rates at RMP facilities nationwide under the pre-Amendments rule. In fact, the average number of accidents per RMP facility in both states have exceeded the national average. Therefore, EPA believes that the STAA provision of the Amendments is an unreasonable regulation because its costs are disproportionate to its benefits.

EPA disagrees that its approach to the Reconsideration rule is a lopsided focus on costs. As EPA has described above, the Agency considered both costs and effectiveness of regulatory provisions, as well as other factors. If a regulatory provision is of minimal or no effectiveness (*e.g.,* STAA), virtually any cost imposed for its implementation would be unjustified. For other prevention provisions of the Amendments rescinded under the final rule—third-party audits and root cause analysis—these take place after an accident has occurred, and the Agency can still obtain their benefits through compliance settlement agreements if these are appropriate based on the violation alleged, without imposing a broad regulatory mandate. Therefore, the Agency is not merely considering the cost savings associated with rescinding these provisions, but rather whether those costs are disproportionate to any benefits gained, and whether those benefits can be obtained more efficiently without a regulatory mandate. Additionally, the disproportionality of costs versus benefits is not the only rationale that EPA relied upon to rescind the prevention program provisions of the Amendments. Rescinding these provisions will also bring the RMP prevention program provisions back into alignment with the OSHA PSM standard, which will avoid confusion among facilities subject to both regulations due to divergent regulatory requirements.

Regarding the Agency's rescission of the information availability provision, while the Agency noted that rescission of this provision would reduce regulatory costs, the primary justification for its removal was not its cost, but rather the increased security risks associated with the provision. As EPA stated in the proposed rule preamble, ''EPA now proposes *for security reasons* to rescind the requirements for providing to the public upon request, chemical hazard information and access to community emergency preparedness information in

[34] See American Chemistry Council public comments, August 17, 2018, EPA–HQ–OEM–2015–0725–1628, and Chemical Safety Advocacy Group public comments, August 23, 2018, EPA–HQ–OEM–2015–0725–1930.

[35] See attachments to EPA–HQ–OEM–2015–0725–0929, EPA Verification of ACC's RMP Accident Analysis with 2 Tables, March 26, 2018, and RMP Accident Data 2004–2013, EPA Verification of ACC Analysis.

§ 68.210 (b) through (d). . . .'' (83 FR at 24859, May 30, 2018) (emphasis added). Therefore, the final rule's rescission of this provision cannot fairly be described as a lopsided focus on its compliance costs.

EPA also disagrees that the Reconsideration rule avoids cost on industry by neglecting the health and financial cost to communities. The final rule does not make this tradeoff. Rather, the rule provides for streamlining of the RMP Amendments to provide appropriate regulatory requirements to address risks from RMP facility processes, including security risks from terrorism. The rule also facilitates rule implementation by removing potential inconsistencies with the OSHA Process Safety Management standard. While EPA indicated that rescinding certain provisions of the Amendments rule may result in foregone benefits, EPA had no data to demonstrate the benefits of specific provisions of the Amendments rule. EPA again notes that the rate of accidents at RMP facilities in New Jersey since the enactment of that state's TCPA IST provision has declined less than the rate of accidents at RMP facilities nationwide, suggesting that the STAA provision of the Amendments rule may not have had a significant impact on accident prevention. EPA retains the ability to continue to employ such prevention measures in enforcement actions as appropriate, which we believe can be a more effective way to employ these measures than a broad regulatory mandate that may unnecessarily impose burden on many regulated facilities. It is also important to note that the Reconsideration rule does not eliminate the body of comprehensive RMP requirements that existed prior to the Amendments rule. Facilities that were previously required to identify and control process hazards, implement operating procedures, investigate incidents, and comply with the other parts of the pre-Amendments RMP rule are still required to do so. The preventive and mitigative effects of these regulatory requirements remain in full effect. Under the pre-Amendments rule, the rate and consequences of RMP-reportable accidents have reached their lowest levels since EPA began collecting these data.[36]

EPA disagrees that the proposed rule and RIA are unlawful or arbitrary because of any failure to conclude that the benefits of the Reconsideration rule exceed its costs. For reasons stated above, EPA believes that the costs of the final rule are reasonable in comparison to its benefits. In short, EPA believes the benefits of rescinded Amendments rule provisions were likely to be lower than previously thought, making the costs of the Amendments rule disproportionate to its benefits. EPA also disagrees that the Agency's current reliance on a compliance-driven approach is arbitrary or that EPA has not provided a reasoned explanation for this change in position from the 2017 RMP Amendments rule. In EPA's most specific rejection in 2017 of reliance on enforcement rather than new regulations, we relied on incident discussions in the proposed rule as well as ''lessons learned'' from these incidents and our experience to support the 2017 RMP Amendments rule.[37] As EPA has noted above, the Agency's latest analysis has demonstrated that RMP facility accidents have declined substantially under the pre-Amendments rule and are currently at the lowest levels since EPA began collecting these data. This low level of accidents diminishes the potential benefits of any additional accident prevention regulations, particularly when the benefits of those provisions are in doubt (*e.g.,* STAA). It also makes a compliance-driven approach more feasible. While EPA cannot inspect every RMP facility every year, the Agency performs approximately 300 RMP facility inspections each year and prioritizes inspections at facilities that have had accidental releases. Therefore, EPA's enforcement resources and posture are capable of addressing accident-prone facilities without additional broad regulatory mandates. The Agency's choice to use a more surgical approach to accident prevention at these facilities is reasonable and practicable.

EPA disagrees with the commenter's claim that it would be arbitrary and capricious for EPA to proceed with the proposed Reconsideration rule if it runs counter to State and local regulations. EPA has analyzed the state and local regulatory programs that commenters are referring to and does not agree that they provide evidence of the effectiveness of the Amendments rule. EPA's detailed examination of these regulatory programs is described elsewhere in this preamble and in the Response to Comments document.

3. Comments Relating to Environmental Justice and Fence-Line Communities

a. Proximity of RMP Facilities to EJ Communities

Many commenters, including multiple form letter campaigns, commented on the disproportionate proximity of minority populations, low-income populations, and/or indigenous peoples (''environmental justice (EJ) communities'') to RMP facilities and emphasized the risk posed by RMP facilities to these communities. Several of these commenters provided extensive data and descriptions in support of their comments. Two advocacy groups cited statistics describing the rates of student proximity to RMP vulnerability zones. A few commenters stated that the poverty rate near RMP facilities is 50 percent greater than the US average, and that the difference is more pronounced for low-income children of color.

An advocacy group stated that 15 percent of RMP-regulated facilities in New York are located in EJ areas. Another advocacy group commented that 600,000 people, or 67% of Louisville residents, live within three miles of 23 RMP facilities. The commenter stated that a large part of that population is black or Latino. The commenter went on to give some history of relaxed regulation, incidents, and the specific harms caused by RMP facilities in Louisville, noting especially an accident the commenter said was preventable at a Carbide Industries facility. An advocacy group stated that communities and individuals often live in proximity to RMP facilities unaware of the chemicals stored and their potential hazards and may be from different cultural communities who may

[36] The RIA for the final rule demonstrates that the number of accidents in 2016 was lower than for any prior year over the period studied for this rule (2004–2016). EPA also compiled a spreadsheet containing RMP facility accidents for 2017 to corroborate the continued decline in RMP facility accidents (there were 94 RMP facility accidents reported to EPA in 2017). See Docket ID: EPA–HQ–OEM–2015–0725–1974. The complete accident record at RMP facilities since 1999 (the year the original RMP regulation went into effect) through 2016 is contained within the RMP database (Docket ID EPA–HQ–OEM–2015–0725–0989). Studies of RMP facility accident data conducted by the Wharton School at the University of Pennsylvania confirm that RMP accident totals for all prior years were well above 2016 and 2017 levels. See, *e.g., Kleindorfer*, et al., Accident Epidemiology and the RMP Rule: Learning from a Decade of Accident History Data for the U.S. Chemical Industry, Final Report for Cooperative Agreement R-83033301 between Risk Management and Decision Processes Center, The Wharton School of the University of Pennsylvania and Office of Emergency Management. U.S. Environmental Protection Agency, December 18, 2007, Figure 5.1 (showing number of accidents from cohort of RMP facilities that filed in first two five-year ''waves'' of RMP submissions). See also sections III.C.2 and IV.C.2.c, below.

[37] Amendments rule Response to Comments at 246 (''the history of implementation of the RMP rule has given EPA sufficient experience to support modernizing and improving the underlying RMP rule and not simply resort to compliance oversight of the existing rule''). Commenters also suggested EPA enforce existing requirements rather than issue new rule provisions regarding third-party audits and emergency coordination. *See* 82 FR 4613–144654.

have a different way of handling emergencies. This commenter stated that EPA should work with states, regions and local government to explain to communities what chemicals are present and the dangers around them. An advocacy group commented that information could be more effectively shared through different channels, like churches.

EPA Response: EPA agrees that RMP facilities are more likely to be located in EJ communities—EPA provided data in both the Amendments rulemaking and the Reconsideration proposal that characterize the disproportionate proximity of EJ communities to RMP facilities. However, neither this information, nor any submitted by commenters, allows EPA to more accurately characterize the effects of the Reconsideration proposal upon those communities.

Regarding community members' awareness of facility chemical hazards, EPA notes that since the 1986 enactment of EPCRA, facilities storing and handling hazardous substances must provide to local government emergency officials the identities and quantities of these hazardous chemicals through annual Hazardous Chemical Inventory reporting and through provision of Safety Data Sheets with the chemical, physical and hazardous properties of these chemicals stored on-site. The thousands of hazardous substances covered under these reporting requirements include the 140 substances regulated under the RMP regulations.[38] The LEPCs established under EPCRA use this information to develop community emergency response plans to address any accidental releases in the community involving these hazardous chemicals. Members of the public are allowed to participate on LEPCs, and EPA encourages interested community members to get involved with their LEPC or attend LEPC meetings to learn more about the chemical hazards in their community and how the community would receive notifications and other emergency information when a chemical accident occurs. Some local governments may provide information on warning systems or emergency procedures on government websites. Community members also can request copies of hazardous chemical inventory reports and Safety Data sheets from their local LEPC. LEPCs serve as focal point in the community for information and discussion about hazardous substance emergency planning.

b. Costs to Fence-Line Communities

Many commenters expressed concerns about the costs of the rule to fence-line communities. A commenter stated that EPA's cost estimate only calculates savings to regulated facilities and there is no attempt to estimate the costs of incidents to fence-line communities, emergency workers, the facilities' workers, and the public in terms of lost lives, injuries, illnesses and property damage. A joint submission from multiple advocacy groups and other commenters stated that there are significant costs imposed on local communities who live near and around chemical facilities. The commenters stated that there can be economic impacts to the community due to lost work days, time spent sheltering-in-place or evacuating, emergency response costs, and general disruption in the event of an emergency. A federally elected official stated that the proposed rule artificially diminishes the benefits associated with protecting EJ communities in order to avoid addressing or reducing the risk posed to those communities. An industry trade association stated that EPA should be aware that low income and minority communities will bear the brunt of the costs of the proposed rule. Similarly, an advocacy group stated that while the proposed rule would save industry money, it would impose costs on poor communities. The commenter provided estimates of the potential costs of chemical accidents to local communities and argued that local communities are more likely to have to pay these costs with the rescission of the Amendments rule. Another commenter stated that the Reconsideration rule would cause impacts including fires and toxic releases in disproportionately EJ communities. These impacts include health impacts to first responders, contamination of community property, and people being forced to shelter-in-place. Several commenters described past chemical plant accidents and their impacts on nearby communities, including explosions, hospitalizations, evacuations, deaths, and fear. A group of State elected officials provided an extensive discussion with information on the susceptibility of EJ communities to RMP-related harm in their States, with incidents and data on the same. A commenter stated that EJ populations are disproportionately affected by RMP-threats, and that past EPA accident calculations did not adequately address the impact of accidents to productivity, the environment, property values, regional economies, government expenses, and long-term health consequences. A group of U.S. Senate members compared EPA's projected cost savings of $88 million against the industry's $767 billion value and argued that this saving does not justify the Reconsideration rule's negative impacts to vulnerable communities. Similarly, a form letter campaign joined by approximately 35,000 individuals asserted that the dangers associated with RMP facilities fall disproportionately on EJ communities.

Some commenters stated that EPA failed to follow its own ''Guidance on Environmental Justice During the Development of Regulatory Actions'' by failing to act on any of the seven recommendations in the guidance, despite prompting from community groups. A tribal government and a tribal association stated that EPA's statement that the proposed rule would not impose any additional costs on affected communities amounted to a failure to consider health and safety impacts to EJ communities. A form letter campaign joined by approximately 2,500 individuals stated that the Reconsideration rule, if finalized, would disproportionately impact EJ communities and directly subvert the goals of E.O. 12898. An advocacy group discounted EPA's projection that the Reconsideration rule will benefit EJ communities, stating that such a claim lacks evidentiary support. The group cited a CSB report to assert that, on the contrary, evidence showed that removing chemical hazard information requirements would work to communities' detriment. The group also stated that EPA's claim runs contrary to EJ communities' own statements regarding their best interests. A joint submission from multiple advocacy groups and other commenters argued that the proposed removal of STAA provisions would particularly impact EJ communities. It stated that larger and more complex plants that would likely benefit from STAA requirements tend to be located in counties with larger African-American populations.

EPA Response: EPA disagrees with the assertion that EPA did not attempt to evaluate the costs of incidents to offsite personnel and the broader community. In the Amendments rule RIA, EPA qualitatively described the benefits of the Amendments rule provisions, including the prevention and mitigation of future RMP accidents. EPA considered the benefits associated with preventing serious accidents, avoiding direct costs such as worker, responder, and public fatalities and

[38] EPA acknowledges that isolated industries, such as mining facilities, may not be subject to EPCRA 311 and 312, but in the vast majority of cases, RMP facilities will also be subject to the EPCRA SDS and inventory provisions.

injuries, public evacuations, public sheltering-in-place, and property and environmental damage. The Amendments rule RIA also considered indirect costs such as lost productivity due to product damage and business interruption, both on-site and off-site, expenditure of emergency response resources and attendant transaction costs, and reduced offsite property values.

EPA acknowledges that it was not possible to estimate quantitative benefits for the 2017 Amendments rule and that EPA, in the Reconsideration rulemaking, remains unable to quantify foregone benefits of the rescinded Amendments rule provisions. However, EPA also notes that the rate and consequences of RMP-reportable accidents have reached their lowest levels since EPA began collecting these data. These trends have occurred under the pre-Amendments rule, and EPA believes that some benefits of the Amendments rule can be obtained through a compliance-driven approach without imposing broad regulatory mandates that may unnecessarily burden many facilities.

EPA disagrees that the Agency failed to adequately consider the consequences of the proposed Reconsideration rule on EJ communities or follow the Agency's own EJ guidance. EPA has acknowledged the disproportionate risks of RMP facilities to EJ communities. The Agency has documented its assessment of the EJ effects of the Reconsideration rule within the RIA. Within that assessment, EPA identified reduced risks to EJ populations from terrorism or related security hazards associated with avoiding the open-ended emergency coordination and public information availability provisions of the Amendments. We also believe that accident risks to surrounding communities are ameliorated by the emergency response coordination and public meeting provisions of the Reconsideration rule. At the same time, to the extent the Amendments rule provisions were effective at reducing risks, there would be some increase in risk to EJ communities as a result of rescinding some provisions of the Amendments rule. Given a lack of data, we have not attempted to quantify the combination of increases of risks to EJ communities and decreases of risks to those communities. We are therefore presenting those changes as a non-quantified set of risk changes, without inaccurately characterizing the net effects. EPA does not have the data to make those net calculations, nor have commenters provided such data. The rulemaking record does not provide enough information for anyone to determine the net risk effects to surrounding communities of the Reconsideration rule.

The Reconsideration rule makes small changes to the existing body of RMP regulatory requirements. The rule does not eliminate the comprehensive RMP requirements that existed prior to the Amendments rule. Facilities that were previously required to identify and control process hazards, implement operating procedures, investigate incidents, and comply with the other parts of the pre-Amendments RMP rule are still required to do so. The preventive and mitigative effects of these regulatory requirements remain in full effect. Under the pre-Amendments rule, the rate and consequences of RMP-reportable accidents have reached their lowest levels since EPA began collecting these data. Commenters have provided no data which would allow EPA to measure the risks posed by altering requirements for changes to existing audit requirements or incident investigations or safer technology analyses. Without this information, it is impossible to characterize these changes as imposing significant costs upon minority and low-income populations.

Regarding STAA, EPA is unable to gauge how facilities in the three affected sectors would have responded to the requirements to assess safer technologies for their processes. Under the 2017 Amendments rule STAA regulation, these facilities were empowered to make their own decisions about what kinds of facility changes might be beneficial. Under the Reconsideration rulemaking, those facilities still remain empowered to make those decisions. It is therefore unclear what the impact of this change, if any, would be on surrounding communities. EPA notes that accident data from RMP facilities in New Jersey since the enactment of that state's TCPA IST provision show less decline in accident rates than RMP facilities nationwide, which had no similar provision in place, suggesting that the STAA provision of the Amendments rule may not have had a significant impact on accident prevention.

c. Comments on Chronic Health and Environmental Impacts to Communities Near RMP Facilities

An advocacy group stated that EJ communities face greater impacts in the form of health and environmental consequences from unplanned releases from RMP facilities. It provided data from a Union of Concerned Scientists study on RMP accidents and their impacts of EJ communities. The comment cited increased rates of cancer resulting from air pollution as well as heightened rates of respiratory illness. Another stated that EJ communities are more likely to be exposed to chemical hazards in the form of dermal contact, ingestion, and inhalation. Other advocacy groups described the heightened vulnerability of EJ communities, stating that they tend to have higher rates of pollution and disease, while having less access to health care and other resources to deal with chemical hazards. A joint submission from multiple advocacy groups and other commenters cited a 51 percent elevated rate of acute lymphocytic leukemia in children living along the Houston Ship Channel, as well as other increased rates of leukemia in the area depending on RMP-proximity. Another advocacy group representing EJ communities commented that EPA should consider the cumulative impacts of pollution from exposure to multiple chemical facility sources. An advocacy group stated that the proposed rule RIA fails to consider the externalized social and health costs of cumulative exposure associated with RMP facilities. A tribal government also stated that the RIA does not attempt to quantify environmental impacts beyond human health.

EPA Response: Regarding commenters' contention of increased rates of cancer and respiratory illness resulting from air pollution, the RMP rule is not intended to address chemical releases that cause cancer or other chronic illnesses [39]—other parts of the CAA (such as the NESHAP program) and other environmental laws are intended to address such health impacts. EPA is expressly prohibited from listing NAAQS pollutants under the RMP rule. Regarding the risk of impacts from accidental releases by multiple sources, the analysis supporting the RMP rule does not include assessing exposure to specific communities from RMP-regulated facilities. Rather, the rule requires regulated sources to take preventive and response actions designed to address hazards at each facility that may pose

[39] *See* Senate Report at 210–11 (new accidental release provisions not intended to cover releases ''where the potential impact on public health is a measurable increase in the probability of death, illness or adverse effect which is normally associated with 'chronic' exposures over a long period. Episodic releases of the latter kind are to be addressed under [the NESHAP authority of] section 112.''); 136 Cong. Record 36,058 (Oct. 27, 1990) (Sen. Durenberger explaining the air toxic problem of ''accidental, catastrophic releases'' as one that ''may cause immediate death or injury'').

risks from accidental releases to nearby communities. EPA does not believe, and has received no data indicating, that rescinding or modifying RMP Amendments rule provisions will increase the risk of accidents, whether from individual or multiple sources. EPA notes that the data presented in the RIA (chapter 8) indicate that less than 5% of the U.S. population is in close proximity to two or more RMP facilities. Regarding environmental impacts, in the 2017 Amendments rule RIA, EPA qualitatively described the benefits of the Amendments rule provisions, including the prevention and mitigation of future RMP accidents. EPA considered the benefits associated with preventing property and environmental damage. In the Reconsideration rulemaking, EPA acknowledges that rescinding some of the Amendments provisions could have an impact on the environment. However, given that EPA can likely obtain some of the benefits of the rescinded provisions through a compliance-driven approach, any such impacts should be small. EPA believes that it is not possible to estimate quantitative benefits or foregone benefits, including environmental impacts, for the final rule. EPA has no data to project the specific impact on accidents made by each rule provision.

4. Comments Relating to Accident Data and Accident Rates

a. Comments Disagreeing With EPA's Characterization of RMP Facility Accident Rates

A labor union argued that EPA's characterization that there is a low and declining accident rate at RMP facilities is inaccurate because EPA failed to calculate or report any rates. The commenter asserted that EPA provided only the number of accidents that have occurred in certain years but failed to account for other relevant statistics that do not support an assertion of a decline in accident rates at RMP facilities. Specifically, the commenter argued that 2013, the most recent year for which complete data are available, saw more property damage due to RMP events than any year since 2008. Additionally, the commenter stated that 2012 saw more injuries and illnesses than any other year between 2004 and 2013 and saw more people evacuating or sheltering in place than any year since 2005.

A joint submission from multiple advocacy groups and other commenters stated that gaps in EPA's chemical accident data lead EPA to underestimate the problems that the Amendments rule was attempting to address. Specifically, the commenters argued that EPA's data underestimates the problem because it does not include incidents when a release occurred that either destroyed or decommissioned a process. This commenter also submitted data on all National Response Center release reports for calendar years 2016 and 2017 and indicated that incidents reported to the National Response Center show additional information on contemporaneous reports of hazardous air (and other) releases from chemical facilities during and after the 2017 hurricanes. A tribal organization also referenced National Response Center release reports, indicating that during 2007–2016 the National Response Center received reports of 285,867 releases of all kinds averaging 28,587 reported incidents each year. The commenter indicated that these numbers indicate that EPA's estimate of only 150 incidents per year is a gross underestimate of the actual number of incidents.

In contrast, an industry association stated that in the Amendments rulemaking, EPA assumed that accident rates would continue in the future at the same rate as they had for the previous ten years but provided no basis for this assumption. The commenter stated that this flawed assumption—in addition to EPA's failure to acknowledge the declining accident rate at RMP facilities—led EPA to overstate the consequences of RMP accidents as well as the benefits related to the 2017 RMP Amendments.

EPA Response: EPA disagrees with the commenter who stated that EPA did not provide accident rates, and EPA continues to maintain that there is a low and declining accident rate at RMP facilities. In the Reconsideration RIA, EPA provided a summary table of the number of accidents from 2004–2016. EPA has also provided additional trend analysis of accident data in the Technical Background Document, which is available in the rulemaking docket.[40] EPA noted in Exhibit 3.7 of the proposed Reconsideration RIA that the number of accidents per year at RMP facilities with reportable impacts had declined over time, particularly in the most recent three years of analysis (2014–2016). In the proposed Reconsideration RIA, EPA did not provide an analysis of the impacts or severity of the accidents in the three years of new data analyzed. EPA has now reviewed the accident severity data from 2014–2016 and concluded that average annual accident severity has declined with the number of accidents. Specifically, the average number of onsite fatalities at RMP facilities between 2004 and 2013 was 5.8 deaths per year; however, from 2014 to 2016, the average number of onsite fatalities decreased to 4.0 deaths per year. Similarly, RMP facilities did not experience an offsite death between 2014 and 2016, while one was reported between 2004 and 2013.

Concerning property damage, the average annual onsite property damage from RMP accidents from 2004 to 2013 was $205.5 million per year, while from 2014 to 2016, the annual average decreased to $169.9 million per year. For offsite property damage, the average offsite property damage from RMP accidents increased to an average of $1.7 million per year between 2014–2016 from $1.1 million per year between 2004 and 2013. Despite the relatively small increase in offsite damage, the overall decrease in property damage and fatalities from RMP accidents supports the conclusion that, similar to declining accident rates, the severity of accidents at RMP facilities is also declining.

Concerning data on incidents where a release occurred that either destroyed or decommissioned a process, EPA acknowledges that there may be some accidents associated with destroyed or decommissioned processes that are not reported to the RMP database because facilities were not required to report such accidents, under the pre-Amendments regulations. However, EPA is not aware of a significant number of examples of this occurrence, and commenters have not provided such data. Therefore, EPA does not believe that the possible omission of a few accidents associated with destroyed or decommissioned processes would materially impact the analyses included in the Reconsideration RIA and continues to believe that relying on the accident information in the RMP database is reasonable and the best source of available information.

Regarding commenters' references to and submission of National Response Center (NRC) incident report information, EPA disagrees that these data demonstrate that EPA has underestimated the number of RMP-reportable accidents. Commenters provided no analysis of NRC data to substantiate this claim. Incidents reported to the National Response Center encompass a far greater range of chemicals and sources than accidents reported under the RMP rule. The National Response Center was established under the National Oil and

[40] EPA. July 18, 2019. Technical Background Document for Final RMP Reconsideration Rule Risk Management Programs Under the Clean Air Act, Section 112(r)(7).

Hazardous Substances Pollution Contingency Plan (40 CFR part 300) and operates a 24-hour communications center for federally-mandated reporting of incidents involving oil, hazardous substances, nuclear material, chemical, biological, radiological, and etiological (*i.e.,* infected substances, medical wastes) releases, as well as maritime reports of suspicious activity and security breaches within the waters of the United States and its territories. The NRC accepts release and incident reports required to be reported under numerous statutes, including the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Clean Water Act, the Toxic Substances Control Act, the Resource Conservation and Recovery Act, the Natural Gas Pipeline Safety Act, and the Hazardous Materials Transportation Act. However, CAA section 112(r) contains no requirement for regulated sources to make release reports to the National Response Center. Therefore, RMP-reportable releases are not required to be reported to the NRC unless the release also triggers reporting under another statute. While some RMP-listed substances are also regulated under other statutes and may therefore require release reporting to the NRC under those statutes if specified conditions are met, not all releases of RMP-regulated substances reported to the NRC meet RMP reporting criteria. This is because the criteria for reporting an accidental release in a facility's RMP are based on meeting consequence criteria listed in § 68.42(a), while reporting to the NRC is based on different criteria. For example, under CERCLA, releases to the environment of listed hazardous substances exceeding specified reportable quantities over a 24-hour period are required to be reported to the NRC. Under 40 CFR 68.42, such an accidental release would only be reported in the RMP accident history if it resulted in specified impacts, even if the CERCLA RQ was exceeded.

The great majority of hazardous chemical releases reported to the National Response Center are from sources not regulated under the RMP rule (*i.e.,* transportation sources or non-RMP-regulated stationary sources), or involve chemicals not listed under the RMP rule. EPA analyzed one set of the NRC data [41] provided by commenters to determine the number and types of materials that are reported to the NRC. See Appendix F in the Technical Background Document [42] for a characterization of the number and types of materials reported in releases to the NRC in 2017. Over 14,000 of the 24,680 NRC release reports in 2017 were for oil or oil-related waste and 4,011 of the reports were for releases identified by a specific chemical name. Not all these chemicals are regulated RMP substances. Other large categories of releases included gasoline, fuel oil or liquid petroleum fuels (1,854), unknown materials (1,117) and natural gas or petroleum gas fuels (770).

Additionally, for reasons stated above, some releases of RMP-listed substances from RMP-regulated facilities that are reported to the NRC do not require reporting in a facility's RMP. Lastly, there is no limit on who may call and make a report to the NRC—it accepts release reports from facility owners and operators, government employees, foreign entities, media, and other members of the public—often resulting in duplicate release reports being made for a single incident. Therefore, the number of releases reported to the National Response Center provides no indication of the number, rate, or trend of accidental releases subject to reporting under the RMP rule.

Regarding the effects of declining accidents on the Amendments rule baseline, EPA agrees that the average number of accidents in the baseline (whose costs were used as a proxy for the maximum possible monetized benefits of preventing RMP facility accidents), and their impacts, likely overestimates the actual number and impact of accidents that will occur under the final Reconsideration rule going forward. In the Reconsideration rule RIA, EPA has noted that in the most recent years of analysis annual accident data continue to show a decline in accident frequency, consistent with the trend over the previous 10-year period. EPA noted in the Reconsideration RIA that this decrease would result in a decrease in the estimated cost savings of repealing rule provisions triggered by reportable accidental releases relative to their costs as estimated in the 2017 Amendments rule RIA. EPA also noted that the decrease in accidents would also result in a commensurate reduction in the benefits of implementing these provisions, if they had gone into effect (*i.e.,* both the cost estimate for provisions required following an accident and the maximum potential benefits of Amendments rule provisions as estimated in the 2017 RMP Amendments final rule RIA, would now be understood to have been too high). However, because of the net offsetting effect of the change in accident frequency on anticipated cost savings and benefit reductions, EPA has not adjusted the Amendments rule costs or benefits estimates to account for declining accident rates where relied on to calculate the cost savings or foregone benefits in the Reconsideration rule.

b. Other Additional Sources of Accident Data

A private citizen stated that EPA has a good opportunity to collect real data on RMP related costs and benefits through OSHA and the California Accidental Release Prevention Program (CalARP). The commenter suggested that both organizations have recently implemented programs with provisions similar to those included in the Amendments rule. Another private citizen commented that the CCPS and a number of other organizations have monetized the potential costs of chemical incidents and the commenter cited several estimates of industrial accident costs from various sources. The commenter submitted information sourced from CCPS, the RAND Corporation, Marsh & McClennan, an insurance industry analysis of hypothetical chlorine spills and terrorist attacks on major metropolitan areas, the West Fertilizer incident, and the Freedom Industries chemical spill. Based on these sources, the commenter stated that the costs of an accident could be many times larger than EPA's monetized estimates and should direct EPA to maintain the Amendments rule.

EPA Response: EPA notes that CalARP now requires additional process safety measures at California refineries, including requirements to adopt inherently safer designs and systems to the greatest extent feasible. Many of the new requirements went beyond what was required by the Amendments rule. The CalARP regulations, along with companion regulations adopted by Cal/OSHA, became effective in October 2017.[43] EPA will consider the CalARP and Cal/OSHA programs moving forward and evaluate whether the accident data produced has any useful relevance to the RMP program.

Regarding a commenter's suggestion that EPA consider additional sources of data, EPA acknowledges that many

[41] EPA–HQ–OEM–2015–0725–1963, attachment ''FOIA files CY2017.''

[42] EPA. July 18, 2019. Technical Background Document for Final RMP Reconsideration Rule Risk Management Programs Under the Clean Air Act, Section 112(r)(7).

[43] Cal EPA and CA DIR. August 4, 2017. News Release: New Regulations Improve Safety at Oil Refineries. California Environmental Protection Agency and California Department of Industrial Regulations. *https://www.dir.ca.gov/DIRNews/2017/2017-71.pdf.*

sources of data and information exist for estimating the costs of incidents, and EPA has evaluated accident data from a number of sources, including the RAND Corporation, CCPS, and others. As discussed later in this preamble (see section IV) and in the Response to Comments document, data collected by CCPS does not appear to significantly overlap with RMP reportable accidents, and EPA does not believe that the RAND Corporation estimates are applicable to the RMP program. The commenter also submitted data from insurance industry analyses of hypothetical chlorine spills and terrorist attacks on major metropolitan areas, stating that potential RMP accident costs are much higher than EPA's estimates. EPA, in its analysis in the Amendments and Reconsideration rule RIAs, has evaluated actual reported accident costs from RMP facilities, and has not relied on hypothetical analyses. EPA believes that it has the best and most accurate available accident data for RMP facilities in its RMP database.

The commenter's submission of accident data from the Marsh & McLennan ''100 Largest Losses 1978–2017, Large Property Damage Losses in the Hydrocarbon Industry, 28th edition'' includes 100 major incidents with property damage losses over $100 million each. EPA believes the stated loss amounts in this document overstate damage impacts that are associated or could be associated with the RMP universe of regulated facilities. For example, the 100 incidents are within five categories, refineries (41 incidents), petrochemicals (25 incidents), gas processing (5 incidents), terminals and distribution (5 incidents) and upstream (24 incidents). Many of these incidents predate the effective date of the original RMP rule, which was June 21, 1999. Of the remaining incidents, many occur outside of the United States and therefore are not subject to the RMP regulations. Others involve off-shore oil and gas drilling or production or transportation (barge) accidents, which are not covered by the RMP rule. For example, in the petrochemicals category, 16 of the 25 incidents occurred before the implementation of the original RMP rule and 7 of the remaining 9 incidents occurred outside the United States. Therefore, the Marsh & McLennan property loss data is of limited use, and EPA believes that estimating RMP accident costs using data reported in the RMP database is more appropriate.

In regard to the data submitted concerning the costs of the West Fertilizer Company incident in 2013, EPA has acknowledged that the incident has provided EPA with valuable information and has yielded significant lessons; however, EPA does not believe that the incident is reflective of RMP facility accident costs because the incident was not associated with an RMP covered substance or process. Specifically, the West, Texas incident involved a chemical, ammonium nitrate, that is not covered by the RMP rule. Additionally, the BATF concluded that the incident was the result of an intentional act and not an accident.

Finally, the commenter's reference to data related to the Freedom Industries chemical spill in West Virginia, while important to chemical facility safety generally, is not directly relevant to the RMP program. The Freedom Industries incident did not involve an RMP substance or an RMP-regulated facility.[44]

c. Claims That EPA's Cost-Benefit Analysis Should Include Data on Near-Misses

A joint submission from multiple advocacy groups and other commenters also stated that EPA has not adequately included data on near misses in the rulemaking, and without such data, EPA's accident-rate estimates are severe underestimates of the problem. The commenter stated that EPA refuses to collect or consider information on most near misses and that EPA's estimates of the harm caused by chemical disasters deliberately exclude harms not attributable to the release of a regulated substance. The commenter stated that many of near-misses include fires, explosions, or other dangerous situations that cause immediate harm, in addition to nearly causing the release of an RMP chemical. The commenter contended that the EPA definition of ''accidental release'' which is ''an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source,'' does not include many dangerous events including fires and explosions nor other events that do not otherwise satisfy the reporting criteria. The commenter argued that costs of these events must be considered because such incidents are also prevented and mitigated by the Risk Management Program and omission of such accidents from the 10-year accident data used in EPA's analysis may under-represent the number and magnitude of RMP chemical accidents. The commenter cited examples of omitted incidents, such as the 2013 West Fertilizer disaster, the 2017 Arkema explosion, and the 2018 Husky Refinery fire, which the commenter stated caused harm and also was a near miss for a hydrogen fluoride release. The commenter acknowledged that when estimating costs of the Amendments rule, EPA assumed one near miss for each accident, but also recognized that some industry publications project much higher ratios of near misses to actual releases.

EPA Response: EPA disagrees that the Agency's estimate of the costs of accidents is a severe underestimate. First, the Agency treats as an accidental release fires and explosions involving regulated substances. These events are not near misses, as the commenter suggests. The Agency has taken multiple enforcement actions after events involving fires and explosions (see, *e.g.,* RTC at section 3.1 regarding Chevron settlement). These events are accidental releases. When these events result in impacts required to be reported under 40 CFR 68.42, such events are included in RMPs. Events like the Arkema Crosby and the West Fertilizer incident are not reflected in accident history reporting not because they were fires or explosions; these events are not reported under 40 CFR 68.42 because the substances involved in the fires and explosions were not regulated substances. Second, EPA is gathering the type of information on accidents that the statute identified as necessary. CAA section 112(r)(7) required the RMP hazard assessment to include ''a previous release history of the past 5 years, including the size, concentration, and duration of releases.'' Therefore, the EPA's regulations track the statutory mandate to gather information on actual release events. Also, it would be illogical to base RMP accident cost estimates on the number of near misses because near misses represent events that did not result in impacts from an accidental release of an RMP-regulated substance. Thus, for the Husky Refinery incident, the report for the flammable release/explosion of regulated substances would capture the actual damages of the incident but not the hypothetical costs of any potential HF release that did not occur. In any event, EPA does not have data on the number of RMP near-miss events. While owners and operators are already required to investigate incidents that could reasonably have resulted in a catastrophic release under the pre-Amendments rule, and the final rule retains that provision, owners and

[44] CSB. February 2017. Investigation Report-Freedom Industries, Inc., January 9, 2014. Report No. 2014–01–I–WV. pp. 28–30, 81. *https://www.csb.gov/freedom-industries-chemical-release-/.*

operators are not required to report data on near-miss events.

EPA also notes that the term ''near-miss'' is not well defined. While some commenters have collected what they have characterized as near-miss data and submitted that information to EPA for this rulemaking, much of this information may not represent near-miss accidents at RMP-covered processes. Whether or not an incident is a near miss event for an RMP-covered process depends on the specific circumstances of each incident. Many of the incidents at RMP facilities cited by commenters from news reports do not provide enough information to conclude that they were near misses that could have involved a release of an RMP-covered substance. To qualify as an RMP-reportable accident, the accident must involve the accidental release of an RMP-regulated substance from an RMP-covered process that results in deaths, injuries, or significant property damage on-site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage. Not every incident that occurs at a chemical facility constitutes an RMP-reportable accident or near miss. Not every release, fire or explosion at an RMP facility necessarily constitutes a near miss for an RMP-covered process. Therefore, EPA continues to believe it is reasonable that near-miss accident rates are not considered in the accident rate analyses. EPA's estimate of one near-miss per accident was based on the experience of an industry consultant and was used to estimate the burden for conducting root-cause analysis for investigation of near-misses.

Regarding harms not attributable to the release of a regulated substance, we do not consider these because the Agency can only act within the bounds of its CAA authority, which extends the RMP provisions under CAA 112(r)(7) only to regulated substances and covered processes. Besides being difficult to quantify, accepting the commenter's argument would require EPA to include a large universe of incident data and speculative harms that would in many cases be unrelated to RMP-covered processes, resulting in a vast overestimate of the harmful impacts of accidents at RMP-regulated processes.

IV. Rescinded Incident Investigation, Third-Party Audit, Safer Technology and Alternatives Analysis (STAA), and Other Prevention Program Amendments

A. Summary of Proposed Rulemaking

In the RMP Amendments rule, EPA added three major provisions to the accident prevention program of Subparts C (for Program 2 processes) and D (for Program 3 processes). These included:

(1) A requirement in § 68.60 and § 68.81 for all facilities with Program 2 or 3 processes to conduct a root cause analysis using a recognized method as part of an incident investigation of a catastrophic release or an incident that could have reasonably resulted in a catastrophic release (*i.e.,* a near-miss).

(2) Requirements in § 68.58 and § 68.79 for regulated facilities with Program 2 or Program 3 processes to contract with an independent third-party, or assemble an audit team led by an independent third-party, to perform a compliance audit after the facility has an RMP reportable accident or when an implementing agency requires a third-party audit due to conditions at the stationary source that could lead to an accidental release of a regulated substance, or when a previous third-party audit failed to meet the specified competency or independence criteria. Requirements were established in § 68.59 and § 68.80 for third-party auditor competency, independence, and responsibilities and for third-party audit reports and audit findings response reports.

(3) A requirement in § 68.67(c)(8) for facilities with Program 3 regulated processes in NAICS codes 322 (paper manufacturing), 324 (petroleum and coal products manufacturing), and 325 (chemical manufacturing) to conduct a STAA as part of their process hazard analysis (PHA). This required the owner or operator to address safer technology and alternative risk management measures applicable to eliminating or reducing risk from process hazards; to consider, in the following order or preference, inherently safer technologies, passive measures, active measures and procedural measures while using any combination of risk management measures to achieve the desired risk reduction; and to evaluate the practicability of any inherently safer technologies and designs considered.

(4) The RMP Amendments rule also made several other minor changes to the Subparts C and D prevention program requirements. These included the following:

- § 68.48 Safety information—changed requirement in subparagraph (a)(1) to maintain Safety Data Sheets (SDS) in lieu of Material Safety Data Sheets.
- § 68.50 Hazard review—added language to existing subparagraph (a)(2) to require hazard reviews to include findings from incident investigations when identifying opportunities for equipment malfunctions or human errors that could cause an accidental release.
- §§ 68.54 and 68.71 Training—changed description of employee(s) ''operating a process'' to ''involved in operating a process'' in § 68.54 paragraphs (a) and (b); and changed ''operators'' to ''employees involved in operating a process'' in § 68.54(d). EPA also added paragraph (e) in § 68.54 and paragraph (d) in § 68.71 to clarify that employee training requirements also apply to supervisors responsible for directing process operations (under § 68.54) and supervisors with process operational responsibilities (under § 68.71).
- §§ 68.58 and 68.79 Compliance audits—changes to paragraph (a) for Program 2 and Program 3 provisions added language to clarify that the owner or operator must evaluate compliance with each covered process every three years.
- §§ 68.60 and 68.81 Incident investigation—made the following changes: Revised paragraph (a) in both sections by adding clarifying text ''(*i.e.,* was a near miss)'' to describe an incident that could reasonably have resulted in a catastrophic release; revised paragraph (a) in both sections to require investigation when an incident resulting in catastrophic releases also results in the affected process being decommissioned or destroyed; added paragraph (c) to § 68.60 to require for Program 2 processes, incident investigation teams to be established and consist of at least one person knowledgeable in the process involved and other persons with appropriate knowledge and experience to thoroughly investigate and analyze the incident; redesignated paragraphs (c) through (f) in § 68.60 as paragraphs (d) through (g); revised redesignated paragraph (d) in § 68.60 and paragraph (d) in § 68.81 to require an incident investigation report to be prepared and completed within 12 months of the incident, unless the implementing agency approves, in writing, an extension of time, and in § 68.60 replaced the word ''summary'' in redesignated paragraph (d) with ''report'' and added the word ''Incident'' before ''investigation'' and replaced the

word ''summaries'' with ''reports'' in redesignated paragraph (g). The following changes were made in both paragraph (d) of § 68.81 and redesignated paragraph (d) of § 68.60 to specify additional required contents of the investigation report: Revised paragraph (d)(1) to include time and location of the incident; revised paragraph (d)(3) to require that description of incident be in chronological order, with all relevant facts provided; redesignated and revised paragraph (d)(4) into paragraph (d)(7) to require that the factors that contributed to the incident include the initiating event, direct and indirect contributing; added new paragraph (d)(4) to require the name and amount of the regulated substance involved in the release (*e.g.,* fire, explosion, toxic gas loss of containment) or near miss and the duration of the event; added new paragraph (d)(5) to require the consequences, if any, of the incident including, but not limited to: Injuries, fatalities, the number of people evacuated, the number of people sheltered in place, and the impact on the environment; added new paragraph (d)(6) to require the emergency response actions taken; and redesignated and revised paragraph (d)(5) of § 68.81 and paragraph (c)(5) of § 68.60 into paragraphs (d)(8) of both sections to require that the investigation recommendations have a schedule for being addressed.

- § 68.65 Process safety information—change to paragraph (a) to no longer require written process safety information to be compiled in accordance with a schedule in § 68.67 and to require the owner or operator to keep process safety information up-to-date; change to Note to paragraph (b) revised the term ''Material Safety Data Sheets'' to ''Safety Data Sheets (SDS).''
- § 68.67 Process hazard analysis—change to subparagraph (c)(2) added requirement for PHA to address the findings from all incident investigations required under § 68.81, as well as any other potential failure scenarios.
- § 68.3 Definitions—added definitions for terms *active measures, inherently safer technology or design, passive measures, practicability,* and *procedural measures* related to amendments to requirements in § 68.67. Added definition of *root cause* related to amendments to requirements in § 68.60 and § 68.81. Added definition for term *third-party audit* related to amendments to requirements in § 68.58 and added § 68.59.

In the Reconsideration rule, EPA proposed to rescind all of the above changes, with the exception of the two changes that would revise the term ''Material Safety Data Sheets'' to ''Safety Data Sheets (SDS)'' in §§ 68.48 and 68.65. This includes deleting the words ''for each covered process'' from the compliance audit provisions in § 68.58 and § 68.79, which apply to RMP Program 2 and Program 3, respectively.

In conjunction with the proposed rescinding of prevention program changes, EPA proposed to rescind the requirements to report the following data elements in the risk management plan: In § 68.170(i), whether the most recent compliance audit was a third-party audit, pursuant to §§ 68.58 and 68.59; in § 68.175(k), whether the most recent compliance audit was a third-party audit, pursuant to §§ 68.79 and 68.80; and in § 68.175(e)(7), inherently safer technology or design measures implemented since the last PHA, if any, and the technology category (substitution, minimization, simplification and/or moderation). In § 68.175(e), EPA proposed to rescind the 2017 RMP Amendments rule's deletion of the expected date of completion of any changes resulting from the PHA for Program 3 facilities. Adding back this requirement would revert reporting of the PHA information in the risk management plan to what was required prior to the Amendments rule. This would also be consistent with the similar § 68.170(e) requirement for Program 2 facilities to report the expected date of completion of any changes resulting from the hazard review, a requirement that was not deleted in the RMP Amendments rule. EPA also proposed to rescind the requirement in § 68.190(c), that prior to deregistration, the owner or operator shall meet applicable reporting and incident investigation requirements in accordance with §§ 68.42, 68.60 and/or 68.81.

Alternatively, EPA proposed to rescind all of the above changes, except for the following:

- Requirement in § 68.50(a)(2) for the hazard review to include findings from incident investigations;
- Retain the term ''report(s)'' in place of the word ''summary(ies)'' in § 68.60;
- Requirement in § 68.60 for Program 2 processes to establish an incident investigation team consisting of at least one person knowledgeable in the process involved and other persons with experience to investigate an incident;
- Requirements in §§ 68.54 and 68.71 for training requirements to apply to supervisors responsible for process operations and minor wording changes involving the description of employees operating a process in § 68.54; and,
- Retain the two changes that would revise the term ''Material Safety Data Sheets'' to ''Safety Data Sheets (SDS)'' in §§ 68.48 and 68.65.

B. Summary of Final Rule

After review and consideration of public comments, EPA is rescinding all the prevention program related changes in the Amendments rule, while retaining the term ''Safety Data Sheets (SDS)'' in §§ 68.48 and 68.65, as proposed, with the following modifications:

- Retain the term ''report(s)'' in place of the word ''summary(ies)'' in § 68.60 for Program 2 processes. The term ''Incident'' before ''investigation reports'' in Amendments rule § 68.60(g) will also be retained from the Amendments rule because this is consistent with the investigation language for Program 3, although the proposed Reconsideration rule omitted this term.
- Retain the requirement in § 68.60 for Program 2 processes to establish an incident investigation team consisting of at least one person knowledgeable in the process involved and other persons with appropriate knowledge and experience to investigate and analyze the incident.
- Retain change to § 68.65(a) for Program 3 processes to not require written process safety information to be compiled in accordance with a schedule in § 68.67.

The requirement in § 68.65(a) for Program 3 processes to compile written process safety information in accordance with a schedule in § 68.67 had been deleted in Amendments rule because it appeared to have been adopted from OSHA's PSM PHA completion schedule of May 1994 to May 1997; it was not relevant to the RMP rule because the compliance date of June 21, 1999 was after OSHA's PSM PHA completion schedule. (See 82 FR 4675, January 13, 2017 and 81 FR 13686, March 14, 2016). EPA intended to not keep this irrelevant text in § 68.65(a), but the schedule requirement was included in the regulatory text of § 68.65(a) in EPA's reconsideration proposal in error. EPA will maintain the Amendments rule's deletion of phrase in § 68.65(a) that had referenced a schedule in § 68.67.

To clarify, EPA will not adopt the alternative proposed changes:

- Requirement in § 68.50(a)(2) for the hazard review to include findings from incident investigations;
- Deletion of the word ''Incident'' before ''investigation summaries'' in Amendments rule § 68.60(g) and
- Training requirements in §§ 68.54 and 68.71 to apply to supervisors

responsible for process operations and minor wording changes involving the description of employees operating a process in § 68.54.

EPA is rescinding the requirement in § 68.190(c) regarding updates to the risk management plan, that prior to deregistration, the owner or operator shall meet applicable reporting and incident investigation requirements in accordance with §§ 68.42, 68.60 and/or 68.81. EPA is also rescinding reporting of the following data elements in the risk management plan associated with the rescinded prevention program requirements of this final rule:

- In § 68.170(i) and 68.175(k), whether the most recent compliance audit was a third-party audit; and
- in § 68.175(e)(7), inherently safer technology or design measures implemented since the last PHA, if any, and their technology category.

EPA is adding back the pre-Amendments rule requirement in § 68.175(e) to provide in the RMP the expected date of completion of any changes resulting from the PHA for Program 3 facilities. This requirement had been deleted by the Amendments rule and was proposed to be restored.

C. Discussion of Comments and Basis for Final Rule Provisions

1. Overview of Basis for Final Rule Provisions

As discussed in section II.D, our approach to this final rule is more data-driven than the 2017 final rule, which relied more on incident information and opinions. As discussed below in several of the comments and responses, the data derived from EPA's RMP database shows that accidents are highly concentrated in a few facilities and that rule-based state mandates that require examination of STAA, IST, and chemical use reduction have not resulted in reducing accidental release frequency of or reduced accident impacts from accidental releases from processes to which the RMP rule applies. We have examined data and statements about the impact of Hurricanes Katrina, Rita, and Harvey on accidental releases subject to the RMP rule, but find little or no evidence that extreme weather events have, to date, led to incidents that would have been prevented had the new prevention provisions added in 2017 been in place and had compliance been required prior to these events. As explained below, many of the incidents extracted from databases maintained by TCEQ and others involved units not subject to the RMP regulations (*e.g.,* naturally occurring hydrocarbon storage prior to entry to a natural gas processing plant or a petroleum refining process unit), regulated substances that are not included in threshold calculations (*e.g.,* substances in gasoline storage), and substances not subject to the RMP rule (*e.g.,* benzene, carbon monoxide). With respect to RMP-regulated substances in RMP covered processes, these likely tend to be more carefully managed than chemicals that are less inherently hazardous, so it is reasonable to expect that other chemicals are more frequently released when held in greater quantities in the absence of use reduction programs.

We find that the observed trend that accidental releases subject to the RMP rule have steadily declined over time continues to be valid. One implication of the decline in accidental releases is that the estimate of 150 accidental releases per year used in calculating the cost of accidental releases in the 2017 rule overstates the number of recent releases occurring under the RMP rule as it was prior the 2017 rule changes. With an overstated baseline of accidental releases, a higher percentage of accidental release would need to be prevented by the measures added in 2017 in order for these provisions to be reasonable and practicable (*i.e.,* costs not disproportionate to their effectiveness). As noted, there is little evidence that IST-like regulatory programs have resulted in improved accidental release prevention trends or that recent extreme weather events have resulted in more accidental releases.

With releases declining under the pre-2017 prevention provisions and the concentration of releases among a small percentage of sources, we maintain the view we expressed in the proposed rule—that a compliance oversight approach addressing the small number of facilities with inadequate prevention programs can obtain much of the accident prevention benefit at a fraction of the cost of a rule-based approach that imposes additional prevention program requirements on all facilities.

Moreover, rescinding the prevention program provisions described in this section is consistent with our historic practice of keeping aligned the RMP prevention provisions that overlap with PSM. This coordination approach has the benefit of simplifying compliance for affected sources and facilitating program implementation by state and local delegated programs. At a minimum, EPA believes it should have a better understanding of the direction of the OSHA program before adding costly and difficult to implement prevention program provisions to the RMP rule.

While EPA did not justify the additional prevention program provisions added by the RMP Amendments rule on the basis of security, we considered claims made by some commenters that these provisions, and particularly STAA, should be retained because they may reduce security risks. However, as explained further below, we maintain the view that the pre-2017 prevention provisions already allowed facilities to appropriately balance security and safety risks, and reverting to those provisions is not inconsistent with other parts of this rule that address new security risks created by the emergency response and information availability provisions of the 2017 RMP Amendments.

Below and in the RTC we discuss in more detail the basis for our decisions to rescind the prevention program elements described in this section.

2. Comments on Rescission of Prevention Program Provisions in General

While several commenters expressed general support for the rescission of the Amendments rule prevention program rescissions, many other commenters, including a form letter campaign joined by approximately 18,310 individuals, recommended maintaining those provisions.

a. Claims That Rescinding Prevention Provisions While Retaining Other Provisions Is Inherently Contradictory

A joint comment submission by multiple advocacy groups argued that the proposed Reconsideration rule is inherently contradictory, reasoning that it is arbitrary for EPA to recognize that the incident data shows a need for certain emergency response coordination and public meeting requirements but argue that the same need does not exist for the prevention program requirements.

EPA Response: EPA disagrees that the Reconsideration rule is inherently contradictory because it retains Amendments rule emergency response provisions while rescinding accident prevention provisions. At no point in the record for the RMP Amendments rule or the Reconsideration rule do we represent that either the pre-Amendments prevention program or the addition of STAA, third-party audits, or root cause analyses to the prevention programs will prevent all accidental releases. There will still be accidents that will need responses with or without the prevention program amendments rescinded today. EPA believes that much of the accident prevention

benefits of the Amendments rule prevention provisions can be achieved by including injunctive relief, as appropriate, in enforcement actions without a broad regulatory mandate that potentially imposes unnecessary costs on many facilities. The retention of the Amendments rule's emergency response program provisions, with modifications, is not inconsistent with this view. We retain many of the RMP Amendments emergency response provisions because, regardless of whether we go forward with the prevention program changes under the RMP Amendments, improvements in the response program provisions are reasonable and practicable. We have struck a reasonable balance of measures that will provide, to the greatest extent practicable, for preventing accidental releases and minimizing the impacts of such releases.

b. Claims That OSHA Coordination Is Not a Reasonable Justification for Rescinding Prevention Requirements

Multiple State elected officials commented that because EPA's rationale regarding the need for greater coordination with OSHA does not provide a reasonable justification for eliminating the benefits of the accident prevention requirements, the proposed rescission would be arbitrary and capricious if finalized. These commenters argued that greater coordination with OSHA is not a prerequisite to imposing the prevention program provisions of the Amendments rule for four reasons: (1) Congress did not intend for the OSHA coordination requirement to prevent EPA from taking action; (2) EPA did in fact coordinate with OSHA throughout the development of the 2017 rule; (3) There is no conflict between the accident prevention requirements and OSHA's regulations; and (4) EPA should not wait for OSHA to act because, as EPA found during the Amendments rulemaking effort, its regulations are needed now. A joint submission from multiple advocacy groups and other commenters made a similar argument that repeal and delay pending a new rulemaking by EPA and/or OSHA is arbitrary and capricious.

EPA Response: EPA disagrees that EPA's rationale regarding the need for greater coordination with OSHA for eliminating accident prevention requirements is unreasonable, arbitrary or capricious. Congress requires EPA to consult and coordinate with OSHA in order to establish coordinated regulatory requirements. As we discussed in section II.C.2, above, the Senate committee report on this language notes that the purpose of the coordination requirement is to ensure that ''requirements imposed by both agencies to accomplish the same purpose are not unduly burdensome or duplicative.'' Senate Report at 244. The proposed Reconsideration rule did not suggest that there was any legal requirement to defer to OSHA in rulemaking, rather EPA acknowledged in the proposed rule that there is no legal requirement for EPA and OSHA to proceed on identical timelines in making changes to the RMP rule and PSM standard, and that some divergence between the RMP rule and PSM standard may at times be necessary given the agencies' separate missions. See 83 FR 24863–64. EPA also indicated, however, that while there is no legal bar to EPA proceeding on a separate rulemaking schedule or having requirements divergent from the OSHA PSM standard, the Amendments rule represented a departure from PSM requirements. While EPA's approach to coordination with OSHA under the Amendments rule was legally permissible, EPA does not have a record showing significant benefits of the added prevention program provisions. Without such benefits, EPA believes it is better to take its traditional approach of maintaining consistency with OSHA PSM. The creation of additional complexity and burden associated with new provisions where EPA has not demonstrated any benefit is evidence of the new prevention provisions' impracticability and that the rule divergence is unreasonable.

By adding significant new requirements to the accident prevention program under the Amendments rule, EPA caused the RMP prevention requirements to diverge substantially from the OSHA PSM standard for the first time. For example, with the Amendments rule's STAA and third-party audit provisions, EPA added completely new and complex components of the PHA and auditing provisions that are not contained in the PSM standard. Such new provisions impose additional compliance and oversight burdens that could cause implementation problems. With respect to root cause investigations, expert testimony at EPA's public hearing indicated that the pre-Amendments RMP rule does not require root cause investigation. In requiring EPA to coordinate its rulemaking under CAA section 112(r)(7) with OSHA, Congress urged EPA to avoid this situation by indicating that the purpose of the coordination requirement was to ensure that ''requirements imposed by both agencies to accomplish the same purpose are not unduly burdensome or duplicative.'' [45] By rescinding the Amendments rule's changes to the accident prevention program, EPA is restoring the pre-Amendments consistency between the RMP rule and PSM standard. At a minimum, EPA believes it should have a better understanding of the direction of the OSHA program before adding costly and difficult to implement prevention provisions to the RMP rule.

While coordination meetings and communications certainly occurred, Congress did not require consultation and coordination for their own sake. Rather, the objective was to establish coordinated regulatory requirements and thereby avoid unduly burdensome or duplicative requirements. EPA agrees with other commenters who indicated that the Amendments rule did not accomplish these objectives. EPA does not have a record showing significant benefits of the added prevention program provisions. Without such benefits, EPA believes it is better to take its traditional approach of maintaining consistency with OSHA PSM. The creation of additional complexity and burden associated with new provisions where EPA has not demonstrated any benefit is evidence of the new prevention provisions' impracticability and that the rule divergence is unreasonable.

c. Claims That Rescinding Prevention Provisions Will Contribute to Future Chemical Emergencies

Several commenters were concerned about safety and health issues that could result from rescinding the Amendments rule accident prevention provisions. Multiple private citizens commented that removing the prevention program requirements will contribute to future chemical emergencies at RMP facilities. An advocacy group stated that the changes to the prevention program in the proposed Reconsideration rule would endanger the public and that EPA should learn from California's new safety regulation for oil refineries, which includes nearly all the provisions that EPA is proposing to remove and was informed by the industry's own best engineering and management practices developed over the last 20 years. Some advocacy groups stated that the prevention program saves lives and

[45] Clean Air Act Amendments of 1989, Report of the Committee on Environment and Public Works, U.S. Senate together with Additional and Minority Views to Accompany S. 1630. S. Report No. 101–228. 101st Congress, 1st Session, December 20, 1989.—''Senate Report'' p. 244. EPA–HQ–OEM–2015–0725–0645.

decreases costs. Multiple State elected officials stated that EPA has acknowledged in the proposed rule that the prevention program provisions subject to rescission produced a variety of benefits that would be reduced if the proposed Reconsideration rule were implemented. The commenters recommended that EPA retain the provisions to attempt to reduce the number of incidents. One commenter stated that preventative measures are not only financially wise, but, as seen in West, Texas, are a matter of life and death for the populace and environment around chemical industries, as well as for employees of the chemical industry. Another commenter stated that EPA's proposed changes will endanger the lives of workers and millions of community members and their families who live around our nation's chemical facilities. Another commenter stated that third-party audits are necessary for profit-based companies who can err in favor of profit and that investigating near-misses and determining root causes is needed to learn from accidents. This commenter stated that the $88 million in savings to industry from rescinding parts of the Amendments rule pales in comparison with the $2 billion in damage, 58 deaths, and nearly 17,000 people injured over the last 10 years from RMP accidents and the profits made the by chemical industry.

EPA Response: While EPA anticipated in the final Amendments rule that implementation of prevention program elements would result in the reduction in frequency and magnitude of damages from releases, EPA was unable to quantify what specific damage reductions would occur as a result of the prevention elements. EPA notes that the accident rate trend shows a continual decrease under the pre-Amendments RMP rule. This downward trend is evidence that the prevention elements of the pre-Amendments RMP rule are working and that the cost of additional prevention requirements may not be necessary. In part because the state-specific data on enhanced prevention programs do not show a clear benefit from imposing the prevention program amendments broadly, EPA does not believe that the additional prevention requirements (*i.e.* third-party audits, STAA, investigation root cause analysis and other prevention program changes) add environmental benefits beyond those provided by the pre-2017 requirements that are significant enough to justify their added costs when imposed by rule rather than on a case-specific basis. When considering scarce resources, there even may be disbenefits from diverting resources towards costly STAA studies at those stationary sources that have successful accident prevention programs as shown by a record of no accidental releases.

The West, Texas incident involved a chemical, ammonium nitrate, that is not covered by the RMP rule. Investigation of near-misses is already required under the pre-Amendments rule, as the regulations require investigation of incidents which could reasonably have resulted in a catastrophic release of a regulated substance. The $88 million in savings projected by EPA is the annualized cost savings for all provisions rescinded by the final rule over the ten-year period (2004–2013) analyzed. These costs did not include the indirect costs of facilities choosing to implement safer technologies and alternatives in the RMP Amendments, although examples of implementing some safer technologies could be very high, such as $500 million to convert a hydrogen fluoride alkylation unit to sulfuric acid or $1 billion to convert a paper mill from gaseous chlorine bleaching to chlorine dioxide. Facilities subject to the STAA requirements were not required to implement STAA, and EPA has no data from which to predict how many facilities might choose to implement these technologies and what the technologies might be.

Although the annual average quantified damages from accidents over the ten-year period were estimated at $274.7 million, EPA was not able to quantify how much of this damage could be reduced in the future by the Amendments prevention program elements. Based on this estimate of the annual cost of accidents, the accident damages would have to be reduced by over 30% annually [46] from the addition of the rescinded elements alone just to break even on their costs, unless other significant non-quantified benefits are assumed. However, EPA found a 3.5% average annual decline in RMP accident rate using the RMP data from 2004–2016, without the added prevention provisions (See Exhibit 3–8, Proposed Reconsideration rule RIA), and as commenters have noted, the severity of accidents has also declined over the period of study. Both trends mean that the annual cost of accidents estimated under the Amendments rule was likely too high, and that rescinded Amendments rule provisions would have needed to prevent an even larger portion of accident damages in order to have benefits that are in proportion to their costs.

However, EPA's analysis of RMP accident data in states with state-level inherent safety or chemical use reduction programs casts doubt on the effectiveness of the Amendments rule STAA provision in particular. EPA analyzed RMP-facility accident trends in states with regulatory programs that require sources to consider inherently safer technology (New Jersey) or to reduce toxic chemical use (Massachusetts) to see what possible effect these particular provisions had on accident rates.[47] The data on RMP facility accidents in these states indicated no discernible reduction in accident frequency or severity associated with the state regulatory programs (the effects of state inherent safety and toxic use reduction programs is discussed further in section IV.C.4, below). In fact, the average number of accidents per RMP facility in both states have exceeded the national average. Therefore, EPA does not see sufficient evidence to show that the STAA provision of the Amendments would reduce RMP facility accident rates enough for the provision to be a reasonable regulation; the costs of STAA are disproportional to projected benefits. For other prevention provisions of the Amendments rescinded under the final rule—third-party audits and root cause analysis—these take place after an accident has occurred,[48] and the Agency can still obtain some of their benefits by including such measures in enforcement actions, where appropriate, through CAA section 113 orders or through settlement, without imposing a broad regulatory mandate.

EPA disagrees that California's new safety regulation for oil refineries provides support for retaining Amendments rule prevention provisions. This comment refers to the California Accidental Release Prevention (CalARP) program, which now requires additional process safety measures at 15 California refineries, including requirements to adopt inherently safer designs and systems to the greatest extent feasible. These regulations became effective in October

[46] See Table 3; combined annual cost of Amendments rule STAA, third-party audit, root cause analysis and information disclosure provisions equal $84.7 million.

[47] EPA. July 18, 2019. Technical Background Document for Final RMP Reconsideration Rule Risk Management Programs Under the Clean Air Act, Section 112(r)(7), Section 3.0 Analysis of Accident Frequency at RMP Facilities in New Jersey and Massachusetts. Available in the rulemaking docket.

[48] Removing the ''*i.e.,* near-miss'' language from §§ 68.60 and 68.81 of the 2017 rule does not alter the requirement to conduct incident investigations for incidents that could reasonably have resulted in a catastrophic release.

2017.[49] The new regulations include requirements for safeguard protection analysis, hierarchy of hazard control analysis (includes analyzing and recommending inherent safety measures and safeguards to reduce each hazard to the greatest extent feasible), damage mechanism review, incident root cause analysis, process safety culture assessment, human factors, corrective action process, effective stop work procedures, and process safety performance indicators.[50] Of these new CalARP regulations, EPA's RMP Amendments included only provisions comparable to inherently safer design analysis (*i.e.,* the Amendments rule STAA requirement) and incident root cause analysis. None of the other new CalARP provisions were included in the Amendments rule. EPA notes that the very recent establishment of the California requirements means that little data bearing on their effectiveness exists. Without such data and considering that state-level data from New Jersey suggests that an IST regulatory requirement may not result in any discernible reduction in accident frequency or severity, the fact that California has adopted such provisions is not sufficient justification for EPA to include them in the RMP rule. However, EPA will consider the CalARP program moving forward and evaluate whether any accident data related to the program has useful relevance to the RMP rule.

d. Claims That Rescinding Prevention Provisions Will Increase Security Risks

A joint submission from multiple advocacy groups and other commenters and a State elected official stated that while EPA cites national security as a risk of the 2017 Amendments rule and a rationale to rescind the information sharing provisions, EPA does not weigh security concerns as a reason to retain the prevention measures. The commenters stated that there are already security risks at these sites due to the chemicals they store. Having a prevention program that makes chemical facilities safer by reducing hazards also minimizes risks, whether due to intentional acts or accidents. One commenter contended that the way to protect communities from terrorism and to advance national security is to reduce hazards, by requiring prevention and safer technologies alternatives analyses that would make chemical facilities safer up front. A State elected official commented that because accidents from the three industry sectors subject to STAA requirements account for 49% of all RMP reportable accidents, it makes economic sense to have them consider potential changes that would eliminate the possibility of a release entirely, by making a process more tolerant of fault or security breaches.

These commenters also argued that it is arbitrary and capricious for EPA to fail to weigh national security concerns as a reason to retain the prevention program provisions. The commenters argued that EPA cannot rationally address national security concerns only as a risk and not also as a potential benefit. In particular, multiple State elected officials commented that the rescission of the STAA requirement is arbitrary and capricious because EPA failed to consider the potential security benefits from STAA. The commenters stated that this is especially true in light of the security concerns cited by EPA as a basis for cutting back on chemical hazard information that must be shared with local emergency response officials and communities.

EPA Response: EPA disagrees that the Agency failed to properly weigh national security concerns during the Reconsideration, or that it should have assumed an increase in security risks from rescission of the Amendments rule's prevention program provisions. In the Amendments rule, EPA did not justify the prevention provisions on the basis of decreasing security risks. During development of the Amendments rule various commenters stated that the STAA provision could increase, not reduce, security risks. Our approach in the final rule was to allow facilities to balance security risks among all others, and that the STAA provision allowed for ''enough flexibility to consider risk management measures to minimize hazards without prescribing an approach that could compromise facility security or transfer or increase risks.'' 82 FR 4649, January 13, 2017. With or without the STAA and other Amendments rule prevention provisions, the rule allows for facilities to continue balancing security and safety risks. We continue to rely on facilities to balance these risks appropriately. Therefore, EPA does not believe that rescinding the STAA and other prevention provisions increases security risks. Changes made by EPA to the RMP accident prevention program were designed to reduce accidental releases and were not specifically undertaken to reduce the risk of releases from intentional criminal acts.

While implementation of some inherently safer technologies could reduce risks of release from criminal acts and the root cause incident investigation process can be useful in determining whether the cause of a release is accidental or intentional, EPA does not believe that rescinding the STAA and root cause analysis provisions increases security risks beyond those already present. The Amendments rule STAA provision did not require implementation of any technologies considered, and the pre-Amendments RMP rule already required investigating the causes of incidents. Regarding the Amendments rule requirements to provide increased availability of chemical hazard information to the public and other relevant planning information to LEPCs, EPA considered whether these requirements were potentially increasing security risks because the Department of Justice (DOJ) has found that the increased availability of information would increase the risk of the misuse of information by criminals or terrorists. Therefore, we do not see any inconsistency in our actions or rationale by trying to avoid increasing security risks for these requirements.

EPA also notes that rescinding the Amendments rule prevention provisions should not result in increased security risks because of the regulatory and legal framework that exists outside of the RMP rule. Specifically, addressing security concerns at high-risk chemical facilities is covered by other laws and regulations. For example, addressing security concerns at high-risk chemical facilities is covered by the Chemical Facility Anti-Terrorism Standards (CFATS), managed by the Department of Homeland Security (DHS).[51] The purpose of CFATS is to ensure facilities have security measures in place to reduce the risks associated with over 300 chemicals of interest and prevent them from being exploited in a terrorist attack. CFATS requires vulnerability assessments, development of site security plans, and implementation of Risk-Based Performance Standards for security of chemical facilities. Security risks at drinking water and waste water treatment facilities are not covered by CFATS but instead are subject to requirements managed by EPA's Water Security Division as authorized by the Public Health Security and Bioterrorism

[49] Cal EPA and CA DIR. August 4, 2017. News Release: New Regulations Improve Safety at Oil Refineries. California Environmental Protection Agency and California Department of Industrial Regulations. *https://www.dir.ca.gov/DIRNews/2017/2017-71.pdf.*

[50] See Program 4 Prevention Program requirements in 19 CCR § 2762, specifically section 2762.2.1, 2762.13, 2762.5(e), 2762.9(e) and (i)(4), 2762.14, 2762.15 and 2762.16(d), (e), (f) and (h) at *https://www.caloes.ca.gov/FireRescueSite/Documents/CalARP%20Regs%20Title%2019%20Division%202%20Chapter%204.5.pdf.*

[51] *https://www.dhs.gov/cisa/chemical-facility-anti-terrorism-standards.*

Preparedness and Response Act of 2002, also known as the Bioterrorism Act of 2002. Facilities on or adjacent to waters of the U.S. must also comply with regulations promulgated under the Maritime Transportation Security Act, which requires security vulnerability assessments and security plans.[52]

e. Commenters Disagree That the Accident Record Supports Rescinding Prevention Provisions

A Federal agency, State elected officials, and a joint submission for multiple advocacy groups and other commenters stated that they are disappointed that EPA has decided to revise the prevention program requirements as EPA's own RMP accident data from 2004 through 2013, which averages about 150 incidents per year, cited in the 2017 Amendments rule, supports implementing greater protections and shows that there is no basis to undermine or weaken the prevention programs. Some of these commenters also cited RMP accident data from 2014–16 and a list of reports of accidents at RMP facilities tracked on a web page by Earthjustice (now totaling 73) that have occurred since the Amendments rule was delayed as evidence that prevention program provisions are needed. These commenters argued that harmful accidents continue to occur, that over 500 accidents have occurred in the last 5 years, that he accident dataset is incomplete and does not include 2017 and 2018 accidents, and that EPA has not demonstrated any significant decline in the accident rate.

An advocacy group expressed disagreement with what they characterized as an EPA suggestion in the proposed Reconsideration rule that the decline in accidental releases that have already occurred is a reason for not requiring additional accident prevention and mitigation steps. The commenter stated that this is like arguing that since seat belts already save lives, there is no need for air bags even though they can save more lives. The commenter reasoned that the fact that existing safety measures have lowered accident rates has no bearing on whether other feasible measures for further reducing accident risk should be adopted.

An advocacy group also stated that the 2017 RMP database that EPA placed into the docket only goes through October 2017 but noted that EPA's proposal was not published until May 30, 2018 and claims that EPA has drawn data from the 2018 database. The commenter asserts that EPA has not given any justification for failing to include the most current data it has into the public record and considering it for the current proposal.

A joint submission from multiple advocacy groups and other commenters argued that the rescission of the prevention program provisions is arbitrary and capricious because EPA's record shows a need for them to be at least as strong, if not stronger, than when EPA promulgated the Amendments rule. The commenters argued that data show that a significant number of accidents are continuing to occur frequently and cause serious harm, which the commenters argued makes it arbitrary and capricious for EPA to rescind almost all prevention measures without enacting an adequate replacement.

EPA Response: EPA disagrees with these comments. While EPA reported in the Amendments rule that RMP accidents averaged about 150 incidents per year from 2004–2013, EPA's further analysis during the reconsideration process shows that RMP accidents continue to decline over time (Reconsideration RIA, Exhibits 3–7 and 3–8) with an average annual decline of approximately 3.5%. EPA disagrees that this is not a significant decline in the accident rate.

EPA examined the data compiled by Earthjustice on their website from 73 incident reports that occurred between the Amendment's rule original effective date of March 14, 2017 and September 21, 2018 when US Court of Appeals for the D.C. Circuit issued a mandate to make the Amendments effective. The 73 incident reports along with their descriptions and result of EPA's review is presented in a Technical Background document,[53] available in the rulemaking docket. The 73 reports involved a total of 75 incidents, all occurring at RMP regulated facilities, except four which are now deregistered. Many (42) of these incidents did not involve processes or chemicals that appear to be covered by the RMP regulations or there was not enough information to judge whether the processes or chemicals were RMP-covered. Some (14) of the 33 incidents that did involve or could have potentially involved covered processes or chemicals were not required to be reported as RMP accidents because they did not appear to have any reportable impacts. The press reports from which the list of 75 incidents was compiled did not always contain sufficient information on the identity of the chemicals released and the other process information needed to ascertain the regulatory status of the process involved. Therefore, EPA views this compiled list of incidents as having limited usefulness for any analysis for the rulemaking. EPA believes that accident data reported by RMP-regulated facilities in their RMPs to be the best source of information for counting accidents relevant to the RMP regulation.

Regarding the RMP accident dataset for 2017 and 2018, the analysis for the proposed Reconsideration rule RIA was completed in March 2018 before the rule was sent for White House Office of Management and Budget (OMB) review in mid-March. Although EPA had access to the March 2018 version of the RMP database that had facility submissions through the end of February 2018, the dataset of accidents that occurred in 2017 would not have been complete. Facilities have up to six months after a reportable accident occurs to update their RMP submission for that accident. Because the RIA analysis was completed in March 2018, most 2018 accidents had not occurred yet, much less been reported on, so naturally the proposed rule analysis could not use them. Thus, the last complete calendar year of RMP accident data available to EPA at the time of completing the proposed rule RIA was 2016. As explained in Chapter 3 of the proposed rule RIA, EPA found that comparisons of the numbers of facilities in the RMP data used in the Amendments rule (which used the February 2015 version of the RMP data) with the November 2017 version[54] of the database, revealed that number of RMP facilities and processes had experienced minor changes in the more than two years between rulemakings (*e.g.* the number of RMP facilities decreased by 1.8% over the time period). As a result, EPA utilized the costs estimated for the 2017 RMP Amendments RIA as the baseline set of costs to be impacted by the proposed Reconsideration rule (see proposed rule RIA at 24).

In October 2018, we provided in the rulemaking docket an extracted Excel file containing the RMP accident data for calendar year 2017, in the same format that had been provided in the

[52] 33 CFR part 105.

[53] EPA. July 18, 2019. Technical Background Document for Final RMP Reconsideration Rule Risk Management Programs Under the Clean Air Act, Section 112(r)(7).

[54] As explained in the Correction to the Notice of Data Availability and Extension of Comment Period for the Proposed Rule (83 FR 36837, July 31, 2018), the updated number of RMP facilities and processes used in the RIA was extracted from the November 2017 version of the RMP database, while the 2014–2016 accident data cited in the RIA was extracted from a March 2018 version of the RMP database. EPA–HQ–OEM–2015–0725–1423.

rulemaking docket for the 2004–2013, and 2014–2016 RMP accident data. These 2017 accident data in the Excel spreadsheet file were extracted from a September 2018 version of the RMP database (*i.e.,* which contained RMP reports submitted through August 31, 2018). While we did not use the 2017 RMP accident data in the RIA or as support for the proposed rule (a complete set of accidents for 2017 was not available when the RIA was done), we provided this same Excel spreadsheet in the docket in order to share the information with interested stakeholders. The docketed Excel spreadsheet for 2017 RMP accidents reported through August 31, 2018 totaled 94 accidents, which is lower than the total for any previously reported year.[55] However, as noted in RIA, the total number of 2017 accidents could increase slightly because a few sources may update their accident history information only when their next full five-year RMP update occurs, which for some facilities occurs in 2019. See the RIA and Response to Comments document for a further explanation of this effect. Based on past five-year reporting cycles (that show a declining number of reporting entities with reports due on the five-year anniversary of the original due date and our observation of the number of extra incidents reported in resubmitted RMPs on the anniversary),[56] EPA does not expect late accident reporting to significantly impact the accident totals for 2014–2017.

Regarding one commenter's claim that the fact of declining accidents has no bearing on whether other accident prevention measures should be adopted, EPA disagrees with this claim and with this commenter's claim that EPA's rescission of the Amendments rule's accident prevention requirements is akin to not requiring air bags in automobiles due to the presence of seat belts. RMP accident prevention program measures are not discrete safety devices like air bags and seat belts. Rather, they represent a comprehensive system-based approach to accident prevention based on each individual facility's analysis of process hazards and subsequent implementation of appropriate engineering, administrative, and procedural controls to manage those hazards. The rule allows for continuous improvement over an iterative cycle of hazard analyses and other measures. Under the pre-Amendments rule, each individual facility is already required to select the appropriate set of risk control measures based on the specific set of hazards present at the facility. The fact that since the enactment of this regulatory regime, accidents and accident consequences have declined substantially and are now at historically low rates suggests that this system has been very effective at preventing accidents. The historically low accident rate matters because with an already low rate of accidents, the maximum potential benefits (*i.e.,* the baseline of preventable accidents) that can accrue from additional regulatory requirements is also lower, whereas their costs are at least partially fixed, and potentially high. For example, EPA's review of available data on IST/STAA[57] provides no clear evidence that the Amendments rule STAA requirement would result in further accident reduction, but the costs of the requirement are calculable and substantial. For more than 90 percent of impacted sources, the STAA provision in particular appears to be an impracticable and unreasonable ''do loop'' unlikely to improve accident prevention performance while also being a cost, time, and focus diversion for sources and their staff. It is reasonable to believe that prevention program measures in place prior to 2017 already encompassed many of the benefits of the STAA provision. Some facilities may already have considered and implemented safer technologies in conjunction with their process hazard analysis so subsequent mandates under regulatory programs would not have not led to additional accidental release prevention. Also, facilities may be using other effective accident prevention measures in lieu of IST (*i.e.* passive, active, and administrative controls) so that IST reviews become simply a procedural burden rather than a method that identifies more effective ways to prevent accidents than those already employed. EPA believes that the balance of the considerations discussed above has shifted in favor of not imposing broad new regulatory requirements without clear evidence of their efficacy, particularly when EPA believes benefits similar to those intended by these provisions are obtained by ensuring compliance with the pre-Amendments rule's accident prevention requirements on a case-specific basis in particular enforcement actions. 83 FR 24873, May 30, 2018.

Lastly, EPA disagrees with a commenter's claim that rescission of the prevention program provisions of the Amendments rule is arbitrary and capricious because the accident record shows a need for the Amendments rule prevention provisions. The RMP accident record shows that RMP-reportable accidents have declined to the lowest level since the origination of the pre-Amendments rule, indicating that the pre-Amendments prevention program provisions, and EPA's enforcement and implementation program, are effective at preventing accidents. It is illogical to argue that the ongoing decline in accident frequency to unprecedently low levels highlights a need for substantial changes to such a successful program.

f. Obtaining Safety Benefits Through Improved Compliance With RMP Regulations

Several commenters supported EPA's proposal to prioritize compliance by poor performers over adding regulatory requirements for all RMP facilities, indicating that this approach will avoid unnecessary burdens on many facilities, is consistent with recent EOs, and will focus compliance costs on those facilities that pose the greatest risks. Several other commenters disagreed with EPA's emphasis on compliance with existing regulations. The commenters emphasized that in the 2017 rulemaking EPA stated that enforcement of the existing program was not sufficient, and that EPA found a ''regulatory need'' for changes to the prevention program. A labor union stated that this type of compliance-driven approach would not have prevented serious accidents at facilities without a prior history of accidents. In addition, an advocacy group stated that during and prior to the West Fertilizer incident, EPA and OSHA both had enforcement authority over the facility, but neither was able to prevent the disaster. Multiple State elected officials commented that the possibility of increased enforcement does not justify the proposed rescissions. The commenters stated that incidents have occurred at more than a thousand facilities, and EPA has not explained how individualized enforcement measures at more than a thousand

[55] See docket item EPA–HQ–OEM–2015–0725–1974. Had this data shown a significant change in trend, it may have been of central relevance to our rulemaking and we would have considered reopening the comment period, but, since it was largely confirmatory of past trends, we rely on the previously observed trends and not on this new information in our decision.

[56] See sections 3 and 10 of the Response to Comment document (available in the rulemaking docket), 4600 RMP facilities are expected to resubmit RMPs in 2019. EPA received over 16,000 RMP reports during 1999, approximately 12,000 during 2004, approximately 8,600 during 2009, and approximately 7,000 during 2014.

[57] EPA, July 18, 2019, Technical Background Document for Final RMP Reconsideration Rule Risk Management Programs Under the Clean Air Act, Section 112(r)(7). Section 3.0 Analysis of Accident Frequency at RMP Facilities in New Jersey and Massachusetts. Available in the rulemaking docket.

facilities can plausibly address such widespread risks and harms. The commenters claim that the agency appears to have accepted—without any confirming analysis—industry trade association data regarding the percentage of facilities at which accidents have occurred.

EPA Response: As discussed in the proposed rule, the RMP accident data (as analyzed by American Chemistry Council (ACC) in its comments on the proposed rule) [58] tend to support the reasonableness of an approach to strengthening accident prevention that focuses on achieving compliance at problematic facilities rather than broader regulatory mandates. ACC's analysis of the RMP accident data for 2004–2013 shows that 1,517 reportable accidents occurred at 1,008 facilities. EPA verified ACC's analysis prior to proposing to rely on it, and the verification analysis was docketed on the date of the proposed Reconsideration rule.[59] ACC submitted as part of its public comments on the proposed Reconsideration, an analysis of the RMP accident data for 2007–2016 that shows 1,368 accidents occurred at 947 facilities.[60] Looking at both analyses overall, ACC's analysis showed that fewer than 10% of the 12,500 facilities subject to the RMP rule reported any accidental releases, while fewer than 2% of facilities that reported multiple releases were responsible for nearly half of reportable accidents from all types of facilities. In the chemical manufacturing sector only, fewer than 7% of the chemical manufacturers had multiple reportable accidents that accounted for about two-thirds of all reportable accidents in this sector.

EPA disagrees that it is implausible that an approach that focuses on achieving compliance at poor performing facilities can address accidental release incidents at RMP facilities. EPA does not claim that enforcement will be increased, but that when a facility is not implementing a successful prevention program, the enhanced prevention program measures reflected in the 2017 RMP Amendments rule (*e.g.,* implementing a third-party audit, conducting root cause analysis or examining safer technologies) can be applied as part of settlement agreements to the extent appropriate based on the violations alleged. In addition, it should be noted that EPA inspections and enforcement actions are not only taken in response to accidents and releases from facilities. EPA routinely performs inspections of RMP-regulated facilities throughout the country, and resulting enforcement actions address non-compliance at facilities, reducing the likelihood of accidents and releases. EPA has previously employed measures such as third-party audits and safer technologies in enforcement actions not only after reported releases but also after other (non-accident-related) inspections where such measures were appropriate to address potential weaknesses in a source's prevention program. Additionally, EPA is currently implementing a National Compliance Initiative under CAA section 112(r) with the goal of reducing risks to human health and the environment by decreasing the likelihood of chemical accidents.[61]

After considering the burdens and benefits of broadly imposing the additional prevention program requirements of the RMP Amendments, and in consideration of new emphasis on reducing unnecessary regulations, EPA has reexamined more carefully whether the benefits of such regulatory provisions are out of proportion to their costs. EPA does not contend that focusing on achieving compliance at poor performing facilities would replicate the effects of the Amendments rule accident prevention provisions, but we believe this approach is more reasonable because it more effectively focuses the burden of additional safety measures on those facilities where they are most needed instead of imposing regulatory mandates across the board that may not be needed to prevent accidents at well-performing facilities. Under a compliance-driven approach, we can obtain accident prevention benefits similar to those that we said justified the 2017 RMP Amendments rule at a fraction of the burden. As further explained in the Response to Comments document,[62] the Agency took more than 1,000 enforcement actions under CAA Section 112(r) between 2014 and 2018. Some of these EPA enforcement actions have involved settlement and injunctive relief that applies to multiple facilities. Thus, an EPA action may address not only the facility that was inspected, but also may require companies to audit other facilities owned by them and require complying actions at those additional facilities, as needed. In addition, the literature on the deterrent effect of enforcement finds that inspections, sanctions or increased threats of inspections and sanctions result in improved compliance not only at the evaluated or sanctioned facility, but also improve performance at other facilities, creating general deterrence.[63]

Regarding the West Fertilizer explosion and EPA enforcement, ammonium nitrate is not currently a substance regulated under the RMP regulations. Therefore, the requirements of the 2017 RMP Amendments rule would not have applied to the ammonium nitrate (AN) process at West Fertilizer even if they had been adopted before the incident at that facility. While some benefits of implementing accident prevention measures at covered processes can sometimes extend to unregulated chemicals and equipment at an RMP facility, this would be most likely to occur for unregulated chemicals contained in a covered process or at unregulated processes presenting similar hazards. At West Fertilizer, the covered process was an anhydrous ammonia storage process, which had distinct prevention measures from AN storage.[64] Therefore, even assuming the West Fertilizer incident did not result from criminal activity,[65] we do not believe the prevention provisions of the 2017 Amendments would likely have prevented the incident. Nevertheless, EPA agrees that this incident highlighted the importance of proper coordination between facility owners and operators and local responders. While the RMP regulations already required facilities to coordinate emergency planning and response with

[58] EPA. March 9, 2017. Notes and Documentation Related to a March 9, 2017 Meeting between the RMP Coalition and EPA regarding a Petition for Reconsideration of the RMP Amendments rule (82 FR 4594, January 13, 2017). EPA–HQ–OEM–2015–0725–0929 and American Chemistry Council public comments, August 17, 2018. EPA–HQ–OEM–2015–0725–1628.

[59] See attachments to EPA–HQ–OEM–2015–0725–0929, EPA Verification of ACC's RMP Accident Analysis with 2 Tables. March 26, 2018 and RMP Accident Data 2004–2013 EPA Verification of ACC Analysis.

[60] EPA–HQ–OEM–2015–0725–1628. pp. 14–15.

[61] More information about the National Compliance Initiative is available at: *https://www.epa.gov/national-compliance-initiative-reducing-accidental-releases-industrial-and-chemical.*

[62] See Response to Comments document, section 3.1.

[63] Shimshack, J.P. (2014). The Economics of Environmental Monitoring and Enforcement. *Annual Review of Resource Economics, 6,* p. 352. Available in rulemaking docket.

[64] In simplest terms, anhydrous ammonia storage typically involves storage of ammonia gas in a pressurized metal container, with piping and control and safety valves, while AN fertilizer storage involves storage of a solid in bulk or packages, in a bin or on pallets. The processes have distinct designs, the process hazards differ, the mechanical integrity programs for pressurized storage and piping and storage of material in bins and pallets are dissimilar, and the related training for employees and operating procedures have minimal overlap.

[65] On May 11, 2016, the BATF announced its conclusion that the fire at the West Fertilizer facility was intentionally set. See EPA–HQ–OEM–2015–0725–0641.

local officials, EPA has retained the enhanced local coordination and response provisions of the Amendments rule, with minor changes, based on its experience from inspections and lessons noted from several incidents including the West Fertilizer explosion.

g. Comments Concerning Extreme Weather Events and Climate Change

Many commenters stated that EPA should retain the Amendments rule prevention provisions because of increased accident risks from severe weather, which some commenters indicated were associated with climate change. One commenter contended that EPA's proposal inexplicably fails to heed lessons learned from the August 2017 disaster at the Arkema chemical facility in Crosby, Texas, which was a result of unstable peroxides decomposing after losing refrigeration due to local flooding from Hurricane Harvey. The commenter stated that the CSB found that the facility had not properly assessed the risk posed by increasingly severe weather and the PHA for the low temperature warehouses did not document any flooding risk. CSB recommended that chemical manufacturing, handling or storage facilities perform analyses to determine their susceptibility to these extreme weather events and evaluate the adequacy of relevant safeguards. Another commenter stated that rescinding certain prevention requirements would reduce opportunities for facilities to learn about their vulnerabilities to severe weather and improve their resiliency. The commenters stated that the requirement for program 2 hazard reviews to identify findings from incident investigations showing vulnerabilities, the root cause analysis requirement, and the STAA requirement, could help a facility determine if a release was caused by a vulnerability to severe weather and determine if there is safer technology that could reduce severe-weather impacts on a process. A joint comment submission from multiple advocacy groups and other commenters said that the need for maintaining the Amendments rule is especially great in communities threatened by a ''double disaster,'' which happens when chemical facilities fail to prepare to prevent and reduce harm from foreseeable hurricanes, floods, earthquakes, and severe weather. The commenter provided a detailed case study related to Hurricane Harvey in support of this argument. This commenter stated that a number of fires, explosions, and chemical releases that affected and harmed commenters and their members were related to Hurricane Harvey, and that many RMP facilities around Houston reported excess air emissions events in the days preceding and immediately following Hurricane Harvey's landfall. A report submitted by one commenter stated that out of 186 total air emissions events reported to the Texas Commission on Environmental Quality (TCEQ) between July 31 and September 7, 2017, 91 events (48.9 percent) were Harvey-related, and 134 events (72.0 percent) were in RMP facilities. The commenter also stated that a total of 1,473,184 pounds of 37 contaminants subject to the RMP rule were released in Harvey-related incidents, and an additional 5,481,871 pounds not related to Harvey were released during reported incidents in the same period. The commenters also argued that it was arbitrary and capricious for EPA to fail to consider the many chemical releases, explosions, and fires that occurred in the wake of Hurricane Harvey and the associated lessons learned regarding communities near chemical facilities that frequently face or are more prone to natural disasters.

EPA Response: EPA disagrees that the Amendments rule provisions were necessary because of the increased potential for accidents due to extreme weather. EPA examined the data submitted by commenters to support a case of increasing RMP facility accidents during extreme weather events but could find no examples in those data of RMP-reportable accidental releases from RMP-covered processes caused by extreme weather events. EPA notes that although the Arkema facility in Crosby, Texas is an RMP facility, the 2017 accident there did not involve the release of any RMP-regulated substances. According to the CSB, Arkema did prepare a PHA to comply with the OSHA PSM standard for all its processes (including the seven low temperature warehouses storing organic peroxides) as a best practice, although only one of its organic peroxide storage buildings met the chemical quantity requirements for coverage under the OSHA PSM standard. Even though Arkema's PHA process hazard analysis for the low temperature warehouses did not document any flooding risk, the facility did take precautions to protect the organic peroxides that required refrigeration against the loss of power, (an identified hazard) although those efforts ultimately failed due to unprecedented flood levels.[66]

EPA reviewed the data provided on emissions from specific facilities submitted by commenters indicating information on chemical releases during adverse weather events (most associated with Hurricane Harvey) in order to specifically examine whether there is an increase in RMP facility accidents during extreme weather events. While the submitted information documented reports of releases, generally the releases did not involve regulated substances listed in 40 CFR 68.130 or did not involve RMP-regulated processes or did not result in RMP-reportable impacts.

A list of these documented reports of releases (mostly air emissions) from specific facilities cited in comments and reviewed by EPA are provided in Table 6 of the Technical Background Document (available in the rulemaking docket). Some incidents or release events commonly cited in comments or references in comments are not subject to the RMP regulation. For example, many of the emissions were from floating roof storage tanks containing petroleum products such as crude oil or gasoline, which are not covered by the RMP regulation (see 40 CFR 68.115(b)(2)(ii) and (iii)). Thus, emissions of chemicals from these petroleum products are not covered by the RMP regulation regardless of whether the facility reports under RMP for other processes or if the chemicals emitted are RMP substances. Many of the emissions data quantified were not specific to a particular chemical and were only noted as pounds of emissions or pounds of volatile organic compounds (VOCs). Some of the emissions that were specified for a particular chemical, such as benzene, organic peroxides, glycerin, methanol, methyl tert-butyl ether, and carbon monoxide, are not listed RMP substances. Some chemicals that are sent to flares or released from flaring in refineries, such as sulfur dioxide or nitrogen oxide, may not be covered by RMP regulations because the chemical may not exceed a threshold quantity in a process. RMP regulations generally do not cover off-shore oil and gas drilling, exploration or production facilities.[67] EPA also reviewed RMP accident history reports during previous extreme

[66] CSB. May 25, 2018. Investigation Report: Organic Peroxide Decomposition, Release and Fire at Arkema Crosby Following Hurricane Harvey Flooding. Incident Date: August 31, 2018. U.S. Chemical Safety and Hazard Investigation Board. pp: 78–82, 86–87, 98–99. *https://www.csb.gov/arkema-inc-chemical-plant-fire-/.*

[67] Off-shore oil and gas drilling operations are not generally covered by the RMP regulations due to either the provision at 40 CFR 68.10(f), which excludes Outer Continental Shelf sources, or the provision at 40 CFR 68.115(b)(2)(iii), which exempts naturally occurring hydrocarbon mixtures prior to entry into a natural gas processing plant or petroleum refinery.

weather events, including Hurricanes Katrina and Rita, and found almost no examples of such events resulting in accidental releases from RMP-covered processes.[68]

Regarding a commenters reference to air emissions events reported to TCEQ during the timeframe of Hurricane Harvey, while the submitted information documented reports of chemical releases, generally those releases did not involve regulated substances listed in 40 CFR 68.130 or did not involve RMP-regulated processes or did not result in RMP-reportable impacts. For example, some of these incidents involved National Ambient Air Quality Standards (NAAQS) pollutants specifically exempted from regulation by 42 U.S.C. 7412(r)(3), hazardous air pollutants not listed under part 68 such as benzene, and other unspecified chemicals.

As these commenters did not submit TCEQ data directly to EPA, EPA conducted a search using TCEQ's website for emissions events occurring between August 25, 2017 and September 1, 2017 (*i.e.,* the period encompassing Hurricane/Tropical Storm Harvey's impact on Southeast Texas), which yielded 93 emissions reports from facilities in Texas. EPA did not review all 93 reports but reviewed a sample of 10 emissions reports from facilities regulated under the RMP rule. These 10 emissions reports can be found in Appendix B of the Technical Background Document. Of the 10 reports reviewed by EPA, 8 were submitted for excess emissions (*i.e.,* emissions above permitted limits) from flare stacks, one was submitted for excess emissions from an electrostatic precipitator, and one to report volatile compounds emitted from a small oil release to secondary containment.

Releases reported to TCEQ's Air Emissions Event Report Database are provided by facilities regulated under the state's air quality rules to report releases of certain air pollutants above specified reportable quantities. Such reports may represent evidence that a facility has emitted pollutants above allowed limits; however, they do not necessarily indicate that an RMP-reportable accidental release has occurred (*i.e.,* the releases do not result in deaths, injuries, property damage, evacuations, or sheltering-in-place). In fact, emissions of pollutants from flare stacks of refineries and chemical plants during process startups, shutdowns, and upsets may occur as the proper functioning of refinery safety systems to prevent catastrophic accidental releases. For example, in order to prevent a process upset from resulting in a fire or explosion in a refinery process unit, a process may be designed to relieve excess gases to the refinery's flare system. Such events may cause excess flaring by the refinery, resulting in an exceedance of the facility's air permit (and for facilities in Texas, requiring a report to the TCEQ Air Emissions Event Report Database). However, these reports generally do not indicate that an RMP-reportable accident has occurred. In fact, the Senate report on the CAA Amendments indicates that ''Accidental releases would not include release from vents and releases resulting from process upsets which are planned and are designed to prevent catastrophic events . . . These ''safety'' releases, while not routine, may be authorized and necessary and would not cause death, injury or property damage. Releases of this type are appropriately subject to regulation under section 112 of the Clean Air Act rather than the new section 129 established here.'' [69]

Commenters presented no information or analysis of TCEQ emissions data to demonstrate that the data related to RMP-reportable chemical accidents, nor did commenters show that the RMP rule or the specific provisions of the Amendments rule rescinded or modified by the Reconsideration rule could have prevented these releases. In EPA's judgement, none of the TCEQ emissions reports reviewed by EPA represented RMP-reportable accidental releases, and it is unlikely that the other TCEQ emissions reports discussed by these commenters would represent RMP-reportable accidental releases.

EPA notes that under the pre-Amendments RMP rule, RMP-reportable accidents are declining, not increasing, and this trend is an important consideration in EPA's decision to rescind Amendments rule requirements, as it indicates that the pre-Amendments RMP rule was effective in preventing and minimizing the risk of accidents. The pre-Amendments RMP regulations already required that facilities investigate incidents and resolve incident investigation findings, and identify the hazards associated with their covered processes and regulated substances and the safeguards used or needed to control or mitigate all relevant hazards, including among other things, loss of power, flooding or hurricanes. Thus, rescinding the Amendments prevention requirements would not relieve facilities of their obligation to address these hazards, whether or not they arise from the potential for extreme weather events.

h. Comments Concerning Costs and Benefits of Amendments Rule Prevention Provisions

Several commenters stated that the costs of repealing the Amendments rulemaking greatly exceed the benefits. Some of these commenters provided specific cost information or estimates to support their claims. One private citizen stated that EPA's estimate of $88 million per year savings from rescinding Amendments rule provisions was more than offset by potential losses of Amendments rule benefits of up to $270 million per year, which did not include additional costs such as contamination, lost productivity, emergency response, property value impacts, and health problems from chemical exposures. The commenter also stated that a single incident at the Exxon Mobil Torrance, California refinery cost California drivers $2.4 billion—based on increased gas prices—and caused macroeconomic losses of $6.9 billion, and that these figures do not include facility and community losses associated with emergency services, health care, property values, and local tax revenue. This commenter also cited a Center for Chemical Process Safety document that states ''major industrial incidents cost an average of $80 million each'' for property damages alone and losses from business interruption ''can amount to four times the property damage.'' This commenter noted that these are among other losses to life, health, market share,

[68] Accident history records during the time frames of Hurricanes Katrina and Rita are available in the docketed RMP database (EPA–HQ–OEM–2015–0725–0989). EPA reviewed accident history data for the following periods: August 25–31, 2005 (Hurricane Katrina) and September 20–25, 2005 (Hurricane Rita). EPA identified one facility—Mississippi Phosphates, that had an ammonia release from a flare that was extinguished due to storm surge during Hurricane Katrina. The same facility also had an ammonia release from a flare that was extinguished due to high winds during Hurricane Rita, and from a flare that was shut down in preparation for Hurricane Cindy (July 2005). However, no accident impacts were reported for any of these releases. Regarding Hurricane Harvey, EPA identified one facility—the Chevron Phillips Chemical Company plant in Sweeny, Texas—that reported an accidental release from an RMP-covered process on August 27, 2017 which was during the period that Southeastern Texas was being impacted by Hurricane/Tropical Storm Harvey. According to the facility's RMP, this incident involved a release of 65 pounds of ethylene that caused a fire resulting in onsite property damage, but no deaths, injuries, offsite property or environmental damage, evacuations, or sheltering-in-place. Based on information in the facility's RMP, it is unclear whether the release was directly related to the storm.

[69] Clean Air Act Amendments of 1989, Report of the Committee on Environment and Public Works, U.S. Senate together with Additional and Minority Views to Accompany S. 1630. S. Report No. 101–228. 101st Congress, 1st Session, December 20, 1989.—''Senate Report'' EPA–HQ–OEM–2015–0725–0645, pp 210.

reputation, litigation, insurance, investigations, and penalties. An advocacy group contended that EPA's justification for repealing the root cause and third-party audit provisions is inadequate because the commenter believes that benefits of these provisions are more than likely to outweigh the compliance costs. The commenter argued that the [third-party] audit provision would only need to reduce the risk of accidents by 3.5% for the costs of that provision to break even with the benefits of the rule and the root cause provision would only need to reduce the risk of accidents by 0.6% to break even.

A group of state elected officials maintained that EPA was not able to quantify what specific reductions in accident harms would occur as a result of implementation of the RMP Amendments but (citing the proposed Amendments rule at 81 FR 13642–3) found that they ''would provide benefits to potentially affected members of society,'' including reducing the probability and severity of chemical accidents. This commenter stated that in the RMP Amendments RIA, EPA cited numerous direct costs avoided including worker, responder, and public fatalities and injuries, public evacuations, public sheltering-in-place, and property and environmental damage, and indirect costs avoided, such as lost productivity due to product damage and business interruption both on-site and off-site, expenditure of emergency response resources and attendant transaction costs, and reduced offsite property values. The commenter argued that EPA may not ignore these benefits just because they are unquantified.

An advocacy group and a union stated that in the proposed Reconsideration rule RIA, EPA states that the agency ''believes the benefits and averted costs are large enough to justify the foregone benefits.'' However, the commenters stated that the Agency's conclusion is unsupported and ignores the significant unquantified benefits of the Amendments rule. The commenters stated that EPA's only justification is declining accident rates at chemical facilities, which the commenter claims is a flawed justification. An advocacy group also stated that the burden of the incident investigation root cause provisions is less than the identifiable benefits. The commenter stated that through a breakeven analysis, EPA can see that the burden provides no justification for repeal.

EPA Response: EPA disagrees with these comments. EPA did not project that the prevention benefits of the Amendments rule would be $270 million per year. That figure included the average annual monetized costs of RMP facility accidents occurring from 2004–2013. The Agency did not claim that the prevention program provisions of the Amendments rule would prevent all future accidents, and there is no reason to expect that this would have occurred.

The Reconsideration rule does not eliminate any pre-Amendments rule RMP requirements, so facilities that were previously responsible for implementing the prevention and emergency response program provisions of that rule will still be required to comply with those requirements, as well as the additional Amendments rule requirements not rescinded by the final rule.

Regarding the cost of the ExxonMobil Torrance, California refinery accident, EPA mentioned this accident in the final RMP Amendments RIA as an example of the regional impacts that can occur due to accidents.[70] The ExxonMobil Torrance refinery accident occurred in February 2015 and was after the ten-year period (2004–2013) for the RMP data that were analyzed for the monetized impacts of RMP accidents. While EPA did mention avoiding the lost productivity due to such accidents as an example of potential additional benefits, EPA had not previously reviewed in depth the RAND study that was the source of this estimate during development of the Amendments rule, and simply took the study's conclusions at face value. EPA has now further reviewed that study in detail and does not believe that it demonstrates that EPA's estimate of the costs of accidents is too low, or that its conclusions can be extrapolated to the nationwide universe of RMP facilities (see Section IV.C of this preamble for a further explanation).

EPA disagrees that the CCPS estimate of major accident damages is representative of the typical cost of RMP facility accidents. The CCPS ''Business Case for Process Safety'' (p.8) states that ''Property damage costs are reduced—In the U.S., major industrial incidents cost an average of $80 million each.'' The Amendments RIA (Exhibit 6–5) shows that the total costs of property damage for all reportable RMP accidents over the 2004–2013 time period analyzed were $2.1 billion for on-site damages, and $11.4 million for off-site damages. This averages $1.4 million per accident of on-site damages and $0.01 million per accident for offsite damages. Since the RMP accident data are self-reported by regulated sources, they likely represent the owner or operator's best estimate of the costs of the accident. CCPS may have derived its number from a definition of accident that is different from what we require to be reported under the RMP rule. For example, the RMP rule requires reporting of accidents that cause ''significant property damage on site'' or ''known offsite'' property damage, whereas the CCPS document purports to describe ''major industrial accidents.''

It does not appear that the set of accidents considered in the CCPS document has much overlap with RMP reportable accidents. The CCPS data on ''major'' industrial accidents are based in part on accidents that are not subject to the RMP rule, while the portion that are RMP accidents is a very small subset of the full RMP accident database. As EPA indicates in the Response to Comments document,[71] only 4 RMP reportable accidents that occurred during 2004–2013 and only one that occurred during 2014–2016 caused $80 million or more in onsite property damage.

EPA disagrees with the commenters that the non-monetized benefits discussed in the Amendments rule were ignored in the Reconsideration rule. In the Amendments rule RIA, EPA qualitatively described the benefits of the Amendments rule provisions, including the prevention and mitigation of future RMP accidents. EPA considered the benefits associated with preventing serious accidents, avoiding direct costs such as worker, responder, and public fatalities and injuries, public evacuations, public sheltering-in-place, and property and environmental damage. The RIA also considered indirect costs such as lost productivity due to product damage and business interruption, both on-site and off-site, expenditure of emergency response resources and attendant transaction costs, and reduced offsite property values. In the Reconsideration RIA, EPA acknowledges that the proposed rescission of some of the Amendments rule provisions would result in a reduction in the magnitude of prevention and information benefits relative to the post-Amendments rule baseline. Specifically, Chapter 6 of the Reconsideration RIA discussed the qualitative benefits associated with the Amendments rule and how they will change in response to the

[70] See EPA, Regulatory Impact Analysis—Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7), December 16, 2016, pp 89–90. This document is available in the rulemaking docket as item number EPA–HQ–OEM–0725–0734.

[71] See Response to Comments document, section 9.1.1.

Reconsideration rule. However, EPA also notes that the rate and consequences of RMP-reportable accidents have reached their lowest levels since EPA began collecting these data. These trends have occurred under the pre-Amendments rule, and EPA believes that some benefits of the Amendments rule can be obtained through a compliance-driven approach without imposing broad regulatory mandates that may unnecessarily burden many facilities.

With regard to incident investigation root cause analysis specifically, EPA did not rely exclusively on a comparison of costs and benefits to justify the rescission. We have been unable to make a direct connection between the presence or absence of these provisions and a number of accidents prevented. However, our decision to rescind these provisions does not rest exclusively on costs and benefits. As we have noted, in addition to reducing the burden on the regulatory community, EPA has decided to rescind the incident investigation root cause analysis provision to maintain consistency with the OSHA PSM Standard.

3. Comments on Rescission of Incident Investigation Provisions

Many commenters supported rescinding the Amendments rule incident investigation and root cause analysis provisions, for various reasons. Some commenters claimed that the Amendments rule lacked adequate justification for adding the provisions. Other commenters stated that the provisions were too burdensome or would not improve safety. Still other commenters stated that the requirements caused conflicts with the OSHA PSM standard and should be rescinded to assure continued unity with the standard. On the other hand, many other commenters opposed rescinding the Amendments rule incident investigation and root cause analysis provisions. These commenters also provided various reasons for opposing the rescission, which are discussed individually below.

a. Claims That Rescinding Provisions Will Weaken Safety Standards and Not Avoid Future Accidents

A State government agency commented that the rescission of the incident investigation provisions would be harmful, as the details collected by the incident investigation provisions help facilities to understand the causes and consequences of incidents, in turn helping to eliminate future incidents. The State government agency also commented that specifying that the initiating event, direct and indirect contributing factors, and root causes must be included in the factors that contributed to the incident is crucial for a thorough incident investigation. A joint submission from multiple advocacy groups and other commenters stated that EPA's own analysis demonstrates that EPA should keep and strengthen incident investigation and auditing requirements. The commenters stated that a conditional probability calculation based on the data in EPA's 2004–2013 accident spreadsheet confirms that facilities that have had even one accident are significantly more likely to have a second one, which shows the importance of retaining all of the improved investigation requirements. The commenters stated that, under the RMP rule in existence prior to the Amendments rule, EPA's data show that facilities are not learning from their mistakes. Additionally, the data show that facilities that experience one problem are likely to have additional issues without regulatory intervention. Other commenters, including private citizens, multiple form letter campaigns joined by approximately 2,275 individuals, and a labor union stated that incident investigations, including root cause analyses, can prevent accidents and should remain a part of the RMP program. These commenters stated that a root cause analysis is common sense and is critical to determining accountability, that the investigations are not a burden on industry, but are necessary and obvious solutions to learn how to prevent dangerous mistakes and enhance business practices. One commenter stated that root cause analysis has resulted in a strong safety record for nuclear facilities. Another commenter indicated that the state of California requires root cause analysis of accidents and that the analysis increases safety and saves companies money.

EPA Response: EPA agrees that incident investigation with root cause analysis is an important method to determine the underlying causes of an accident, so that they may be addressed to prevent future accidents. However, as noted earlier, many facilities may already use root cause analysis for incident investigations. All RMP facilities with Program 2 or 3 processes were already required to conduct incident investigations that include identification of ''contributing factors,'' and EPA's RMP guidance document already encouraged owners and operators to identify ''root'' and ''underlying'' causes of incidents. Several commenters noted that some facilities already conduct root cause analyses as part of their incident investigations and that root cause analysis is the modern, industry accepted approach in incident investigations. The Center for Chemical Process Safety (CCPS), based upon a survey of its membership and other processing companies, observed that companies reported using an average of two or three different public domain and proprietary tools methodologies for both major and minor incidents, and the most popular methodologies use different combinations of investigation tools.[72]

EPA did cite some examples in the Amendments rule of accidents where EPA, OSHA or CSB identified ineffective investigations by the owner or operator of previous, similar incidents, resulting in a failure to address the same causes. We presume that had these previous problems or near misses been identified, action would have been taken to avoid reoccurrence. However, EPA has not conducted any overall analysis of data from RMP accident investigations conducted by regulated facilities to determine how well these investigations have identified causes and contributing factors.

EPA acknowledges the commenter's point concerning facilities that have more than one accident. However, EPA disagrees that in all cases, subsequent accidents are due to a failure to conduct a root cause analysis of an earlier accident. In some cases, subsequent accidents could be due to a failure to implement incident investigation findings. In others, the causes of a subsequent accident could be completely unrelated to the causes of an earlier accident. EPA believes that the commenter's statement ''a conditional probability calculation based on the data in EPA's 2004–2013 accident spreadsheet confirms that facilities that have had even one accident are significantly more likely to have a second one,'' may mischaracterize the RMP accident data. While this observation is true, it fails to consider the possibility that subsequent accidents are unrelated to an owner's failure to identify a root cause.

Given the relatively small and declining number of facilities that have RMP-reportable accidents, and the concentration of accidents among a subset of facilities that have had accidents, EPA believes that focusing on

[72] CCPS. March 2003.Guidelines for Investing Chemical Process Incidents, Second Edition, Chapter 4, An Overview of Investigation Methodologies. Pp. 44–45. EPA–HQ–OEM–2015–0725–0251.

including injunctive relief as necessary in appropriate enforcement actions is a better approach to preventing future accidents than imposing broad regulatory requirements. Such an approach will also allow EPA to tailor injunctive relief to best suit the circumstances of the case. For example, considering that EPA's existing guidance already encourages owners and operators to identify the root and underlying causes of accidents, EPA may find that a facility's failure to address earlier incident investigation findings contributed to a subsequent accident, rather than failure to conduct a root cause incident investigation. In light of the language of our pre-Amendments rule, our guidance and that of CCPS on root cause analysis, and the widespread practice of conducting root cause analyses mentioned by commenters, a bare ''root cause'' regulatory requirement is unlikely to significantly change current practices or reduce accidents as much as a case-by-case approach that examines individual source behavior.

Also, based on its record, EPA does not wish to have the RMP incident investigation requirements diverge from those in OSHA's PSM standard. EPA does not have a record showing significant benefits of the added prevention program provisions. Without such benefits, EPA believes it is better to take its traditional approach of maintaining consistency with OSHA PSM. The creation of additional complexity and burden associated with new provisions where EPA has not demonstrated any benefit is evidence of the new prevention provisions' impracticability and that the rule divergence is unreasonable. However, retaining for Program 2 investigation requirements, the words ''report'' and ''reports'' in place of ''summary'' and ''summaries'', respectively, and the requirement for an incident investigation team with at least one person knowledgeable in the process and other persons with appropriate investigation experience, does not create any inconsistencies with OSHA PSM requirements.

b. Alleged Lack of Justification for Rescission

An advocacy group stated that there is no cost justification for the rescission of the root cause analysis provisions. The commenter stated that a break-even analysis demonstrates that the burden provides no justification for repeal as the benefits greatly outweigh the costs. This commenter argued that because the root cause incident investigation provision costs $1.8 million annually and the annual cost of facility accidents is $274.5 million, the provision would only need to reduce the risk of accidents by 0.6% to break even, which seems well within the range of reasonableness to conclude that these provisions would be able to provide this level of protection. The group recommended that EPA conduct their own breakeven analysis. Similarly, a tribal government and a few other commenters stated that the small cost associated with root cause investigations are well worth the benefit.

EPA Response: EPA disagrees that the commenter's break-even analysis that it is within the range of reasonableness to conclude the ''benefits [of the root cause provision] greatly outweigh the costs.'' The commenter suggests if the provision prevents at least 0.6% of accidental release damages, then it would be cost-beneficial, but provides no data to support that assumption about the effectiveness of the provision. EPA has not been able to quantify how much benefit in accident reduction would be attributed to this specific provision. EPA has no data or empirical estimates of the precise impact of each rule provision on the probability and magnitude of an accident. The accidents themselves have highly variable impacts that are difficult to predict. To the extent practicable, EPA's analysis monetizes the costs of accident damages to partially estimate the baseline costs that should be affected by the final rule.

This is also complicated by the fact that many facilities may already employ root cause analysis techniques and it is difficult to estimate how much benefit is to be gained from facilities who are not already conducting root cause analysis. In at least some of the incidents mentioned in the RMP Amendments proposal, it is arguable that a contributing factor in the subsequent incident was either the failure to conduct any investigation, or the failure to implement findings from an incident investigation, rather than the failure to conduct a root cause investigation. EPA is also rescinding the root cause analysis provision because we do not wish to have the incident investigation requirements diverge from those in OSHA's PSM standard. EPA does not have a record showing significant benefits of the added prevention program provisions. Without such benefits, EPA believes it is better to take its traditional approach of maintaining consistency with OSHA PSM. The creation of additional complexity and burden associated with new provisions where EPA has not demonstrated any benefit is evidence of the new prevention provisions' impracticability and that the rule divergence is unreasonable.

c. Other Comments Opposing Rescission of Root Cause Analysis Provision

A state agency and an advocacy group stated that incident investigations should be conducted ''using a recognized method'' as standard practice and stated that informal one-on-one interviews with supervisors or an investigation committee method are flawed approaches. These commenters stated that companies should use a more structured and comprehensive team approach to identify root causes with tested data analysis tools and methodologies. An industry trade association commented that they believe root cause analyses could help determine flooding risk for accidents and influence severe weather analyses. The commenter also stated that EPA should consider CSB's recommendation regarding the 2017 disaster at the Arkema chemical facility in Texas, that chemical manufacturing, handling, or storage facilities perform analyses to determine their susceptibility to these extreme weather events and evaluate the adequacy of relevant safeguards.

EPA Response: Although EPA is rescinding the specific regulatory requirement for root cause analysis, the Agency's existing guidance already encouraged owners and operators to determine the root and underlying causes of incidents. EPA's guidance also provides pointers to recognized investigation methods, such as the CCPS ''Guidelines for Investigating Chemical Process Incidents'' and the ''National Fire Protection Association Guide for Fire and Explosion Investigations.''

Regarding the use of root cause analysis to determine flooding risk, root cause analysis generally is used to identify underlying system-related reasons why an incident occurred, and it is therefore probably of less utility for determination of flooding risk or for investigating events that are clearly caused by extreme weather and are not system-related. The issue with extreme weather events is recognizing the hazard, its likelihood of occurrence and its severity. The RMP regulations already require that facilities identify the hazards associated with their processes and regulated substances and the safeguards used or needed to control or mitigate all relevant hazards, including among other things, loss of power, flooding or hurricanes. Thus, rescinding the Amendments prevention requirements and in particular the root cause analysis provision would not relieve facilities of their obligation to address these hazards.

d. Rescind ''near miss'' Clarifying Text

Several commenters stated that the term near miss was confusing and supported the proposal to rescind the term. These commenters recommended allowing firms the flexibility to determine what constitutes an incident that could reasonably have resulted in a catastrophic release. Several other commenters stated that in the Amendments rule EPA failed to define a near miss and its illustrations of near misses created confusion. Other commenters also supported the rescission, providing various reasons, including that EPA's earlier expansive view of the term was at odds with industry's understanding, or that the term could cause facilities to unfairly be subject to enforcement, or that EPA's description of the term would intrude on OSHA's jurisdiction. An industry trade association stated that, in addition to rescinding the near miss text, EPA also needs to clarify inaccuracies that were included in the near miss discussion in the Amendments rule preamble. Specifically, the commenter argued that EPA needed to clarify that some examples EPA included in the Amendments rule preamble were not near misses or incidents that could reasonably have resulted in a catastrophic release.

Other commenters opposed the rescission of the near miss text. A Federal government agency stated that investigating near misses can help prevent more serious and catastrophic incidents from occurring. The commenter also stated that because major process accidents are generally categorized as ''low probability, high consequence'' occurrences, near-miss incident investigations can provide a higher number of learning opportunities, providing a more complete data set for lessons learned and major process safety enhancements locally, within the company, and potentially industry-wide. A State government agency stated that to have an effective risk management program, facilities must investigate all incidents involving a regulated substance, including catastrophic releases, smaller accidental releases that are not catastrophic, and near misses. The commenter stated that the proposed revision is vague and subjective in that it leaves the owner or operator to decide what they will investigate outside of the ''catastrophic'' incidents, therefore weakening the provision. A State agency provided recommended draft text for § 68.81 that would require investigation of all accidental releases and near-misses (instead of incidents that resulted in or could reasonably have resulted in a catastrophic release) and included new definitions of ''accidental release'' and ''near miss.''

EPA Response: EPA is deleting the term ''near miss'' that was added in the Amendments rule. The term was added in order to further clarify those incidents which could reasonably have resulted in a catastrophic release and are also subject to investigation. However, EPA's lack of specificity about what it meant by ''near miss'' contributed to confusion about the incident investigation requirement rather than clarity. EPA does not have a record showing significant benefits of the added prevention program provisions. Without such benefits, EPA believes it is better to take its traditional approach of maintaining consistency with OSHA PSM. The creation of additional complexity and burden associated with new provisions where EPA has not demonstrated any benefit is evidence of their impracticability and unreasonableness. EPA does not wish to have the incident investigation requirements diverge from those in OSHA's PSM standard. Removing the language will prevent undue burden in complying with process safety requirements that would result from introducing a duplicative requirement for investigations. Contrary to some commenters' concerns, the addition of the term ''near miss'' in the Amendments rule was not intended to be an expansion of the type of incidents that were required to be investigated, but a clarification of the incidents which could reasonably have resulted in a catastrophic release that must be investigated. However, even without the term, incidents which could reasonably have resulted in a catastrophic release continue to require incident investigations.

While EPA did provide examples in the Amendments rule of incidents which may be considered near misses (82 FR 4606–7, January 13, 2017), EPA did not intend to imply that these examples were always events that would require investigation. EPA noted that ''facility owners or operators will need to decide which incidents could reasonably have resulted in a catastrophic release'' and that ''this will require subjective judgement.'' EPA also acknowledged ''that not all excursions of process parameters outside control levels or all instances of protective device activation should necessarily be considered to be near misses'' and ''that activation of protective devices should be investigated when the failure of such devices could have reasonably resulted in a catastrophic release.'' These situations would have to be evaluated to determine if imminent and substantial endangerment to the public health and environment could have plausibly resulted if the circumstances and been slightly different.

Regarding making any changes in the definition of a release subject to the investigation requirements, EPA had already proposed in the Amendments rule to change the definition of ''catastrophic release'' to be identical to the description of accidental releases required to be reported under the accident history reporting requirements. In the final Amendments rule, EPA decided not to make this change after reviewing many comments opposing the change and because the proposed revision may have inadvertently expanded the definition of incidents subject to investigation (see 82 FR at 4603, January 13, 2017). EPA did not propose a definition of near-miss in the proposed Amendments rule but did consider it. In the final Amendments rule, EPA chose not to provide a definition of near-miss because it was too difficult to address in a single definition the variety of incidents that may occur at RMP facilities that could be near-misses that should be investigated. The term near-miss had been added in the proposed rule as a term to help clarify and highlight those incidents that could reasonably have resulted in a catastrophic release. The difficulty in devising a single regulatory definition supports removing the term as it did not accomplish the intended clarification. Based on the reasoning given in the Amendments rule, EPA does not agree that any changes should be made regarding the catastrophic release definition for incident investigation nor should a definition of near-miss be added.

e. Requiring Program 2 Investigation Teams To Have at Least One Person Knowledgeable in the Process and Other Persons With Investigation Experience

An industry trade association expressed support for EPA's proposal to rescind the requirement for program 2 incident investigation teams to have at least one person knowledgeable in the process and other persons with investigation experience, stating that the team requirements are ambiguous and not appropriate for all incident investigations. The commenter stated that the team should be tailored to the level of incident and given that Program 2 facilities are lower risk, the team requirements should not be necessary. Two other commenters provided general support for the proposed rescission. On the other hand, a Federal agency

strongly recommended that EPA retain the staffing requirements for Program 2 investigation teams. Similarly, a State elected official questioned what kind of safety improvements could result from an investigation conducted by individuals with no experience with the failed process. Another commenter provided general opposition to the proposed rescission.

EPA Response: EPA is retaining the Program 2 requirement in § 68.60(c) for an incident investigation team to be established and consist of at least one person knowledgeable in the process involved and other persons with appropriate knowledge and experience to thoroughly investigate and analyze the incident. While EPA is rescinding other incident investigation requirements so that they do not diverge from those in OSHA's PSM standard, retaining the investigation team requirements for Program 2 does not create any inconsistencies with OSHA PSM requirements. The pre-Amendments rule for Program 3 already required an incident investigation team to be established and consist of at least one person knowledgeable in the process involved and other persons with appropriate knowledge and experience to thoroughly investigate and analyze the incident. This provision is the same as that required by the OSHA PSM standard. Retaining this provision for Program 2 does not make the provision more rigorous than Program 3, and EPA agrees with commenters who stated that incident investigation teams should always include at least one person who is knowledgeable in the process and other persons with investigation experience.

f. Other Comments on Incident Investigation Provisions

Commenters provided other comments relating to the incident investigation provisions. A State elected official opposed the rescission of the incident report elements added under the Amendments rule. A State government agency commented that the rescission of the added incident report elements will be detrimental to public safety because they would help the company understand the causes and consequences of the incident when the incidents are reviewed in the future, such as during process hazard analyses. Several commenters opposed EPA's proposed rescission of schedules for addressing investigation recommendations. A State government agency stated that a schedule for addressing recommendations from the incident investigation is an important requirement to ensure that recommendations are resolved in a timely manner and is necessary as part of the management system for all prevention program elements. Similarly, a Federal agency stated that EPA should continue to require that investigation reports include a schedule to address recommendations by taking appropriate corrective action(s) with a 12-month completion deadline. On the other hand, an industry trade association expressed support for the rescission of the added elements emphasizing that the additional items are not designed to meaningfully enhance incident investigations. Another trade association supported EPA's proposed rescission of additional report requirements, including schedules for addressing investigation recommendations, as unnecessary.

A few commenters supported EPA's proposal to rescind the 12-month incident investigation deadline requirement. Two industry trade associations supported EPA's proposal, reasoning that mandating a completion deadline is detrimental to the focus of the investigative team, which should be on completeness. Two industry trade associations also commented that the timeframe to complete a thorough incident investigation will vary depending on several external factors, including the consequences of the release, the complexity of the incident, the process or processes involved, the substance released, and the investigation team's experience, knowledge, and composition. In opposition to EPA's proposal, an industry trade association and a union disagreed with rescinding the 12-month deadline, stating that the deadline is reasonable to ensure the owner/operator does not let the investigation lag indefinitely. In addition, a Federal agency stated that EPA should continue to require that investigation reports include a schedule to address recommendations by taking appropriate corrective action(s) with a 12-month completion deadline.

A few commenters supported the rescission of the requirement to investigate catastrophic releases that result in a decommissioned or destroyed process. Alternatively, a few commenters opposed rescinding the provision. A joint submission from multiple advocacy groups and other commenters stated that without investigations of releases that resulted in a decommissioned or destroyed process, it would create a significant gap in current RMP accident reporting data and would be a missed opportunity to improve safety.

EPA Response: EPA is rescinding all the incident investigation report elements added by the Amendments rule, except that EPA will retain the words ''report'' and ''reports'' in place of the words ''summary'' and ''summaries'' in 68.60(d) and (g), respectively, and the requirement in 68.60(c) for an incident investigation team to be established and consist of at least one person knowledgeable in the process involved and other persons with appropriate knowledge and experience to thoroughly investigate and analyze the incident. This includes rescinding, among others, the requirement to complete an incident investigation within 12 months, the requirement to provide a schedule for addressing recommendations in the investigation report, and the requirement to investigate catastrophic releases that result in a decommissioned or destroyed process. EPA does not wish to have the incident investigation requirements diverge from those in OSHA's PSM standard. EPA does not have a record showing significant benefits of the added prevention program provisions. Without such benefits, EPA believes it is better to take its traditional approach of maintaining consistency with OSHA PSM. The creation of additional complexity and burden associated with new provisions where EPA has not demonstrated any benefit is evidence of their impracticability and unreasonableness. Retaining the previously mentioned Program 2 investigation requirements above does not create any inconsistencies with OSHA PSM requirements. The pre-Amendments rule already had a requirement for the owner or operator to establish a system to promptly address and resolve the incident report findings and recommendations, with resolutions and corrections to be documented. These requirements remain and the rescission of the provision for a schedule for addressing recommendations in the investigation report does not negate the requirement to promptly address the investigation findings and recommendations.

Regarding investigation of accidents that result in a decommissioned or destroyed process, commenters did not identify a significant number of release incidents at RMP facilities that had resulted in a destroyed or decommissioned process without any RMP accident report.[73] We believe these

[73] In the list of incidents provided by Earthjustice attached to comment EPA–HQ–OEM–2015–0725–1969 and subsequently updated, EPA noted two incidents that resulted in the facility deregistering from the RMP database due to damage from the incident. See EPA. July 18, 2019, Technical

events would tend to be higher profile, with job losses and visibility to news organizations and to the communities. EPA is aware of a few such incidents (*e.g.,* the June 24, 2005 fire at a Praxair facility in St. Louis, Missouri); however the Agency is not aware of a significant number of such incidents. The absence of additional examples would lead us to conclude that the gap we were addressing in the Amendments exists but is not a significant one.

4. Comments on Rescission of Third-Party Audit Provisions

Many commenters representing industry supported EPA's proposed rescission of the third-party audit provisions. Some of these commenters stated that requiring a third-party audit after every reportable accident is unwarranted, would result in a misallocation of resources, and in cases where EPA believes a third-party audit is warranted, the agency already can require a facility to conduct a third-party audit as a corrective action under an enforcement settlement. Several trade associations stated that the third-party audit provisions are duplicative given that facilities are already required to be audited every three years. Other commenters stated that the Amendments rule provided insufficient evidence that third-party audits are more robust and effective than internal compliance audits. Many commenters stated that the Amendments rule's requirements for auditor competency and independence would make it difficult for companies to find and afford qualified auditors, and that EPA provided no evidence that internal auditors were insufficiently objective or competent to perform audits. Several industry trade associations commented that it is false to assume that third parties are more capable, credible, and objective than a facility's own audit staff. Two industry trade associations stated that EPA lacks authority to impose a regulatory requirement for third-party audits.

In contrast, many other commenters, including multiple form letter campaigns joined by approximately 2,275 individuals, opposed EPA's proposed rescission of the third-party audit provisions. Many of these commenters stated that third-party audits increase accountability. Some commenters supported retaining the third-party audit provisions because the CSB has found that a company's own internal corporate PSM audits can fail to identify systemic process safety deficiencies. An advocacy group stated that third-party audits should be maintained because post-incident audits help facilities pinpoint and eliminate the cause of such incidents to prevent future accidental releases. A joint submission from multiple advocacy groups and other commenters stated that EPA previously supported and provided a rationale for third-party audits in the Amendments rule. A labor union also cited EPA's Amendments rule arguments in support of third-party audits and EPA's conclusion that ''independent compliance audits will assist stationary sources to come fully into compliance with the applicable prevention program requirements.'' The commenter stated that they fully believe that third-party audits would reduce the frequency and severity of accidents at RMP facilities. Another advocacy group stated that third-party audits are an essential part of the Contra Costa County (CCC), California Industrial Safety Ordinance (ISO), which the commenter described as a nationally-acclaimed chemical release prevention program that has reduced both the number and severity of incidents since its implementation of the third-party audit program. Other commenters stated that the costs of the third-party audit provisions do not justify their repeal, and that there is no problem if EPA requires third-party audits when OSHA does not.

EPA Response: EPA believes there can be benefits to third-party audits in some instances and has previously described the benefits in the Amendments rule. EPA will continue to include third-party audits as part of enforcement actions, when appropriate. The Agency's decision to rescind the third-party audit requirements is not based on a determination that third-party audits are not beneficial or justified in certain cases, but to allow for coordination of process safety requirements with OSHA before proposing future regulatory changes, and to reduce unnecessary regulatory costs and burdens of a broad rule-based approach to third-party audits rather than a case-by-case approach. As discussed in the proposed rule, one area of potential divergence between the OSHA PSM standard and the RMP rule under the Amendments is in the requirement for third-party audits. EPA noted that the August 2016 OSHA SBAR panel report [74] did not fully support third-party audits. Instead the SBAR panel recommended further review of the need and benefits of a third-party audit provision in the PSM standard. EPA therefore believes that we should not retain and put into effect changes to the prevention aspects of the Risk Management Program until we have a better understanding of OSHA's plans for changes to the PSM standard so that we may move forward in a more coordinated fashion.

Regarding commenters' claims that the Amendments rule's auditor competency and independence provisions will make it difficult for facilities to locate and afford auditors, and that EPA lacks authority to impose third-party audit regulatory requirements, these comments reiterate similar comments made on the Amendments rule, to which EPA already responded in the preamble and Response to Comments document for that rule. EPA notes that the rescission of the third-party audit requirements is not due to unavailability of auditors, or EPA's lack of authority to impose the requirement.

EPA disagrees that the CCC ISO provides evidence that third-party audits are justified on a cost-benefit basis. The CCC ISO includes many provisions that are not duplicated in the RMP regulation, and it is impossible to disaggregate the effects of individual provisions to determine their efficacy. However, the CCC audit program is not a third-party audit program comparable to the Amendments rule provision, but rather is comprised of inspections and audits that are conducted by the regulator (*i.e.,* county inspectors). The CCC Hazardous Materials Programs staff was required to audit and inspect all stationary sources regulated under the Industrial Safety Ordinance within one year after the initial submittal of their Safety Plans. In other words, these were enforcement audits, not independent third-party audits comparable to those in the Amendments.

5. Comments on Rescission of STAA Provision

Many commenters representing industry supported EPA's proposed rescission of the STAA provision. Some of these commenters argued that STAA has limited or no benefit or will even decrease safety. Some commenters indicated that the frequency of accidents in New Jersey since enactment of the NJ Toxic Catastrophe Prevention Act (TCPA) IST provision has not

[74] OSHA, OMB and SBA. August 1, 2016. Report of the Small Business Advocacy Review Panel on OSHA's Potential Revisions to the Process Safety Management Standard. Pp. 32–33. U.S. Dept. of Labor (DOL), Occupational Safety and Health Administration (OSHA); U.S. DOL Office of the Solicitor (SOL); Office of Management and Budget (OMB), and U.S. Small Business Administration (SBA). EPA–HQ–OEM–2015–0725–0923.

declined, and that this indicates that the Amendments rule STAA provision will cause facilities to incur costs without any accident reduction benefits. An industry trade association commented that the STAA provision would not reduce accidents, and that the RMP rule's existing requirements for management of change and PHAs already provide for analysis of alternatives and continuous risk mitigation. Two other industry trade associations stated that, in the course of PHAs, plants identify risks and address them according to recognized and generally accepted good engineering practice. One of these commenters also stated that companies implement risk-based analyses in order to reduce risks to an acceptable level. Another association argued that the Amendment rule's STAA provisions would provide no benefit because industries already utilize IST analysis where they determine it feasible. Other industry trade associations agreed, stating that IST analyses have been adopted as a matter of industry best-practice for years. They argued that imposing a regulatory requirement to do so will only result in waste. An industry trade association argued that STAA should not be generally required of existing facilities, and that a broad STAA requirement could only be appropriate when designing new plants, but that companies already perform STAA in these circumstances. Many associations commented that, at most, STAA should only apply to the design of a process and not be part of the PHA. An industry trade association representing specialty chemical manufacturers stated that its members manufacture specialty chemicals under designs specified in Federal regulations, and the tight specifications required by these programs limit the beneficial potential of STAA.

Some industry associations argued that STAA would increase risks. An industry trade association commented that STAA requirements, by departing from OSHA's PSM requirements, would create an overlapping, inconsistent regulatory framework and thereby decrease process safety. Another industry trade association predicted that risk shifting and a potential increase in overall risk would be a likely result of requiring STAA. An association of government agencies commented that the efficacy of the STAA requirement would be undermined if there were no required analysis for transfer of risk. An industry trade association commented that STAA requirements would stifle innovation by adding documentation costs to companies already innovating. Another commenter agreed, stating that STAA requirements, triggered by minor safety changes, could disincentivize the same changes.

On the other hand, many commenters representing environmental advocacy groups, state and tribal governments, and others opposed rescission of the Amendments rule STAA requirements. EPA also received comments from multiple form letter campaigns joined by approximately 2,275 individuals expressing opposition to the proposed rescission of STAA requirements. These commenters reasoned that if implemented, the STAA requirements would help prevent or decrease the impacts of future accidents. An advocacy group stated that STAA is the best mechanism available for improving plant safety. Another commenter agreed, elaborating that IST provides the most robust mechanism for preventing accidents by removing, rather than protecting against, hazards. Many other commenters wrote similar comments. A tribal government commented that numerous recent accidents may have been avoidable with STAA regulations. Specifically, the commenter cited the April 2, 2010 explosion at the Tesoro Refinery in Anacortes, Washington, an August 6, 2012 accident at the Chevron Refinery in Richmond, CA and CSB's similar findings for both incidents that process safety programs at both facilities failed to effectively control the hazards before these incidents occurred. This commenter noted that the CSB recommended that EPA require the documented use of inherently safer systems analysis and the hierarchy of controls to the greatest extent feasible in establishing safeguards for identified process hazards. The commenter also referred to other incidents that EPA had cited in support of the Amendments rule, stated that they all appear to have been caused by management's failure to implement adequate safety management programs, and concluded that process safety regulations were unsuccessful at preventing these major incidents. Another tribal government also argued that STAA provisions should be retained, describing the potential harm threatened by a nearby refinery's use of hydrogen fluoride. A private citizen commented that recent years have exhibited higher rates of reported incidents. The commenter argued that STAA provisions should be implemented to help reduce these occurrences. Another commenter stated that an expansion of RMP is necessary given the numbers of accidents under the RMP requirements in place prior to the Amendments rule. An anonymous commenter urged that the STAA provisions be retained, stating that nearly 135,000,000 people live in areas potentially impacted by 3,400 of the highest-risk RMP facilities' worst-case chemical releases. The New Jersey Department of Environmental Protection recommended that the Amendment rule's STAA provisions not only be retained but expanded. It commented that New Jersey's broad STAA approach, which includes safety measures short of redesigning a plant, made ongoing STAA requirements beneficial. It cited a study in support of its contention that STAA provision can improve safety in older and operational facilities.

EPA Response: When promulgating the Amendments rule, EPA anticipated that the STAA provision could be beneficial if facilities voluntarily implemented safer technologies in response to their analysis. However, EPA had no estimate of how many facilities would implement such measures and what the effects of these measures might be on the accident rate. EPA has since reviewed the nationwide RMP facility accident rate trend through 2016, which shows a continual decrease under the pre-Amendments RMP rule. This downward trend is evidence that the prevention elements of the pre-Amendments RMP rule are working and that the cost of additional prevention requirements may not be necessary. In addition, the accident data from RMP facilities in New Jersey indicate little or no discernible reduction in accident frequency or severity that can be associated with the NJ IST requirement to date. While comparing RMP accident data from New Jersey facilities to the full RMP database, EPA found that nationwide, the RMP accident rate has declined by an average of 4.1% per year from 2008–2016 (3.5% per year per facility), without the added prevention provisions whereas the RMP accident rate in New Jersey declined by only approximately 1.7% per year (or 2% per year per facility), with the state's IST provision in effect. The downward trend in accident rate nationwide could reflect industry efforts in this area that have been achieved without prescriptive regulatory provisions. In any case, the lack of an apparent additional accident reduction effect of the IST provision at the state level over the pre-Amendments EPA program casts doubt on whether the STAA provision is reasonable because the added costs of the measure are disproportionate to the environmental benefits that are likely to be gained beyond those provided by the

pre-Amendments requirements. Therefore, EPA is rescinding the STAA requirement based on the lack of apparent benefits of the provision when applied to existing sources across broad sectors, based on EPA's review of available data, the apparent effectiveness of pre-Amendments accident prevention regulations in reducing accidents over time and a desire to keep the Program 3 accident requirements aligned with the OSHA PSM standard at this time.

Regarding commenter's arguments that STAA is only appropriate for new processes, should not be incorporated into the PHA, and is inappropriate for specialty chemical (*i.e.,* batch toll) manufacturing facilities, while EPA's rescission of the Amendments rule requirement makes these comments moot, we note that we already addressed these comments in the Response to Comments for the Amendments rule,[75] and the Agency continues to disagree with them.

Concerning commenters' discussion of the potential usefulness of STAA in preventing specific incidents, while EPA cited factors in specific accidents as support for regulatory changes in the Amendments, the Reconsideration rule doesn't contradict those points. Rather, the proposed Reconsideration rule noted certain problems with respect to the new requirements that on further consideration, we believe can be addressed through rescission of the Amendments rule requirements while still improving chemical accident prevention and response, and using less costly means (*e.g.,* a compliance-driven approach instead of a broad regulatory requirement). EPA's objective in making regulatory revisions is to make only those changes that are likely to improve accident prevention and response while not imposing unreasonable costs.

EPA agrees that these accidents resulted from the failure by management to implement safety management programs, but the Agency does not agree with the commenter's conclusion that process safety regulations were unsuccessful at preventing them. Rather EPA believes it was the failure of these facilities to fully implement the existing process safety regulations that led to these incidents. Although CSB found that failure to use a more corrosion resistant high-chromium steel was a factor in the Tesoro Anacortes and Chevron Richmond accidents, and cited it as an example of an inherently safer strategy, the mechanical integrity provisions of the RMP regulation already required process equipment to be fabricated from the proper materials of construction and be properly installed, maintained, and replaced to prevent failures and accidental releases (see 40 CFR part 68.3). If a regulated facility fails to properly implement existing regulatory provisions, rather than imposing additional regulatory requirements, the appropriate response is for EPA to undertake regulatory enforcement, and EPA regularly does so under CAA section 112(r).

Regarding refineries' use of hydrogen fluoride, EPA notes that the Amendments rule STAA provision would not have required any facility to implement safer technologies. Thus, while some refineries still use hydrogen fluoride, the STAA requirement would not have required them to eliminate its use. EPA disagrees with commenters assertions that the accident rate is increasing. EPA's analysis of the trend in RMP accidents from 2003 through 2016 indicates that RMP facility accidents have declined in frequency by approximately 3.5% per year.

a. Costs and Benefits of STAA Provision

Many commenters provided input on the subject of STAA's potential costs and benefits. Comments in support of the rescission often emphasized the indirect costs of STAA, while those in opposition often addressed environmental, human health, and other unquantifiable benefits. Several commenters characterized the Amendments rule's STAA provisions as ''open-ended,'' with the potential of causing massive costs without justification. One industry trade association stated that changing extant processes or plants can have unforeseen costs and trigger additional safety evaluations. Another industry trade association, citing a 2010 study, commented that STAA during PHA revalidation is an inefficient, costly use of resources. A tribal government supported the rescission of STAA requirements, stating that they may be both cost-prohibitive and detrimental to the environment. Another added that STAA would cost more than EPA predicted, as it would require hiring and training personnel. An industry trade association stated that EPA recognizes STAA could cause indirect costs up to $1 billion through voluntary company action. Another commenter added that STAA requirements would become a paper formality which would especially harm small operations, because of the costs of compliance. An industry trade organization stated that rescinding the STAA requirement would advance the goals of E.O. 13771, 13777, and 13783. A trade association indicated that the frequency of accidents in New Jersey since enactment of the NJ TCPA IST provision has not declined, and that this indicates that the Amendments rule STAA provision will cause facilities to incur costs without any accident reduction benefits.

Other commenters indicated that the costs of the provision were reasonable and justified. A State elected official acknowledged other comments that argued that the adoption of alternative technologies may result in unforeseen consequences and costs. The official, however, commented that this element of uncertainty should be explored and considered within the context of STAA decision-making. Another State elected official cited EPA's conclusion in the Amendments rule that ''facilities will only incur additional costs beyond the analysis when the benefits of the change make adoption of the change reasonable for the facility.'' (82 FR at 4644).

State elected officials argued that experience of the State of New Jersey shows that IST regulations are effective, that New Jersey found that performing an IST review would not be financially burdensome, and that the cost was further justified by the potential to identify additional risk reduction measures to protect the public and the environment. This commenter argues that even if the number of reportable incidents in New Jersey has not decreased after adoption of the IST rule, IST could still yield benefits by reducing the impact of releases that do occur.

Other comments in favor of STAA argued that it could be economically beneficial in ways other than preventing the direct costs of accidents. A private citizen stated that STAA provisions would have benefits in terms of reducing cancer rates and other human costs. An anonymous commenter added that EPA failed to consider the benefits of STAA in its proposed rescission. An anonymous commenter stated that, from their experience, environmental regulations resulted in plants implementing safer technology on generating units, improving operational efficiency and profitability. A private citizen commented that STAA provisions may result in economic benefits both by improving industry efficiency and by improving the market for safer technology. Several commenters cited a publication stating that a single significant refinery disaster causes an average of $220 million in

[75] RMP Amendments Response to Comments, pgs. 105, 107–109. EPA–HQ–OEM–2015–0725–0729.

economic harm,[76] and one commenter stated that the Chevron Richmond accident caused $1.7 billion in damage to California's economy.

EPA Response: In the RIA for the Amendments rule, EPA acknowledged that considering only the monetized impacts of RMP accidents would mean that the rule's costs may outweigh the portion of avoided impacts from improved prevention and mitigation that were monetized. The STAA provision was estimated to be the costliest provision of the Amendments rule, by itself accounting for more than 50% of estimated compliance costs. Therefore, in order for the rule's costs to be reasonable (not disproportionate to its benefits), this provision must result in substantial benefits. In monetizing the costs of RMP-reportable accidents, EPA suggested that a substantial portion of those accidents would need to be prevented by the Amendments rule provisions in order to be justified on a cost-benefit basis. However, in the Amendments rule, EPA had not attempted examine the effects of existing state (*i.e.,* New Jersey) level IST regulations. For this rulemaking, commenters have submitted data and studies that argue on both sides of this issue with regard to STAA.[77] Some commenters have indicated that the lack of decline in the frequency of accidents in New Jersey since enactment of the NJ TCPA IST provision indicates that there is no evidence that the provision has resulted in any reduction in accidents. EPA agrees that the NJ accident rate trend does not support the effectiveness of its IST provision. EPA notes that RMP facility accident data from RMP facilities in New Jersey, which has required RMP facilities to evaluate inherently safer technology options since 2008, do not show any decline in accidents beyond that occurring in RMP facilities nationwide, suggesting that evaluation of safer technologies has either already occurred without the rule change, or does not result in significant accident reduction. While comparing RMP accident rates from New Jersey facilities to the nationwide rate of RMP facility accidents, EPA found that the nationwide RMP accident rate has been reduced by an average of 4.1% per year from 2008–2016, without the added prevention provisions. Regarding the comment that IST could still yield benefits by reducing the impact of releases that do occur, EPA considered the trend of accident impacts in New Jersey. Since the beginning of 2004, RMP-reportable accidents in New Jersey have resulted in nine injuries, $23,102,000 in property damage, three offsite hospitalizations, and 80 offsite evacuations. Except for one injury, all impacts occurred in 2008 or later, after the NJ TCPA IST provision became effective. EPA can discern no declining trend in accident severity at RMP facilities in New Jersey.

While EPA did state in the Amendments rule that ''facilities will only incur additional costs beyond the analysis when the benefits of the change make adoption of the change reasonable for the facility,'' (82 FR at 4644) and we also stated, ''there is value in requiring facilities with extremely hazardous substances to evaluate whether they can improve risk management of current hazards through potential implementation of ISTs,'' we recognized this value only ''for those facilities who have not considered adopting any IST or have only done so in limited fashion.'' (82 FR at 4645). EPA also notes that facilities would incur costs for doing the analysis whether or not they are able to implement IST or other safer technology alternatives that would yield benefits. As we have reconsidered the Amendments rule, while EPA acknowledges we are not able to quantify how many facilities would implement safer technologies and what the effectiveness of particular measures might be on reducing the number of accidents, the data available from the longest-standing state-level IST regulatory provision suggest that such provisions do not have the significant impact on accident reduction that would be necessary to justify the high costs of these provisions.

Regarding the potential economic benefits of the STAA provision other than accident prevention benefits, most commenters asserted such benefits (*e.g.,* reduced cancer risk) without supplying any supporting data. Some commenters referred to a RAND Corporation study to support a conclusion that EPA had significantly underestimated the costs of accidents, and therefore the potential benefits of the STAA provision. EPA disagrees that the RAND study can be used to predict the costs of accidents at RMP facilities nationwide—see below for EPA's explanation.

b. Increased Vulnerability to Terrorism

Two private citizens reasoned that rescission of STAA provisions would result in more facilities remaining vulnerable to terrorist attack than if STAA were adopted as-is. Advocacy groups and multiple State elected officials pointed to the New Jersey IST requirements as explicitly furthering security and anti-terrorism efforts. A joint submission from multiple advocacy groups and other commenters added that STAA would help prevent terrorism and mitigate any possible attacks.

EPA Response: These comments are similar to comments EPA addressed in *section IV.C.2—''Comments on Rescission of Prevention Program Provisions in General.''* In short, while some commenters assert that the STAA provisions will reduce the risk of terrorism, others argued that STAA could increase security risks. EPA received no data to judge the relative significance of different security concerns associated with this provision. The intent of the STAA provision in the RMP Amendments rule was to potentially reduce accidental releases—it was not undertaken to reduce the risk of releases from intentional criminal acts. For example, the STAA provision applied only to facilities in complex manufacturing sectors with high accident rates, and the water treatment sector was not required to complete a STAA. While EPA acknowledges that implementation of some inherently safer technologies could reduce risks of release from criminal acts, EPA does not believe that rescinding the STAA provisions increases security risks beyond those already present. EPA also notes that the regulatory and legal framework outside of CAA section 112(r) (*e.g.,* DHS CFATS regulations) minimizes the risk of criminal and terrorist threats against chemical facilities.

c. Data on Accident Rates Related to State and County Programs With IST or Toxic Use Reduction Requirements

Several commenters provided input discussing STAA-analogous programs in New Jersey and CCC, California. An industry trade association stated it discerned no appreciable difference between the accident rates in New Jersey and those in other states since New Jersey's implementation of the NJ TCPA IST provision. Another industry trade association expressed concern for the reliability of evidence supporting the efficacy of New Jersey and CCC IST regulations. Commenting on the Amendments rule, an industry trade association argued that requiring STAA would be arbitrary and capricious because of the lack of reliable data. The commenter cast doubt especially on evidence on the New Jersey and CCC

[76] Gonzales, D., Gulden, T., Strong, A. and Hoyle, W. 2016. Cost-Benefit Analysis of Proposed California Oil and Gas Refinery Regulations. RR–1421–DIR. RAND Corporation, Santa Monica, CA. *www.rand.org/t/RR1421. EPA-HQ-OEM-2015-0725-0643.*

[77] See Comments EPA–HQ–OEM–2015–0725–(1481), –(0973), –(1870), –(1896), –(1925) and –(1969).

schemes. Another industry trade association argued against the adoption of STAA, stating that EPA considered the issue in 1996 and that no new data has emerged to justify a departure from its decision from that time.

An advocacy group examined an industry trade association's comment that accident rates in New Jersey had increased since IST practices were mandated. The advocacy group stated that it was unable to find an empirical study of IST's efficacy in New Jersey. The commenter then analyzed publicly available accident data, stating that companies which refused to implement safer practices accounted for 25% of accidents. The commenter described those accidents and their circumstances. A State government agency commented that, in the first 85 STAA-analogous reports submitted in New Jersey, 45 facilities implemented 205 measures. These included two water treatment facilities using different chemicals. Several State elected officials commented that data on New Jersey accidents may be misleading; the number of accidents may have remained constant, with their severity reduced by IST. A joint submission from multiple advocacy groups and other commenters provided a lengthy exploration of New Jersey's IST regulations and results. It examined data and, citing an EPA statement, commented that data cannot fully capture efficacy of IST.

An advocacy group stated that STAA is an accepted industry best practice and that the CCC ISO has implemented similar requirements without excessive financial burden. A joint submission from multiple advocacy groups and other commenters provided a history of safer alternative regulation in CCC. It cited a reduction in accident number and severity over the last 20 years. The commenters specially addressed an accident at a refinery that made CCC adopt ''greatest extent feasible language.'' The commenters stated that, since that time, none of the most severe classification of accidents occurred and few of any classification took place.

A State government agency cited extensive data on the results of Massachusetts' Toxic Use Reduction Act (TURA) program to argue that STAA provisions could lead to improvements in plant safety, environmental risks, efficiency, and access to international markets. A joint submission from multiple advocacy groups and other commenters provided extensive data on the TURA program, specifically citing that toxic waste generation was 66% below 1987 levels and that businesses reported improved safety, cost savings, and marketing, as a result of the regulation. The commenter included additional data and specific examples.

A State government agency commented that EPA failed to evaluate STAA efficacy against recent accidents. A union cited several of its own studies to assert the safety benefits of STAA. A joint submission from multiple advocacy groups and other commenters asserted that IST regulations resulted in net savings for industry, citing a study by the RAND Corporation which found that a refinery saves, on average, $220 million, in quantifiable terms alone, for an accident avoidance, and that a single accident at a California refinery caused $1.7 billion in damage to California's economy.

EPA Response: EPA reviewed information submitted by commenters relating to IST regulatory provisions in New Jersey and CCC, California, and the information relating to the Massachusetts TURA program. Regarding the New Jersey TCPA IST provision, EPA discussed some comments concerning New Jersey's program earlier in this section. EPA found no evidence that the provision has resulted in a reduction in either accident frequency or severity at RMP-regulated facilities subject to the provision. Using the accident data provided by EPA in the rulemaking docket, EPA calculated the average accident rate for RMP facilities in New Jersey, plotted the accident data for New Jersey RMP facilities from 2008 through 2016, calculated the accident trend using a linear regression analysis, and compared these results to the same measures for the national set of RMP facilities.[78] The results show that New Jersey RMP facilities were more likely to have RMP-reportable accidents than RMP facilities nationally over the period studied. Also, while the rate of RMP facility accidents in New Jersey has declined since adoption of the TCPA IST provision, that decline is less than half as large as the decline in accidents for RMP facilities nationally over the same period. New Jersey exhibited a 1.7% annual decline in accident frequency, whereas nationally, RMP facilities experienced a 4.1% decline in accident frequency over the same period. Some commenters suggested that the lack of a significant decline in accident frequency in New Jersey could be due to a change in the number of RMP facilities. However, this is not the case. When the accident frequency is normalized by the number of RMP facilities present in each year, the results are similar: The normalized accident rate in New Jersey declined by approximately 2% per year, whereas the normalized accident rate at RMP facilities nationwide declined by 3.3% per year. Regarding accident severity, as indicated previously, EPA examined the impacts of RMP-reportable accidents in New Jersey over the same period and can discern no declining trend in accident severity in New Jersey.

EPA also disagrees that the CCC ISO provides strong evidence that IST regulations result in marked decreases in accident rates. While the accident trend in CCC is downward since implementation of the ISO, there are several reasons to be cautious in interpreting and extrapolating the results observed under the CCC ISO to the nationwide universe of RMP facilities. The CCC IST provision was adopted in 1998 and is applicable to a total of six RMP facilities. The City of Richmond, California, adopted a similar safety ordinance in 2002, which is applicable to two additional RMP facilities. Contra Costa Hazardous Materials Programs, a division of Contra Costa Health Services, the county health department, oversees both programs. Therefore, the CCC and Richmond programs combined apply to a total of only eight RMP facilities.

In addition to the very small number of facilities from which to draw such conclusions, EPA notes that the CCC ordinance contained other regulatory provisions. Most of these provisions are not features of either the Amendments rule or the NJ TCPA and their effects are impossible to disaggregate from the inherently safer systems analysis (ISSA) provision of the ISO. For example, in addition to requiring ISSA, the CCC and Richmond programs require submission of a Safety Plan, implementation of a human factors program, implementation of expanded management of change provisions (to include management of organizational change), root cause analysis investigations for major chemical accidents, safety culture assessments, process safety performance indicators, safeguard protection analyses, and other requirements. Another important difference between the CCC ISO ISSA provisions and both the NJ IST provision and the Amendments rule STAA provision is that since 2014, the CCC ISO provision has required facilities to implement inherently safer systems ''to the greatest extent feasible and as soon as

[78] EPA. July 18, 2019, Technical Background Document for Final RMP Reconsideration Rule Risk Management Programs Under the Clean Air Act, Section 112(r)(7). Available in the rulemaking docket.

administratively practicable.'' [79] Neither the NJ IST nor Amendments rule STAA provisions require implementation of IST/STAA measures.

The CCC ISO program is also unique among U.S. chemical safety regulatory programs in another important respect. CCC employs several full-time engineers to oversee implementation of the ISO at the six regulated facilities in the County and the two facilities in Richmond. According to reporting by CCC, these engineers have spent thousands of hours conducting such oversight each year. In its 2017 Annual Report, CCC reported that from 2000 to 2015, it completed five audits/inspections at each facility subject to the CCC ISO and had initiated a sixth round of audit/inspections. CCC also reported that it performed seven facility audits from the Fall of 2014 through 2016, and that each audit required ''four to five engineers four weeks to perform the on-site portion of an ISO/CalARP Program audit. The audit process encompasses off-site time that includes a quality assurance process, working with the facility to address any questions, posting public notices, attending a public forum to share audit findings, addressing any questions from the public and issuing the final report. The total time taken to perform these audits each year was 3,600 hours. Approximately one-third of the time was dedicated to the Industrial Safety Ordinance, for a total of 1,200 hours.'' [80]

As far as the Agency is aware, this level of regulated chemical facility oversight is unmatched by any other jurisdiction in the United States. It approaches the very high levels of government oversight provided by the Nuclear Regulatory Commission's resident inspector program,[81] and the Department of Energy's facility representative program,[82] both of which involve full time inspectors devoted to providing continuous oversight at a small number of, or even a single, hazardous facility. The experience of these programs demonstrates that such levels of government oversight, in conjunction with a rigorous safety management program, can prevent serious accidents. But this level of oversight is very expensive, and not feasible at facilities regulated by the RMP rule on a national basis. Such extensive staffing commitments also greatly exceed the per facility level of staffing for the operating permits program under CAA title V, and, in contrast to CAA 112(r), the operating permits program has a specific funding mechanism authorized and required by CAA 502(b)(3).

Whether it is due to the differing regulatory requirements, different levels of government oversight at regulated facilities or the small number of regulated facilities subject to the CCC/Richmond ISO provisions, the contrast between the accident trends at RMP facilities in New Jersey and CCC suggest that the reduction in accident frequency in CCC may be due to some factor other than the portion of the ISSA provision in the Industrial Safety Ordinance that is analogous to the Amendments rule's STAA provision. The NJ TCPA regulates approximately ten times the number of RMP facilities that are regulated under the CCC ISO. Further, the NJ regulations do not require implementation of alternatives considered, contain the other regulatory provisions or involve as high a level of oversight as are present in the CCC ISO program. Therefore, from the standpoint of comparing the two programs to the STAA provision of the Amendments rule, The New Jersey program serves as a more valid experiment to predict the results of the STAA provision of the Amendments rule (note, however, that the NJ TCPA IST provision is still more rigorous than the Amendments rule in that it requires facilities to submit the IST review to the State, whereas the Amendments rule's STAA provision contains no such requirement). The results in New Jersey suggest that such provisions, by themselves, do not have the significant effect on accident rates that proponents predict. Rather, the accident data from RMP facilities in New Jersey indicate little or no discernible reduction in accident frequency or severity associated with the NJ IST requirement to date. Therefore, whatever beneficial effects such provisions may have, they seem unlikely to result in anything close to the reduction in accident frequency or severity that would be required to find the benefits of STAA in terms of accident prevention and mitigation are not disproportionate to the burdens associated with the provision.

Regarding the Massachusetts TURA program, EPA found no evidence that this program has resulted in a reduction in the frequency of RMP facility accidents in Massachusetts and disagrees that other results of the program (*e.g.,* less use of toxic chemicals) can be extrapolated to predict the results of the STAA provision of the Amendments rule. The Massachusetts TURA program is not directly analogous to the Amendments rule because it is explicitly a toxic chemical use reduction program, rather than a program for preventing accidental air releases of RMP-regulated substances. Under the TURA program, large quantity toxic substance users must develop a toxic use reduction plan that examines opportunities to reduce toxic chemical use by adopting safer processes or inputs, update the plan bi-annually, and submit both an annual toxic use report and a summary of the bi-annual toxic use reduction plan to the Massachusetts Department of Environmental Protection.[83] The STAA provision of the Amendments rule required facilities covered by the provision to consider, as part of their process hazard analysis, safer technology and alternative risk management measures applicable to eliminating or reducing risk from process hazards, and to determine the practicability of the inherently safer technologies and designs considered. While one option for inherently safer risk management measures under the Amendments rule was to minimize the use of regulated substances,[84] the Amendments rule did not explicitly require facilities to plan to minimize the use of regulated substances or to submit reports to EPA about reductions in their use of regulated substances.

Although the Massachusetts TURA program is not aimed specifically at RMP-regulated facilities, because its list of covered chemicals [85] includes some common industrial chemicals that are also on the RMP-regulated substance list (*e.g.,* ammonia, chlorine), some RMP facilities in Massachusetts are covered under both regulatory programs. EPA therefore examined the frequency and trend in accidents at RMP facilities in Massachusetts over the period covered by the accident record used for the Amendments and Reconsideration rules (2004–2016). The TURA program [86] started in 1989, so presumably any downward pressure on accident frequency at RMP facilities due to the TURA program would be observable in the accident record for RMP facilities in Massachusetts. However, on a per-

[79] CCC Industrial Safety Ordinance, Chapter 450–8—RISK MANAGEMENT, paragraph (i)(3), available at: *https://cchealth.org/hazmat/pdf/iso/Chapter-450-8-RISK-MANAGEMENT.pdf.* EPA–HQ–OEM–2015–0725–0638.

[80] CCC Industrial Safety Ordinance RISO Report, Annual Performance Review and Evaluation, 2017, pp 10, 18–20. Available in the Docket EPA–HQ–OEM–2015–0725.

[81] *https://www.nrc.gov/docs/ML1819/ML18197A116.pdf*

[82] *https://www.standards.doe.gov/standards-documents/1000/1063-astd-2017*

[83] *See: https://www.mass.gov/guides/massdep-toxics-use-reduction-program#-company-requirements-.* Available in the rulemaking docket.

[84] *See* 82 FR 4629, January 13, 2017.

[85] *See https://www.mass.gov/files/documents/2018/06/13/chemlist.xls.*

[86] *https://www.mass.gov/guides/massdep-toxics-use-reduction-program.*

facility basis, Massachusetts RMP facilities were more likely to have had an RMP-reportable accident than RMP facilities nationally. EPA found little difference between the accident trend at RMP facilities in Massachusetts and nationally during the 2004–2016 period.[87]

It is reasonable to expect a difference in the trends for TURA's overall effectiveness in waste reduction and other efficiencies versus its effectiveness as an accident reduction program for RMP-listed substances. The chemicals listed under the RMP program are among the most dangerous in terms of acute impacts upon accidental release. Therefore, users are likely to carefully manage these chemicals for their own safety as well as for PSM and RMP compliance. In contrast, TURA is much less focused on such chemicals. Therefore, it is likely that facilities were less aggressively minimizing release of TURA chemicals in general in the absence of TURA than they were in managing RMP-listed substances. There likely would be more opportunities for reductions in releases of non-RMP-regulated TURA chemicals, including chemical substitution, than there would be for RMP substances at the same facilities.

While EPA agrees that reduction in the use of toxic chemicals is a laudable goal and minimizing the use of regulated substances remains an option for the owner or operator of any RMP facility to consider, analysis of state-level RMP accident data from Massachusetts does not appear to support the proposition that such regulatory provisions will result in significant accident reduction at RMP facilities. Also, the Pollution Prevention Act of 1990 already establishes a method for evaluating chemical use reduction at facilities. The Agency does not want to replicate these programs under CAA section 112(r).

Regarding commenters' claims that a study conducted by the RAND Corporation[88] proves that EPA's estimate of the benefits of accident prevention is too low, EPA disagrees with these comments. The RAND study is not suitable for nationwide extrapolation for several reasons. First, virtually all the monetized accident prevention benefits claimed in the RAND study are associated with avoiding higher gasoline prices in California following refinery accidents, such as the 2015 accident at ExxonMobil's Torrance, CA refinery and the 2012 accident at Chevron's Richmond refinery. Regarding the ExxonMobil accident, the RAND study estimated that this accident cost California consumers more than $2.4 billion in higher gasoline prices.

A consequence of California's unique gasoline rules is that gasoline sold in the state is also produced within the state. According to RAND, ''California requires a unique reformulated gasoline blend to meet the state's pollution-control requirements. Gasoline made in other states to meet other state and federal pollution-control requirements does not meet California standards. Consequently, all gasoline consumed in California is typically made in the state.'' This greatly increases the impact of a California refinery accident on California gasoline prices because of the inability to substitute to out-of-state gasoline supplies, as gasoline produced out-of-state does not meet California regulatory requirements. According to RAND, ExxonMobil was forced to import special blends of gasoline from other countries to meet demand in California following the accident. In fact, the RAND analysis itself shows that the gasoline price effects seen in California following the ExxonMobil accident did not extend to areas outside California.

The RAND study used the IMPLAN input-output model[89] to estimate the price effects of California refinery accidents. IMPLAN utilized several simplifying assumptions that are unsuitable for national-scale analysis. While input-output models such as IMPLAN will readily yield impact estimates, their underlying structure rests on strong assumptions that preclude key economic responses that would be expected in the case of national level regulation. Input-output models do not allow prices, production processes, or technologies to adjust in response to a regulatory change. Instead, at best they represent the short-term regional response to regulation better than an intermediate or longer-term national response. This does not align well with the objective of understanding responses to federal regulation. A major limitation of using input-output models for policy simulations occurs when the policy under consideration must be translated into changes in final demand. The models assume that input supplies are unlimited, and prices are fixed, suggesting that they are better at representing the response of a single region to a small regulatory change not expected to affect prices. Input-output models are of limited use for analyzing large regulatory changes or the national economy. EPA guidance on economic impact analysis cautions against using such models for specific quantitative estimates.[90] The RAND study acknowledges some of the drawbacks of using IMPLAN, including that ''it tends to capture maximum effects.'' The study also clearly states that IMPLAN is a tool used to capture ''the *regional* macroeconomic impacts of policy decisions.'' (Emphasis added.) EPA has additional concerns with the RAND study that are explained in the Response to Comments document.

In sum, retaining the STAA provision and other new prevention provisions of the Amendments rule will not result in the magnitude of savings estimated in the RAND study. The unique nature of the California gasoline market (discussed above) does not exist elsewhere in the United States. Under California law, refineries already are required to implement regulatory requirements exceeding Amendments rule provisions, so additional benefits of the Amendments rule provisions would not be expected to occur as a result of the rule's implementation at refineries in California. (See prior discussion of CalARP refinery safety regulations in *section IV.C*)

d. Claims That STAA is Required by CAA

A joint submission from multiple advocacy groups and other commenters stated that EPA is statutorily required to use STAA or an alternative because of the Agency's prior determination that such requirements are necessary to ''ensure continued public safety concerning the operation of chemical facilities in and near communities''[91] and to satisfy requirements in § 7412(r)(7)(B).

EPA Response: EPA disagrees with the commenter's assertion that EPA is statutorily required to use STAA or an alternative because of the Agency's prior statements determining that such requirements are necessary to ensure continued public safety. In the Amendments rule, EPA adopted a requirement for safer technology and alternatives analysis for selected industry sectors subject to Program 3

[87] EPA. July 18, 2019. Technical Background Document for Final RMP Reconsideration Rule Risk Management Programs Under the Clean Air Act, Section 112(r)(7). Available in the rulemaking docket.

[88] Gonzales, D., Gulden, T., Strong, A. and Hoyle, W. 2016. Cost-Benefit Analysis of Proposed California Oil and Gas Refinery Regulations. RR–1421–DIR. RAND Corporation, Santa Monica, CA. *www.rand.org/t/RR1421.* EPA–HQ–OEM–2015–0725–0643.

[89] See RAND study, pp. 24–26.

[90] EPA. Handbook on the Benefits, Costs, and Impacts of Land Cleanup and Reuse, EPA–240–R–11–001, October 2011, p. 81.

[91] Amendments rule Response to Comments, pp. 219, 247. EPA–HQ–OEM–2015–0725–0729

requirements. Now EPA is rescinding the STAA provision after reconsideration based on the lack of apparent benefits of the provision when applied to existing sources across broad sectors, based on our review of available data, the effectiveness of pre-Amendments accident prevention regulations in reducing accidents over time and a desire to keep the Program 3 accident requirements aligned with the OSHA PSM standard to better fulfill the EPA's coordination requirements pursuant to CAA 112(r)(7)(D). Under 42 U.S.C. 7412(r)(7)(B), the accident prevention provisions have an overriding requirement to be reasonable. ''Reasonable regulation ordinarily requires paying attention to the advantages *and* disadvantages of agency decisions.'' *Michigan* v. *EPA,* 135 S. Ct. at 2707 (original emphasis). The legislative history of the CAA 112(r) accident prevention program indicates that EPA was to ensure the regulations would not be ''unduly burdensome'' (See section III.B—*Discussions of Comments on EPA's Substantive Authority under CAA Section 112(r)*). Our accident rate analysis shows that costs associated with the STAA provision (nearly $70 million annualized) are disproportionate to the accident prevention and mitigation benefit shown in the state-level data (a benefit that we cannot discern from the available data). Therefore, we believe that EPA can consider cost issues and other burdens of compliance among the factors considered in deciding what is a reasonable regulation to prevent accidents.

e. Claims That Rescission of STAA Provision is Arbitrary and Capricious

A joint submission from multiple advocacy groups and other commenters claimed that EPA's decision to rescind STAA is arbitrary and capricious. Citing EPA's proposed Reconsideration rule language about the indirect costs of STAA (83 FR at 24872, May 30, 2018—stating that such costs could be incurred if facilities take actions based on external pressures to implement STAA recommendations regardless of whether they are necessary or practical), the commenter argued that EPA is proposing to rescind the STAA provision based on speculation that third-parties may pressure plants to adopt alternative technologies even when adoption is unfeasible or otherwise unwarranted. The commenter stated no evidence was available to corroborate this consideration and asserted that EPA only discussed these indirect costs at the prompting of OMB.

EPA Response: EPA disagrees that rescinding the requirement is arbitrary or capricious. The Agency is not rescinding the STAA provision because third-parties may pressure plants to adopt alternative technologies even when adoption is unfeasible or otherwise unwarranted. The commenter may have drawn this inaccurate conclusion by mistakenly assuming that EPA believes the costs of the STAA provision as described in the Amendments rule included indirect costs of implementing safer technologies and alternatives. However, while EPA discussed such indirect costs in the Amendments rule, EPA was clear that the STAA provision did not mandate adoption of any technology, and the only cost that could be directly attributed to the requirement were the cost of the assessment itself. The cost of the assessment included the $70 million annualized cost for performing an STAA and did not include any costs of implementation of any safer technology alternatives or IST.

EPA is rescinding the STAA provision after reconsideration based on the lack of apparent benefits of the provision when applied to existing sources across broad sectors, based on our review of available data, as compared to its cost for compliance (*i.e.,* performing an STAA, but not implementing any IST), the effectiveness of pre-Amendment accident prevention regulations in reducing accidents over time and a desire to keep the Program 3 accident requirements aligned with the OSHA PSM standard. EPA does not have a record showing significant benefits of the added prevention program provisions. Without such benefits, EPA believes it is better to take its traditional approach of maintaining consistency with OSHA PSM. The creation of additional complexity and burden associated with new provisions where EPA has not demonstrated any benefit is evidence of their impracticability and unreasonableness.

6. Comments on Other Prevention Program Provisions

a. Remove ''For Each Covered Process'' Language From Compliance Audit Provisions

Multiple commenters supported EPA's proposal to remove the language ''for each covered process'' from the compliance audit provisions of § 68.58(a) and § 68.79(a), stating that reviewing each covered process is inefficient and inconsistent with industry auditing practice. An industry trade association commented that when using a sampling approach, the identification and corrections of concerns in one process unit will address those concerns in all other covered process units; therefore, an audit of each covered process would be a waste of resources and create operational disruptions. A similar comment was made by another industry association who recommended EPA adopt a regulation allowing for representative sampling of covered processes for compliance audits.

An industry trade association also expressed support for EPA's proposal, stating that the requirement was a procedurally defective amendment that was made without an opportunity for the regulated community to comment on EPA's departure from auditing practice based on statistically significant representative sampling. Similarly, an industry association stated that EPA failed to conduct a proper cost-benefit analysis in the Amendments rulemaking when choosing to require audits of all covered processes rather than allow for representative sampling which is contrary to long-standing accepted auditing practice. The commenter stated that maintaining the provision would result in significant cost burdens on the regulated community. Several industry trade associations also commented that EPA, in the Amendments rule, did not justify how the provision would increase facility safety.

In contrast, other commenters disagreed with removing the language. A private citizen indicated that it is necessary to audit every covered process. Similarly, a State government agency stated that even though EPA is proposing to delete the phrase ''for each covered process,'' all covered processes still must be evaluated in the compliance audit as the phrase in question is merely a clarification.

EPA Response: The final rule removes the phrase ''for each covered process'' from the compliance audit requirements because it was not necessary to add the phrase and removing it will maintain consistency with the OSHA PSM standard.[92] For those facilities with more than one covered process, EPA's view that compliance audits must evaluate every process every three years does not foreclose the use of ''representative sampling'' during audits.[93] At complex facilities with multiple processes, audits do not typically involve reviewing 100 percent

[92] EPA. Response to Comments on the 2016 Proposed Rule Amending EPA's Risk Management Program Regulations, December 19, 2016, pp. 54–55. Docket ID: EPA–HQ–OEM–2015–0725–0729.

[93] Representative sampling would not apply to the majority of regulated facilities because most have only one covered process.

of records relating to a topic—rather, an auditor should review a sample of records sufficient to draw valid conclusions about a source's compliance with a particular regulatory provision. At such facilities, to audit each process, an auditor may review a process directly, or may gain confidence in the compliance of the process through representative review of compliance of other processes at the source. CCPS ''Guidelines for Auditing Process Safety Management Systems, Second Edition'' (Wiley, 2011), provides two methods for representative sampling that are designed to ensure a compliance audit at a medium to large multi-process facility represents all covered processes at the facility without sampling records or personnel for every prevention program provision at every covered process. The two methods offered by CCPS are to either (1) Audit some elements of the prevention program in all covered processes and units (CCPS provides an example indicating that different subsets of prevention elements are selected for different units, such that every element is ultimately audited under this approach), or (2) Audit all elements of the prevention program in some of the processes and units.

The Agency agrees that either of these approaches can produce an audit reflecting regulatory compliance for each RMP prevention program element at each covered process. However, where an owner or operator chooses to perform such a representative sampling approach, under either method (or a combination of both methods) they must demonstrate that the information audited is truly reflective of regulatory compliance for each process at the source. If the owner or operator can demonstrate that an audit of an accident prevention provision at one or more processes is representative of the owner's compliance with the prevention provision at other processes at the source, then a source may use the review of that aspect in one process to address and evaluate other processes, so long as all prevention requirements are evaluated and addressed for all processes at the source either directly or by such representative testing every three years. All covered processes and units must be in the pool from which the representative sample is selected, and any findings of the audit must be addressed, and deficiencies corrected at all units. If a facility implements representative sampling to satisfy compliance audit requirements for multiple processes, the Agency will evaluate whether non-compliance with an RMP prevention program element is also evidence of inadequate compliance audit procedures.

b. Rescind Requirement To Include Findings From Incident Investigations in Hazard Reviews

Several commenters expressed support for the proposal to rescind the requirement to include findings from incident investigations in hazard reviews for Program 2 sources. A trade association stated that the requirement to include this information in a hazard review is essentially a requirement to repackage this information, placing burdens on facilities already expending resources on implementing findings from the incident investigation, while providing no new benefit, arguing that it places an even heavier burden on small businesses, which make up a greater percentage of processes subject to Program 2 requirements. A few commenters expressed opposition to the proposal to rescind the requirement. Multiple State elected officials commented that eliminating the requirement for hazard reviews to identify findings from incident investigations that show vulnerabilities that could cause accidental releases, would weaken hazard reviews that evaluate the dangers associated with the regulated substances, processes and procedures at a facility.

EPA Response: Although not rescinding this change in the Program 2 prevention program requirements would not conflict with the OSHA PSM standard, which is equivalent to RMP Program 3, EPA is rescinding the provision to keep Program 2 requirements less burdensome than Program 3, maintaining the pre-Amendments balance of burdens on smaller entities. This is in keeping with the design for less rigorous requirements and recordkeeping for Program 2 facilities. Pre-Amendments § 68.50 (a)(2) hazard review required that the review identify opportunities for equipment malfunction and human errors that could cause an accidental release. The Amendments rule added the requirement to include findings from incident investigations in the hazard review. EPA expects that Program 2 facilities are already using incident investigations to identify situations that could cause an accidental release. Under the pre-Amendments incident investigation requirements, Program 2 facilities are required to promptly address and resolve investigation findings and recommendations, with resolutions and corrective actions documented.

c. Rescind Employee Training Requirements for Supervisors Responsible for Process Operations

A few industry trade associations expressed support for EPA's proposed rescission of the requirement to include supervisors responsible for process operations under the training requirements. One commenter stated that the rescission eliminates any ambiguity regarding the number and types of employees who must receive training. The commenter stated that without clear guidance regarding the scope of the employees covered by the provision, the provision would be difficult for owner/operators to implement with certainty. Additionally, an industry trade association stated that in the proposed Reconsideration rule, EPA mischaracterized the change in the training requirements as a minor wording change. The commenter stated that the term supervisor is vague and potentially overly broad. The commenter also stated that the Amendments rule was a departure from the prior regulations and could create ambiguity regarding who EPA intends to be trained. A trade industry association stated that the provision is in conflict with the OSHA PSM standard and increases costs for facility training. Similarly, another industry trade association stated that EPA's use of the phrase, ''involved in operating a process'' appears to be inconsistent with OSHA's interpretation of the PSM standard. The commenter stated that EPA intends the phrase to include process engineers and maintenance technicians, but that OSHA took the opposite stance and included within the class of employees involved in operating a process only ''direct hire employees not involved in maintenance.'' (February 24, 1991, 57 FR 6356). In addition, the commenter indicated that requiring the same level of training for supervisors as required for operators is not practical or consistent with the approach prior to 2017 under EPA's regulations or OSHA's regulations.

A few commenters expressed opposition to EPA's proposal and provided various reasons why EPA should retain the provision. For example, a State government agency stated that the proposed rescission would decrease safety training. A labor union opposed the rescission of the provision, stating that ''training is as important for supervisors, maintenance technicians, and control room operators as it is for the pilots of commercial airliners.'' The commenter stated that implementing the training requirements

would improve facility safety. Additionally, an advocacy group expressed opposition to EPA's proposal to rescind the provision, indicating that employees must meet competency criteria before operating covered processes.

EPA Response: The final rule rescinds the language added to the Program 2 (§ 68.54) and Program 3 (§ 68.71) training requirements which more explicitly included supervisors and others involved in operating a process. However, as EPA noted in the proposed Amendments rule, EPA has traditionally interpreted the training provisions of §§ 68.54 and 68.71 to apply to any worker that is involved in operating a process, including supervisors. This is consistent with the OSHA definition of employee set forth at 29 CFR 1910.2(d) (see 81 FR 13686, Monday, March 14, 2016). Although EPA did not view the added language as being inconsistent with OSHA PSM, we are rescinding the added language to maintain wording consistent with the OSHA PSM training requirements in 29 CFR 1910.119(g) and not create additional ambiguity or confusion about the type of employees who must receive training.

d. Rescind Requirement To Keep Process Safety Information Up-to-Date

An industry trade association supported EPA's proposal to rescind the requirement to keep process safety information (PSI) up-to-date. The commenter stated that the provision is likely to result in significant costs that EPA has failed to justify as PSI documentation for a single RMP-covered facility can easily consist of thousands of pages of complex information. In contrast, two commenters opposed EPA's proposal to rescind the provision. An advocacy group and Multiple State elected officials stated that out-of-date PSI could lead to dangerous system errors, and recommended EPA maintain the provision.

EPA Response: The language explicitly requiring that process safety information for Program 3 processes be kept up-to-date has been rescinded in the final rule because it is unnecessary. The language which is being rescinded in the final rule would only have affected Program 3 processes. However, for Program 3 processes, the management of change requirements of § 68.75 already addressed changes that affect covered processes, and § 68.75(d) already required process safety information to be updated when changes covered by the management of change provisions result in a change in the process safety information. The safety information requirements of § 68.48 for Program 2 processes already required the owner or operator to compile and maintain up-to-date safety information, and to update safety information if a major change occurs.

e. Rescind Requirement To Address Incident Investigation Findings and Any Other Potential Failure Scenarios in the PHA

Several commenters expressed support for the proposal to rescind the requirement to address incident investigation findings and any other potential failure scenarios in the PHA (Program 3). Two industry trade associations stated that facilities believe that requiring incident investigation findings to be addressed during the PHA process is a duplication of time and effort, increasing the cost of conducting a PHA without any corresponding safety benefit. Additionally, an industry trade association expressed support for EPA's proposed rescission, reasoning that it would avoid inconsistency with the PSM standard. The commenter stated that instead of being a complimentary policy, the RMP provision creates unnecessary paperwork burdens on facilities. Another commenter indicated that as written, the findings to be reviewed would include findings from all incident investigations for the entire history of the facility, and that the phrase ''as well as any other potential failure scenarios'' is inherently vague and ambiguous. A few commenters expressed opposition to the proposal to rescind the requirement. Multiple State elected officials commented that eliminating the requirement that PHAs address the findings from all incident investigations, as well as any other potential failure scenarios, would weaken hazard reviews that evaluate the dangers associated with the regulated substances, processes and procedures at a facility.

EPA Response: The final rule rescinds the requirement to address incident investigation findings and any other potential failure scenarios in the PHA. While EPA disagrees that the provision was inherently vague, EPA is rescinding the provision so that the Program 3 PHA requirements remain consistent with the OSHA PSM standard, and to prevent unduly burdensome or duplicative requirements. EPA does not have a record showing significant benefits of the added prevention program provisions. Without such benefits, EPA believes it is better to take its traditional approach of maintaining consistency with OSHA PSM. The creation of additional complexity and burden associated with new provisions where EPA has not demonstrated any benefit is evidence of the new prevention provisions' impracticability and that the rule divergence is unreasonable. We also note that this requirement is unnecessary because under section 68.67(c)(2) the PHA must already identify ''any previous incident which had a likely potential for catastrophic consequences'' and paragraph (c)(4) requires the PHA to consider the ''Consequences of failure of engineering and administrative controls.'' Therefore, a properly-conducted PHA should already consider the findings from previous incident investigations, and the rescinded language built in a difference with PSM without adding anything to the protectiveness of the RMP rule. The requirement will revert back to the pre-Amendments rule language that required the PHA to address any previous incident which had a likely potential for catastrophic consequences.

f. Rescind Requirement To Report Incident Investigation and Accident History Information in the RMP Prior To De-Registration

An industry trade association commented that they supported the proposed rescission of the requirement for reporting incident investigation and accident information in the RMP prior to de-registration and argued that there would be no safety benefit added by performing requirements prior to deregistration. An industry trade association argued that EPA did not provide quantifiable improvements that could result due to implementation of incident investigation requirements prior to de-registration.

EPA Response: EPA is finalizing the rescission of the Amendments rule requirement to report incident investigation and accident history information prior to de-registering, as this provision would impose additional regulatory requirements (*i.e.,* beyond the requirement to de-register) on sources that are no longer subject to the rule.

V. Rescinded and Modified Information Availability Amendments

A. Summary of Proposed Rulemaking

In the RMP Amendments rule, EPA added several new provisions to § 68.210—Availability of information to the public. These included:

(1) A requirement for the owner or operator to provide, upon request by any member of the public, specified chemical hazard information for all regulated processes, as applicable, including:

• Names of regulated substances held in a process,
• SDSs for all regulated substances located at the facility,
• Accident history information required to be reported under § 68.42,
• Emergency response program information, including whether or not the source responds to releases of regulated substances, name and phone number of local emergency response organizations, and procedures for informing the public and local emergency response agencies about accidental releases,
• A list of scheduled exercises required under § 68.96 (*i.e.,* new emergency exercise provisions of the RMP Amendments rule), and; Local Emergency Planning Committees (LEPC) contact information;

(2) A requirement for the owner or operator to provide ongoing notification on a company website, social media platforms, or through other publicly accessible means that the above information is available to the public upon request, along with the information elements that may be requested and instructions for how to request the information, as well as information on where members of the public may access information on community preparedness, including shelter-in-place and evacuation procedures;

(3) A requirement for the owner or operator to provide the requested chemical hazard information within 45 days of receiving a request from any member of the public, and;

(4) A requirement to hold a public meeting to provide accident information required under § 68.42 as well as other relevant chemical hazard information, no later than 90 days after any accident subject to reporting under § 68.42.

Additionally, the RMP Amendments rule added provisions to § 68.210 to address classified information and confidential business information (CBI) claims for information required to be provided to the public and made a minor change to the existing paragraph (a) RMP availability, to add a reference to 40 CFR part 1400 for controlling public access to RMPs.

For security reasons, EPA proposed to rescind the requirements for providing to the public upon request, chemical hazard information and access to community emergency preparedness information in § 68.210(b) through (d), as well as rescind the requirement to provide other chemical hazard information at public meetings required under § 68.210(e). Alternatively, EPA proposed to rescind all of the information elements in § 68.210(b) through (d), as well as rescind the requirement to provide other chemical hazard information at public meetings required under § 68.210(e), except for the requirement in § 68.210(b)(5) for the owner or operator to provide a list of scheduled exercises required under § 68.96. EPA proposed to retain the requirement in § 68.210(e) for the owner/operator of a stationary source to hold a public meeting to provide accident information required under § 68.42 no later than 90 days after any accident subject to reporting under § 68.42 but proposed to clarify that the information to be provided is the data listed in § 68.42(b). This data would be provided for only the most recent accident, and not for previous accidents covered by the 5-year accident history requirement of § 68.42(a). EPA proposed to retain the change to paragraph (a) ''RMP availability'' which added availability under 40 CFR part 1400 (which addresses restrictions on disclosing RMP offsite consequence analysis under CSISSFRRA).[94] The provisions for classified information in § 68.210(f) were also proposed to be retained but were separately proposed to be incorporated into the emergency response coordination section of the rule.

EPA proposed to delete the provision for CBI in § 68.210(g), because the only remaining provision for public information availability in this section (other than the provision for RMP availability) would have been the requirement to provide at a public meeting, the information required in the source's five-year accident history, which § 68.151(b)(3) prohibits the owner or operator from claiming as CBI. EPA proposed to rescind the requirements in § 68.160(b)(21) to report in the risk management plan, the method of communication and location of the notification that hazard information is available to the public, pursuant to § 68.210(c).

B. Summary of Final Rule

After review and consideration of public comments, EPA is finalizing the information availability related changes, as proposed (including rescinding the requirement for the owner or operator to provide a list of scheduled exercises required under § 68.96), but is modifying the public meeting requirement. The final rule modifies the requirement in § 68.210(e) for the owner/operator of a stationary source to hold a public meeting to provide accident information required under § 68.42(b) by limiting the trigger for the requirement to the occurrence of an RMP reportable accident with offsite impacts specified in § 68.42(a) (*i.e.,* known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage). This is a modification to the RMP Amendments rule that required a public meeting after any accident subject to reporting under § 68.42, including accidents that resulted in on site impacts only. This action rescinds requirements to report in the risk management plan, the method of communication and the location of the notification that chemical hazard information is available to the public, pursuant to § 68.210(c). The final rule retains reporting in the RMP, as required by § 68.160(b)(21), whether a public meeting was held following an RMP accident, pursuant to § 68.210(b). Reporting of a public meeting under § 68.160(b)(22) [now redesignated as § 68.160(b)(21)], is also added to the list of RMP registration information in § 68.151(b)(1) that are excluded from being claimed as CBI.

C. Discussion of Comments and Basis for Final Rule Provisions

1. Overview of Basis for Final Rule Provisions

As noted above, the primary basis for our decisions on rescinding or modifying provisions adopted in 2017 regarding information availability is our view that the 2017 provisions underweighted security concerns in balancing the positive effects of information availability on accident prevention and the negative effects on public safety from the utility to terrorists and criminals of the newly available information and dissemination methods. One important factor not discussed or assessed in 2017 when balancing these concerns was the utility for terrorists and criminals of consolidating information that may otherwise be available publicly and allowing for anonymous access. We rely on the findings of DOJ in its report required by CSISSFRRA, which found that assembling the otherwise-public data is valuable in targeting sources for criminal acts. The report notes that the list of factors US Special Operations Command (US SOC) held to be useful in targeting vulnerable assets includes response information, information on which chemicals are present at a facility, knowledge that there were offsite consequences to a chemical release, and other factors. While most of the categories of information specified by US SOC are outside the OCA information restricted by CSISSFRRA,

[94] EPA–HQ–OEM–2015–0725–0135.

the 2017 provisions would make such information newly and anonymously accessible via the web and other means. This anonymous access to consolidated information already available, and new mandated disclosures, undermines the practicability of the changes made in the 2017 rule.

Except for the requirement to hold a public meeting after an accidental release having offsite impacts, we have decided to return to the public information availability provisions that struck a balance between right-to-know and security. This balance allows for access and legitimate use of RMP data through multiple means of access. For members of the public, such means include viewing RMPs at Federal government reading rooms, obtaining RMP information from state or local government officials who have obtained RMP data access, or submitting a request to EPA under the FOIA (for non-OCA RMP information). Owners and operator of regulated facilities may also disclose RMP information for their own facilities if they so choose. State and local emergency response officials may obtain full access to RMP information by submitting a request to EPA.[95] Nevertheless, we agree that emergency responders would benefit from easier access to emergency planning and response-related information. We believe that, regardless of the cause of the West Fertilizer incident, a major lesson learned is that better communication and coordination between emergency responders and facilities would improve safety. Annual coordination added by the 2017 and mostly retained by this final rule should provide this benefit in a more secure way than the 2017 provisions.

In retaining the requirement to hold a public meeting after an incident that has offsite impacts, we believe we have focused the requirement for such meetings on the events of greatest public interest. The public has multiple interests that are materially advanced by the information required to be addressed in such meetings. In addition, public exchanges of information will improve the quality of incident investigations because the public may possess information the facility does not, such as information about public impacts. Public meetings conveying initial results of incident investigations to the extent known are not duplicative of media reports or release reports under other requirements, which in the case of CERCLA and EPCRA are based on initial knowledge during the first moments of an incident. We have limited the information required to be conveyed at meetings to the preliminary information that ultimately will be required to be reported in the RMP in order to limit the potential for security-sensitive information being released at public meetings. Much of this information is factual, while the rest is primarily based on the best judgment of the owner or operator. With the modifications of the public meeting requirement in the final rule, we believe we have struck a reasonable and practicable balance of the public's need for information about local incidents, the security of the source and the community, and other protected interests of the source.

2. Comments on Information Availability Provisions

a. EPA's Security Rationale for Rescinding Information Availability Provisions

Many commenters opposed the Amendments rule's expanded public disclosure requirements, arguing that they would create a security risk. An industry trade association commented that databases are especially vulnerable to terrorist data mining, where an actor could shop for especially vulnerable sites. Another trade association agreed, stating that Toxic Release Inventory (TRI) regulations and EPCRA already provide for information disclosure but, importantly, not the kind of unified information source that a bad actor could use to seek out the most vulnerable sites. A State government agency commented that the Reconsideration rule's rescissions would help protect against criminal acts by anonymous readers. An industry trade association supported EPA's proposed rescission of the requirements, arguing that under the pre-Amendments rule parties with legitimate interests can access information through more secure, controlled means. An industry trade association cited past comments from the Federal Bureau of Investigation and DHS to express concern that disclosure requirements could raise security issues. Another commenter expressed support for making chemical hazard information available to emergency response personnel, but not the public at large, because of security concerns. Another industry trade association stated that while it supported efforts to enhance information sharing and collaboration between facility owners, LEPCs, first responders, and members of the public, this should be done in a manner that balances security and safety considerations, and the Agency had not adequately justified the information requirements of the Amendments rule. Other commenters also opposed disclosing chemical hazard information on the basis of confidentiality, the costs of disclosure, the availability of information through other means (such as the FOIA and TRI), and security risks.

Other commenters disagreed with the proposed rule's security rationales. A private citizen argued that the Amendments rule's information provisions would make little difference to terrorists who already have access to significant amounts of information. A professional engineer commented that the RMP information that would remain public under the Reconsideration rule and other legally required disclosures would be sufficiently helpful to potential terrorists. He stated that enough information is already publicly available to create your own worst-case analysis, and that the Reconsideration rule would not significantly impact this issue. The commenter stated that relevant security concerns depend neither on the Amendments or Reconsideration rules, but rather depend on CSISSFRRA, and argued that withholding information for security purposes has harmed community planning. A tribal government argued that EPA cannot demonstrate any real security risk that would be caused or exacerbated by information disclosure. It added that past thefts and incidents referenced in the rulemaking were not caused by information disclosure. Other commenters also contended that there is no connection between terrorist threats and information sharing, or that EPA has not made a serious case that terrorist threats due to information reporting requirement are substantial, or that the claimed security benefits of the proposed rule are substantial. An advocacy group cited testimony from a chemical company that, in relevant part, involved the company abusing security laws. The company testified to doing so in order to hide from the public information about a deadly accident at one of their facilities. The group also stated that, while EPA provided no evidence of information availability abetting terrorist attacks, there is evidence of emergency responders struggling to respond to chemical accidents because of a company's refusal to share information.

Other commenters argued that public disclosure could, by improving public safety and responsiveness, reduce the threat of terrorism or intentional harm. An anonymous commenter stated that information availability, and the measures the public can take with information to protect themselves, help allay terrorism risks. A joint submission from multiple advocacy groups and

[95] See 40 CFR Chapter IV.

other commenters stated that EPA failed to consider benefits of improved information sharing, especially in preventing or mitigating terrorist attacks by better preparing first responders and the community. The commenters argued that EPA must consider the security benefits of information sharing if the agency considers its risks. Finally, the commenters noted that, while security breaches have resulted in accidents at facilities, these were still accidents—there was no terrorist intent in the breaches or an intent to cause a chemical release. The group stated that the Congressional Research Service estimated the threat of terrorist attacks at chemical facilities is low compared with that of accidents. A private citizen stated that law and the judiciary generally favor a right-to-know over security interests. He stated that efforts to prevent disclosure are futile.

Multiple State elected officials commented that EPA has failed to supply a reasoned explanation for rescinding the community information sharing requirements included in the Amendments rule. The commenters acknowledged the need for the RMP regulations to balance between increasing public awareness of chemical hazards and maintaining facility security but concluded that the proposal upsets that balance by focusing too much on the latter concern without addressing the myriad benefits of increased public awareness.

An advocacy group stated that EPA's rationale for rescinding the online notification requirements is arbitrary and capricious. The group stated that EPA relied on the redundancy of the measure with the role of LEPCs. However, it asserted that LEPC websites are often inadequate, making necessary the requirement that facilities provide notification of available information.

EPA Response: EPA agrees that anonymous access to sensitive chemical facility hazard information could increase the risk of criminal acts and terrorism against regulated facilities, and believes the pre-Amendments rule's existing provisions for reading room access to RMPs, combined with the remaining Amendments rule information availability provisions (*i.e.,* enhanced local coordination requirements and public meeting requirements) strike an appropriate balance between community right-to-know and security. EPA also now believes requiring additional chemical facility hazard and emergency response information to be made available to the public imposed unnecessary burdens on regulated facilities.

After further review of the potential security concerns of the Amendments rule information availability provisions, EPA believes that these concerns have merit. Section 68.205 from the proposed RMP Amendments rule listed specific items of information that the owner or operator must provide to the LEPC or local emergency response officials upon request, but it did not include an open-ended provision requiring the owner or operator to provide any other information that local responders identify as relevant to local emergency response planning. By including such a provision in the final RMP Amendments rule, EPA may have inadvertently opened the door to local emergency officials requesting and receiving security-sensitive information even beyond the specific items included in § 68.205 of the proposed RMP Amendments about which petitioners and others had raised concerns. EPA believes that the rescission of the chemical hazard information availability provisions in § 68.210 will provide security benefits relative to the 2017 Amendments rule by eliminating the security concerns created by the Amendments rule provisions.

Another important consideration in EPA's final rule decision is to avoid providing anonymous access to consolidated chemical hazard information. As EPA indicated in the proposed rule, the combination of mandatory disclosure elements as required under the Amendments is generally not already available to the public from any single source. EPA believes that the consolidation of the required chemical hazard and facility information may present a more comprehensive picture of the vulnerabilities of a facility than would be apparent from any individual element and requiring it to be made more easily available to the public from a single source (*i.e.,* the facility itself) could increase the risk of a terrorist attack on some facilities. Additionally, as State petitioners and other commenters have pointed out, the Amendments made no provision for screening requesters of such information or for the owners or operators of regulated facilities to restrict what information was provided to a requester or to appeal a request.

Regarding commenters' claims that the Amendments rule's information provisions would make little difference to terrorists who already have access to significant amounts of information, EPA agrees that under the final Reconsideration rule, information on most of the individual disclosure elements required under the Amendments would still be available via other means, such as by visiting a Federal RMP reading room, requesting information from an LEPC, or by making a request under the FOIA. However, this information would not be available in a consolidated form that may readily identify facility vulnerabilities, and in each case a requester could be required to identify themselves before gaining access to the information. FOIA requests require a name and U.S. state or territory address to receive information. Federal Reading Rooms require photo identification issued by a Federal, state, or local government agency such as a driver's license or passport. These requirements to accurately identify the party requesting the information may provide a deterrent to those who seek to obtain chemical information for a facility for terrorist purposes without unduly impeding access to the information by those in the nearby community with a right-to-know.

EPA disagrees with commenters who claim that there are no real security risks that would be caused or exacerbated by information disclosure, and that the reporting requirements in the information availability provisions of the Amendments rule did not create security concerns. As a result of the CSISSFRRA (Pub. L. 106–40), the DOJ performed an assessment of the increased risk of terrorist or other criminal activity associated with posting off-site consequence analysis information on the internet. In that assessment, DOJ found that the increased availability of information would increase the risk of the misuse of information by criminals or terrorists, that criminals and terrorists had already sought to target U.S. chemical facilities, and that such threats were likely to increase in the future.[96] With respect to OCA information, DOJ found that the assembly of information that was otherwise public had value in targeting. See DOJ report at 41. Furthermore, the report noted that the US Special Operations Command views information about response plans, which would not be OCA data, would be of value in target selection. See DOJ Report at 38–39.

Regarding commenters who indicate that public disclosure could, by improving public safety and responsiveness, reduce the threat of terrorism or intentional harm, EPA believes that this will only be true if the disclosure occurs in a manner that

[96] Department of Justice. April 18, 2000. Assessment of the Increased Risk of Terrorist or Other Criminal Activity Associated with Posting Off-Site Consequence Analysis Information on the internet. Available in the rulemaking docket.

makes information available for legitimate uses while preventing or dissuading access to it for criminal purposes. The final Reconsideration rule attempts to strike an appropriate balance between these concerns by allowing access to information via controlled means. The final rule retains the information availability provisions of the pre-Amendments RMP rule, retains a modified form of the Amendments rule's public meeting requirement and retains the enhanced local coordination requirements of the Amendments rule with minor modifications. All of these provisions increased information access relative to the pre-Amendments rule, to specific categories of chemical hazard information under controlled circumstances. These requirements should help ensure that local community members and local responders have access to appropriate information about regulated facilities without increasing the risk that such information will be used for criminal purposes.

The Agency acknowledges that removing this provision eliminates one of several ways to locate and obtain chemical hazard information. For example, RMPs are subject to FOIA (except for OCA information) and may be reviewed at Federal Reading rooms or through LEPCs. Once a member of the public reviewed the RMP, they would already have most of the information available under the Amendments rule information availability provision. Also, while LEPCs vary in quality, under EPCRA, much of this information is required to be reported to them and they are required to provide it upon request to members of the public. Those other methods remain. Our view is that removing a redundant method of access that provides consolidated chemical hazard information is a reasonable balance between community access to chemical hazard information and security risks.

b. Community Interest in Access to Information

Some commenters representing industry trade associations expressed doubt about the value of information disclosures, especially to lay audiences. One doubted that the disclosures would improve community responses to accidents. Another noted that chemical hazard information is very technical and would be very time-consuming to compile and translate into a format appropriate for the public, who may still be unable to understand it. A third cautioned that information disclosures could cause unnecessary and unjustified alarm in unsophisticated parties. An industry trade organization argued that facilities and the public are best served by flexibility in public communications, and that plants could be trusted to decide when, how, and what information to disclose. Another commenter argued that expansive and redundant reporting requirements could be counterproductive, allowing important information to be lost in the mix. A State elected official stated that much of the information required by the Amendments rule to be released, such as exercise schedules and emergency response details, does not help reduce the risk of accidents.

Many other commenters, including a form letter campaign joined by approximately 415 individuals, expressed general opposition to eliminating requirements for facilities to share information with communities on hazards at the facility and preparedness procedures. A private citizen and advocacy organization stated that emergency response agencies and community residents have a right to know where dangerous materials exist, and that if the Amendments rule provisions had been in place during the Arkema and West Texas incidents, emergency responders would have been able to better protect themselves. A Federal agency and advocacy group agreed, citing a report on the Chevron Refinery Fire. A tribal government commented that the principles of EPCRA should be applied to the RMP framework. It added that the public should both have access to emergency preparedness information and, upon request, chemical hazard information. Some other commenters asserted a need for greater information availability so that community members know how to react when an accident occurs. An advocacy group commented that community members do not know whether, when they hear sirens at chemical plants, they are to evacuate or shelter in place. This commenter argued that reduced information availability will make it more difficult for residents to prepare in case of accidents. An anonymous commenter highlighted the importance of access to emergency plans and the contact information for local coordination officials in planning. Another referenced Flint, MI, as an example of the importance of being informed as to health risks in avoiding contamination consequences. An advocacy group cited a past EPA statement that additional RMP disclosures would likely reduce the number and severity of chemical accidents. A private citizen cited a DHS publication, stating that providing information to the community helps people protect themselves during accidents. Another commenter cited a 2014 report indicating that 135 million people live within vulnerability zones of the highest-risk RMP facilities. The commenter argued that this risk, taken with evidence from the Arkema disaster, merits greater information disclosure.

Many commenters argued that reading rooms do not provide a realistic avenue for much of the public to access information. A State elected official commented that visitors are limited to gathering information for a maximum of 10 facilities, once per month, without access to copying technology beyond hand-written notes. Even then, the commenter claimed, New York Attorney General interns took more than three weeks and substantial effort to gain access to reading room materials. An anonymous commenter and advocacy group echoed these concerns. A joint submission from multiple advocacy groups and other commenters cited the distance people may have to travel to access a reading room and the difficulty the public may have in finding necessary information for reading room research such as facility identification numbers. The commenters also argued that reading rooms presented language and expertise barriers. Another commenter stated that her State failed to respond to information requests in a timely manner and that members of the public were compelled to seek legal counsel to access information. A Federal agency commented that the burden of information sharing should rest with facilities to affirmatively provide comprehensive information. It stated that the public should not have to request such information.

EPA Response: As EPA indicated in the proposed rule, the information elements provided by the Amendments rule's information availability requirements were already obtainable by other means.[97] As previously noted, RMPs are accessible through multiple means and contain most of the information that would have been provided under the Amendments. Once a member of the public obtains a facility's RMP, the need to make a request to that facility for the elements contained in the RMP would be eliminated, and most other elements provided for in the Amendments rule provision are available using the internet or by contacting local response agencies. In many cases, such information provided through local authorities may be most relevant to a

[97] See 83 FR 24873–4, May 30, 2018.

member of the public because local authorities will be able to provide information within the context of the community emergency plan.

The Amendments rule provision would have allowed anonymous access to chemical hazard information in consolidated form that may have presented a more comprehensive picture of the vulnerabilities of a facility than would be apparent from any individual element. EPA is concerned that allowing anonymous access to sensitive chemical facility hazard information could potentially increase the risk of criminal acts and terrorism against regulated facilities. EPA believes the pre-Amendments rule's existing provisions for access to RMPs, combined with the remaining Amendments rule information availability provisions (*i.e.,* enhanced local coordination requirements and public meeting requirements as modified by the final rule) strike an appropriate balance between community access and security.

Appropriate public response actions will depend on many factors that an individual member of the public is unlikely to be aware of at the time of a release, even if the Amendments rule's information availability provisions were not rescinded. In the event of an emergency at a regulated facility requiring public evacuation or sheltering, the community emergency response plan should ultimately guide the actions taken by members of the public near the affected facility. Local authorities will generally issue appropriate evacuation or sheltering orders based on the nature of the release, their assessment of potential public impacts, and the provisions of the community emergency plan. Under the pre-Amendments rule, owners and operators of regulated facilities were already required to coordinate response actions with local authorities and ensure the source is included in the community emergency response plan, so that local authorities, in consultation with the owner or operator, are prepared to issue appropriate instructions to members of the community. The Reconsideration rule preserves this system and the enhancements made in the Amendments rule to make information more available to local authorities by requiring annual emergency coordination activities.

EPA disagrees that the Amendments rule's information availability provisions could have had any influence on the Arkema incident. The injuries that occurred to first responders at Arkema happened after facility personnel and county emergency responders had closely coordinated on the response to the emergency. According to the CSB investigation report,[98] at the time of the first responder injuries, Arkema had already warned local emergency response authorities about the hazards of organic peroxide decomposition and alerted them that emergency responders who may be exposed to this material should wear personal protective equipment and self-contained breathing apparatus. County emergency response authorities had evacuated the facility and established a 1.5-mile evacuation zone around the facility. The CSB investigation report did not recommend changes to the emergency coordination provisions of the RMP rule, or fault Arkema for failing to adequately coordinate with local emergency responders. Regarding the West Fertilizer incident, EPA believes this incident did highlight the need for better communication between regulated facilities and first responders, and EPA has therefore retained the enhanced local coordination requirements of the Amendments rule, with modifications. EPA believes these enhancements, rather than the public information availability provisions, will allow community emergency planners and first responders the opportunity to better prepare themselves to appropriately respond to accidental releases.

c. Comments on Other Benefits of the Information Availability Provisions

Several commenters argued that greater disclosure requirements could, through political and market mechanisms, be beneficial. An anonymous commenter stated that access to hazardous chemical information would allow residents to more accurately determine whether they should allow a facility to be sited near them. Another commenter stated that the benefits of economic growth associated with chemical plants must be balanced against public health concerns, stating that public information provisions can help inform this balance. An anonymous commenter stated that the Amendments rule was intended to help residents make informed decisions as to where to live and help communities determine whether to subject a plant to greater scrutiny. An advocacy group cited the RIA, stating information sharing improves efficiency of location decisions and property markets. The commenter also stated that information sharing helps appropriately allocate resources to emergency response preparation. An advocacy group cited EPA's TRI program, stating that public information requirements can prompt companies to adopt safer practices. Another advocacy group described the history of CCC's response to a 2012 refinery accident as evidence of the public making use of transparency regulations to effect safer practices. A tribal association cited the costs of compliance at $4,820 per facility for large facilities and stated that this cost would be justified by the benefits of informed community members. An industry trade organization disagreed, commenting that the costs of establishing a single, streamlined website are high and not outweighed by any benefits.

EPA Response: EPA disagrees that rescinding the Amendments rule's information availability provisions will hinder facility siting decisions. Facility siting decisions are generally made by facility owners and local governments, who are in the best position to decide whether and how chemical facilities will impact economic growth or public health in the community. Under the Reconsideration rule, both local governments and members of the public will have enhanced access to facility hazard information relative to the pre-Amendments rule due to the Amendments rule's local coordination and public meeting provisions, which the final rule retains in modified form. Additionally, members of the public can continue to obtain RMP facility information through Federal reading rooms and obtain information relevant to emergency preparedness in their community by contacting their LEPC or other appropriate emergency planning authorities. The Agency disagrees that the information availability requirements of the Amendments rule were analogous to the TRI program. The TRI program provides information on annual toxic releases from chemical facilities, but not on chemical facility hazards in a way that could potentially be exploited by criminals or terrorists. EPA is concerned that allowing anonymous access to sensitive chemical facility hazard information could potentially increase the risk of criminal acts and terrorism against regulated facilities. These were the same concerns that led to the pre-Amendments rule procedures for public access to RMP OCA information under the CSISSFRRA (Pub. L. 106–40). Regarding the commenter's concern about public involvement in advocating safer refinery practices following the 2012 Chevron

[98] To obtain a copy of the Arkema investigation report, see: *https://www.csb.gov/arkema-inc-chemical-plant-fire-/*

refinery accident, EPA notes that the Agency has retained a modified form of the Amendments rule's public meeting requirement, which will require RMP facility owners or operators to hold a public meeting following any accident involving the release of a regulated substance with offsite impacts. This provision will allow members of the public to gain additional information about serious accidents and engage with the owner or operator as appropriate. Regarding comments on the costs of the information availability provisions, while reducing unnecessary regulatory costs was a consideration in EPA's rescission of the provisions, EPA's primary rationale is to address security concerns.

3. Comments on Proposed Rescission of CBI Requirements in § 68.210

A commenter asserted that trade secrets should not be protected when secrecy poses a threat to human life. A private citizen stated that CBI protections privilege company profits over the health and safety of citizens. The commenter added that these can undermine emergency response readiness, violating EPA's mandate. An advocacy group cited a chemical facility's past testimony as evidence that chemical companies use security reasons as excuses to limit information disclosures and obfuscate unsafe practices. An industry trade association emphasized the necessity that the public know that disclosures are limited by CBI and classified information rules.

EPA Response: EPA is finalizing the proposed deletion of the CBI provision in § 68.210 (g), because with the rescission of the Amendments rule's information availability requirements and the modification of the public meeting requirements, the only remaining information required to be provided is the source's five-year accident history at the public meeting, and § 68.151(b)(3) prohibits the owner or operator from claiming this accident history information as CBI.

4. Comments on Public Meeting Requirements

a. Retention of Public Meeting Requirement

Many commenters opposed retaining the public meeting requirements. An industry trade association commented that public meetings are sparsely attended and of little value, especially given the proposed removal of other required disclosures at the meeting. Two other industry trade associations stated that, because they occur after the accident and response, public meetings do not materially advance any legitimate interest of the EPA. The commenters asserted that public meetings instead are only exercises in public shaming. Another industry trade association commented that the Amendment rule's meeting requirements would be redundant with initial release reporting and media reports, which provide the information the community would be interested in. An industry trade association commented that facilities already hold public meetings, especially under the ACC Responsible Care Program, when there is a need for one. Another stated that community advisory panels are already sufficient. Another commented that a Federal public meeting requirement would be needlessly duplicative with those required by State law. A facility commented that there is no need for the facility to host a public meeting, and instead a government entity should provide information to the community. An industry trade association, citing the CAA, stated that LEPCs should bear the responsibility of determining whether a public meeting needs be held after an accident, and whether the responsible facility should be required to attend. An industry trade association stated that the Amendment's public meeting requirement was too vague. Another commented that public meetings may not work because members of the public may protest and disrupt the meeting. An industry trade association stated that it will be difficult to discuss an incident when, because of litigation of adverse consequences, there will be legal issues impinging on the facility's speech.

Other commenters expressed support for retaining the Amendments rule public meeting requirement. A joint submission from multiple advocacy groups and other commenters stated that notice of meetings, and meetings themselves, are vital to letting the public know that they have been exposed to hazards. These commenters also stated that meetings should have translators where the local community may need them. A private citizen recommended requiring an initial meeting, not triggered by an accident, to build connections between the community and facility.

EPA Response: The final rule enacts an option for public meetings on which EPA had requested comment. EPA received several public comments that supported EPA's proposed option to require public meetings only after accidents with offsite impacts. EPA agrees with these commenters that incidents with no reportable offsite impacts are unlikely to generate much interest from the local community and will therefore be sparsely attended. Public meetings after serious accidents with offsite impacts, however, are likely to be well attended by the public and therefore EPA believes such public meetings should still be required. (See further discussion of public meeting criteria in the next section: *b. Requiring public meetings after accidents meeting specified criteria.*)

EPA disagrees that public meetings do not advance any legitimate interest of the EPA or that such meetings are intended to be ''exercises in public shaming.'' Public meetings give the owner or operator an opportunity to explain in detail the causes and consequences of serious accidents and respond to legitimate public concerns about potential health effects or ongoing risks from an accident. The public has a substantial interest in knowing what happened in an accident that had off-site impacts, why the accident happened and what steps the facility is taking to prevent a future occurrence, which should protect the public or environment from future impacts of releases of hazardous substances. The public's protection from the hazards of chemical accidents and ability to participate in emergency planning and readiness actions is materially advanced by being better informed about the accident, the risks posed and how they are being addressed. By meeting with the public, the quality of the facility's accident report improves due to the exchange of information, such as information regarding further impacts.

EPA is not requiring owners or operators to provide language translators at public meetings or to have initial public meetings not associated with reportable accidents with offsite impacts. EPA did not propose these provisions in either the Amendments or Reconsideration rules. EPA encourages owners or operators to accommodate language translation requests during public meetings but is not requiring them to do so. Owners or operators are free to hold additional public meetings beyond those required under the final rule if they so choose. EPA disagrees that public meetings are redundant to initial release reporting and media reports. By holding a public meeting up to 90 days after an incident, the owner or operator is likely to be able to provide more accurate and reliable information than is provided in initial notification or media reports. Also, at a public meeting, members of the public will have the opportunity to ask follow-up questions about the accident, which would not be possible through viewing initial notification reports or media reports.

EPA disagrees that the final rule's public meeting requirement is duplicated in any other law or regulation that is applicable to all RMP facilities. However, if a facility conducts a public meeting to comply with another law or regulation, or as a result of complying with an industry code of practice, such a meeting may be used to comply with the final rule's requirement, provided the meeting is held within 90 days of the accident and provides the information required to be reported under § 68.42(a). EPA disagrees that the possibility of a meeting being disrupted by protesters or the owner or operator's concerns about litigation are good reasons to not require public meetings. Public meetings are used in many communities throughout the country for a variety of purposes and are rarely disrupted by protesters. Owners and operators may take appropriate and lawful measures to maintain order and security at public meetings. Regarding litigation concerns, the owner or operator already has a regulatory duty to disclose the information required under § 68.42(a)—therefore, discussing this information at a public meeting should not increase the owner or operator's vulnerability to litigation. EPA disagrees that the government entities such as LEPCs should be responsible for holding public meetings concerning RMP facility accidents. The owner or operator will have the most accurate and up to date information about the accident because of the owner or operator's incident investigation. However, a regulated facility may combine their post-accident public meeting with an LEPC meeting that is open to the public, if the LEPC agrees to such an arrangement. EPA has removed the more open-ended requirement to provide ''other relevant chemical hazard information'' beyond the information required in 40 CFR 68.42, thus making the requirement for disclosure less vague by limiting the required content of public meetings to more specific, factual information.

b. Requiring Public Meetings After Accidents Meeting Specified Criteria

Several commenters argued that public meetings should only be required for especially serious accidents. A State government agency commented that public meeting requirements should be limited to reportable incidents with off-site consequences. An industry trade association suggested that no public meeting be required when there is a shelter-in-place order just as a precaution, if there are no real offsite impacts. Another commenter recommended that meetings only be required for major accidents, noting that meetings are often sparsely attended. Another industry trade association stated that the public is unlikely to attend meetings for accidents with few offsite impacts. Another industry trade association commented that meetings for onsite-only incidents engender distrust and could be overly alarming after minor accidents. Other commenters supported limiting public meeting requirements to accidents with the offsite impacts specified in § 68.42. The commenters stated that accidents with strictly on-site consequences fall exclusively under OSHA's purview. Another commenter recommended that meetings only occur upon request by the public or an official.

EPA Response: EPA agrees that incidents with no reportable offsite impacts are unlikely to generate much interest from the local community and will therefore be sparsely attended. Public meetings after serious accidents with offsite impacts, however, are likely to be well attended by the public and therefore EPA believes such public meetings should still be required. EPA disagrees, however, that shelter-in-place orders should not trigger public meetings. Sheltering-in-place is considered an offsite impact under § 68.42(a) and therefore, under the final rule, a public meeting is required after an accident that results in a community shelter-in-place order, even if no other impact occurs. EPA also disagrees that accidents with only on-site consequences fall exclusively under OSHA's purview. Such accidents involving covered processes must still be reported in a source's RMP if they cause any of the consequences listed under § 68.42(a). If the accident involved a Program 2 or Program 3 process and resulted in, or could reasonably have resulted in a catastrophic release, the owner or operator must also perform an incident investigation as required under § 68.60 or § 68.81.

EPA did not require public meetings upon request of a member of the public (or an official) because such a provision would be difficult to implement for many facilities. In order to have a meeting occur within 90 days of an accident under this approach, EPA would need to establish a relatively short time frame for a member of the public to make a request, and regulated facilities would therefore have needed to provide almost immediate notice to the public to explain how and where to submit such a request. If a member of the public submitted a request, then the facility would need to provide a second public notice that a public meeting would occur, prepare for the meeting, and hold the meeting, all within 90 days of the incident. Under the final rule, regulated facilities and members of the public will know in advance that any accident from a regulated process involving specified offsite impacts will automatically trigger a public meeting. The owner or operator will only need to provide a single notice to members of the public to inform them when and where the meeting will be held. The owner or operator will also have a full 90 days to prepare for the meeting, as they will not need to await the receipt of a public request in order to determine whether or not to hold a meeting.

c. Required Timeframe for Public Meeting

Many commenters supported longer, more flexible timeframes for public meetings. An industry trade association recommended a 180-day timeframe, so more information can be gathered for the meeting. Other commenters opposed a 90-day timeframe, arguing that they may need more time to investigate the accident. An industry trade association recommended making the public meeting deadline coincide with the requirement to update accident history information in a facility's RMP, within 6-months of an accident. Another commenter suggested that timing should vary, according to the accident. An industry trade association recommended that owners or operators should be able to request time extensions for holding a public meeting if an investigation is ongoing. A facility, mentioning its positive experience with such an approach, suggested, instead of requiring a public meeting in 90 days, a meeting with the LEPC and emergency responder community be required within 120 days.

Other commenters, including a joint submission from multiple advocacy groups and other commenters and an industry trade association supported earlier meetings in order to address public health concerns.

EPA Response: EPA considered both longer and shorter timeframes for the public meeting but elected to retain the 90-day timeframe established in the Amendments rule. As the pre-Amendments rule already contained a requirement for facilities to update their RMP within 6 months of an accident meeting the reporting criteria of § 68.42, EPA considered whether to extend the timeframe to 6 months, as it would be more likely that a source would have completed its incident investigation by the time a public meeting was held. However, the Agency judged that even though in some cases the owner or

operator's incident investigation may not be complete within 90 days of the accident, the owner or operator is likely to know most of the elements required to be reported under § 68.42 earlier than 90 days after the accident. Of the eleven information elements required to be reported in a regulated source's accident history, EPA believes it is likely that the owner or operator will know all except perhaps the contributing factors to the accident (§ 68.42(b)(9)) and operational or process changes that resulted from investigation of the release (§ 68.42(b)(11)). The owner or operator may also lack knowledge about the full extent of offsite impacts of the accident (§ 68.42(b)(8)), and an additional benefit of holding a public meeting within 90 days of the event may be that it allows the owner or operator to gain additional information about offsite impacts. By meeting with the public in advance of needing to report the incident in its accident history, the quality of the facility's accident report improves due to the exchange of information. In some cases, the owner or operator will have completed their incident investigation and will know all eleven information elements required to be reported in the accident history. Even if the owner or operator's incident investigation is incomplete at the time of the public meeting, EPA believes holding a meeting as early as reasonably possible is most beneficial to the community. The 90-day timeframe should allow the owner or operator to share appropriate information about the accident with the local community. The facility could discuss the progress of the investigation so far and next steps planned. While EPA encourages owners and operators to hold public meetings sooner than 90 days after an accident if possible, EPA did not establish a shorter timeframe because shorter timeframes could make it less likely that the owner or operator will have complete information about the incident to present at the public meeting, and the Agency also did not want to exacerbate logistical challenges for regulated facilities in the immediate aftermath of a serious accident, when facility resources may be stressed in responding to and recovering from the accident.

d. Limiting Accident Information Discussed at Public Meetings to the Most Recent Accident

An industry trade association expressed support for limiting the content of public meetings to the accident at issue rather than including the entire 5-year accident history. Other commenters agreed, citing security concerns. A joint submission from multiple advocacy groups and other commenters disagreed, commenting that accident history is useful to understand future risks and what the community may have already been exposed to. A tribal government commented that emergency personnel should have access to past accident/incident reports, not just information about the current incident.

EPA Response: The final rule requires public meetings to cover only the accident at issue and not the full 5-year accident history. While EPA agrees that information about other accidents may be useful to provide context to the public and encourages the owner or operator to provide such additional information if appropriate, the Agency is not requiring sources to provide information on older accidents because the Agency believes that it would place an additional burden on the source to prepare for and present the additional accident information, which may or may not be relevant to the most recent accident. Therefore, under the final rule, the owner or operator is free to judge what additional information beyond that required to be reported under § 68.42 for the most recent accident should be presented at the public meeting. Regarding the comment about emergency personnel having access to past accident reports, while this information is not required to be presented at public meetings, it can be requested by local emergency response authorities at annual coordination meetings required under § 68.93. If local authorities can show that such information is necessary for developing and implementing the local emergency response plan, the owner or operator must provide it to them.

e. Rescission of Providing Other Relevant Chemical Hazard Information at Public Meetings

A State elected official commented that no evidence demonstrates that chemical hazard disclosure will increase the risk of a terrorist attack or other intentional harm. The commenter specifically stated that there is no indication that such disclosures played a role at the West Fertilizer explosion. A tribal government opposed the rescission and asserted that the community has a right to know what chemicals are being used in their community. The commenter added that the information that would be provided may be useful to emergency personnel. A joint submission from multiple advocacy groups and other commenters stated that EPA's rationale that the language requiring the owner or operator to provide other relevant chemical hazard information at public meetings ''could be interpreted to be an overly broad requirement'' is arbitrary and capricious. The commenters asserted that, if EPA is truly concerned about how facilities will interpret this language, it can clarify the requirement or provide examples of the types of information that would need to be shared. The commenters stated that deleting the requirement isn't necessary and deprives communities of information that EPA itself determined was valuable for them to know. An industry trade association supported rescinding the requirement, citing security concerns. Another industry trade association agreed and stated that allowing facilities to choose what to disclose would ease their ability to comply with the DHS CFATS.

EPA Response: EPA is finalizing the proposed rescission of the Amendments rule requirement for the owner or operator to provide other chemical hazard information at public meetings. EPA disagrees that its rationale for rescinding this requirement is either arbitrary or capricious. EPA is rescinding this requirement for the same reason that we are modifying the similar requirement for facilities to share other information that local emergency planning and response organizations identify as relevant to local emergency response planning in § 68.93—EPA believes this language is too open ended and could trigger requests for security-sensitive information at public meetings. As EPA noted in the preamble to the proposed rule, the language of the public meeting provision requiring the owner or operator to provide other information is similar to the Amendments rule requirement for the owner or operator to share with local responders other information that responders identify as relevant to local emergency response planning, which this final rule modifies to require providing other information necessary for developing and implementing the local emergency response plan. (See discussion later in *section VI.C.2.a* ''*Information disclosure during local emergency coordination*.'') All three of the reconsideration petitioners had security concerns with providing this type of information with no screening process for requesters or limitations on the use or distribution of information, and EPA believes that these legitimate concerns that can reasonably be addressed by deleting this language in the public meeting requirement. EPA believes deleting the language is better than attempting to narrow it by providing specific examples of the types

of other information that should be shared, because the purpose of the public meeting provision is to share information relating to the accident that resulted in the meeting, and this information is already listed in § 68.42. Any attempt to list additional types of information would presuppose that such information would be relevant to the accident and not present security risks, but EPA cannot reach such a conclusion without knowledge of the specific contents of the other information or circumstances of a particular accident.

EPA disagrees that there is no evidence that increasing information disclosure will increase security risks to regulated facilities. As a result of CSISSFRRA, the DOJ performed an assessment of the increased risk of terrorist or other criminal activity associated with posting off-site consequence analysis information on the internet. In that assessment, DOJ found that the increased availability of information would increase the risk of the misuse of information by criminals or terrorists, that criminals and terrorists had already sought to target U.S. chemical facilities, and that such threats were likely to increase in the future. EPA agrees that the community has a right to know what chemicals are being used in their community and that this information is useful to emergency personnel. The identity of the chemical involved in the accident triggering the public meeting must be disclosed during that meeting, as this is required to be reported in the facility's accident history under § 68.42(b)(2). However, EPA does not believe the owner or operator should be required to discuss other chemical hazards during public meetings, because the purpose of the meeting is to discuss the recent accident, not to hold a comprehensive discussion about all chemical hazards at the source. Both the RMP rule and EPCRA provide other means for members of the public to obtain information about the chemical hazards present at facilities in their community. The final rule also retains the enhanced local coordination provisions of the Amendments rule, so local emergency response personnel will have more opportunities to meet with the owner or operator beyond post-accident public meetings. At annual coordination meetings required under § 68.93, local emergency response authorities may request information about other chemical hazards at the facility, and the owner or operator must provide such information to the extent it is necessary for developing and implementing the local emergency response plan.

5. Other Comments on Information Availability and Public Meeting Provisions

a. Retention of Classified Information Provision in § 68.210

An industry trade association commented that the rule should make clear that classified information limitations still apply to any information that would otherwise be required to be disclosed. Another industry trade association commented that information limitations should be expanded to clearly include information protected by other Federal laws, especially Sensitive Security Information (SSI). It recommended that new language be added to the rule, protecting CVI, SSI, information classified by Federal agencies, and a catchall for all other information protected by law. Two industry trade associations stated that retaining the classified information provisions will help facilities remain in compliance with CFATS.

EPA Response: In the proposed rule, EPA had proposed to retain the Amendments rule's classified information provision within § 68.210. The final rule includes a modified version of this provision which addresses both classified and restricted information (EPA is making the same modification to the classified information provision proposed to be added to the emergency coordination provisions in § 68.93). Since the original RMP rule was published, DHS has developed new categories of security-sensitive information that potentially affect some RMP facilities. These include Sensitive Security Information (SSI), Protected Critical Infrastructure Information (PCII), and Chemical-terrorism Vulnerability Information (CVI). Certain facilities regulated under the RMP regulation may possess any or all of these categories of information, and EPA agrees with commenters who indicated these categories of information should be addressed in the rule. By referring to the DHS's restricted information regimes in the final rule, EPA intends to make clear that such information should be controlled via the applicable laws, regulations, and executive orders. EPA's reference to the DHS's regulations does not imply an absolute prohibition on the sharing of information controlled under these regulations, as some local emergency response officials may be authorized to receive SSI, PCII, or CVI. However, EPA expects that there will be few cases where local emergency coordination activities will require exchanges of such restricted information, and it should never be disclosed during public meetings.

Regarding classified National Security Information (NSI), very few RMP-regulated facilities possess such information (*i.e.,* information controlled under NSI laws as confidential, secret, or top-secret information), and applicable laws prohibit its disclosure to the public. Nevertheless, EPA has retained a modified form of the classified information provision in the final rule to emphasize the importance of adhering to all laws relating to control of NSI, which generally prohibit its disclosure to any persons who do not have an appropriate clearance for NSI and a need to know the information.

b. Requirement To Provide to Public a List of Scheduled Exercises

A state agency and two industry trade associations argued that disclosing exercise schedules to the public created security risks. One of these trade associations also commented that EPA's concern that the public could be alarmed by exercises is unfounded, and that facilities have hitherto successfully notified the public of drills without confusion. Another industry trade association commented that, because the public does not participate in emergency response activities, it has no significant interest in their details. A tribal government commented that the proposal was too vague. The commenter also stated that the discussion on this subject provided no reference to potential impacts to human health or the environment.

EPA Response: In the final rule, EPA is not requiring facilities to disclose exercise schedules. Although information on upcoming facility exercises is the one information element provided under the Amendments rule that is not already available from another source, as EPA indicated in the proposal, there is no easy way to restrict this information to only members of the local public, and wider distribution of this information could carry security risks. Most comments received by EPA that addressed the issue agreed with EPA's proposal not to require disclosure of this information.

VI. Modified Local Coordination Amendments

A. Summary of Proposed Rulemaking

In the RMP Amendments rule, EPA required owners or operators of ''responding'' and ''non-responding'' stationary sources to perform emergency

response coordination activities required under new § 68.93. These activities included coordinating response needs at least annually with local emergency planning and response organizations, as well as documenting these coordination activities. The RMP Amendments rule required coordination to include providing to the local emergency planning and response organizations the stationary source's emergency response plan (if one exists), emergency action plan, updated emergency contact information, and any other information that local responders identify as relevant to local emergency response planning. For responding stationary sources, coordination must also include consulting with local emergency response officials to establish appropriate schedules and plans for field and tabletop exercises required under § 68.96(b). Owners or operators of responding and nonresponding sources are required to request an opportunity to meet with the local emergency planning committee (or equivalent) and/or local fire department as appropriate to review and discuss these materials.

In the proposed Reconsideration rule, EPA proposed to modify the local coordination amendments by deleting the requirement in § 68.93(b), for the owner or operator to provide other information that local responders identify as relevant to local emergency response planning. Alternatively, EPA proposed to change this phrase to require the owner or operator to provide other information needed for developing and implementing the local emergency response plan, which is virtually identical to that used in EPCRA § 303(d)(3) [42 U.S.C. 11003(d)(3)]. Under both alternatives, EPA also proposed to incorporate appropriate classified information and CBI protections to regulated substance and stationary source information required to be provided under § 68.93.

EPA proposed to retain the requirement in § 68.95(a)(4) for responding facilities to update their facility emergency response plans to include appropriate changes based on information obtained from coordination activities, emergency response exercises, incident investigations or other information. In addition, EPA proposed to retain the requirement in § 68.95(a)(i) that emergency response plan notification procedures must inform appropriate Federal and state emergency response agencies, as well as local agencies and the public.

EPA proposed to retain language in § 68.93(b) referring to field and tabletop exercise schedules and plans with a proposal to retain some form of field and tabletop exercise requirement. Alternatively, in conjunction with an alternative proposal to rescind field and tabletop exercise requirements (see *section VII.* ''*Modified Exercise Amendments*'' below), the Agency also proposed to rescind this language.

EPA did not propose any other changes to the local coordination requirements of the RMP Amendments rule. Under either proposed alternative described above, the following provisions would have remained unchanged: The provisions of paragraph (b) requiring coordination to include providing to the local emergency planning and response organizations the stationary source's emergency response plan if one exists, emergency action plan, and updated emergency contact information, as well as the requirement for the owner or operator to request an opportunity to meet with the local emergency planning committee (or equivalent) and/or local fire department as appropriate to review and discuss these materials. For provisions of the RMP Amendments that EPA proposed to retain, EPA continued to rely on the rationale and responses provided when the Agency promulgated the Amendments rule. See 81 FR 13671–74 (proposed RMP Amendments rule), March 14, 2016, 82 FR 4653–58 (final RMP Amendments rule), January 13, 2017.

B. Summary of Final Rule

After review and consideration of public comments, EPA is finalizing the local emergency response coordination requirements related changes, as proposed, with some modifications. This rule modifies the local emergency response coordination amendments by replacing the requirement in § 68.93(b) for the owner or operator to provide any other information that local response organizations identify as relevant to local emergency response planning with the requirement to provide ''other information necessary for developing and implementing the local emergency response plan.'' Also, the final rule includes a modified form of the proposed provision for protection of classified information in § 68.93(d) but does not include the proposed CBI provision in § 68.93(e).

C. Discussion of Comments and Basis for Final Rule Provisions

1. Overview of Basis for Final Rule Provisions

The modifications we adopt today to the emergency coordination requirements of the 2017 rule primarily ensure that the coordination occurs in a more secure manner than the 2017 requirements. We have substituted the open-ended and somewhat vague ability of emergency response organizations to obtain any information ''relevant to'' local emergency response planning for a requirement to provide information ''necessary for'' the development and implantation of the local emergency plan. ''Necessary for'' tracks more closely the terms of EPCRA 303(d)(3) and 40 CFR 68.95(c) of the pre-2017 RMP rule. We slightly expand the applicability of this language to include non-responding sources subject to RMP Programs 2 and 3 and to sources not otherwise subject to EPCRA and retain the 2017 rule's provision that allows local emergency response organizations rather than just LEPCs to use this EPCRA-like language.

As commenters pointed out, the EPCRA provision has been successfully implemented for many years with no known security breaches. While local emergency response organizations that may use this authority would include entities other than LEPCs, LEPCs would have broader membership than fire and other public safety authorities that would be allowed to use the information gathering authority and therefore these additional entities present even less of a security risk. The provision we adopt is consistent with the National Incident Management System (NIMS) and facilitates the functioning of the NIMS and the Incident Command System (ICS) by promoting preplanning in advance of an incident.

We have previously noted that US SOC identified response plans as important targeting information for criminals or terrorists seeking to cause harm to chemical facilities. Therefore, we believe the less open-ended provision adopted today that mirrors language that has not led to known security breaches is a more reasonable and practicable approach to emergency coordination than the provision we adopted in 2017.

2. Comments on Local Coordination Provisions

a. Information Disclosure During Local Emergency Coordination

EPA received various comments on the proposed deletion of the requirement to provide any other information that local planning and response organizations identify as relevant to local emergency response planning during annual coordination activities, and the alternative proposed language, which replaces the provision with a requirement for the owner or

operator to provide other information necessary for developing and implementing the local emergency response plan. Many commenters, including industry trade associations, facilities, and State elected officials, expressed support for the proposed deletion of the language, commenting that it created an open-ended provision that could allow third parties to obtain security-sensitive or classified information about highly protected processes, threatening public health and heightening national security risks. Some of these commenters also provided additional reasons for deleting the phrase, stating that the language created an inconsistency with the OSHA PSM standard, that LEPCs have no capability to maintain the security of the information, that the provision was overly burdensome, and that it is not supported by the CAA.

Many other commenters, including private citizens, advocacy groups, and State elected officials, opposed deleting the provision because of general concerns about the availability of needed information for emergency planners and first responders. An association of government agencies commented that first responders should be entitled to all information they need to understand the risk of a release and respond. The commenter stated that EPA's proposed change to § 68.93(b) regarding requests for information is inadequate, short-sighted, and suggests that the facility information available in an RMP is materially different than the facility information provided under EPCRA. The commenter stated that the majority of RMP regulated facilities are subject to EPCRA, under provisions of which LEPCs routinely receive information from facilities relevant to emergency preparedness planning, and there is no evidence that any LEPC or first responder organization cavalierly released information obtained from a facility obtained under EPCRA or through any other mechanism. This commenter and others stated that EPA's proposed alternative language for the information disclosure requirement would be acceptable because it is virtually identical to the EPCRA language and would allow LEPCs and responders to work with regulated facilities to obtain the information and cooperation they need. Another commenter stated that EPA had failed to justify its proposal to delete the requirement and that EPA's attempt to argue that the proposed deletion will result in security benefits is erroneous and unjustified. However, this commenter also expressed a preference for the proposed alternative language to EPA's proposed deletion. An industry trade association also expressed support for EPA's proposed alternative language, which it stated would address the ambiguous, open-ended nature of the Amendments rule language and mirror the [EPCRA] statutory language.

Other commenters, including advocacy groups and State elected officials, expressed opposition to the proposed alternative language, reasoning that the alternative language would create the same or similar security risks as the language included in the Amendments rule. One of these commenters stated that local emergency planning and response organizations lack any uniform capability to keep and safeguard sensitive chemical hazard information and the proposed alternative language does nothing to address this problem. Multiple state elected officials commented that EPA did not explain the material difference between the proposed alternative language and the existing language of § 68.95(c) of the pre-Amendments rule. Another commenter stated that EPA incorrectly asserted that the alternative provision is consistent with EPCRA. The commenter stated that the fundamental distinction is that, under EPCRA, facilities must disclose certain information to LEPCs established under 42 U.S.C § 11001, whereas the RMP provision would allow or disclosure of information to local emergency planning and response organizations, local response organizations, and local authorities. The commenter concluded that because it is unknown exactly who might be able to access this information additional security risks may be created. The commenter also expressed concern about the potential burden this could place on industry without a specified mechanism for requesting review of unreasonable requests. Another trade association opposed the proposed alternative and instead recommended that EPA should adopt a rule that removes the requirement to submit any classified/confidential information and confines the information that would be provided to the basic, publicly available information that local responders need to do their job effectively. The commenter argued that their suggested approach would reduce the burdens on the regulated community and also avoid overwhelming the limited resources of the local officials. A joint submission from multiple advocacy groups and other commenters stated that the proposed alternative language would deny first responders additional information relevant to their planning activities that they cannot already receive pursuant to EPCRA. These commenters also stated that EPA has not explained how the proposed alternative language would address its finding in the Amendments rule that chemical facility information and data-sharing efforts need significant improvement and that LEPCs and first responders need more information to do their jobs. The commenters also stated that EPA has cited no evidence connecting any national security threats to sharing information with first responders and that firefighters, EMTs, and first responders are trained to protect the public and required to keep sensitive information secure.

EPA Response: In the final rule, EPA is adopting the alternative proposed language, which replaces the requirement to provide any other information that local planning and response organizations identify as relevant to local emergency response planning with the requirement to provide other information necessary for developing and implementing the local emergency response plan. As EPA explained in the proposed rule,[99] this language is virtually identical to that used in EPCRA section 303(d)(3), [42 U.S.C. 11003(d)(3)], and also appears in § 68.95(c) of the original RMP rule, which applies to facilities with Program 2 and Program 3 processes whose employees respond to accidental releases of regulated substances. Therefore, because of either the EPCRA section 303(d)(3) provision or the provision in § 68.95(c), most RMP facilities have long been subject to this requirement and applying it to the relatively few RMP facilities that are not already subject to it under EPCRA section 303(d)(3) or § 68.95(c) should not create any security vulnerabilities. EPA believes that the alternative proposed language will address security concerns with the Amendments rule provision while still allowing local responders to obtain information needed for emergency response planning. EPA notes that the final rule language is not open-ended, and restricts other information provided to that necessary for developing and implementing the local emergency response plan. EPA recognizes that a class of information—information that local response organizations deem ''relevant,'' but which is not ''necessary'' for the emergency plan—would be unavailable under the amended language adopted today. We view the narrowing as a compromise that helps emergency planning but

[99] 83 FR 24866, May 30, 2018.

removes some information that is unnecessary for the emergency plan but which may pose a security risk. EPA is aware of no security vulnerabilities associated with language that tracks EPCRA in the past, and no commenters provided any such examples.

EPA disagrees that the Agency failed to explain the material difference between the language of § 68.95(c) in the pre-Amendments rule and the proposed alternative revision to § 68.93(b). While the pre-Amendments rule language in 68.95(c) is almost the same as the proposed alternative revision to § 68.93(b), its applicability is different. As EPA explained in the proposed rule, some RMP facilities that are subject to the final rule's requirement to provide other information needed for developing the local emergency response plan in § 68.93(b) were not already subject to it under either the pre-Amendments RMP rule provision at § 68.95(c), which applied only to responding facilities, or under EPCRA section 303(d)(3), which would generally apply only to RMP facilities that hold an EPCRA extremely hazardous substance above a threshold planning quantity. Under the Amendments and Reconsideration rules, all facilities with Program 2 and/or Program 3 processes are subject to the emergency response coordination requirements of § 68.93, whether or not the source's employees will respond to accidental releases of regulated substances. Therefore, EPA's inclusion of the alternative proposed language in § 68.93(b) applies the requirement to more RMP facilities than were subject to it under § 68.95(c) of the pre-Amendments rule.

EPA disagrees with commenters' claims that additional security risks may be created because it is unknown exactly who might be able to access information provided during local coordination activities. In the proposed rule, EPA specifically asked commenters to explain how the alternative language presents new security concerns if it has not caused such concerns in relation to its presence in EPCRA section 303(d)(3) or in § 68.95(c) of the pre-Amendments RMP rule. On this issue, one commenter attempted to draw a fundamental distinction between the EPCRA requirement, which requires disclosing certain information to LEPCs, and the proposed alternative provision, which would require disclosure of information to ''local emergency planning and response organizations.'' According to this commenter, additional security risks may be created because it is unknown exactly who might be able to access this information within the broader realm of ''local emergency planning and response organizations,'' which would include but not be limited to LEPCs. But while it is true that the term ''local emergency planning and response organizations'' encompasses LEPCs and other organizations, such as fire departments and emergency management agencies, LEPCs likely include the most diverse membership of any local response organization. If disclosure of other information related to development of the local emergency plan to LEPCs has not resulted in security risks to date, it is unlikely that disclosing the same information to fire departments or emergency management agencies will cause such problems. Also, EPA notes again that § 68.95(c) already required responding facilities to provide this information to ''local emergency response officials,'' a term that includes, but is not limited to, LEPCs. Therefore, the Agency believes it is implausible that using the previously-existing language of § 68.95(c) within § 68.93(b) would create security risks.

EPA also sees no reason to specify a mechanism for requesting review of unreasonable information requests. Since nearly all RMP facilities have been subject to this requirement for many years, with no such review mechanism in place, and without any apparent problem, EPA does not expect the § 68.93 provision to cause any proliferation of unreasonable information requests. EPA encourages local responders and owners or operators of regulated facilities to discuss the need for other emergency planning information and come to a reasonable agreement on what additional information, if any, should be provided, without the need for intervention by external arbitrators. The final rule does not require disclosure of classified information or CBI during annual coordination activities—this topic is further discussed below.

b. CBI and Classified Information Protections for Local Coordination

Several commenters agreed with EPA's proposal to include classified information and CBI protection provisions in the local coordination provisions. An industry trade association commented that EPA needs to specifically address SSI and CVI in the provision, not just classified information, a term which is too narrow to reflect current information protection regimes. Another industry trade association also recommended that EPA specifically include SSI, in addition to classified information or CBI. Another industry trade association commented that the proposed protection only addresses the disclosure of CBI to EPA and fails to consider such a disclosure to non-government entities, such as LEPCs. The commenter recommended that EPA should revise its CBI and classified information disclosure provisions to more clearly articulate how covered process facilities may address these concerns. Similarly, an industry trade association encouraged EPA to revise the proposed revision to identify how a facility can protect CBI or classified information potentially subject to a release to a non-governmental entity. An industry trade association recommended that the CBI and classified information provisions be clarified to provide that public version of the specific items identified in the regulation should be provided. Specifically, the commenter recommended that EPA clarify that regulated entities are under no obligation to provide to LEPCs or other emergency responders any information that is not already publicly available. An industry trade association encouraged EPA to specify that a ''sanitized'' version of requested materials, as referenced in § 68.93(e), means that companies may redact CBI from information provided under this provision.

Several other commenters indicated that allowing companies to claim CBI as a way of avoiding the responsibility to provide emergency planners and first responders access to essential information needed to respond to a chemical release is not acceptable.

EPA Response: EPA agrees with commenters who indicated that the classified information provision included in the proposed rule was too narrow. The final rule's modified form of the proposed rule's classified information protection provision should address these commenters' concerns regarding information restricted under DHS regulations.

Regarding CBI, EPA is not finalizing the proposed provision of § 68.93(e) because under the final rule, the Agency no longer believes it is necessary. With the changes EPA has made in the final rule—most notably replacing the open-ended requirement to provide any other information that local planning and response organizations identify as relevant to local emergency response planning with the requirement to provide other information needed for developing and implementing the local emergency response plan, which replicates previously existing rule language from § 68.95(c)—EPA no longer sees any need for a CBI provision in this section of the rule.

Owners and operators of regulated facilities are not required to provide CBI to local response officials. EPA agrees with commenters that companies should not claim CBI merely as a way to avoid providing essential planning information to local responders, but EPA is not aware of any cases where this has occurred, and commenters provided no such examples. EPA expects that little, if any, confidential business information will be requested during coordination activities conducted under § 68.93. However, for information elements such as the names of chemicals, where facilities have made valid CBI claims in their RMP submission, where those elements are exchanged with local response officials during coordination activities, the owner or operator should provide the same sanitized information to local response officials that they provided to EPA in their RMP submission. For information requested by local response officials other than that reported in an RMP, if a local response official requests an element of information that the owner or operator judges to be CBI, the owner or operator is not required to provide the information but is encouraged to provide a non-confidential version of the information to local response officials (*i.e.,* a version with confidential business information redacted) if possible.

The reason that EPA had proposed adding a CBI provision to the local coordination provisions of § 68.93 is because the proposed Amendments rule had included a CBI provision to cover potential CBI in the itemized list of chemical hazard information that EPA proposed to require be provided to local emergency response officials upon request (see 81 FR 13711, March 14, 2016—proposed new § 68.205—Availability of information to the LEPC or emergency response officials). That list of items included information potentially containing CBI beyond the items already contained in an RMP, such as compliance audit reports, incident investigation reports, and IST information. In the final Amendments rule, EPA did not finalize the proposed § 68.205, instead finalizing a provision in § 68.93 requiring certain information to be provided during coordination activities. That information included the stationary source's emergency response plan (if one exists); emergency action plan; updated emergency contact information, and any other information that local planning and response organizations identify as relevant to local emergency response planning. In petitions submitted to EPA after publication of the final Amendments rule, petitioners objected to inclusion of the requirement to provide any other information that local planning and response organizations identify as relevant to local emergency response planning, noting that this requirement placed no limits on what could be requested under the provision, provided no protection for CBI, and provided no safeguards for security-sensitive information.[100] To address this concern, in the proposed rule, EPA proposed adding CBI and classified information provisions to § 68.93. However, with EPA's final rule option to replace the requirement to provide any other information that local planning and response organizations identify as relevant to local emergency response planning with the requirement to provide other information necessary for developing and implementing the local emergency response plan, which was already in § 68.95(c), and limiting the other specific information elements to be provided during coordination activities to emergency planning items that generally do not contain CBI, EPA no longer sees any need for a CBI provision in subpart E. Emergency coordination information generally is made up of information not entitled to CBI protection under RMP subpart G or information that would have extremely limited protection under the EPCRA trade secret provisions covering EPCRA's emergency planning subchapter. Under the final rule, the only information that Subpart E had not already required to be available to local response officials is information on responding facilities' schedules and plans for field and tabletop exercises, which should not require disclosure of any CBI.

Regarding classified and restricted information, for the same reasons previously explained in *section V.C.5.a—''Retention of classified information provision in § 68.210''*, the final rule includes a modified form of the proposed rule's classified information provision in § 68.93. As with § 68.210, the new provision in § 68.93 addresses both classified information (*i.e.,* NSI) and restricted information (*i.e.,* CVI, SSI, and PCII). EPA's reference to DHS regulations for restricted information in this section does not imply an absolute prohibition on the sharing of such information during coordination activities, as some local emergency response officials may be authorized to receive SSI, PCII, or CVI. However, EPA expects that there will be few cases where local emergency coordination activities will require exchanges of such restricted information. Regarding NSI, very few RMP-regulated facilities possess such information, and EPA does not expect that coordination activities involving facilities that possess NSI would typically involve such information. As previously stated, laws relating to control of NSI generally prohibit its disclosure to any persons who do not have an appropriate clearance for NSI and a need to know the information.

c. Conflicts With Other Federal Coordination Requirements

Most commenters supported EPA's proposal to retain the Amendments rule requirement for the owner or operator to annually coordinate with local responders and provide emergency response plans, emergency action plans, and updated contact information during coordination activities. A comment submitted by multiple state elected officials stated that the provisions in the proposed Reconsideration rule obliging local emergency planning and response organizations to coordinate annually on emergency response should be deleted from the final rule and should not be retained. The commenter argued that a determination of the necessity and effectiveness of emergency response coordination in the post-9/11 era requires consideration, among other things, of the existing incident command structure the Federal government has worked to develop through the NIMS, coordinated through the DHS and the Federal Emergency Management Agency. The commenter asserted that when an incident occurs, State and local emergency responders operate through an established incident command structure. The commenter argued that it is essential that when promulgating rules relating to emergency response coordination EPA consider the numerous overlapping emergency response coordination and preparedness requirements in other regulations and statutes. The commenter concluded that the Amendments rule failed to adequately consider these other provisions, resulting in the potential to create confusion among responders, thereby reducing the effectiveness of their response efforts in the event of a chemical facility accident. Furthermore, the commenter argued that creating an uncoordinated overlay to an existing incident command structure would result in incident response scenarios rife with potential for confusion at the precise time any such confusion could be most hazardous. The commenter also

[100] See CSAG petition, pp 5 EPA–HQ–OEM–2015–0725–0766 and RMP Coalition petition, pp 7. EPA–HQ–OEM–2015–0725–0759.

asserted that duplication of existing incident response and incident command structure makes emergency response and the organization of incident response less effective. Finally, the commenter stated that EPA should not engage in rulemaking to establish separate criteria for coordination that only frustrate the broader objective of cohesive and effective emergency response and serve to overburden already limited State and local emergency response financial resources.

EPA Response: EPA disagrees that the final rule creates any conflict with the NIMS.[101] The NIMS establishes a set of emergency management concepts, principles, and methods with the objective of producing a standardized but flexible approach to incident management at all levels. EPA supports the NIMS and these objectives and believes nothing in the RMP rule conflicts with them—commenters presented no evidence or examples of where the RMP emergency response coordination provisions were incompatible with the NIMS. For the most part, RMP emergency response coordination activities take place outside of the context of an actual incident; they are intended to be routine, annual activities that involve the sharing of information in advance of any incident. However, such sharing can and should include collaborating on incident planning, incident command, and incident resource and information management. Advanced coordination regarding chemical releases facilitates the functioning of the NIMS. During exercises and actual incidents, EPA encourages owners and operators and local response officials to employ NIMS doctrine, such as use of the ICS.

d. Requirement for More Frequent Coordination Should Be Clarified

An industry trade association, referring to the requirement for coordination to occur at least annually, and more frequently if necessary, commented that a determination as to whether more frequent coordination is needed should be tied to some objectively knowable change in circumstances, and notification to the source must occur.

EPA Response: EPA intends the ''more frequently if necessary'' language to address situations where a significant change in either the source or its surrounding community has made information exchanged during the most recent coordination activity outdated, or where the owner or operator and local response officials judge that additional coordination should take place sooner than the next annual meeting or more frequently than annually on an ongoing basis. In most cases, sources and local authorities may have no need to conduct coordination activities more frequently than annually. In others, ''more frequently'' may mean a one-time additional coordination activity to address a specific change at the source or in the community, whereas in still others, the owner or operator and local authorities may elect to establish an ongoing schedule for coordination activities that is more frequent than annual. EPA's rule leaves flexibility for the source and the community to determine when additional coordination is needed.

e. Claims That Rescinding Local Coordination Provisions Is Arbitrary and Capricious

A joint submission from multiple advocacy groups and other commenters, and a comment submitted by multiple State elected officials stated that EPA's proposal to rescind and weaken emergency coordination requirements is arbitrary and capricious. These commenters stated that according to the standard established in *FCC* v. *Fox Television,* EPA is required to provide a more detailed rationale to justify the agency's proposed changes when the Agency is contradicting prior fact-finding. The commenters concluded that EPA did not provide the requisite more detailed rationale.

EPA Response: EPA disagrees with these comments. The final rule does not rescind, eliminate, or weaken the Amendments rule's emergency coordination requirements. The final rule makes a minor but important change to the emergency coordination provisions of the Amendments rule in order to not create new security vulnerabilities. In the final rule, EPA is adopting the alternative proposed language for local coordination, which replaces the requirement to provide any other information that local responders identify as relevant to local emergency response planning with the requirement to provide other information necessary for developing and implementing the local emergency response plan. As EPA explained in the proposed rule, this requirement is virtually identical to the requirement in Emergency Planning and Community Right-to-Know Act (EPCRA) section 303(d)(3), [42 U.S.C. 11003(d)(3)], and also appears in § 68.95(c) of the original RMP rule, which applies to facilities with Program 2 and Program 3 processes whose employees respond to accidental releases of regulated substances. Therefore, as a result of either the EPCRA section 303(d)(3) provision or the provision in § 68.95(c), most RMP facilities have long been subject to this requirement, and the Agency is applying it in the new requirement to the relatively few RMP facilities that are not already subject to it under EPCRA section 303(d)(3) or § 68.95(c), which should not create any security vulnerabilities. We note that the RMP Amendments failed to address, or even mention, the importance of information on a facility's and a community's emergency response plan as a factor in targeting chemical facilities.[102] An open-ended provision would create new potential vulnerabilities. EPA believes that adopting the alternative proposed language in the final rule will address security concerns with the Amendments rule provision while still allowing local responders to obtain information needed for emergency response planning. EPA notes that the final rule language is not open-ended, and restricts other information provided to that needed for developing and implementing the local emergency response plan. EPA disagrees that this rationale is arbitrary or capricious—it is a rational and reasonable response to addressing legitimate security concerns raised by petitioners and does not weaken the emergency coordination provisions of the Amendments rule.

VII. Modified Exercise Amendments

A. Summary of Proposed Rulemaking

In the RMP Amendments rule, EPA added a new section entitled § 68.96 Emergency response exercises. This section contained several new provisions, including:

- *Notification exercises:* At least once each calendar year, the owner or operator of a stationary source with any Program 2 or Program 3 process must conduct an exercise of the stationary source's emergency response notification mechanisms.
- Owners or operators of responding stationary sources are allowed to perform the notification exercise as part of the tabletop and field exercises required in new § 68.96(b).
- The owner/operator must maintain a written record of each notification

[101] See National Incident Management System, *https://www.fema.gov/national-incident-management-system* and National Incident Management System Third Edition October 2017, available in the rulemaking docket.

[102] Department of Justice. April 18, 2000. Assessment of the Increased Risk of Terrorist or Other Criminal Activity Associated with Posting Off-Site Consequence Analysis Information on the internet. pp. 38–39. Available in the rulemaking docket.

exercise conducted over the last five years.

• *Emergency response exercise program:* The owner or operator of a responding stationary source must develop and implement an exercise program for its emergency response program.

• Exercises must involve facility emergency response personnel and, as appropriate, emergency response contractors.

• The emergency response exercise program must include field and tabletop exercises involving the simulated accidental release of a regulated substance.

• Under the RMP Amendments rule, the owner or operator is required to consult with local emergency response officials to establish an appropriate frequency for exercises, but at a minimum, the owner or operator must hold a tabletop exercise at least once every three years, and a field exercise at least once every ten years.

• Field exercises must include tests of procedures to notify the public and the appropriate Federal, state, and local emergency response agencies about an accidental release; tests of procedures and measures for emergency response actions including evacuations and medical treatment; tests of communications systems; mobilization of facility emergency response personnel, including contractors, as appropriate; coordination with local emergency responders; emergency response equipment deployment; and any other action identified in the emergency response program, as appropriate.

• Tabletop exercises must include discussions of procedures to notify the public and the appropriate Federal, state, and local emergency response agencies; procedures and measures for emergency response including evacuations and medical treatment; identification of facility emergency response personnel and/or contractors and their responsibilities; coordination with local emergency responders; procedures for emergency response equipment deployment; and any other action identified in the emergency response plan, as appropriate.

• For both field and tabletop exercises, the RMP Amendments rule requires the owner or operator to prepare an evaluation report within 90 days of each exercise. The report must include a description of the exercise scenario, names and organizations of each participant, an evaluation of the exercise results including lessons learned, recommendations for improvement or revisions to the emergency response exercise program and emergency response program, and a schedule to promptly address and resolve recommendations.

• The RMP Amendments rule also contains a provision for alternative means of meeting exercise requirements, which allows the owner or operator to satisfy the requirement to conduct notification, field and/or tabletop exercises through exercises conducted to meet other Federal, state or local exercise requirements, or by responding to an actual accidental release.

EPA proposed to modify the exercise program provisions of § 68.96(b), as requested by state and local response officials, by removing the minimum frequency requirement for field exercises and establishing more flexible scope and documentation provisions for both field and tabletop exercises. Under the proposal, EPA would have retained the final RMP Amendments rule requirement for the owner or operator to attempt to consult with local response officials to establish appropriate frequencies and plans for field and tabletop exercises. The minimum frequency for tabletop exercises would have remained at three years. However, there would have been no minimum frequency specified for field exercises in order to reduce burden on regulated facilities and local responders as explained in rationale in *section IV.D.5.* ''*Costs of Field and Tabletop Exercises*'' in the proposed rule. Documentation of both types of exercises would still have been required, but the items specified for inclusion in exercises and exercise evaluation reports under the RMP Amendments rule would have been recommended, and not required. The content of exercise evaluation reports would have been left to the reasonable judgement of stationary source owners or operators and local emergency response officials. As described in the RMP Amendments rule, if local emergency response officials declined the owner or operator's request for consultation on and/or participation in exercises, the owner or operator would have been allowed to unilaterally establish appropriate frequencies and plans for the exercises (provided that the frequency for tabletop exercises does not exceed three years) and conduct exercises without the participation of local emergency response officials. Likewise, if local emergency response officials and the facility owner or operator cannot agree on the appropriate frequency and plan for an exercise, owners and operators must still ensure that exercises occur and should establish plans to execute the exercises on their own. The RMP Amendments rule does not require local responders to participate in any of these activities, nor would the proposed Reconsideration rule.

The proposal would not have altered the notification exercise requirement of § 68.96(a) or the provision for alternative means of meeting exercise requirements of § 68.96(c). EPA proposed to correct an error in § 68.96(b)(2)(i) related to the frequency of tabletop exercises by proposing to replace the phrase ''shall conduct a field exercise every three years'' with ''shall conduct a tabletop exercise every three years.'' For provisions of the RMP Amendments that were proposed to be retained, the Agency continued to rely on the rationale and responses provided when we promulgated the Amendments. See 81 FR 13674–76 (proposed RMP Amendments rule), March 16, 2016 and 82 FR 4659–67 (final RMP Amendments rule), January 13, 2017. In summary, EPA found that exercising an emergency response plan is critical to ensure that response personnel understand their roles, that local emergency responders are familiar with the hazards at the facility, and that the emergency response plan is appropriate and up-to date. Exercises also ensure that personnel are properly trained and that lessons learned from exercises can be used to identify future training needs. Poor emergency response procedures during some recent accidents have highlighted the need for facilities to conduct periodic emergency response exercises. Other EPA and federal agency programs and some state and local regulations require emergency response exercises. As an alternative, EPA considered whether to fully rescind the field and tabletop exercise provisions of § 68.96(b). Under that alternative proposal, EPA would have retained the notification exercise provision of § 68.96(a) but revised it and § 68.93(b) to remove any reference to tabletop and field exercises, while also modifying the provision in § 68.96(c) for alternative means of meeting exercise requirements so that it applies only to notification exercises.

EPA also considered another alternative—to remove the minimum frequency requirement for field exercises but retain all remaining provisions of the RMP Amendments rule regarding field and tabletop exercises, including the RMP Amendments rule requirements for exercise scope and documentation.

B. Summary of Final Rule

After review and consideration of public comments, EPA is finalizing the changes to the Amendments rule

exercise requirements as proposed. This rule modifies the field exercise frequency provision in § 68.96(b)(1)(i) to remove the minimum frequency for field exercises, retains the required 3-year frequency for tabletop exercises in § 68.96(b)(2)(i); recommends, but does not prescribe the field and tabletop exercise scope requirements in §§ 68.96(b)(1)(ii) and 68.96(b)(2)(ii); and recommends, but does not prescribe the contents of field and tabletop exercise evaluation reports required under § 68.96(b)(3) (the final rule retains the Amendments rule requirement for such reports to be completed within 90 days of each exercise). As proposed, the final rule also corrects an erroneous cross-reference in § 68.96(a) of the final Amendments rule. In this section, the final Amendments rule required the owner or operator of a stationary source with any Program 2 or Program 3 process to conduct an exercise of the source's emergency response notification mechanisms required ''under § 68.90(a)(2) or § 68.95(a)(1)(i), as appropriate.'' However, the final Amendments rule did not contain § 68.90(a)(2); this was an incorrect reference to the notification mechanism requirement for non-responding facilities, which is at § 68.90(b)(3). This error is corrected in the final Reconsideration rule. The final rule retains all other emergency exercise provisions of the Amendments with no changes.

C. Discussion of Comments and Basis for Final Rule Provisions

1. Overview of Basis for Final Rule Provisions

We do not rescind or revise the emergency exercise requirements of the 2017 rule except for limited modifications noted above and discussed below. Except for the provisions we modify in this final rule, we reaffirm the basis for the positions we adopted in 2017 as stated at the time and as elaborated below and in the Response to Comments document. The changes we make today tend to add flexibility for both stationary sources as well as local emergency response organizations. Specifically, we have removed the requirement for sources to conduct field exercises no less frequently than every 10 years, and we have changed certain requirements for the scope of field exercises and after exercise reports to advisory provisions (*i.e.,* ''shall'' to ''should'').

These changes should reduce the cost and staffing burden of these provisions both for sources and for local emergency response organizations. While we have not dollarized the cost savings of these changes, we take this approach to be conservative in our estimation of the benefit of these changes rather than to say there are no cost savings. We believe reducing and managing the burden of these provisions is important because, in order to have the emergency exercise provisions be most effective, we must structure the provisions to facilitate the voluntary participation of local emergency response organizations in these exercises. These organizations are neither directly regulated under the structure of the statute nor are they funded under EPA's budget. In particular, we believe the 10 year frequency requirement for field exercises would have been burdensome on local emergency response organizations with multiple RMP facilities; 9 counties have 50 or more RMP facilities. There would be no practicable way for these response entities to participate in all the exercises within their jurisdiction.

The approach adopted today allows for flexibility in scheduling while retaining the requirement to conduct field exercises. Should sources abuse the flexibility in scheduling field exercises to the extent that they effectively negate the requirement to conduct a field exercise, we reserve the ability to argue that they are in non-compliance. The frequency modification we adopt, along with scope and documentation changes, allow for sources and response organizations to tailor the exercise plans reasonably and practicably for source-specific and community-specific conditions.

2. Comments on Proposed Changes to Exercise Requirements

a. General Comments on Exercise Requirements

Numerous commenters, including industry trade associations, a tribal government, an organization representing local governments, and an association of government agencies, supported the changes to the exercise requirements in the proposed rule. These commenters generally acknowledged the benefits of some level of exercises or emergency response training. Commenters described benefits such as promoting understanding of roles and responsibilities, assisting owners or operators in determining if the emergency response plan is adequate, and providing the opportunity to discover shortcomings and incorrect assumptions in response plans. These commenters indicated that the proposed revisions would provide needed flexibility to allow better coordination with local responders and ease the compliance burden on regulated facilities and local responders. One industry trade association provided additional reasons for allowing increased flexibility, including the range of resources available to local emergency response providers, the range in types of hazards at individual facilities, and different levels of interest by communities and local response officials.

On the other hand, several commenters, including a private citizen, a Federal agency, a professional organization, and advocacy groups, opposed the proposed changes to the emergency response exercise requirements. One commenter stated that implementing the proposed changes would reduce the safety of chemical facilities and make them more incident prone. Some commenters, including a Federal agency and a professional organization, expressed concern that the proposed changes would negatively impact the preparedness of emergency responders because responders would have less opportunity to practice skills needed in an emergency. An advocacy group stated that EPA's proposal to weaken the exercise requirements is arbitrary and capricious because while the Agency claimed its rationale for the changes was to reduce the regulatory burden on regulated facilities and local responders, the Agency did not project any cost savings from the change. The commenter argued that weakening a requirement that the Agency found had concrete benefits, without citing any benefits from the change, is arbitrary and capricious. The commenters also stated that EPA's alternative proposal to fully rescind the exercise requirements is even more arbitrary that the proposed modifications, reasoning that removing or weakening the exercise provisions is at odds with EPA's record findings and violates the statutory mandate to provide for adequate response to chemical disasters.

EPA Response: EPA agrees with commenters that the exercise provisions are important to enhance sources' and communities' ability to effectively respond to emergencies. The Agency believes removing the minimum exercise frequency requirements for field exercises and modifying the exercise scope and documentation requirements as proposed will still accomplish this goal while providing more flexibility to regulated facilities and local responders to plan and schedule exercises and reducing unnecessary regulatory burdens.

EPA disagrees that changing the exercise requirements by removing the minimum required frequency for field exercises and providing increased flexibility for the scope and documentation of field and tabletop exercises will make facilities more incident-prone. Emergency response exercises are aimed at reducing the consequences of accidents that may occur rather than preventing accidents from occurring. Therefore, changes to these requirements should have little or no effect on a facility's propensity for incidents. EPA also disagrees that the changes will result in responders having too few opportunities to practice their skills. The Agency believes that regulated facilities and local responders are in the best position to determine how much practice they need in order to be prepared to effectively respond to accidental releases. Under the final rule, EPA has largely retained the Amendments rule's exercise provisions, which allow facilities and local responders to work together to establish a schedule for emergency response exercises that best suits their own circumstances. While the final rule removes a required minimum frequency for field exercises, it retains the required 3-year minimum frequency for tabletop exercises. Therefore, the final rule ensures that regulated facilities and local responders will still have regular opportunities to practice their skills during lower-intensity tabletop exercises, while allowing regulated facilities and local responders to schedule the more resource-intensive field exercises at a frequency that best balances their need for field response training with the larger drain on facility and community resources associated with such exercises.

EPA disagrees that its decision to remove the required minimum frequency for field exercises and make the exercise scope and documentation requirements more flexible is arbitrary or capricious or violates statutory requirements. The Clean Air Act contains no requirement that EPA impose an exercise requirement under section 112(r), and the pre-Amendments rule contained no such requirement. As EPA stated in the proposed Reconsideration rule and RIA, EPA retained its Amendments rule estimate of exercise costs ''as a conservative approach to estimating exercise costs under this proposal. By removing the minimum frequency requirement for field exercises and encouraging facilities to conduct joint exercises and using exercises already conducted under other requirements to meet the requirements of the RMP rule, EPA expects that the total number, and therefore costs, of exercises held for compliance with the rule is likely to be lower than this estimate.'' [103] EPA's decision not to project a specific amount of cost savings associated with these changes does not imply the Agency believes that there will be no actual savings. In eliminating the required minimum frequency for field exercises, EPA was particularly concerned about the burden of exercises on communities with numerous RMP facilities. For example, nine U.S. counties contain over 50 RMP facilities.[104] While not all of these facilities are responding facilities that will be required to comply with the emergency field exercise requirements, many of them are. If EPA were to maintain a 10-year minimum frequency requirement for field exercises, local emergency responders in these counties, and others with large numbers of RMP facilities, may have no practical way to effectively participate in all required field exercises conducted by responding RMP facilities in the county. While the final rule does not require local responders to participate in facility exercises, EPA believes it is in the best interest of regulated facilities and their surrounding communities for local responders to participate in exercises whenever possible, and therefore the Agency does not want to establish a minimum frequency requirement that is practically unachievable for some communities, particularly those communities with the greatest numbers of regulated facilities. EPA also believes that the final rule's modification to the exercise documentation requirements will give increased flexibility to owners and operators in meeting those requirements, making them easier to comply with.

b. Frequency of Field Exercises

Many commenters, including industry trade associations, facilities, and a Tribal government, supported the proposed modification of field exercise frequency requirements. These commenters generally stated that removing the required minimum frequency for field exercises will decrease the cost and burden associated with the exercises.

Many other commenters, including a Federal agency, a State government agency, Tribal governments, a State elected official, advocacy groups, industry trade associations, and a professional organization, opposed the removal of the minimum frequency for field exercises. A State elected official stated that EPA may not lawfully revise field exercise frequency requirements until it has additional information showing the costs were not accurately reflected in the Amendments rule and that the costs outweigh the benefits. A State elected official stated that the proposed modification of the minimum field exercise frequency would not guarantee the prepared and coordinated responses to catastrophic releases necessary to protect public health and safety. Several commenters, including Tribal governments and an industry trade association supported the 10-year minimum exercise frequency provided in the Amendments rule, asserting that providing some minimum frequency is important. An advocacy group stated that the proposed modification of field exercise frequency requirements would hurt the effectiveness of first responders and facilities during a disaster. A Federal agency stated that training in a classroom or via computer-based training modules is not an effective substitute for actual exercises, especially when combined with a debrief and lessons learned. The agency expressed concern that removal of the field exercise frequency requirement would negatively impact the coordination and identification of planning gaps and improvements with local response authorities. A State government agency stated that without a minimum field exercise frequency, exercises can be considered optional. A State government agency expressed that field exercises should occur annually to allow hands-on practice and mitigate the impacts of turnover. The commenter stated that all personnel should participate in exercises, and facilities should invite responding agencies to participate (with the understanding that they may not be able to every year). The commenter recommended that EPA revise the emergency response requirements to be consistent with N.J. Admin. Code § 7:31–5.2(b)2. An advocacy group suggested a minimum field exercise frequency of every two or three years due to turnover of facility employees.

EPA Response: EPA agrees with commenters who indicate that removing the minimum field exercise frequency requirement will reduce the burden of exercises on facilities and local responders and provide increased flexibility to plan and schedule

[103] See 83 FR 24874 and proposed rule RIA, pp 48.

[104] Based on RMP National Database, Docket ID: EPA–HQ–OEM–2015–0725–0909. Counties include Harris, Dallas, and Tarrant counties in Texas, Los Angeles, Kern, Fresno, and Tulare counties in California, Cook county in Illinois, and Maricopa county in Arizona.

exercises. Staffing capabilities are relevant to whether a requirement is practicable.

EPA disagrees that the Agency must demonstrate that the costs of exercises outweigh their benefits in order to revise the exercise requirements. This claim is not supported by the CAA, and in any case, EPA was unable to quantify the benefits of specific provisions of the Amendments rule, so it would not be possible to quantify the change in benefits, if any, resulting from the change. EPA is making this change because the Agency believes it to be a better and more practicable approach toward implementing the field exercise requirement, as it will allow facilities and local communities greater flexibility to balance the need for responder training with the potentially high costs of field exercises, particularly in areas containing many RMP facilities and areas where response resources are more limited. EPA has decided to leave greater flexibilities for the timing of field exercises based in part on our belief that such an approach will, in the absence of federal funding, maximize the voluntary participation of local emergency responders in field exercises.

EPA also disagrees that there is any specific minimum exercise frequency that can ''guarantee'' prepared and coordinated responses to chemical accidents. However, EPA believes that allowing facilities and local responders greater flexibility to plan and schedule exercises will not harm, and may improve, facility and community preparedness for accidents, by allowing facilities and communities to better balance training needs with available resources. As indicated above, in removing the minimum frequency requirement for field exercises, EPA is particularly concerned about the burden of exercises on communities with numerous RMP facilities and the Agency does not want to establish a minimum frequency requirement that is practically unachievable for some communities, particularly those communities with the greatest numbers of regulated facilities.

EPA agrees that training in a classroom or via computer-based training modules is not an effective substitute for actual exercises, and the final rule therefore retains a requirement for all responding facilities with program 2 and/or 3 processes to implement a field exercise program. EPA disagrees that field exercises can be considered optional under the final rule. All responding facilities are still required to perform field exercises. When EPA finalized a 10-year minimum frequency requirement for field exercises under the Amendments rule, the Agency expressed concern that an important reason for such a requirement was to avoid allowing sources to schedule field exercises so infrequently that the source practically exempted itself from the exercise program requirements.[105] While the final Reconsideration rule no longer eliminates this concern, EPA believes that responding sources are unlikely to attempt such an approach. The final rule requires responding sources to have developed plans for conducting emergency response exercises within 4 years of the final rule (see later discussion in section IX. Revised Compliance Dates). If a source schedules field exercises at some extremely long periodicity, repeatedly cancels or reschedules exercises with no justification, or provides no evidence of having implemented a field exercise program, EPA can still take appropriate enforcement actions under the rule.

EPA disagrees that field exercises should be required on an annual, biennial, or triennial basis. Requiring field exercises to be held at shorter minimum frequencies such as these would significantly increase compliance costs and staffing demands for both regulated facilities and local responder agencies, which is contrary to one of EPA's main objectives in the Reconsideration rule. Such an approach would discourage the participation of local emergency responders in field exercises, which is voluntary under both the RMP Amendments and this Reconsideration. The Agency is retaining the Amendments rule requirement for responding facilities to perform tabletop exercises at least every three years, and these, along with field exercises, should mitigate the knowledge loss associated with employee turnover. Responding facilities must invite local response officials to participate in both field and tabletop exercises, but the scope of each exercise will be decided by the owner or operator, in consultation with local response officials. Under the final rule, the number of personnel participating in exercises will depend on the exercise scenario, its scope, and the resources available to regulated facilities and local responders.

c. Frequency of Tabletop Exercises

Several commenters, including industry trade associations, facilities, and a Tribal government, supported the proposed tabletop exercise frequency requirements. An industry trade association suggested that EPA require tabletop exercises less frequently than every three years, suggesting that EPA require responding facilities to perform one tabletop exercise between field exercises or base the frequency of exercise requirements on a facility's particular circumstances (*e.g.,* history of catastrophic releases or RMP noncompliance, quantity of regulated chemicals). A State government agency expressed that tabletop exercises should occur routinely and that once every three years is not sufficient because personnel turnover is often more frequent than every three years. An industry trade association suggested that EPA allow local responders and facilities, especially non-responding facilities, to determine the best frequency for tabletop exercises.

EPA Response: EPA acknowledges commenters' arguments for more or less frequent tabletop exercises. However, the final rule retains the Amendments rule requirement for tabletop exercise frequency, which requires responding facilities with any Program 2 or Program 3 process to consult with local response officials to establish an appropriate frequency for tabletop exercises but hold such exercises at a minimum of at least once every three years. EPA believes that a three-year minimum frequency for tabletop exercises, combined with field exercises done at a frequency established by the owner or operator in consultation with local responders, should ensure that facility personnel involved in responding to emergencies receive sufficient training in response to accidental releases, without overtaxing the resources of facilities and local responders. EPA believes that allowing owners and operators to work together with local response officials to establish exercise plans, scope, and schedules should allow each facility to adapt its exercise program to the particular circumstances of the facility.

d. Scope and Documentation Requirements

Many commenters, including industry trade associations and facilities, supported the proposed changes to the exercise scope and documentation requirements. An industry trade association stated that the proposed changes to exercise and evaluation report scope will result in a significant reduction in regulatory burden and will allow emergency response personnel to make decisions about the type of exercise activities that will yield benefits. A few industry trade associations asserted that the proposed evaluation report requirements would

[105] See Amendments rule Response to Comments, pp. 181.

encourage cooperation between facility owners and local emergency response officials by allowing them to reach agreement on exercise evaluation report content. A few commenters, including industry trade associations, stated that the proposed flexibility for exercise scope will allow owners and operators to tailor exercises based on each facility.

Other commenters either opposed making the scope of exercises and exercise evaluation reports optional or objected to certain recommended data elements. A State government agency and an advocacy group opposed making the scope of exercises and evaluation reports optional. A State government agency stated that ''should'' is inappropriate in a rule and asserted that the listed activities are standard and reasonable requirements. An industry trade association recommended that the proposed items recommended for inclusion in evaluation reports be considered for rescission, asserting that owners or operators would not be able to set a schedule for report recommendations to external participants. An industry trade association recommended that EPA either rescind the proposed exercise scope provisions or revise them to clarify which emergency response equipment procedures must be tested/discussed and to clarify the requirement to include in exercises any other action identified in the emergency response plan, as appropriate. Industry trade associations and an advocacy group opposed the inclusion of the names and organizations of each participant as recommended data elements, for reasons such as burden on facilities, risks to individuals' safety, and providing no perceivable benefit.

EPA Response: EPA agrees that making the scope and documentation provisions non-mandatory will reduce regulatory burden and allow emergency response personnel flexibility to decide on an exercise scope and exercise documentation that will be most appropriate for the facility and community. EPA disagrees that the exercise scope provisions should be rescinded, made mandatory, or need greater clarity regarding which equipment procedures must be tested or what other actions identified in the emergency response plan should be included during exercises. EPA's reasons for only recommending the descriptions of information for the exercise scope and documentation were explained in the proposal—in short, the Agency believes that making the listed information discretionary will allow owners and operators to coordinate with local responders to design exercises that are most suitable for their own situations. EPA disagrees that using ''should'' in a regulation is always inappropriate, or that there is a recognized standard set of activities that must be completed during all exercises. Different facilities use a variety of types of emergency response equipment and may have many different actions specified in their emergency response plans. EPA cannot anticipate all variants of equipment and response procedures that might be appropriately exercised by every facility subject to the emergency exercise requirements. Therefore, EPA has finalized language which provides general guidelines for exercise scope, without mandating specific actions or procedures for exercises.

Regarding whether to include the names and organizations of each participant in exercise evaluation reports, EPA disagrees that there is no benefit of such information. Under the final rule, the frequency of both field and tabletop exercises will mainly be left to the discretion of the owner or operator, in collaboration with local response officials. In some cases, exercises may occur infrequently, and EPA believes that maintaining a written record including, among other things, the identification and affiliation of exercise participants could be useful in planning future exercises. EPA disagrees that collecting this information would be unduly burdensome. Owners and operators can collect this information using low-cost methods, such as sign-in sheets or registration websites. Local emergency response organizations participating in exercises will also likely be able to assist the owner or operator in collecting and providing this information. Nevertheless, EPA notes that under the final rule, the items listed for inclusion in exercise evaluation reports are not mandatory but suggested. Therefore, while EPA encourages owners and operators to include the names and organizations of exercise participants in exercise evaluation reports, they are not required to do so. Similarly, while EPA encourages owners and operators to include in the report recommendations for improvements or revisions to the emergency response exercise program and emergency response program, and a schedule to promptly address and resolve recommendations, under the final rule it is not mandatory to do so.

e. Retention of Requirement To Consult With Local Response Officials to Establish Exercise Frequencies and Plans

Several commenters, including industry trade associations and a local agency, supported retaining the requirement to consult with local response officials regarding exercise frequency and planning. An industry trade association stated that the requirement to consult with local response officials provides flexibility while still requiring consultation. Another industry trade association stated that exercises are most valuable when all entities mentioned in emergency response plans participate in drills, but also asked EPA to recognize in the preamble to the final rule that facilities will not be penalized for lack of participation by LEPCs or emergency responders in drills. A few commenters, including an industry trade association and a State elected official, opposed the requirement to consult with local response officials regarding exercise frequency and planning. An industry trade association stated that power plants should be exempt from this requirement due to their limited scheduling flexibility and should be allowed to develop their own schedules for field exercises, without having to agree on a schedule with local officials. This trade association recommended that EPA allow facilities to request from the regulatory authority an exemption from coordinating that facility's field and tabletop exercises with local response officials, stating that an exemption from the requirement to attempt to consult with local response officials would allow companies that have not been successful in gaining the cooperation of local response officials to suspend their efforts. The commenter added that such an exemption could be in perpetuity or could be subject to an expiration date. An industry trade association stated that the proposed emergency coordination requirements, including the requirement to consult on schedules and plans for exercises, are duplicative and conflict with other statutes and regulations.

EPA Response: The final rule retains the requirement to consult with local response officials to establish appropriate frequencies and plans for field and tabletop exercises. EPA disagrees that power plants should be exempt from this requirement. EPA acknowledges that some facilities, such as power plants and other utilities, may have less scheduling flexibility than other facilities. However, EPA believes that local response officials should still be involved in planning, scheduling, and conducting field and tabletop exercises at such facilities whenever possible, as they will likely be key players in the event of an actual incident, particularly an incident with

offsite impacts. By involving local public responders in exercises, responders may be able to test or simulate important offsite emergency response actions that are usually managed by local public emergency response officials, such as community notification, public evacuations, and sheltering in place. The final rule's removal of the required minimum frequency for field exercises should make it easier for owners and operators to schedule field exercises involving local responders. While the final rule retains the Amendments rule's 3-year minimum frequency requirement for tabletop exercises, it does not require the first tabletop exercise to be held until up to seven years after the effective date of the final rule (*i.e.,* the final rule requires responding sources to have exercise plans and schedules in place within four years of the effective date of a final rule (§ 68.10(d)), but provides an additional three years before the first tabletop exercise must actually be completed (§ 68.96(b)(2)(i)). EPA believes this time frame should give all responding facilities sufficient time to consult with local response officials to plan and schedule exercises.

While the final rule retains the requirement for owners and operators to coordinate with local response officials on exercise frequencies and plans, and to invite local officials to participate in exercises, EPA emphasizes that the final rule does not require local responders to participate in any of these activities. EPA understands that it may not always be possible for such participation to occur, for several reasons. First, owners and operators cannot compel local responders to participate in exercises or exercise planning. As EPA has previously stated,[106] in the past some sources have been unable to locate local response organizations who are able or willing to be involved in exercise activities. EPA also acknowledges that in areas with few public response resources or high numbers of responding facilities, requests from owners and operators for local responders to participate in exercises and exercise planning could overburden local response organizations. Therefore, if the owner or operator is unable to identify a local emergency response organization with which to develop field and tabletop exercise schedules and plans and participate in exercises, or the appropriate local response organizations are unable or unwilling to participate in these activities, then the owner or operator may unilaterally establish appropriate exercise frequencies and plans, and if necessary hold exercises without the participation of local responders. In such cases, there is no need for the owner or operator to request from regulatory authorities an exemption from the coordination requirement. The owner or operator should document its attempts to consult with local responders and continue to make reasonable ongoing efforts to consult with appropriate local public response officials for purposes of participation in emergency response and exercises coordination and participation.

Lastly, while the final rule requires the owner or operator to coordinate with local response officials on exercise schedules and plans, this does not mean that the owner or operator must accede to every recommendation made by local response officials. In most case, EPA expects that owners and operators and local response officials will be able to reach agreement on reasonable and practicable schedules and plans for field and tabletop exercises. However, in the event of a disagreement, it is the owner or operator that must comply with the exercise requirement and who therefore must have the final say on exercise schedules and plans.

EPA disagrees that the final rule's exercise requirements are duplicative of other exercise requirements or conflict with other statutes and regulations. The commenter provided no examples of any such conflicts, and there are no other existing exercise requirements that apply to all responding RMP facilities. Where exercise requirements under other Federal, state, or local laws do apply to certain RMP facilities, those facilities may use such exercises to meet the exercise requirements of the final rule, provided those exercises involve the simulated release of a regulated substance or involve the same actions that a regulated facility would take to respond to such a release.

f. Retention of Notification Exercise Requirements

Several commenters, including industry trade associations, a State government, a facility, and Tribal governments, supported the maintenance of the notification exercise requirements. A Tribal government encouraged EPA to require facilities to conduct notification exercises on a frequent enough basis to ensure that emergency contact information is accurate, and that response resources and capabilities are in place. A State government agency recommended that the notification exercise requirements be applicable to both non-responding and responding facilities. An industry trade association stated that all facilities should already be conducting notification exercises under current rules, and thus the notification exercise requirements are not necessary. The commenter also asserted that EPA's proposal added ambiguity to the notification exercise requirement by specifying that facilities are to conduct notification exercises ''as appropriate,'' and that if EPA retains the requirement, the Agency should clarify that it affords facilities the discretion to determine the appropriateness of exercises.

EPA Response: The final rule retains the Amendments rule notification exercise requirement, with no changes. Almost all commenters agreed with retaining this requirement. The notification exercise requirement applies to all facilities (*i.e.,* both responding and non-responding facilities) with any Program 2 or Program 3 process. EPA disagrees that there is any pre-existing requirement for notification exercises that applies to all RMP facilities with Program 2 or Program 3 processes; however, if a previously existing requirement applies to certain facilities, those facilities may use compliance with that requirement to comply with the final rule requirement, provided the owner or operator maintains a written record of each such notification exercise conducted over the last five years, as required under § 68.96(a). EPA also disagrees that the proposed rule added ambiguity to the notification exercise requirement, or that the meaning of the phrase ''as appropriate'' is unclear. Where the rule uses the phrase ''as appropriate,'' it clearly refers to the immediately preceding regulatory text. The proposed rule requires the owner or operator of a stationary source with any Program 2 or Program 3 process to conduct an exercise of the stationary source's emergency response notification mechanisms required ''under § 68.90(b)(3) or § 68.95(a)(1)(i), as appropriate.'' § 68.90(b)(3) is the requirement for non-responding facilities to have an emergency response notification mechanism in place. § 68.95(a)(1)(i) is the requirement for responding facilities to have procedures for informing the public and Federal, state, and local emergency response agencies about accidental releases. Therefore, ''as appropriate'' means that non-responding facilities should exercise the mechanism required under 68.90(b)(3) and responding facilities should exercise the procedures required under § 68.95(a)(1)(i).

[106] See Amendments rule RTC, page 185.

g. Comments on Alternative Proposal To Fully Rescind Field and Tabletop Exercise Provisions

Several commenters, including industry trade associations, a local agency, multiple State elected officials and a facility, supported the alternative to fully rescind field and tabletop exercise provisions. A facility and an industry trade association supported the proposed alternative because the exercise requirements impose significant burdens. An industry trade association supported the alternative, reasoning that neither the Amendments rule nor this proposed Reconsideration rule provided any documented justification for EPA to impose these additional requirements on top of other existing regulations. An industry trade association and multiple State elected officials asserted that the Amendments rule exercise requirements should be removed because they would overburden response organizations and facilities. These commenters also stated that EPA should not establish its own criteria for notifications and exercises, which are unnecessary and potentially inconsistent with existing requirements. These commenters stated that the NIMS provides a consistent national framework and approach to coordination of emergency preparedness, prevention, and response, and notifications and exercises should be conducted through this system and consistent with it. These commenters also stated that during an incident, operations should be conducted through the incident command structure established under NIMS, rather than by creating an ''uncoordinated overlay'' to the existing incident command structure, as the RMP Amendments rule does.

Several commenters, including a State elected official, industry trade associations, and a Tribal government, opposed the alternative to fully rescind field and tabletop exercise provisions. A State elected official stated that the alternative would not guarantee the prepared and coordinated responses to catastrophic releases necessary to protect public health and safety (1633). A State elected official opposed the alternative because the commenter stated that EPA has not provided an explanation for why previous reasons for rejecting the elimination of exercise requirements provided in the Amendments rule are no longer valid.

EPA Response: The final rule does not adopt the alternative proposal to fully rescind the field and tabletop exercise provisions. While EPA is conscious of the potentially high burdens associated with exercises, EPA reaffirms its view that both field and tabletop exercises are an important component of an emergency response program. EPA believes that the changes made to the exercise provisions in the final rule will reduce the burden of exercises on responding facilities by allowing facilities greater flexibility in scheduling field exercises and determining the scope of and documentation for exercises. The additional flexibilities in terms of frequency of field exercises and scope of exercises also will lessen the burden on local emergency response organizations to participate in exercises; facilitating such voluntary participation will make the exercises more effective. EPA disagrees that the final rule's requirement for exercises conflicts with the NIMS. See *section* VI. ''Modified Local Coordination Amendments'' for a further explanation of why EPA believes that nothing in the RMP rule conflicts with the NIMS.

h. Comments on Alternative Proposal To Remove the Minimum Frequency Requirement for Field Exercises, but Retain All Remaining RMP Amendments Provisions Regarding Field and Tabletop Exercises

Several industry trade associations opposed the alternative proposal to remove the minimum frequency requirement for field exercises but retain all remaining provisions of the RMP Amendments rule regarding field and tabletop exercises. An industry trade association opposed the alternative because it would not allow for flexibility in determining the scope of exercises. Another industry trade association opposed the alternative because it would not allow for flexibility in documentation requirements, stating that if a facility is captured in a community response plan, no further documentation should be needed. Another industry trade association stated that the proposed alternative would decrease facility flexibility in planning and conducting exercises.

EPA Response: The final rule does not adopt the alternative proposal to remove the minimum frequency requirement for field exercises but retain all remaining provisions of the RMP Amendments rule regarding field and tabletop exercises. EPA agrees with commenters that stated the alternative would not offer sufficient flexibility to schedule and plan exercises. EPA believes the changes made to the exercise provisions in the final rule will reduce the burden of exercises on responding facilities and local responders by allowing facilities and responders greater flexibility in scheduling field exercises and in deciding on the scope of and documentation for exercises.

i. Meeting Exercise Requirements Through Alternative Means

Several commenters, including industry trade associations, supported retaining the provision allowing for exercise requirements to be met through alternative means. An industry trade association suggested that EPA clarify that prior exercises that ''substantially meet'' the exercise requirements satisfy RMP requirements, such as exercises conducted under the National Preparedness for Response Exercise Program (PREP) Guidelines, stating that such a provision would help conserve resources among facilities and oversight agencies. The commenter also requested that EPA clarify in the final rule that companies can make the determination that an alternative meets the requirements of the regulation without prior approval from regulatory authorities. An industry trade association suggested that for clarity EPA should replace the term ''field exercise'' with one of the three types of operations-based exercises described under the Homeland Security Exercise and Evaluation Program: Drills, functional exercises, or full-scale exercises.

EPA Response: EPA agrees that the provision allowing exercise requirements to be met through alternative means should be retained, and therefore the final rule retains this provision. Exercises conducted to satisfy other exercise requirements or conducted voluntarily, or an actual response by the source to an accidental release, will also satisfy the final rule's exercise requirements if they meet the requirements of § 68.96. In order to substantially meet the exercise requirements of the final rule, a notification exercise must test the mechanisms or procedures the facility has established to notify the public and local emergency responders about the release of a regulated substance and be documented in a written record that is retained for five years. A field or tabletop exercise must involve the simulated accidental release of a regulated substance or involve the same actions (for a tabletop exercise, discussion of actions) that a regulated facility would take to respond to such a release. Field and tabletop exercises must also involve facility emergency response personnel and emergency response contractors as appropriate and include response coordination with local public emergency response officials, who would also be invited to

participate in the exercise. Field and tabletop exercises must also include preparation of an evaluation report within 90 days of the exercise. The final rule does not require the owner or operator to obtain outside approval to determine that an alternative exercise meets the requirements of the regulation.

Exercises conducted under the PREP Guidelines are intended for facilities required to comply with the federal oil pollution response exercise requirements of the Oil Pollution Act of 1990. For such an exercise to meet the requirements of the RMP rule, the owner or operator must ensure that the exercise includes the items required under § 68.96. Since not all of these items (*e.g.,* simulated accidental release of an RMP-regulated substance) would be a typical feature of an oil spill response exercise, the owner or operator would likely need to modify the oil spill response exercise scenario to incorporate any required features of § 68.96 that were not already included in the scenario.

EPA disagrees that the Agency should replace the term ''field exercise'' with one of the three types of operations-based exercises described in the Homeland Security Exercise and Evaluation Program (HSEEP).[107] The term field exercise is a general term that indicates the exercise involves mobilization of personnel and equipment. In this sense, field exercises are analogous to the general category of operations-based exercises, and EPA believes any of the three types of operations-based exercises described in the HSEEP can potentially meet the field exercise requirements of the final rule.

j. Tiered Approach To Exercise Requirements

An industry trade association recommended that EPA consider a tiered approach to exercise requirements so that they apply most stringently to the facilities that are at risk for having a catastrophic release. The commenter suggested several potential options for a tiered approach, including by quantity of ammonia, by industry sectors with a history of catastrophic events and/or RMP noncompliance, by North American Industrial Classification System codes.

EPA Response: EPA disagrees that the Agency should adopt a tiered approach to exercise requirements that applies more stringent requirement to facilities that are at risk for a catastrophic release, as demonstrated by larger quantities of regulated substances or a history of accidents, etc. EPA did not propose such alternatives. The Agency views field and tabletop exercises as important components of an emergency response program for all responding stationary sources, because they allow these sources to implement their emergency response plans under simulated release conditions, test their actual response procedures and capabilities, identify potential shortfalls, and take corrective action. EPA also continues to believe both field and tabletop exercises will provide essential training for facility personnel and local responders in responding to accidental releases and will ultimately mitigate the effects of such releases at RMP facilities. Therefore, in the final rule, EPA is requiring all responding stationary sources to perform both field and tabletop exercises.

k. Joint Exercises

An advocacy group disagreed with the elimination of joint exercise requirements and associated reporting requirements. An industry trade association suggested that EPA consider ways in which exercise requirements could be revised to recognize sharing of resources among neighboring facilities in conducting exercises.

EPA Response: The Amendments rule contained no requirement for joint exercises, and the final rule does not incorporate one. However, in the Response to Comments for the Amendments rule, EPA encouraged owners and operators of neighboring RMP facilities to consider planning and conducting joint exercises to meet the rule's requirements.[108] EPA reaffirms this view—as commenters have noted, RMP facilities participating in mutual aid agreements with other nearby facilities already coordinate response actions and resources with those facilities, and EPA believes conducting joint exercises among these facilities will more accurately simulate their behavior in the event of an actual release event, and further enhance the ability of these facilities and surrounding communities to effectively respond to accidental releases. The benefits of joint exercises can also include improved identification and sharing of response resources, enhanced training for facility personnel and local responders, improvements in facility procedures and practices resulting from information sharing, and other benefits.

l. Exercise Evaluation Report Time Frame

Several industry trade associations requested that EPA extend the time required for preparing evaluation reports, asserting that reports may take longer than 90 days to document.

EPA Response: EPA has retained the Amendments rule requirement for field and tabletop exercise evaluation reports to be completed within 90 days. EPA disagrees that this timeframe should be extended to some longer period. Unlike incident investigations, where report completion may require extensive and time-consuming evidence collection and forensic analysis, the basic elements required to be documented in an exercise evaluation report should be known relatively quickly after the conclusion of the exercise. Also, as the final rule only recommends a specific list of items to be included in exercise evaluation reports, the owner or operator now has additional flexibility to decide on the appropriate contents of exercise reports, and this should make it easier to meet the 90-day requirement.

VIII. Revised Emergency Response Contacts Provided in Risk Management Plan

A. Summary of Proposed Rulemaking

EPA proposed to modify the emergency response contact information required to be provided in a facility's RMP. In § 68.180(a)(1) of the RMP Amendments rule, EPA required the owner or operator to provide the name, organizational affiliation, phone number, and email address of local emergency planning and response organizations with which the stationary source last coordinated emergency response efforts. EPA proposed to modify this requirement to read: ''Name, phone number, and email address of local emergency planning and response organizations . . . .'' EPA also proposed to update a CFR paragraph cross-reference in this section referring to the emergency response coordination provision for Program 1 sources, now in § 68.10(g)(3).

B. Summary of Final Rule

EPA has finalized these changes as proposed.

C. Discussion of Comments and Basis for Final Rule Provisions

EPA received relatively few comments on these issues. A few industry trade associations stated that

[107] See DHS, Homeland Security Exercise and Evaluation Program (HSEEP), April 2013, pp. 2–5, available in the rulemaking docket. HSEEP discusses two categories of exercises: Discussion-based exercises which include seminars, workshops, tabletop exercises, and games; and Operations-based exercises, which include drills, functional exercises and full-scale exercises.

[108] See Amendments rule Response to Comments, pp. 189–190.

they supported the proposed change to the reporting of emergency contact information as required by § 68.180(a)(1) and argued that availability of this information could create an increase of security and safety concerns. An industry trade association argued that providing information about individuals would put the safety of the named individuals at risk. In contrast, a joint submission from multiple advocacy groups and other commenters argued that EPA's concerns with national security risks were not sufficient to limit emergency response organizations' contact information.

EPA Response: EPA agrees with commenters that the revised language alleviates a potential security concern. As EPA stated in the proposed rule, this change would clarify that the Agency is only requiring reporting of organization-level information about local emergency planning and response organizations in a facility's RMP rather than information about individual local emergency responders. EPA believes there is no benefit to requiring the owner or operator to identify specific emergency response personnel in their RMP. To the extent local emergency responders need the identity of specific individuals for purposes of emergency planning, they can obtain this information during annual coordination meetings.

IX. Revised Compliance Dates

A. Summary of Proposed Rulemaking

In the RMP Amendments rule, EPA required compliance with the new provisions as follows:

- Required compliance with emergency response coordination activities by March 14, 2018;
- Required compliance with the emergency response program requirements of § 68.95 within three years of when the owner or operator initially determines that the stationary source is subject to those requirements;
- Required compliance with other major provisions (*i.e.,* third-party compliance audits, root cause analyses and other added requirements to incident investigations, STAA, emergency response exercises, and information availability provisions), unless otherwise stated, by March 15, 2021; and;
- Required the owner or operator to correct or resubmit their RMP to reflect new and revised data elements promulgated in the RMP Amendments rule by March 14, 2022.

EPA did not specify compliance dates for the other minor changes to the Subpart C and D prevention program requirements. Therefore, under the RMP Amendments rule, compliance with these provisions was required on the effective date of the RMP Amendments rule. In the RMP Reconsideration rule, EPA proposed to extend compliance dates as follows:

- For emergency response coordination activities, EPA proposed to require compliance by one year after the effective date of a final rule.
- For emergency response exercises, EPA proposed to require owners and operators to have exercise plans and schedules meeting the requirements of § 68.96 in place by four years after the effective date of a final rule. EPA also proposed to require owners and operators to have completed their first notification drill by five years after the effective date of a final rule, and to have completed their first tabletop exercise by 7 years after the effective date of a final rule. Under this proposal, there would be no specific compliance date specified for field exercises, because field exercises would be conducted according to a schedule developed by the owner or operator in consultation with local emergency responders.
- For corrections or resubmissions of RMPs to reflect reporting on new and revised data elements (public meeting information and emergency response program and exercises), EPA proposed to require compliance by five years after the effective date of a final rule.
- For third-party audits, STAA, root cause analyses and other new provisions of the RMP Amendments rule for incident investigations and chemical hazard information availability and notice of availability of information, as well as other minor changes to the Subpart C and D prevention program requirements (except for (1) the two changes that would revise the term ''Material Safety Data Sheets'' to ''Safety Data Sheets (SDS)'' in §§ 68.48 and 68.65, (2) the use of the term ''report(s)'' in place of the word ''summary(ies)'' in § 68.60, and (3) the requirement in § 68.60 for Program 2 processes to establish an incident investigation team consisting of at least one person knowledgeable in the process involved and other persons with experience to investigate an incident), EPA proposed to rescind these provisions. If the final rule did not rescind these provisions, EPA proposed to require compliance with any of these provisions that are not rescinded, by four years after the effective date of a final rule.
- For the public meeting requirement in § 68.210(b), EPA proposed to require compliance by two years after the effective date of a final rule.
- EPA proposed to retain the requirement to comply with the emergency response program requirements of § 68.95 within three years of when the owner or operator initially determines that the stationary source is subject to those requirements.

For provisions of the RMP Amendments that EPA proposed to retain, EPA relied on the rationale and responses provided when EPA promulgated the Amendments. See 81 FR 13686–91 (proposed RMP Amendments rule), March 14, 2016 and 82 FR 4675–80 (final RMP Amendments rule), January 13, 2017.

For the emergency coordination requirements, EPA found that one year was sufficient to arrange and document coordination activities, three years was needed to comply with emergency response program requirements once a source determined that those requirements applied, and five years was necessary to update risk management plans. Three years to develop an emergency response program is necessary for facility owners and operators to understand the requirements, arrange for emergency response resources and train personnel to respond to an accidental release. EPA stated that compliance with emergency coordination requirements could require up to one year because some facilities who have not been regularly coordinating will need time to get familiar with the new requirements, while having some flexibility in scheduling and preparing for coordination meetings with local emergency response organizations whose resources and time for coordination may be limited. EPA also argued that a shorter timeframe may be difficult to comply with, especially for RMP sources whose local emergency organization has many RMP sources in their jurisdiction who are trying to schedule coordination meetings with local responders at the same time.

For the emergency response exercises, EPA proposed a four year compliance time for developing exercise plans and schedules, an additional year for conducting the first notification exercise, and an additional three years for conducting the first tabletop exercise, because EPA believed that additional time is necessary for sources to understand the new requirements for notification, field and tabletop exercises, train facility personnel on how to plan and conduct these exercises, coordinate with local responders to plan and schedule exercises, and carry out the exercises. Additional time would also provide owners and operators with flexibility to

plan, schedule, and conduct exercises in a manner which is least burdensome for facilities and local response agencies. Also, EPA planned to publish guidance for emergency response exercises and once these materials are complete, owners and operators would need time to familiarize themselves with the materials and use them to plan and develop their exercises. If local emergency response organizations are to be able to participate in the field and tabletop exercises, sufficient time is needed to accommodate any time or resource limitations local responders might have not only for participating in exercises, but for helping to plan them.

For the public meeting requirement in § 68.210(b), EPA proposed to require compliance by two years after the effective date of a final rule. The RMP Amendments rule allows four years for compliance for the public meeting which was consistent with the compliance date for other information to be required to the public by § 68.210. However, EPA proposed to remove the requirement to provide to the public the chemical hazard information in § 68.210(b), the notice of availability of information in § 68.210(c), and the timeframe for providing information in § 68.210(d), as well as to remove the requirement to provide the chemical hazard information in § 68.210(b) at the public meeting. The stationary source would only be required to provide the chemical accident data elements specified in § 68.42(b), data which should already be familiar to the source because this information is currently required to be reported in their risk management plan. Thus, EPA proposed that two years should be enough time for facilities to be prepared to provide the required information at a public meeting after an RMP reportable accident.

With regard to the five-year compliance date for updating RMPs with newly-required information, EPA proposed this time frame because EPA will need time to revise its RMP submission guidance for any provisions finalized and also to revise its risk management plan submission system, RMP*eSubmit, to include additional data elements. Sources will not be able to update risk management plans until the revised RMP*eSubmit system is ready. Also, once the software is ready, some additional time is needed to allow sources to update their risk management plans while preventing potential problems with thousands of sources submitting updated risk management plans on the same day.

B. Summary of Final Rule

With the exception of the proposed compliance dates for emergency response coordination activities and public meetings, EPA is finalizing compliance dates as proposed. For the following minor prevention provisions that EPA is retaining, the final rule does not extend their compliance date, which was the effective date of the Amendments rule:

(1) The two changes that would revise the term ''Material Safety Data Sheets'' to ''Safety Data Sheets (SDS)'' in §§ 68.48 and 68.65,

(2) the use of the term ''report(s)'' in place of the word ''summary(ies)'' in § 68.60, and

(3) the requirement in § 68.60 for Program 2 processes to establish an incident investigation team consisting of at least one person knowledgeable in the process involved and other persons with experience to investigate an incident).

The compliance date for the revised emergency response coordination provisions is set to the final rule effective date, as specified under § 68.10(a)(4), which establishes the final rule effective date as the default compliance date for any revisions to part 68 unless otherwise specified. EPA made this change from the proposed rule because of the D.C. Circuit Court vacatur of the RMP Delay Rule, which made the emergency coordination provisions from the Amendments rule effective on September 21, 2018. Because sources are already required to comply with these requirements as a result of the Delay Rule vacatur, and no new obligations are created related to emergency response coordination activities by the Reconsideration rule, EPA does not believe additional time is needed to comply with the revised emergency response coordination requirements.

For public meetings, EPA is retaining the compliance date established in the Amendments rule. The Court's vacatur of the Delay Rule made the Amendments rule public meeting provision effective with a future compliance date of March 15, 2021. As with the revised emergency coordination requirements, the final rule creates no new obligations relative to the public meeting requirements, and EPA therefore sees no reason to further delay this compliance date.

Regarding the five-year compliance date for updating RMPs with newly-required information, the final rule clarifies that applicable new information elements associated with public meetings, emergency response programs, and emergency response exercises are required to be provided in any risk management plan initial submission or update required by pre-Amendments regulations to be submitted later than five-years after the final rule effective date. In other words, newly registered sources are not required to provide applicable new information elements in their initial risk management plan submission for initial submissions made prior to five years beyond the final rule effective date, and currently registered sources are not required to update and resubmit their plans to provide the applicable new information elements until the source reaches its next five-year anniversary date or another update trigger specified in § 68.190 that occurs after five years beyond the final rule effective date. EPA notes that when any of these triggers are reached, sources must include the new information element in § 68.160(b)(21), indicating whether a public meeting has been held, and the completion dates of the most recent notification, field and tabletop exercises as required under § 68.180, as applicable. EPA added the term ''as applicable'' in the emergency response program and exercise reporting compliance date provision of § 68.10(f)(4) because the provision refers to § 68.180(b), which contains requirements that do not apply to all sources (*e.g.,* only responding sources with Program 2 or 3 processes are required to perform field and tabletop exercises). EPA added ''as applicable'' to § 68.10(b) and (d) for the same reason. EPA also notes that some sources may not have completed initial tabletop and field exercises by the time their RMP is updated following the five-year compliance date specified in § 68.10(f)—in such cases, these dates would not be required to be included in the updated submission. Sources may but are not required to update or correct their RMP to add applicable new information elements any time after EPA makes this new functionality available within EPA's online RMP submission system, RMP*eSubmit.

C. Discussion of Comments and Basis for Final Rule Provisions

1. Overview of Basis for Final Rule Provisions

The final rule is the culmination of a substantive review of the provisions promulgated in 2017 and in effect since the *AAH* mandate issued on September 21, 2018. In setting compliance dates for the provisions retained from the 2017 rule or modified by this rule, EPA has assessed how to achieve compliance as expeditiously as practicable with each individual provision. For example, we

have retained the Amendments rule compliance dates for the emergency coordination and public meeting provisions even though we have made minor changes because these do not impose additional burden on sources for compliance. Sources are already required to comply with the Amendments rule's emergency coordination provisions, and compliance with the final rule's revised provision can be met on a going-forward basis. These are like the minor procedural requirements that the legislative history suggests can be quickly met. See Senate Report at 245. Similarly, the Amendments rule established a compliance date of March 15, 2021 for the public meeting provision, and the changes made to this provision in the final rule narrow its applicability and do not impose any additional compliance burden on sources still subject to it. Therefore, EPA sees no reason to further delay the public meeting compliance date established under the Amendments rule.

The most significant change of compliance date and terms of compliance involves the dates by which sources must plan and conduct emergency exercises. We believe the schedule we adopt today better accounts for the burden upon local emergency response organizations for voluntarily participating in these exercises. While it is not a mandate of the rule to have local responders participate in any of the exercises, we believe the most effective drills will involve the participation of these entities in source drills. We believe retaining a March 15, 2021 compliance date for the provisions of § 68.96 would overwhelm many local emergency response organizations and discourage their participation. This is especially true at the counties with multiple facilities subject to the RMP rule, including several with more than 50 facilities. The need for local emergency responders to voluntarily participate in emergency exercises despite the lack of funding and the inability of EPA to compel their participation makes this requirement more like the specialized programs that would require more time to implement than the pure procedural provisions. See Senate Report at 245. We believe the new time frames set compliance dates that are as expeditious as practicable for meeting the goals of the emergency exercise provisions. Other changes to compliance dates we make in the final rule better coordinate information submissions in RMPs with the development of the revised content of those submissions. Allowing sources to provide new information elements whenever their next submission would otherwise have been required will also prevent thousands of sources from being required to resubmit RMPs on the same date.

2. Comments on Compliance Date for Emergency Response Coordination Activities

An advocacy group argued that emergency response coordination activity requirements should not be further delayed. A joint comment submission from multiple advocacy groups and other commenters stated that further delay of coordination activities conflicted with EPA statutory requirements. In contrast, a few industry trade associations stated that EPA should provide a longer lead time for compliance of emergency response coordination activities to increase flexibility and allow for more effective emergency plans.

EPA Response: The final rule requires compliance with the revised emergency response coordination requirements on the effective date of the final rule. While EPA disagrees that further delaying compliance dates for this requirement would necessarily conflict with statutory requirements, EPA made this change from the proposed rule because of the D.C. Circuit Court vacatur of the RMP Delay Rule, which made the emergency coordination provisions from the Amendments rule effective on September 21, 2018. Because sources are already required to comply with the Amendments rule coordination requirements, and no new obligations are created related to emergency response coordination activities by the Reconsideration rule, EPA does not believe additional time is needed to comply with the emergency response coordination requirements.

3. Comments on Emergency Response Program Compliance Date

An industry trade association expressed support for requiring compliance with the emergency response program requirements of § 68.95 within 3 years of when the owner or operator initially determines that the stationary source is subject to those requirements.

EPA Response: EPA agrees with the commenter and did not propose any changes to this requirement. The final rule retains the Amendments rule requirement for compliance with the emergency response program requirements of § 68.95 within 3 years of when the owner or operator initially determines that the stationary source is subject to those requirements.

4. Comments on Compliance Date for Emergency Response Exercises

A State government agency expressed opposition to allowing facilities seven years from the effective date of the final Reconsideration rule to conduct a tabletop exercise, indicating that facilities can coordinate with local officials and conduct an initial tabletop exercise within three years of the effective date of the rule.

An industry trade association supported the proposed changes to the exercise compliance dates, indicating that it would provide greater flexibility to meet the requirements. Another trade association supported EPA's proposed requirement to have exercise plans and schedules in place within four years of the effective date of the final rule but stated that deadlines for the first exercise would be established in the exercise schedule developed in consultation with local responders. Two industry trade associations questioned whether extended compliance times in the proposed Reconsideration Rule were necessary given that a response structure existed under EPCRA and the OSHA Hazardous Waste Operations and Emergency Response Standard. One of these trade associations stated that a shorter compliance time of a year would be appropriate if cooperation with LEPC was obtained.

EPA Response: As EPA stated in the proposed rule, we believe that additional time is necessary for many sources to understand the new requirements for exercises, train personnel, coordinate with local responders, and carry out the exercises. Additional time will also provide owners and operators with flexibility to plan, schedule, and conduct exercises in a manner which is least burdensome for facilities and local response agencies. EPA disagrees that either EPCRA or the OSHA Hazardous Waste Operations and Emergency Response standard contain exercise requirements analogous to those in the final rule.

While EPA agrees that in some cases, sources will not need four years to plan exercises and an additional three years to complete a tabletop exercise, EPA remains concerned about requiring exercises to be completed sooner, particularly in communities with numerous RMP facilities (see *section VII. ''Modified Exercise Amendments,''* for further discussion of this issue). If EPA requires compliance with field and tabletop exercise requirements without providing sufficient lead time for compliance, local emergency responders

in communities with large numbers of RMP facilities may have no practical way to effectively participate in tabletop and field exercises conducted by responding RMP facilities in the community. While the final rule does not require local responders to participate in facility exercises, EPA believes it is in the best interest of regulated facilities and their surrounding communities for local responders to participate in exercises whenever possible, and therefore the Agency does not want to establish a compliance time frame that overburdens facilities or local responders. Also, EPA plans to publish guidance for emergency response exercises and once these materials are complete, owners and operators will need time to familiarize themselves with the materials and use them to plan and develop their exercises. EPA encourages owners and operators and local emergency response officials to plan and conduct exercises sooner than required under the final rule if facility and community resources are available for the exercises.

5. Comments on Compliance Date for Corrections or Resubmissions of RMPs for New and Revised Data Elements

An industry trade association supported EPA's proposal to require sources to update their risk management plans by five years after the effective date of the final rule.

EPA Response: The final rule allows sources at least five years after the effective date of the final rule to update their risk management plans. The final rule makes clear that sources would be required to provide applicable new information elements associated with revised provisions in any required risk management plan submission made later than 5 years after the effective date of the final rule.

6. Comments on Compliance Date for Public Meeting Requirements

An industry trade association expressed support for EPA's proposed compliance date for the public meeting requirements of two years after the effective date of a final rule. Another industry trade association argued that the deadline for implementing the public meeting requirement should be four years after the effective date of the final rule.

EPA Response: In the final rule, EPA is requiring compliance with the public meeting requirements for specified accidents that occur after March 15, 2021. This means that for any accident with any known offsite impacts specified in § 68.42(a) that occurs after March 15, 2021, the owner or operator must conduct a public meeting within 90 days of the accident. In the proposed rule, EPA argued that with the rescission of the other public information availability requirements of the Amendments rule, two years would be enough time for facilities to be prepared to provide the required information at a public meeting. However, the D.C. Circuit Court's decision in the *AAH* case placed the Amendments rule provision into effect with a compliance date of March 15, 2021. As the changes made to this provision in the final rule narrow its applicability and do not impose any additional compliance burden on sources still subject to it, EPA sees no reason to further delay the compliance date established under the Amendments rule. Sources should still have ample time to prepare to conduct public meetings.

7. Other Comments on Compliance Dates

Many industry trade associations stated that the proposed compliance date delays would allow facilities time to evaluate and develop strategies to ensure compliance. Similarly, an industry trade association argued that the proposed compliance dates were reasonable because some requirements of the rule may require consultation with third-parties that may have time constraints and limited resources.

On the other hand, an advocacy group and multiple State elected officials argued that EPA failed to provide a reasoned explanation for further delaying compliance dates for local emergency coordination, emergency response exercises, and public meetings provisions. Similarly, a joint submission from multiple advocacy groups and other commenters argued that further delay of compliance dates of provisions that EPA proposed to retain would be unlawful and arbitrary. A tribal government argued that further delay of compliance dates would potentially endanger the public, responding emergency personnel, and the environment.

EPA Response: EPA has provided a reasoned explanation for each of the compliance dates established in the final rule.

An indication of EPA's serious consideration of compliance date extensions for each remaining provision of the Amendments rule is that the final rule does not extend compliance dates for every modified Amendments rule provision, and where compliance dates are extended, not all of those dates are tolled relative to their original compliance date. The Agency has not extended the compliance date of the emergency coordination provision or the few minor prevention provisions retained in the final rule, as regulated facilities are already required to comply with them, and any changes made by EPA do not introduce any new compliance obligations. EPA also retained the compliance date for the public meeting requirement established in the Amendments rule. Instead of tolling the compliance date for this provision, EPA retained the Amendments rule's compliance date (March 15, 2021) because of the reduced compliance obligation associated with the rescission of the other information availability provisions and the narrower scope and applicability of the revised public meeting provision under the final rule.

Compliance dates for the exercise provisions were extended because EPA made more substantial changes to those provisions, and because the Agency remains concerned about the high burden of emergency response exercises on both regulated facilities and emergency responders, particularly in areas with numerous RMP-regulated facilities. While we do not mandate participation of local emergency responders in any of the drills, EPA has always viewed as important and encouraged their participation. We have concerns about making the requirement overly-burdensome on their participation. By deferring the date these exercise requirements must begin, we give the responders more lead-time to plan their participation. Recognizing that the legislative history and the *AAH* decision both emphasize the need for setting compliance dates early when changes are simple to implement like small procedural changes, we believe that retaining the March 2021 compliance date would interfere with obtaining participation of local emergency responders. Deferring the compliance date until December 19, 2023, facilitates more effective exercises by allowing local response personnel to familiarize themselves with facilities, to review EPCRA information from facilities and the EPCRA plan for the community, to obtain necessary funding and staffing to participate in exercises, all while continuing to perform their overall emergency planning and response duties. While it may be nominally possible for owners and operators to reach out to local responders as had been required by the Amendments rule by March 2021, we believe delaying the compliance date for planning and scheduling exercises until December 19, 2023, and providing

additional time for conducting initial notification, tabletop, and field exercises, would promote more effective participation of emergency responders, and thus is more like the complex steps the legislative history suggests may need longer lead-times before compliance is required. Therefore, we believe requiring exercise schedules and plans to be completed by December 19, 2023, assures compliance with the emergency exercise requirement as expeditiously as practicable.

The new information required to be reported in the RMP concerns compliance with provisions of the RMP Amendments retained or modified in the RMP Reconsideration rule. The compliance date for the new information necessarily must follow the compliance dates for the substantive changes to the underlying rules. We recognize that some requirements, like the emergency coordination requirement, have required compliance since the mandate for the *AAH* decision issued, while other requirements in the final rule require compliance in 2021 or later. While it would be possible to phase in RMP changes to coincide with these compliance dates, we note that the RMP is generally a periodic report submitted every five years. Rather than requiring multiple amended or new RMP reports shortly after the compliance date for each new provision, which we believe would be impractical in terms of administration, enforcement, and compliance, we are requiring sources to comply with the amended RMP information requirements in the next RMP required to be submitted later than one year after they must comply with the requirement to have completed a plan and schedule under the new exercise requirement. This would be at the end of the phase-in period for most provisions, and after completion of the initial notification exercises for all sources subject to that provision.

EPA believes this rationale is a reasonable justification for extending the compliance dates under the final rule. The extended compliance dates do not endanger the public, emergency responders, or the environment because in every case they relate to provisions which have not yet been implemented, so delaying compliance causes no loss of public or environmental protection relative to the pre-Amendments rule, which remains fully in effect during the phase-in of the new provisions.

X. Corrections to Cross Referenced CFR Sections

A. Summary of Proposed Rulemaking

EPA proposed to correct CFR section numbers that were cross referenced in certain sections of the rule because these were changes necessitated by addition and re-designation of the paragraphs pertaining to compliance dates in § 68.10 in the RMP Amendments rule but were overlooked at the time. The addition of a new separate compliance date paragraph for public meetings added in the proposed Reconsideration rule (now § 68.10(f)), results in old paragraphs (f) through (j) being redesignated as (g) through (k). Other corrections involve cross references to CFR sections for the compliance dates proposed in § 68.96 for the first notification and tabletop exercises that were overlooked when updating compliance schedule information in § 68.215 (a)(2)(i). References to ''paragraph (b)'' and ''paragraph (g)'' in now redesignated paragraphs § 68.10 (h) and (i), were not updated in the Amendments or proposed Reconsideration rule, so EPA is correcting these references. EPA is also correcting a typographical error in the proposed rule that inadvertently deleted ''or;'' at the end of § 68.215 (a)(2)(i). Table 4 contains a list of the corrections.

TABLE 4—CORRECTIONS OR CHANGES TO CROSS REFERENCED SECTION NUMBERS

In section:	Change in section reference:
§ 68.10	§ 68.10(f) through (j) is now (g) through (k).
§ 68.10(h)	Text ''paragraph (b)'' should be ''paragraph (g)'' Text ''paragraph (g)'' should be ''paragraph (i)''
§ 68.10(i)	Text ''paragraph (b)'' should be ''paragraph (g)''
§ 68.12(b)	§ 68.10(b) should be § 68.10(g).
§ 68.12(b)(4)	§ 68.10(b)(1) should be § 68.10(g)(1).
§ 68.12(d)	§ 68.10(d) should be § 68.10(i).
§ 68.12(c)	§ 68.10(c) should be § 68.10(h).
§ 68.96(a)	§ 68.90(a)(2) should be § 68.90(b)(3).
§ 68.180(a)(1)	§ 68.10(f)(3) should be § 68.10(g)(3).
§ 68.215(a)(2)(i)	§ 68.10(a) should be § 68.10(a) through (f), § 68.96(a) and (b)(2)(i), followed by ''or;''.

B. Summary of Final Rule

EPA is finalizing all proposed corrections to cross referenced CFR section numbers.

C. Discussion of Comments and Basis for Final Rule Provisions

EPA received no comments on this issue.

XI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, ''Regulatory Impact Analysis: Reconsideration of the 2017 Amendments to the Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7)'' is available in the docket (Docket ID Number EPA–HQ–OEM–2015–0725).

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this final rule can be found in EPA's analysis of

the potential costs and benefits associated with this action.[109]

C. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to the OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2537.05 and OMB Control No. 2050–0216. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

On January 13, 2017 (82 FR 4594), EPA published in the **Federal Register** the Risk Management Program Amendments rule (Amendments rule). The Amendments rule added several requirements to the RMP rule, including several requirements that would impose information collection burdens on regulated entities. EPA is now finalizing a rule that reconsiders the Amendments rule, including retaining, retaining with modification, or rescinding provisions from the Amendments rule (Reconsideration rule).

This ICR addresses the Amendments rule information collection requirements impacted by the Reconsideration rule. A summary of how the Reconsideration rule impacts the Amendments rule information collection requirements is provided in the following table.

Amendments rule information collection	Reconsideration rule action
Improve information availability (applies to all facilities)	
Make certain information related to the risk management program available to the public upon request.	Rescinded.
Hold a public meeting within 90 days of an accident subject to reporting under § 68.42 (*i.e.,* an RMP reportable accident).	Retained with modification.
XRevise accident prevention program requirements (applies to P2 and P3 facilities unless otherwise specified)	
Hire a third-party to conduct the compliance audit after an RMP reportable accident or after an implementing agency determines that conditions at the stationary source could lead to an accidental release of a regulated substance or identifies problems with the prior third-party audit.	Rescinded.
Conduct and document a root cause analysis after an RMP reportable accident or a near miss.	Rescinded.
Conduct and document a safer technology and alternatives analysis (STAA) for a subset of Program 3 facilities in North American Industrial Classification System (NAICS) codes 322 (paper manufacturing), 324 (petroleum and coal products manufacturing), and 325 (chemical manufacturing).	Rescinded.
Improve emergency preparedness (applies to P2 and P3 facilities)	
Meet and coordinate with local responders annually to exchange emergency response planning information.	Retained with modification.
Conduct an annual notification drill to verify emergency contact information.	Retained.
Responding facilities conduct and document emergency response exercises including:	Retained with modification.
A field exercise at least every ten years, and	
A tabletop exercise at least every three years.	

Respondents/affected entities: Manufacturers, utilities, warehouses, wholesalers, food processors, ammonia retailers, and gas processors.

Respondent's obligation to respond: Mandatory (CAA sections 112(r)(7)(B)(i) and (ii), CAA section 112(r)(7)(B)(iii), 114(c), CAA 114(a)(1)).

Estimated number of respondents: 14,280.

Frequency of response: On occasion.

Total estimated burden reduction: 1,071,161 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost reduction: $92,078,752 (per year), includes $8,259,750 annualized capital or operation & maintenance cost reduction.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in the final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule.

The final RMP Amendments rule considered a broad range of costs on small entities based on facility type. As estimated in the 2017 Amendments RIA, the provisions in that final rule had quantifiable impacts on small entities. This action largely repeals, or retains with slight modification, the provisions incurring costs on small entities. As a result, EPA expects this action to provide cost savings for all facilities, including small entities. Specifically, as explained in Unit I.E.1, EPA estimates annualized cost savings of $87.4 million at a 3% discount rate and $87.8 million at a 7% discount rate.

The only new costs imposed on small entities would be rule familiarization with the final rule, which as discussed further, would not exceed 1% of annual revenues for any small entity affected by this rule. The final rule affects 5,193 facilities owned by small entities, none of which will experience economic burdens in excess of 1% of revenues as a result of this rule. This action will

[109] Regulatory Impact Analysis—Reconsideration of the 2017 Amendments to the Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7). This document is available in the docket for this rulemaking (Docket ID Number EPA–HQ–OEM–2015–0725).

relieve regulatory burden for all directly regulated small entities. The impact of this action on small entities is discussed further in the RIA, which is available in the rulemaking docket. We have therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments. While the private sector has compliance obligations under the RMP regulations, this action is deregulatory, in the aggregate, on the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. There are approximately 260 RMP facilities located on tribal lands. Tribes could be impacted by the final rule either as an owner or operator of an RMP-regulated facility or as a tribal government when the tribal government conducts emergency response or emergency preparedness activities under EPCRA.

The EPA consulted with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing this regulation to permit them to have meaningful and timely input into its development. EPA hosted a public hearing on June 14, 2018 that was open to all interested parties and hosted a total of two conference calls for interested tribal representatives on June 25 and 26, 2018. A summary of each conference call is available in the docket for this action.

As required by section 7(a), the EPA's Tribal Consultation Official has certified that the requirements of the executive order have been met in a meaningful and timely manner. A copy of the certification is included in the docket for this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in the chapter 9 of the RIA for this rule, available in the docket.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action is not anticipated to have notable impacts on emissions, costs or energy supply decisions for the affected electric utility industry.

J. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action may have disproportionately high and adverse human health or environmental effects on minority, low income, and/or indigenous peoples as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this decision is contained in chapter 8 of the RIA, a copy of which has been placed in the public docket for this action.

L. Congressional Review Act (CRA)

This action is subject to the CRA and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects 40 CFR Part 68

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 20, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 68, of the Code of Federal Regulations is amended as follows:

PART 68—CHEMICAL ACCIDENT PREVENTION PROVISIONS

■ 1. The authority citation for part 68 continues to read as follows:

Authority: 42 U.S.C. 7412(r), 7601(a)(1),7661–7661f.

§ 68.3 [Amended]

■ 2. Amend § 68.3 by removing the definitions ''Active measures'', ''Inherently safer technology or design'', ''Passive measures'', ''Practicability'', ''Procedural measures'', ''Root cause'' and ''Third-party audit''.

■ 3. Amend § 68.10 by:

■ a. Revising paragraphs (a) introductory text, (b), (d), and (e);

■ b. Redesignating paragraphs (f) through (j) as paragraphs (g) through (k);

■ c. Adding new paragraph (f);

■ d. Removing the text ''paragraph (b) or paragraph (d)'' and adding ''paragraph (g) or paragraph (i)'' in its place in newly redesignated paragraph (h); and

■ e. Removing the text ''paragraph (b)'' and adding ''paragraph (g)'' in its place in newly redesignated paragraph (i).

The revisions and addition read as follows:

§ 68.10 Applicability.

* * * * *

(a) Except as provided in paragraphs (b) through (f) of this section, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under § 68.115, shall comply with the requirements of this part no later than the latest of the following dates:

* * * * *

(b) By March 14, 2018, the owner or operator of a stationary source shall comply with the emergency response coordination activities in § 68.93, as applicable.

* * * * *

(d) By December 19, 2023, the owner or operator shall have developed plans for conducting emergency response exercises in accordance with provisions of § 68.96, as applicable.

(e) The owner or operator of a stationary source shall comply with the public meeting requirement in § 68.210(b) within 90 days of any RMP reportable accident at the stationary source with known offsite impacts

specified in § 68.42(a), that occurs after March 15, 2021.

(f) After December 19, 2024, for any risk management plan initially submitted as required by § 68.150(b)(2) or (3) or submitted as an update required by § 68.190, the owner or operator shall comply with the following risk management plan provisions of subpart G of this part:

(1) Reporting a public meeting after an RMP reportable accident under § 68.160(b)(21) as promulgated on December 19, 2019;

(2) Reporting emergency response program information under § 68.180(a)(1) as promulgated on December 19, 2019;

(3) Reporting emergency response program information under § 68.180(a)(2) and (3) as promulgated on January 13, 2017, as applicable; and,

(4) Reporting emergency response program and exercises information under § 68.180(b) as promulgated on January 13, 2017, as applicable. The owner or operator shall submit dates of the most recent notification, field and tabletop exercises in the risk management plan, for exercises completed as required under § 68.96 at the time the risk management plan is either submitted under § 68.150(b)(2) or (3), or is updated under § 68.190.

* * * * *

§ 68.12 [Amended]

■ 4. Amend § 68.12:

■ a. By removing the text ''68.10(b)'' and adding ''68.10(g)'' in its place in paragraph (b) introductory text;

■ b. By removing the text ''68.10(b)(1)'' and adding ''68.10(g)(1)'' in its place in paragraph (b)(4);

■ c. By removing the text ''68.10(c)'' and adding ''68.10(h)'' in its place in paragraph (c) introductory text; and

■ d. By removing the text ''68.10(d)'' and adding ''68.10(i)'' in its place in paragraph (d) introductory text.

■ 5. Amend § 68.50 by revising paragraph (a)(2) to read as follows:

§ 68.50 Hazard review.

(a) * * *

(2) Opportunities for equipment malfunctions or human errors that could cause an accidental release;

* * * * *

■ 6. Amend § 68.54 by revising the first sentence in paragraph (a), removing the paragraph (b) subject heading, revising the first sentence in paragraph (b), revising paragraph (d), and removing paragraph (e).

The revisions read as follows:

§ 68.54 Training.

(a) The owner or operator shall ensure that each employee presently operating a process, and each employee newly assigned to a covered process have been trained or tested competent in the operating procedures provided in § 68.52 that pertain to their duties. * * *

* * * * *

(b) Refresher training shall be provided at least every three years, and more often if necessary, to each employee operating a process to ensure that the employee understands and adheres to the current operating procedures of the process. * * *

* * * * *

(d) The owner or operator shall ensure that operators are trained in any updated or new procedures prior to startup of a process after a major change.

■ 7. Amend § 68.58 by revising paragraph (a) and removing paragraphs (f) through (h).

The revision reads as follows:

§ 68.58 Compliance audits.

(a) The owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that the procedures and practices developed under this subpart are adequate and are being followed.

* * * * *

§ 68.59 [Removed]

■ 8. Remove § 68.59.

■ 9. Amend § 68.60 by revising paragraphs (a) and (d) to read as follows:

§ 68.60 Incident investigation.

(a) The owner or operator shall investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release.

* * * * *

(d) A report shall be prepared at the conclusion of the investigation which includes at a minimum:

(1) Date of incident;

(2) Date investigation began;

(3) A description of the incident;

(4) The factors that contributed to the incident; and,

(5) Any recommendations resulting from the investigation.

* * * * *

■ 10. Amend § 68.65 by revising the first sentence of paragraph (a) and revising the note to paragraph (b) to read as follows:

§ 68.65 Process safety information.

(a) The owner or operator shall complete a compilation of written process safety information before conducting any process hazard analysis required by the rule. * * *

(b) * * *

Note to paragraph (b): Safety Data Sheets (SDS) meeting the requirements of 29 CFR 1910.1200(g) may be used to comply with this requirement to the extent they contain the information required by paragraph (b) of this section.

* * * * *

■ 11. Amend § 68.67 by:

■ a. Revising paragraph (c)(2);

■ b. Adding the word ''and'' at the end of paragraph (c)(6);

■ c. Removing '', and'' and adding a period in its place at the end of paragraph (c)(7); and

■ d. Removing paragraph (c)(8).

The revision reads as follows:

§ 68.67 Process hazard analysis.

* * * * *

(c) * * *

(2) The identification of any previous incident which had a likely potential for catastrophic consequences;

* * * * *

§ 68.71 [Amended]

■ 12. Amend § 68.71 by removing paragraph (d).

■ 13. Amend § 68.79 by revising paragraph (a) and removing paragraphs (f) through (h).

The revision reads as follows:

§ 68.79 Compliance audits.

(a) The owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed.

* * * * *

§ 68.80 [Removed]

■ 14. Remove § 68.80.

■ 15. Amend § 68.81 by revising paragraphs (a) and (d) to read as follows:

§ 68.81 Incident investigation.

(a) The owner or operator shall investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release.

* * * * *

(d) A report shall be prepared at the conclusion of the investigation which includes at a minimum:

(1) Date of incident;

(2) Date investigation began;

(3) A description of the incident;

(4) The factors that contributed to the incident; and,

(5) Any recommendations resulting from the investigation.

* * * * *

■ 16. Amend § 68.93 by revising paragraph (b) and adding paragraph (d) to read as follows:

§ 68.93 Emergency response coordination activities.

* * * * *

(b) Coordination shall include providing to the local emergency planning and response organizations: The stationary source's emergency response plan if one exists; emergency action plan; updated emergency contact information; and other information necessary for developing and implementing the local emergency response plan. For responding stationary sources, coordination shall also include consulting with local emergency response officials to establish appropriate schedules and plans for field and tabletop exercises required under § 68.96(b). The owner or operator shall request an opportunity to meet with the local emergency planning committee (or equivalent) and/or local fire department as appropriate to review and discuss those materials.

* * * * *

(d) *Classified and restricted information.* The disclosure of information classified or restricted by the Department of Defense or other Federal agencies or contractors of such agencies shall be controlled by applicable laws, regulations, or executive orders concerning the release of that classified or restricted information.

■ 17. Amend § 68.96 by revising the first sentence of paragraph (a) and revising paragraphs (b)(1)(i) and (ii), (b)(2)(i) and (ii), and (b)(3) to read as follows:

§ 68.96 Emergency response exercises.

(a) * * * At least once each calendar year, the owner or operator of a stationary source with any Program 2 or Program 3 process shall conduct an exercise of the stationary source's emergency response notification mechanisms required under § 68.90(b)(3) or § 68.95(a)(1)(i), as appropriate, before December 19, 2024, and annually thereafter. * * *

(b) * * *

(1) * * *

(i) *Frequency.* As part of coordination with local emergency response officials required by § 68.93, the owner or operator shall consult with these officials to establish an appropriate frequency for field exercises.

(ii) *Scope.* Field exercises shall involve tests of the source's emergency response plan, including deployment of emergency response personnel and equipment. Field exercises should include: Tests of procedures to notify the public and the appropriate Federal, state, and local emergency response agencies about an accidental release; tests of procedures and measures for emergency response actions including evacuations and medical treatment; tests of communications systems; mobilization of facility emergency response personnel, including contractors, as appropriate; coordination with local emergency responders; emergency response equipment deployment; and any other action identified in the emergency response program, as appropriate.

(2) * * *

(i) *Frequency.* As part of coordination with local emergency response officials required by § 68.93, the owner or operator shall consult with these officials to establish an appropriate frequency for tabletop exercises, and shall conduct a tabletop exercise before December 21, 2026, and at a minimum of at least once every three years thereafter.

(ii) *Scope.* Tabletop exercises shall involve discussions of the source's emergency response plan. The exercise should include discussions of: Procedures to notify the public and the appropriate Federal, state, and local emergency response agencies; procedures and measures for emergency response including evacuations and medical treatment; identification of facility emergency response personnel and/or contractors and their responsibilities; coordination with local emergency responders; procedures for emergency response equipment deployment; and any other action identified in the emergency response plan, as appropriate.

(3) *Documentation.* The owner or operator shall prepare an evaluation report within 90 days of each field and tabletop exercise. The report should include: A description of the exercise scenario; names and organizations of each participant; an evaluation of the exercise results including lessons learned; recommendations for improvement or revisions to the emergency response exercise program and emergency response program, and a schedule to promptly address and resolve recommendations.

* * * * *

■ 18. Amend § 68.151 by revising paragraph (b)(1) to read as follows:

§ 68.151 Assertion of claims of confidential business information.

* * * * *

(b) * * *

(1) Registration data required by § 68.160(b)(1) through (6), (8), (10) through (13), and (21), and NAICS code and Program level of the process set forth in § 68.160(b)(7);

* * * * *

■ 19. Amend § 68.160 by revising paragraph (b)(21) and removing paragraph (b)(22).

The revision reads as follows:

§ 68.160 Registration.

* * * * *

(b) * * *

(21) Whether a public meeting has been held following an RMP reportable accident, pursuant to § 68.210(b).

■ 20. Amend § 68.170 by revising paragraph (i) to read as follows:

§ 68.170 Prevention program/Program 2.

* * * * *

(i) The date of the most recent compliance audit, the expected date of completion of any changes resulting from the compliance audit.

* * * * *

■ 21. Amend § 68.175 by revising paragraphs (e) introductory text and (e)(1), (5), and (6), removing paragraph (e)(7), and revising paragraph (k).

The revisions read as follows:

§ 68.175 Prevention program/Program 3.

* * * * *

(e) The date of completion of the most recent PHA or update and the technique used.

(1) The expected date of completion of any changes resulting from the PHA;

* * * * *

(5) Monitoring and detection systems in use; and

(6) Changes since the last PHA.

* * * * *

(k) The date of the most recent compliance audit and the expected date of completion of any changes resulting from the compliance audit.

* * * * *

■ 22. Amend § 68.180 by revising paragraph (a)(1) to read as follows:

§ 68.180 Emergency response program and exercises.

(a) * * *

(1) Name, phone number and email address of local emergency planning and response organizations with which the stationary source last coordinated emergency response efforts, pursuant to § 68.10(g)(3) or § 68.93.

* * * * *

■ 23. Amend § 68.190 by revising paragraph (c) to read as follows:

§ 68.190 Updates.

* * * * *

(c) If a stationary source is no longer subject to this part, the owner or operator shall submit a de-registration to

EPA within six months indicating that the stationary source is no longer covered.

■ 24. Amend § 68.210 by:

■ a. Removing paragraphs (b), (c), (d), and (g);

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

■ c. Revising newly redesignated paragraphs (b) and (c).

The revisions read as follows:

§ 68.210 Availability of information to the public.

* * * * *

(b) *Public meetings.* The owner or operator of a stationary source shall hold a public meeting to provide information required under § 68.42(b), no later than 90 days after any RMP reportable accident at the stationary source with any known offsite impact specified in § 68.42(a).

(c) *Classified and restricted information.* The disclosure of information classified or restricted by the Department of Defense or other Federal agencies or contractors of such agencies shall be controlled by applicable laws, regulations, or executive orders concerning the release of that classified or restricted information.

■ 25. Amend § 68.215 by revising paragraph (a)(2)(i) to read as follows:

§ 68.215 Permit content and air permitting authority or designated agency requirements.

(a) * * *

(2) * * *

(i) A compliance schedule for meeting the requirements of this part by the dates provided in §§ 68.10(a) through (f) and 68.96(a) and (b)(2)(i), or;

* * * * *

[FR Doc. 2019–25974 Filed 12–18–19; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reclassifying the Hawaiian Goose From Endangered to Threatened With a Section 4(d); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2017–0050; FXES11130900000C6–189–FF09E42000]

RIN 1018–BC10

Endangered and Threatened Wildlife and Plants; Reclassifying the Hawaiian Goose From Endangered to Threatened With a Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: Under the authority of the Endangered Species Act of 1973, as amended (Act), we, the U.S. Fish and Wildlife Service (Service), determine threatened status for the Hawaiian goose (nene) (*Branta sandvicensis*). This rule changes the listing status of the nene from an endangered species to a threatened species on the List of Endangered and Threatened Wildlife. We call this ''reclassifying'' or ''downlisting'' the species. We are also adopting a rule under the authority of section 4(d) of the Act (a ''4(d) rule'') to enhance conservation of the species through range expansion and management flexibility. This final rule is based on a thorough review of the best available scientific data, which indicate that the threats to this species have been reduced to the point that it no longer meets the definition of endangered under the Act, but that it is likely to become an endangered species within the foreseeable future. In addition, this rule corrects the Federal List of Endangered and Threatened Wildlife to reflect that *Nesochen* is not currently a scientifically accepted generic name for this species, and acknowledges the Hawaiian name ''nene'' as an alternative common name.

DATES: This rule is effective January 21, 2020.

ADDRESSES: This final rule is available on *http://www.regulations.gov* under Docket No. FWS–R1–ES–2017–0050. Comments and materials received, as well as supporting documentation used in preparation of this final rule, are available for public inspection at *http://www.regulations.gov,* or by appointment at: U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, HI 96850; telephone 808–792–9400.

FOR FURTHER INFORMATION CONTACT: Katherine Mullett, Acting Field Supervisor, telephone: 808–792–9400. Direct all questions or requests for additional information to: U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, HI 96850. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species may warrant reclassification from endangered to threatened if it no longer meets the definition of endangered (in danger of extinction). The reclassification of a listed species can only be completed by issuing a rule. The endangered designation no longer correctly reflects the current status of the nene due to a substantial improvement in the species' status. This rule finalizes the reclassification of the nene as a threatened species. Furthermore, changes to the take prohibitions in section 9 of the Act, such as those we enact for this species under a section 4(d) rule, can only be made by issuing a rule. This rule finalizes provisions under the authority of section 4(d) of the Act and is necessary and advisable for the conservation needs of the nene.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species based on any one or a combination of 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. We have determined that the nene is no longer at risk of extinction and, therefore, does not meet the definition of endangered, but is still affected by the following current and ongoing threats to the extent that the species meets the definition of a threatened species under the Act:

- Habitat destruction and modification due to urbanization, agricultural activities, nonnative ungulates, and nonnative vegetation;
- Predation by nonnative mammals such as mongoose, cats (feral and domestic), dogs (feral and domestic), rats, and pigs;
- Diseases such as toxoplasmosis, avian pox, avian botulism, avian malaria, omphalitis, West Nile virus, and avian influenza;
- Human activities such as motor vehicle collisions, collisions at wind energy facilities, artificial hazards (*e.g.,* fences, fishing nets, erosion control material), feeding and habituation, and recreational activities (*e.g.,* human visitation at parks and refuges); and
- Stochastic events such as drought, hurricanes, and floods.

Environmental effects from climate change are likely to exacerbate the impacts of drought, hurricanes, and flooding associated with storms and hurricanes, as well as causing flooding of portions of nene habitat due to sea-level rise. Impacts associated with climate change may become a threat in the future. Existing regulatory mechanisms and conservation efforts do not effectively address the introduction and spread of nonnative plants and animals and other threats to the nene.

Under section 4(d) of the Act, when a species is listed as a threatened species, the Secretary of the Interior (Secretary) has discretion to issue such regulations he or she deems necessary and advisable to provide for the conservation of the species. For fish or wildlife listed as threatened, the Secretary may, by regulation, prohibit any act prohibited under section 9(a)(1) of the Act. For the nene, the Service has determined that a 4(d) rule is appropriate as a means to facilitate conservation and expand the species' range by increasing flexibility in management activities for our State partners and private landowners. The Service has modified the normal take prohibitions to allow certain activities to be conducted on lands where nene occur or where they would occur if we were to reintroduce them to areas of their historical distribution. Under this 4(d) rule, take of nene caused by actions resulting in intentional harassment that is not likely to cause direct injury or mortality, control of introduced predators, or habitat enhancement beneficial to nene is not prohibited under Federal law. This 4(d) rule identifies these activities to provide protective mechanisms to landowners and their agents so that they may continue with certain activities that are not anticipated to cause direct injury or mortality to nene and that will facilitate the conservation and recovery of nene. Federally implemented, funded, or permitted actions will continue to be subject to the requirements of section 7 of the Act and eligible for an incidental take exemption through section 7 of the Act.

Peer review and public comment. We sought comments from independent specialists to ensure that our determination is based on scientifically

sound data, assumptions, and analyses. We invited these peer reviewers to comment on the downlisting proposal. We also invited government agencies, the scientific community, industry, Native Hawaiian organizations, and any other interested parties to submit comments or recommendations concerning any aspect of the proposed rule. We considered all comments and information we received during the comment period.

Summary of Changes From Proposed Rule

In preparing this final rule, we reviewed and fully considered comments from the peer reviewer and public on the proposed downlisting of nene with a 4(d) rule. This final rule incorporates the following substantive changes to our proposed rule, based on the comments we received:

(1) During the comment period, we received new information regarding the recent volcanic activity on the island of Hawaii. We have added an analysis of the effects of volcanic activity to portions of nene habitat under *Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.*

(2) During the comment period, we received new information regarding impacts of floods resulting from storms and hurricanes on nene eggs and goslings. We have added an analysis of the effects of flooding resulting from storms and hurricanes to nene eggs and goslings under *Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence.* This threat is anticipated to be exacerbated by the increasing global surface temperature associated with greenhouse gases resulting from human activities.

(3) We have incorporated updated information from the Hawaii Department of Land and Natural Resources (DLNR) on the most recent nene population counts into the rule (see *Species Information* below).

(4) We added language under *Recovery Planning* and *Implementation of Recovery Actions for the Nene* to further clarify the status of nene on Molokai and to more clearly reflect our analysis under *Overall Summary of Factors Affecting Nene.*

(5) We added a definition of ''qualified biologist'' to the 4(d) rule.

(6) We added surveys that further the recovery of nene to the excepted forms of take in the 4(d) rule.

(7) We modified the 4(d) rule to explicitly identify six categories of prohibited actions, which resulted in changes to its organizational structure and narrative justification but no substantive alteration in either prohibited or excluded actions.

(8) Under 50 CFR 17.41(d)(3)(iii)(A)(*3*), we've added that the landowner must arrange follow-up surveys of the property by qualified biologists to assess the status of birds present to the actions necessary should a nest be discovered during any intentional harassment activities excepted in this final 4(d) rule.

Background

Previous Federal Actions

Please refer to the proposed downlisting with a 4(d) rule, published in the **Federal Register** on April 2, 2018 (83 FR 13919), for previous Federal actions for the nene prior to that date. The publication of the proposed downlisting with a 4(d) rule opened a 60-day comment period, ending on June 1, 2018. In addition, we published a public notice of the proposed rule on May 5, 2018, in the Honolulu Star Advertiser, Hawaii Tribune Herald, The Garden Island, and West Hawaii Today; on May 9, 2018, in the Molokai Dispatch; and on May 12, 2018, in The Maui News.

Species Information

Please see the April 2, 2018, proposed rule (83 FR 13919) regarding the history of the scientific and common names of the nene. This final rule adopts the currently accepted scientific name, *Branta sandvicensis,* and the common Hawaiian name ''nene,'' on the Federal List of Endangered and Threatened Wildlife (List; 50 CFR 17.11(h)). Hawaiian goose remains an accepted common name on the List. Please also see the proposed rule (83 FR 13919; April 2, 2018) for a physical description of nene and a summary of its current and historical range, habitat description and use, movement patterns, life history, demography, and population status.

Here, we provide only new information we received since the publication of the April 2, 2018, proposed rule. We received the 2017 statewide nene count of individuals from the Hawaii DLNR, which includes a statewide population of 3,252 individuals comprised of 1,104 individuals on Hawaii, 1,482 individuals on Kauai, 627 individuals on Maui, 37 individuals on Molokai, and 2 individuals on Oahu. These estimates include the 646 translocations made from Kauai to Hawaii (598) and Maui (48), between 2011 and 2016. We have incorporated this information into this final rule.

Recovery Planning

Section 4(f) of the Act (16 U.S.C. 1531 *et seq.*) directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include ''objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of [section 4 of the Act], that the species be removed from the list.'' However, revisions to the Lists of Endangered and Threatened Wildlife and Plants (adding, removing, or reclassifying a species) must be based on determinations made in accordance with sections 4(a)(1) and 4(b) of the Act. Section 4(a)(1) requires that the Secretary determine whether a species is endangered or threatened (or not) because of one or more of five threat factors. Section 4(b) of the Act requires that the determination be made ''solely on the basis of the best scientific and commercial data available.'' While recovery plans provide important guidance to the Service, States, and other partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to measure progress towards recovery, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species on, or to remove a species from, the Federal List of Endangered and Threatened Wildlife (List; 50 CFR 17.11(h)) is ultimately based on an analysis of the best scientific and commercial data then available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all of the criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and the species is robust enough to delist. In other cases, recovery opportunities may be discovered that were not known when the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan.

Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent to which existing criteria are appropriate for recognizing recovery of the species. Recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all of the guidance provided in a recovery plan.

In 1983, the Service published the Nene Recovery Plan and concluded that the nene population in the wild was declining; however, the exact causes of the decline were not clearly understood (USFWS 1983, p. 24). The statewide population was estimated at approximately 600 nene with 390 ± 120 nene on Hawaii and 112 nene on Maui. Based on the available data, the plan recommended the primary objective to delist the species was establishing a population of 2,000 nene on Hawaii and 250 nene on Maui, well distributed in secure habitat and maintained exclusively by natural reproduction (USFWS 1983, p. 24). The plan focused on maintenance of wild populations through annual releases of captive-reared birds to prevent further population decline, habitat management including control of introduced predators, and conducting research to determine factors preventing nene recovery and appropriate actions to overcome these factors. The plan also acknowledged that more research, biological data, and better population models would lead to a reassessment of recovery efforts and criteria for delisting the species.

On September 24, 2004, the Service made the Draft Revised Recovery Plan for Nene (USFWS 2004) available for public review and comment (69 FR 57356). The draft revised recovery plan presented additional information on the status of the species, factors affecting species recovery, and an updated framework for species recovery. Although this plan was not finalized, it has been our guiding document regarding recovery of the nene for the past decade and a half. At the time the draft revised recovery plan was written, the statewide population was estimated at approximately 1,300 nene with populations on Hawaii (350), Maui (250), Kauai (620), and Molokai (55). The primary factors affecting the nene recovery in the wild were: (1) Predation by introduced mammalian predators (Factor C); (2) inadequate nutrition (Factor E); (3) lack of lowland habitat (Factor A); (4) human-caused disturbance and mortality (Factor E); (5) behavioral issues (Factor E); (6) genetic issues (Factor E); and (7) disease (Factor C). The draft revised recovery plan recommended the following three criteria for downlisting the nene from endangered to threatened: (1) Self-sustaining populations exist on Hawaii, Maui Nui (Maui, Molokai, Lanai, Kahoolawe), and Kauai with a target of at least 2,000 birds distributed in 7 populations over 15 years; (2) sufficient suitable habitat to sustain the target population levels on each island is identified, protected, and managed in perpetuity (USFWS 2004, pp. 50–52); and (3) consideration for delisting could occur once all of the downlisting criteria had been met, and population levels on Hawaii, Maui Nui, and Kauai had all shown a stable or increasing trend (from downlisting levels) for a minimum of 15 additional years (*i.e.,* for total of 30 years). Self-sustaining was defined as maintaining (or increasing) established population levels without additional releases of captive-bred nene, although we recognized that continued management, such as predator control or pasture management (*e.g.,* mowing or grazing regime), may need to be continued.

As noted in the April 2, 2018, proposed rule (83 FR 13919), and throughout this final rule, substantial self-sustaining populations exist and are well distributed in multiple localities on the islands of Hawaii, Kauai, and Maui (NRAG 2017; Amidon 2017, entire; DLNR 2018, *in litt.*), totaling 3,252 individuals (DLNR 2018, *in litt.*). Populations on Maui and Hawaii have been observed to be stable without external supplementation since about 2011, when active translocations from Kauai were discontinued; Kauai populations have been stable to increasing for several decades while also providing stock for translocation. The species continues to be conservation-reliant (*i.e.,* dependent on long-term management commitments to active predator control and habitat management), but with ongoing management we expect populations on these three islands to continue to be self-sustaining without additional releases of captive-bred birds. As discussed in the proposed rule and this final rule, under Factor A, certain habitat stresses continue to exist, but as nene have proven adaptable to diverse native and human-modified habitats, it appears that, with active management, the extent and quality of existing breeding habitat is sufficient to support robust populations in multiple localities throughout the species' range. Additional management in seasonally occupied non-breeding habitat would improve population viability.

The 2004 draft revised recovery plan sets forth the general recovery strategy for nene (USFWS 2004, p. 47), as follows: In order for nene populations to survive they should be provided with generally predator-free breeding areas and sufficient food resources. Human-caused disturbance and mortality should be minimized, and genetic and behavioral diversity maximized. The goal of recovery stated in the draft revised recovery plan is to enable the conservation of nene by using a mix of natural and human-altered habitats in such a way that the life-history needs of the species are met and the populations become self-sustaining. While it is important to restore nene within its native ecosystem to ensure long-term species survival, nene currently successfully use a gradient of habitats ranging from highly altered to completely natural. Additionally, some populations exhibit behaviors that differ from what it is believed wild birds historically displayed. Nene are a highly adaptable species, which bodes well for recovery of the species.

Conservation needs and activities to recover nene vary among islands due to differences in factors affecting nene populations both within and among islands. For example, although mongoose occur on Hawaii, Maui, and Molokai, Kauai does not yet have an established mongoose population; thus predator control priorities there are different. In addition, elevations used by nene vary among sites and among islands, and vegetation available to nene also differs between sites and by island.

Implementation of Recovery Actions for the Nene

Nene are now more abundant than when they were federally listed as endangered in 1967, due largely to a captive propagation program that began in 1949 before the species was listed and continued through 2011, when it was stopped due to successful breeding in the wild. This program was implemented collaboratively by the Territory and later the State of Hawaii, the Peregrine Fund, and the Zoological Society of San Diego. In addition, a number of zoos and private facilities in the United States and abroad continue to maintain and breed nene in captivity (Kear and Berger 1980, pp. 59–77; Marshall 2017, pers. comm.). The existence of captive nene outside of Hawaii provides additional insurance against extinction of the species, but due to concerns about disease introduction, they are not used currently as a source for supplementation of the wild population and are not considered a significant

contributor to conservation of the species. However, they are still subject to permitting requirements under the Act for interstate commerce.

In the years between 1960 and 2008, some 2,800 captive-bred nene were released into areas of their former range at more than 20 sites throughout the main Hawaiian islands. Most releases of captive birds used open-top pens to provide protection from predators. The pens provide protection to the birds as long as they are inside the pens, and the birds frequently returned to breed in the same pens in subsequent years.

Many of the earlier releases were accompanied by little or no management of predators and habitats. Monitoring of released birds showed high mortality and low nesting success, indicating that food availability and predators had a significant impact on wild populations (Banko 1992, pp. 102–104). The highest levels of survival and reproductive success were documented at Hawaii Volcanoes and Haleakala National Parks, where more intensive management of threats was initiated, demonstrating the need and benefits of habitat management and predator control (Black *et al.* 1997, p. 1,171). Recent years have seen an increase in the capacity of conservation agencies and partners to manage habitat and control predators on larger spatial scales. Although not all release sites have supported sustained populations (*e.g.,* Molokai), areas in which predators are low or controlled and habitat is managed for native food plant species have allowed nene to fare better (Hawaii Division of Forestry and Wildlife 2012, p. 19).

Nene have re-established traditional movement patterns in two breeding subpopulations on the island of Hawaii (Hess *et al.* 2012, pp. 480–482; Leopold and Hess 2014, pp. 67–78). Nene spend the breeding and molting seasons at lower elevations from September to April, and move to higher elevation areas during the non-breeding season in May to August. Hess *et al.* (2012, pp. 479, 482) contend that this movement pattern may be beneficial to nene for the following reasons: (1) Altitudinal migration may allow nene to track availability of food resources not otherwise seasonally available (Black *et al.* 1997, pp. 1,170–1,171); (2) migration may enhance survival during the non-breeding season by avoiding nonnative predators in (lowland) breeding areas; (3) nene may be able to reduce exposure to human activities by occupying high-elevation areas during the non-breeding season; and (4) there may be opportunities for greater genetic exchange if pair bonds are formed between individuals from separate breeding subpopulations at non-breeding locations. This movement pattern is believed to have occurred historically (Banko *et al.* 1999, pp. 3–4).

Population Viability Analyses and Mortality Rates

A population viability analysis modelled the long-term fate of nene under three different management scenarios: (1) No further releases or management, (2) releases mirroring those of the past 30 years, and (3) increased management without further releases. Only under the third scenario could all three populations (Hawaii, Maui, and Kauai) survive for 200 years; thus, reintroduction alone as a management tool may continue to be effective in delaying extinction on Hawaii, but will not lead to a self-sustaining population. The study concluded that enhanced management efforts, which include an appropriate predator control effort, would enable nene to reach a self-sustaining level (Black and Banko 1994, entire).

Another population viability analysis was conducted for nene in Hawaii Volcanoes National Park to examine management options more specific to that area (Hu 1998). First-year mortality was identified as the primary limiting factor for nene in Hawaii Volcanoes National Park. From 1990 to 1996, survival of fledglings averaged 84 percent for females and 95 percent for males, while survival from laying to fledging ranged from 7 to 19.5 percent (mean 12 percent; Hu 1998, pp. 84–85). While predator control had reduced egg predation, fledging success remained low, largely due to inadequate nutrition. The study found that open-top pens cannot sustain a viable nene population in Hawaii Volcanoes National Park. The study suggests that while management techniques such as grassland management, supplemental feeding, and cultivation of native food plants may sustain nene in Hawaii Volcanoes National Park, such approaches require considerable effort and would require increasing resource expenditures. Thus, it was suggested that nene would be more secure if they were integrated into habitat management instituted on a larger scale that would involve the creation of native-dominated, fire-adapted landscapes at low- and mid-elevations in Hawaii Volcanoes National Park and more efficient, widespread predator control techniques, allowing reestablishment of their seasonal movement patterns between various locations (Hu 1998, pp. 107–114).

Survival data from 1960 through 1990 for released nene on the island of Hawaii showed that the highest mortality rate was found among newly released goslings during drought years. Nene at Hawaii Volcanoes National Park had the lowest annual mortality rates. The three main factors affecting mortality rates were found to be release method, age at time of release, and year of release. Releasing pre-fledged goslings with parents or foster parents from open-top pens during years with sufficient rainfall was found to be the most successful release method on the island of Hawaii (Black *et al.* 1997, entire). On Kauai, where mongoose are not yet established, protecting the nesting area from other predators, such as dogs and cats, was found to be extremely successful (Telfer 1998, pers. comm., as cited in USFWS 2004).

In a preliminary assessment of the short-term population trends in nene populations on the four main Hawaiian islands where nene currently occur, count-based and demographic models (Morris and Doak 2002, pp. 8–9) were developed with readily available information on each population (Hu 1998; Hu 1999, unpubl. as cited in Banko *et al.* 1999; USFWS 2004; Bailey and Tamayose 2016, *in litt.*; Kendall 2016, *in litt.;* Uyehara 2016a, *in litt.*) and projected over a 20-year time period assuming constant management (Amidon 2017, entire). Count-based models (for Hawaii Volcanoes National Park, the island of Maui, Haleakala National Park, the island of Molokai, and the island of Kauai) showed an increase or leveling off around current population estimates (Amidon 2017, pp. 10–16). Demographic models variously projected level or slightly declining populations (Hakalau Forest National Wildlife Refuge (NWR) and Haleakala National Park) or continued increase (Kauai NWR Complex) (Amidon 2017, pp. 18–21). Available data did not allow modeling of nene populations on lands outside national parks and national wildlife refuges, where management and population trends are likely to differ. In the best case scenario, nene populations were predicted to remain stable or increase; however, because the model was based on the assumption that management actions would continue on into the future, it does not support the nene's viability into the foreseeable future without continuing management.

Current Status Summary

The implementation of recovery actions for nene has significantly reduced the risk of extinction for the species. Once on the brink of extinction, the captive propagation and release program successfully increased the number of individuals and re-

established populations throughout the species' range on the islands of Hawaii, Kauai, Maui, and Molokai. Studies of foraging behavior identified nene food preferences and nutritional value of food resources contributing to a greater understanding of habitat requirements during the breeding and non-breeding seasons. Current populations are sustained by ongoing management (*e.g.,* predator control, habitat management for feral ungulates and nonnative plants). On the island of Hawaii, traditional movements are being restored, which could be expected to improve survival and breeding, as well as genetic exchange between subpopulations. Certain key populations are expected to maintain current levels or increase into the future if the current level of management is continued.

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 vertebrate 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 because of any of one or a combination 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. We must consider these same five factors in reclassifying a species from endangered to threatened (*i.e.,* downlisting). We may downlist a species if the best available scientific and commercial data indicate that the species no longer meets the definition of endangered, but instead meets the definition of threatened because the species' status has improved to the point that it is not in danger of extinction throughout all or a significant portion of its range, but is in danger of extinction in the foreseeable future.

Determining whether a species has improved to the point that it can be downlisted requires consideration of whether the species is endangered or threatened because of the same five categories of threats specified in section 4(a)(1) of the Act. A species is ''endangered'' for purposes of the Act if it is in danger of extinction throughout all or a ''significant portion of its range'' and is ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a ''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 and the species responds negatively, the factor may be a threat, and during the five-factor analysis, we attempt to determine how significant a threat it is. The threat is significant if it drives or contributes to the risk of extinction of the species, such that the species warrants listing as endangered or threatened as those terms are defined by the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that the potential threat is likely to materialize (*i.e.,* future foreseeability) and that it has the capacity (*i.e.,* it should be of sufficient magnitude and extent) to affect the species' status such that it meets the definition of endangered or threatened under the Act.

In the following analysis, we evaluated the status of the nene throughout all of its range as indicated by the five-factor analysis of threats currently affecting the species, or that are likely to affect the species within the foreseeable future. As part of our analysis we also evaluated the foreseeability of threats. As nene is a conservation-reliant species, some threats are already present and so already ''foreseeable'' but we also evaluated the foreseeability of the continued conservation management to address such threats (see discussion below in Determination section).

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

The draft revised recovery plan identified the lack of lowland habitat and inadequate nutrition as two habitat-related stressors limiting nene recovery (USFWS 2004, pp. 29–30). Nene continue to be affected by historical and ongoing habitat destruction and modification caused by urbanization, agricultural activities, drought, feral ungulates, and nonnative plants. These factors limit suitable breeding and flocking habitat, constraining the recovery of nene populations.

Historical habitat loss was largely a result of human activities such as urban development and land conversion for agricultural activities, particularly in lowland areas. Degradation of lowland habitats used by nene began with Polynesian colonization (around 1,600 years ago) and has continued since European arrival over the past 200 years (Kirch 1982, pp. 7–10). Impacts to lowland habitat included clearing of land for settlements and agriculture; increased frequency of fire; heavy grazing, browsing, and soil disturbance by introduced deer, cattle, goats, sheep, and pigs; and the spread of nonnative plants (Cuddihy and Stone 1990, pp. 103–107).

The threat of destruction and modification of habitat, particularly in lowland areas, by urbanization and land use conversion, including agriculture, is ongoing and expected to continue to limit the amount of nene foraging and nesting habitat. Past land use practices have resulted in great reduction or loss of native vegetation below 2,000 feet (ft) (600 meters (m)) throughout the Hawaiian Islands (TNC 2006). Hawaii's agricultural industries (*e.g.,* sugar cane, pineapple) have been declining in importance, and large tracts of former agricultural lands are being converted into residential areas or left fallow (TNC 2007).

In addition, Hawaii's population increased almost 10 percent between 2003 and 2013, further increasing demands on limited land and water resources in the islands (Hawaii Department of Business, Economic Development and Tourism 2013, *in litt.*). Hawaii's average annual population growth rate has since slowed to 0.7 percent per year, and is anticipated to slow to 0.5 percent by 2025 (Hawaii Department of Business, Economics, and Tourism (HDEBT) 2018, p. 2); however, existing demands for competing resources will persist.

While breeding habitat has some level of protection in national parks, in national wildlife refuges, and on some State lands, there is little to no protection for habitat that nene use outside the breeding season. Nene are vulnerable at this time, as well as during the breeding season, as they are moving around to different areas, thus being exposed to additional predation in unprotected habitat, poor availability of suitable foraging habitat, and interactions with humans and human structures (wind towers, vehicles, etc.). Human activities associated with the development and urbanization of lowland habitat will continue to impact

nene. For example, nene collide with trees, fences, and particularly motor vehicles (Banko and Elder 1990; Banko *et al.* 1999). Nene are attracted to feeding opportunities provided by mowed grass, weeds, and human handouts. Feeding, in particular, makes nene vulnerable to collisions along roadsides as they frequently become tame and unafraid of human activity (Banko *et al.* 1999). Mortality is high in human-modified habitats due to increased predation, collisions, and human-caused accidents (Banko *et al.* 1999).

Feral ungulates and nonnative plants led to degradation of nene habitat by negatively impacting forage quality, shelter, and potential nest sites. Grazing and browsing by introduced cattle, goats, and sheep converted significant portions of native montane forest and shrubland between 1,640 and 6,562 ft (500 and 2,000 m) to wild grassland and managed pastureland dominated by nonnative species (Cuddihy and Stone 1990, pp. 59–63, 63–67). Effects of nonnative ungulates have been somewhat less severe above 6,562 ft (2,000 m) because nonnative weeds are less prevalent (Banko *et al.* 1999, p. 6). Efforts to control feral ungulate populations (*e.g.,* fencing) have been implemented at some sites, including localities in Hawaii Volcanoes and Haleakala National Parks, and have locally reduced ungulate impacts on native vegetation and likely improved nene foraging and breeding habitat. Nonnative plants adversely affect native habitat in Hawaii by: (1) Modifying the availability of light, (2) altering soil-water regimes, (3) modifying nutrient cycling, and (4) altering fire regimes of native plant communities (*i.e.,* the ''grass/fire cycle'' that converts native-dominated plant communities to nonnative plant communities) (Smith 1985, pp. 180–181; Cuddihy and Stone 1990, p. 74; D'Antonio and Vitousek 1992, p. 73; Vitousek *et al.* 1997, p. 6). Nonnative ungulates and plants are expected to require continued management into the foreseeable future, if not indefinitely, as the main Hawaiian islands are too large for complete eradication to be feasible with current technology.

Inadequate nutrition limits nene reproduction and gosling survival, especially on Hawaii and Maui (USFWS 2004, pp. 29–30). Proper nutrition is critical for successful reproduction. Breeding females require carbohydrates and protein to increase fat reserves for egg laying and incubation; goslings require high-protein foods for growth and development (Ankney 1984, pp. 364–370; Banko *et al.* 1999, p. 7). Low breeding rates (20 to 63 percent) and low nest success (44 percent) at several sites on Maui and Hawaii from 1979 to 1981 were likely attributable to poor quality or low availability of foods (Banko 1992, pp. 103–104). The high rates of gosling mortality (57 to 81 percent) in Haleakala National Park during the mid-1990s were due to starvation and dehydration (Baker and Baker 1995, p. 2; 1999, p. 12). Between 1989 and 1999, lack of adequate food or water also appeared to be a factor limiting nene recruitment in Hawaii Volcanoes National Park (Rave *et al.* 2005, p. 14). In many instances of gosling mortality, the actual cause of death may be exposure because goslings are weakened by malnutrition (at hatching) and were unable to keep up with parents, and therefore got chilled or overheated and died (Baker and Baker 1999, p. 13). Emaciation was the most common cause of death diagnosed in 71 out of 300 adult and gosling mortalities submitted to the National Wildlife Health Research Center between 1992 and 2013 for which a cause of death was identified (Work *et al.* 2015, p. 692). More cases of emaciation were diagnosed on Hawaii Island (32), and to a lesser extent on Kauai (21) and Maui (13), perhaps reflecting the rates of hatching and fledgling success and nutritional quality of habitats on the respective islands. Habitat also continues to be reduced due to the spread of unpalatable alien grasses (*e.g.,* guinea grass (*Megathyrsus maximus*), sword grass (*Miscanthus floridulus*)) and other weeds (*e.g.,* koa haole (*Leucaena leucocephala*), lantana (*Lantana camara*)), as this spread diminishes foraging opportunities (Banko *et al.* 1999, p. 23). Therefore, inadequate nutrition due to the lack of suitable foraging opportunities in and around current breeding areas, particularly at higher elevations on Maui and Hawaii Island, coupled with the loss of lowland breeding areas across its range, is expected to continue into the foreseeable future as a threat to the nene.

Drought contributes to nene mortality by reducing the amount and quality of available forage, thereby increasing the starvation and dehydration. For example, nene exhibited higher rates of mortality in drought years during the prolonged island-wide drought between 1976 and 1983 on Hawaii Island (Black *et al.* 1997, pp. 1,165–1,169). Drought was also thought to have contributed to the population decline (10 percent) at Hawaii Volcanoes National Park in the late 1990s (Rave *et al.* 2005, p. 12). Numerous and recurrent droughts have been documented historically throughout the Hawaiian Islands (Giambelluca *et al.* 1991, pp. 3–4; Hawaii Civil Defense 2011, ch. 14, pp. 1–12), with the most severe events often associated with the El Niño phenomenon (Hawaii Civil Defense 2011, p. 14–3). Climate modelling projections indicate that drought frequency and intensity in the Hawaiian Islands are expected to increase over time (Loope and Giambelluca 1998, pp. 514–515; U.S. Global Change Research Program (US–GCRP) 2009, pp. 10, 12, 17–18, 32–33; Giambelluca 2013, p. 6). Therefore, we expect drought to be an ongoing threat to nene and to increase in frequency and intensity in the foreseeable future.

Many of the areas where nene occur in the wild are afforded some level of habitat enhancement that focuses on increasing the survival and reproduction of nene. Habitat enhancement can include predator control, mowing for conservation management purposes, outplanting, and supplemental feeding. Hawaii Volcanoes National Park has areas where many of these types of enhancement occur. For instance, park staff maintain two predator-resistant, open-topped pens, which are 4 and 5 hectares (10 and 13 acres) in size, as safe-breeding sites with supplemental feed and occasional mowing. In addition, predator control is conducted at key brooding sites, and some areas may be closed to human use during the nene breeding season. The Hawaii Division of Forestry and Wildlife also provides supplemental food for nene populations on Hawaii Island. Haleakala National Park has controlled ungulate populations and horses intermittently grazing in Paliku pasture. Kauai Department of Fish and Wildlife (DOFAW) also has predator control programs and may provide supplemental feed during drought years. Mowing, grazing, and irrigating grass can improve its attractiveness to geese by increasing the protein content (Sedinger and Raveling 1984, p. 302; Woog and Black 2001, pp. 324–328). All of these management actions are considered necessary into the foreseeable future for the sustained and continued recovery of nene. Predation is expected to continue indefinitely as a threat to nene, as the main Hawaiian islands are too large for complete eradication of predators to be feasible with current technology.

Nene use of highly altered landscapes and nonnative vegetation can significantly contribute to long-term viability of the population. For example, nene on Kauai use primarily lowland

areas in highly altered, human-impacted habitats such as pastures, agricultural fields, and golf courses (USFWS 2004, pp. 41–42). Nene have been very successful in these areas, indicating their adaptability to a variety of habitats. Lowlands, however, are often unsuitable because of intense human activity or dense predator populations placing nene at greater risk of predation, and hazardous situations such as habituation to human feeding, vehicle collisions, and golf ball strikes (Natural Resources Conservation Service [NRCS] 2007, p. 7). The recovery of nene is dependent on a variety of habitats ranging from highly altered, managed habitats to habitats consisting of primarily native species, and it may not be feasible to restore habitats to native species in all areas used by nene. Currently, nene are thought to require availability of a diverse suite of food resources that may include both nonnative and native vegetation (Baldwin 1947, pp. 108–120; Black *et al.* 1994, pp. 103–105; Banko *et al.* 1999, pp. 6–7). However, the current amount and distribution of suitable breeding, foraging, and flocking habitat continue to be limiting factors for the nene, and we expect this to be the case into the foreseeable future.

Our analyses of Factor A under the Act include consideration of ongoing and projected changes in climate, and the impacts of global climate change and increasing temperatures on Hawaii ecosystems, all of which are the subjects of active research. Analysis of the historical record indicates surface temperature in Hawaii has been increasing since the early 1900s, with relatively rapid warming over the past 30 years. The average increase since 1975 has been 0.48 degrees Fahrenheit (°F) (0.27 degrees Celsius (°C)) per decade for annual mean temperature at elevations above 2,600 ft (800 m) and 0.16 °F (0.09 °C) per decade for elevations below 2,600 ft (800 m) (Giambelluca *et al.* 2008, pp. 3–4). Based on models using climate data downscaled for Hawaii, the ambient temperature is projected to increase by 3.8 to 7.7 °F (2.1 to 4.3 °C) over the 21st century, depending on elevation and which of the four Representative Concentration Pathway (RCP) emissions scenarios (RCP 2.6, 4.5, 6, and 8.5) are considered (Liao *et al.* 2015, p. 4344; van Vuuren et al. 2011, p.5; Intergovernmental Panel on Climate Change 2014, p. 8). Environmental conditions in tropical montane habitats can be strongly influenced by changes in sea surface temperature and atmospheric dynamics (Loope and Giambelluca 1998, pp. 504–505; Pounds *et al.* 1999, pp. 611–612; Still *et al.* 1999, p. 610; Benning *et al.* 2002, pp. 14,246–14,248; Giambelluca and Luke 2007, pp. 13–15). On the main Hawaiian islands, predicted changes associated with increases in temperature include a shift in vegetation zones upslope, a similar shift in animal species' ranges, changes in mean precipitation with unpredictable effects on local environments, increased occurrence of drought cycles, and increases in intensity and numbers of hurricanes (tropical cyclones with winds of 74 miles per hour or higher) (Loope and Giambelluca 1998, pp. 514–515; U.S. Global Change Research Program (US–GCRP) 2009, pp. 10, 12, 17–18, 32–33; Giambelluca 2013, p. 6). The effect on nene of these changes associated with temperature increase is detailed in the following paragraphs.

Forecast of changes in precipitation are highly uncertain because they depends, in part, on how the El Niño–La Niña weather cycle (an episodic feature of the ocean-atmosphere system in the tropical Pacific having important global consequences for weather and climate) might change (State of Hawaii 1998, pp. 2–10). The historical record indicates that Hawaii tends to be dry (relative to a running average) during El Niño phases and wet during La Niña phases (Chu and Chen 2005, pp. 4809–4810). However, over the past century, the Hawaiian Islands have experienced a decrease in precipitation of just over 9 percent (U.S. National Science and Technology Council 2008, p. 61) and a decreasing trend (from the long-term mean) is evident in recent decades (Chu and Chen 2005, pp. 4802–4803; Diaz *et al.* 2005, pp. 1–3). Models of future rainfall downscaled for Hawaii generally project increasingly wet windward slopes and mild to extreme drying of leeward areas in particular during the middle and late 21st century (Timm and Diaz 2009, p. 4262; Elison Timm *et al.* 2015, pp. 95, 103–105). Altered seasonal moisture regimes can have negative impacts on plant growth cycles and overall negative impacts on native ecosystems (US–GCRP 2009, pp. 32–33). Long periods of decline in annual precipitation result in a reduction of moisture availability; an increase in drought frequency and intensity; and a self-perpetuating cycle of nonnative plant invasion, fire, and erosion (US–GCRP 2009, pp. 32–33; Warren 2011, pp. 221–226). Overall, more frequent El Niño events are predicted to produce less precipitation for the Hawaiian Islands. These projected decreases in precipitation are important stressors for nene because they experience substantially higher mortality from starvation in drought years (Hess 2011, p. 59). In addition, the drying trend, especially on leeward sides of islands, creates suitable conditions for increased invasion by nonnative grasses and enhances the risk of wildfire.

Tropical cyclone frequency and intensity are projected to change as a result of increasing temperature and changing circulation associated with climate change over the next 100 to 200 years (Vecchi and Soden 2007, pp. 1068–1069, Figures 2 and 3; Emanuel *et al.* 2008, p. 360, Figure 8; Yu *et al.* 2010, p. 1371, Figure 14). In the central Pacific, modeling projects an increase of up to two additional tropical cyclones per year in the main Hawaiian islands by 2100 (Murakami *et al.* 2013, p. 2, Figure 1d). In general, tropical cyclones with the intensities of hurricanes have been an uncommon occurrence in the Hawaiian Islands. From the 1800s until 1949, hurricanes were reported only rarely. Between 1950 and 1997, 22 hurricanes passed near or over the Hawaiian Islands, and 5 of these caused serious damage (Businger 1998, *in litt.*). A recent study shows that, with a projected shift in the path of the subtropical jet stream northward, away from Hawaii, more storms will be able to approach and reach the Hawaiian Islands from an easterly direction, with Hurricane Iselle in 2014 being an example (Murakami *et al.* 2013, p. 751). At high-elevation nesting sites, frequent heavy precipitation may affect gosling survival during the cooler months (Hess *et al.* 2012, p. 483). More frequent and intense tropical storms are likely to increase the number of nest failures and gosling mortalities in mid- and high-elevation habitats on Maui and Hawaii, where nene are already at risk of exposure and starvation due to inadequate nutrition (Baker and Baker 1995, p. 13; Misajon 2016, pers. comm.; Tamayose 2016, pers. comm.). In addition, projected warmer temperatures and increased storm severity resulting from climate change are likely to exacerbate other threats to nene, such as enhancing the spread of nonnative invasive plants into these species' native ecosystems in Hawaii.

New information received during the comment period revealed that flooding from increased storm frequency and intensity may negatively affect nene viability as past heavy rainfall during the nene breeding season has caused numerous failures of eggs and young goslings at Hawaii Volcanoes National Park (NPS 2018, *in litt.*). On Kauai, flooding has decreased nest success for

the past 2 years (Webber *et al.* 2017, *in litt.;* Uyehara 2018, *in litt.*). In 2017 and 2018, Kauai experienced a record number of flooding events (Uyehara 2018, *in litt.*). Approximately 10 flash floods impacted the Hanalei flood plain through the 2017–2018 breeding season, which hindered breeding activity (Luxner *et al.* 2018, *in litt.;* Uyehara 2018, *in litt.*). Three nene nests were discovered in October 2017, all of which were destroyed the following month by the first flood of the season (Luxner *et al.* 2018, *in litt.*). Most of the active, undiscovered nests established prior to the flood also presumably failed (Luxner *et al.* 2018, *in litt.*). Overall, both the 2016–2017 and 2017–2018 seasons resulted in over 30 percent nest failure as a result of flooding (Webber *et al.* 2017, *in litt.;* Luxner *et al.* 2018, *in litt.*). Many breeding pairs may have failed after the first attempt to nest, may have failed after attempting to re-nest, did not re-nest, or may have moved off the refuge to nest or re-nest (Luxner *et al.* 2018, *in litt.*). Flooding also pushes nene out of their habitat and closer to roads, placing them at risk of vehicular strikes (Webber *et al.* 2017, *in litt.*). Another impact from flooding is an increased subsequent risk of an avian botulism outbreak (Uyehara 2018, *in litt.*).

Finally, sea-level rise resulting from thermal expansion of warming ocean water; the melting of ice sheets, glaciers, and ice caps; and the addition of water from terrestrial systems (Climate Institute 2011, *in litt.*) has the potential for direct effects on nene habitat. Rise in global mean sea level (GMSL) is ongoing and expected to continue (Meehl *et al.* 2012, p. 576; Golledge *et al.* 2015, pp. 421, 424; DeConto and Pollard 2016, pp. 1, 6) due to warming that has already occurred and an uncertain amount of additional warming caused by future greenhouse gas emissions (Sweet *et al.* 2017, p. 1). Six risk-based scenarios describing potential future conditions through 2100 project lower and upper bounds of GMSL rise between 0.3 and 2.5 m (1 and 8 ft) (Sweet *et al.* 2017, pp. vi–vii, 1–55, and Appendices A–D).

Sea-level rise is not expected to be uniform throughout the world, due to factors including, but not limited to: (1) Variations in oceanographic factors such as circulation patterns; (2) changes in Earth's gravitational field and rotation, and the flexure of the crust and upper mantle due to melting of land-based ice; and (3) vertical land movement due to postglacial rebound of topographically depressed land, sedimentation compaction, groundwater and fossil fuel withdrawals, and other non-climatic factors (Spada *et al.* 2013, p. 484; Sweet *et al.* 2017, pp. vi–vii, 9, 19). Sea-level rise in the Hawaiian Islands is expected to be greater than the rise in GMSL (Spada *et al.* 2013, p. 484; Polhemus 2015, p. 7; Sweet *et al.* 2017, p. 9), due, at least in part, to gravitational redistribution of meltwater resulting from terrestrial ice melt occurring in Greenland, Antarctica, and other places (Spada *et al.* 2013, p. 484). In Hawaii, long-term sea-level rise adds to coastal erosion, impacts from seasonal high waves, coastal inundation due to storm surge and tsunami, and drainage problems due to the convergence of high tide and rainfall runoff (SOEST 2017, *in litt.*). Flooding related to sea-level rise would result in the additional loss of lowland habitat occupied by nene in low-lying coastal areas at Huleia NWR on Kauai, Ukumehame on Maui, and Keaau on Hawaii Island.

Thus, although we cannot predict the timing, extent, or magnitude of specific events given that RCP scenarios diverge after around 2035, we expect effects of climate change (changes in tropical cyclone frequency and intensity, drought frequency, and sea-level rise) to exacerbate the current threats to this species such as predation, inadequate nutrition, and habitat loss and degradation.

During the comment period, we received new information that indicates the recent volcanic activity from Kilauea on the island of Hawaii destroyed portions of nene habitat in Hawaii Volcanoes National Park and some nearby areas. Hawaii Volcanoes National Park is home to approximately one-third of the current statewide nene population. There have been significant changes to the caldera floor and notable deposits of ash in the vicinity of the Kilauea summit and to the southwest (Misajon 2018, *in litt.*). Areas of nene habitat known to be affected include nesting, roosting, and molting sites; however, the extent of affected habitat and the actual impacts to that habitat as a result of the collapses and the ash are not known at this time (Misajon 2018, *in litt.*). The eruption in lower Puna eliminated habitat for a small group of nene that resides in the area (Mello 2018, *in litt.*). Severe, ongoing volcanic eruptions have the potential to destroy much or all of the habitat in Hawaii Volcanoes National Park and surrounding areas that support approximately one-third of the statewide nene population. Fortunately, nene were not nesting or molting during the time period of the eruption. Nene have evolved alongside volcanic activity on the island of Hawaii for centuries, and despite past and present activity, volcanic activity has not been identified as a dominant factor that threatens the survival of the species. Although we have added volcanic activity as a threat under Factor A in this rule, we do not identify volcanic activity as a dominant factor that threatens the survival of the species as there are additional self-sustaining nene populations on the islands of Kauai and Maui. Additionally, in mid-August 2018, Kilauea's activity decreased in some areas and ceased in others. Although initially the recent eruption temporarily altered nene behavior by causing them to spend much more time at Wright Road farms, Volcano Winery, and Volcano Golf and Country Club, by December 2018, State biologists reported that ''business is as usual'' for nene in the volcano area (Mello 2018, *in litt.*). Updates have yet to come in for the small coastal population of nene in the Kapoho to Pohoiki area; however, they are assumed to have moved out during the eruption and moved back into the area afterward (Mello 2018, *in litt*). Volcanic activity has greater potential to bring harm to individual nene if it occurs during breeding or molting seasons, when birds may be flightless. Direct impacts to individual nene will be difficult to assess, and any impacts at the population level will not be immediately apparent (Misajon 2018, *in litt.*). It is impossible to know if the lull in volcanic activity will continue or if Kilauea will increase in activity again in the near future.

Summary of Factor A

Habitat destruction and modification from urbanization, agricultural activities, drought, feral ungulates, and invasive plant species remain threats to nene. Volcanic activity recently impacted nene habitat on the island of Hawaii, but the long-term effects of this activity have yet to be determined. These factors contribute to an ongoing lack of suitable breeding and flocking habitat, limiting nene population expansion. Historical habitat loss was largely a result of human activities such as urban development and land conversion for agricultural activities, particularly in lowland areas, contributing to the extirpation of nene on Kauai and Molokai, and the loss of seasonally important leeward, lowland breeding areas on islands with elevations above 5,000 ft (1,524 m) (Hawaii and Maui). Feral ungulates and invasive plant species led to further degradation of nene habitat by negatively impacting forage quality, shelter, and potential nest sites. Nonnative ungulates and plants are ongoing threats that we expect will continue indefinitely into the future and require continued management, as the

main Hawaiian islands are too large for complete eradication to be feasible.

Recovery efforts initially focused on the establishment of populations, with the majority of releases of captive-bred nene at high-elevation sanctuaries (above 5,000 ft (1,524 m)) on the islands of Maui and Hawaii. Despite supplemental food and water and localized predator control efforts, nene at these sites experienced high rates of adult mortality and low rates of gosling survival that were attributed to inadequate nutrition caused by habitat factors such as poor forage quality, drought, and exposure. Access to managed grassland habitats and habitat enhancement during the breeding season improved foraging opportunities and resulted in increased survival and breeding success. Control of feral ungulate populations in some localities has reduced their impacts on native vegetation and likely improved nene foraging and breeding habitat. Subsequent reintroductions at low- and mid-elevation sites, first on the islands of Kauai and Hawaii, and more recently on eastern Molokai and western Maui, demonstrated the ability of nene to successfully become established in these areas.

Currently, nene are found in a range of habitats from sea level to subalpine areas on the islands of Kauai, Oahu, Molokai, Maui, and Hawaii. Populations are centered around release sites and rely on continued land use protections and habitat management (including predator control) to sustain successful breeding and population numbers in these areas.

Overall, the expansion of existing populations is limited by the lack of suitable breeding and flocking habitat due to continuing urbanization, agricultural activities, and potential conflicts with human activities. Periods of drought are expected to continue and are likely to be exacerbated by the effects of climate change. To minimize the effects of drought on the food availability and adequate nutrition, habitat enhancement activities to provide foraging opportunities, especially during the breeding season, will need to be maintained. The rise in sea level projected by climate change models (Spada *et al.* 2013, p. 484; Polhemus 2015, p. 7; Sweet *et al.* 2017, p. 9) may threaten any low-lying habitats used by nene. Although the effects of climate change do not constitute a threat to nene at the present, we do expect them to exacerbate the effects of drought and tropical storms, and to constitute a threat in the foreseeable future.

Flooding and volcanic activity are threats to nene; however, neither of these threats is likely to occur across the nene's range in a single event. Flooding may only occur on one island, or impact only one subpopulation on an island, leaving intact the remaining self-sustaining populations on other islands, or other subpopulations on a single island. Similarly, volcanic activity is not a threat to the survival of the species because it is restricted to one island (Hawaii) and self-sustaining nene populations exist on three islands (Hawaii, Kauai, and Maui).

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

Overuse for commercial, recreational, scientific, or educational purposes is not a threat to the nene. The exploitation of nene for food by Hawaiians and non-Polynesian settlers is believed to have been responsible for substantial population declines in lowland areas, and hunting was a major limiting factor until a hunting ban was passed and enforced in 1907 (Banko *et al.* 1999, p. 23). While the historical effects of overuse were factors that led to the original listing of nene as federally endangered in 1967, current regulations and enforcement are in place and have proven effective in protecting nene from overuse.

Factor C. Disease or Predation

Disease

Numerous parasites and diseases have been documented in captive and wild nene (van Riper and van Riper 1985, pp. 308, 312, 333; Bailey and Black 1995, p. 62; Work *et al.* 2002, p. 1,040). The primary causes of death to nene from disease have been parasites, bacterial and fungal infection, and, less commonly, avian pox (virus) and avian botulism (Work *et al.* 2015, pp. 690–694). Avian influenza and West Nile virus (WNV), if established, also have the potential to affect the nene population.

Toxoplasma gondii is a protozoan parasite transmitted by cats (*Felis catus*) that has historically caused mortality in native Hawaiian birds, and is the most commonly encountered infectious disease in nene, primarily affecting adult birds (Work *et al.* 2015, p. 691). As herbivores, nene are likely exposed by eating transport hosts such as insects or ingesting oocysts (reproductive phase of the parasite) in contaminated water, soil, or vegetation (Work *et al.* 2016, p. 255). For mortalities attributed to *T. gondii,* the cause of death is typically diagnosed as inflammation or lesions on multiple organs. The detection of *T. gondii* in over 30 percent of feral cats sampled (n=67) at two locations on Mauna Kea, Hawaii Island (Danner *et al.* 2007, p. 316), suggests that exposure to and infection by *T. gondii* is likely to continue and to play a role in mortality of nene. Wild birds infected by *T. gondii* may experience a variety of sublethal effects including weakness, loss of balance, and visual impairment (Dubey 2002, pp. 128–136). Such nonlethal effects may also make nene more susceptible to trauma caused by vehicle collisions; in other species the prevalence of *T. gondii* infection has been observed to be greater in roadkilled individuals than in the general population (Work *et al.* 2016, p. 256). Widespread exposure to *T. gondii* was detected in wild birds from Kauai, Maui, and Molokai (21 to 48 percent of birds examined) (Work *et al.* 2016, p. 255). However, the parasite is implicated as the cause of death in a relatively low proportion (4 percent) of the number of nene mortalities between 1992 and 2013 (Work *et al.* 2015, pp. 690–694). This suggests that although exposure to *T. gondii* is widespread and ongoing, the threat of disease caused by *T. gondii* is expected to be low in magnitude and is thus not likely to have population-level impacts on nene into the foreseeable future.

Omphalitis, a bacterial infection of the umbilical stump, has been found to cause mortality in both wild and captive nene goslings (USFWS 2004, p. 34). Diagnosis of omphalitis infection has been documented at low levels (2 percent) (Work *et al.* 2015, supplemental material). We are uncertain as to the impacts on nene into the foreseeable future; however, due to the low incidence, we do not view this a species-level threat.

Avian pox is caused by a virus that causes inflammation of the skin, and in severe cases may result in large scabs that block circulation and lead to the loss of digits or entire limbs or lead to blindness, the inability to eat, or death (USGS–NWHC 2017a, *in litt.*). Pox-like lesions have been reported in adult birds in captivity (Kear and Brown 1976, pp. 133–134; Kear and Berger 1980, pp. 42, 86, 138), and pox scars on many birds in the wild on Hawaii and Maui indicate that avian pox is common, but generally not fatal to nene (Banko *et al.* 1999, pp. 20–21). Avian pox was found in an emaciated bird, but was judged to be a secondary finding (Work *et al.* 2015, p. 693).

Avian malaria is caused by the microscopic parasitic protozoan, *Plasmodium relictum.* Avian malaria was diagnosed as the cause of death in

only 1 out of 300 nene mortalities for which the cause of death was identified (Work *et al.* 2015, supplemental material). Avian malaria has also been reported in at least one wild bird on Maui, but it does not appear that avian malaria is causing significant declines of nene populations (Banko *et al.* 1999, pp. 20–21), nor do we expect it to cause significant declines in the foreseeable future. However, concern about the potential to transfer unique regional strains of avian malaria between islands has resulted in quarantine testing of any nene to be moved inter-island to ensure they are not infected. During the recent Nene Relocation Project, birds from Kauai in which *Plasmodium* was detected were kept on Kauai and not translocated to Maui or Hawaii Island (Kauai Lagoons 2015, *in litt.*).

Avian botulism is a paralytic disease caused by the ingestion of a natural toxin produced by the bacteria *Clostridium botulinum.* Birds either ingest the toxin directly or may eat invertebrates (*e.g.,* non-biting midges, fly larvae) containing the toxin (USGS–NWHC 2017b, *in litt.*). Botulism outbreaks may occur year-round with distinct seasonal patterns based on location (Uyehara 2016b, *in litt.*).

Avian botulism has been found on Kauai, Oahu, Molokai, Maui, and Hawaii Island (USGS–NWHC 2017b, *in litt.*). Avian botulism was diagnosed as the cause of death in only 4 out of 300 nene mortalities for which the cause of death was identified (Work *et al.* 2015, supplemental material). Also, between 2011 and 2015, only 1 percent of the 866 cases of avian botulism involved nene in the Kauai NWR Complex (Uyehara 2016b, *in litt.*). Avian botulism is thought to pose a minor threat to nene because they tend to forage on grasses rather than aquatic invertebrates (Work *et al.* 2015, p. 693). We do not anticipate avian botulism becoming a threat in the foreseeable future.

The spread of avian influenza and WNV in North America has serious implications if either arrives in Hawaii. West Nile virus is transmitted by adults of various species of *Culex* mosquitoes, some of which are present in Hawaii (USGS–NWHC 2017c, *in litt.*). When an infected mosquito bites an animal, the virus enters the animal and infects the central nervous system. West Nile virus causes mortality in domestic geese, with goslings more susceptible than adults (Austin *et al.* 2004, p. 117). In experimentally infected young domestic geese, the New York strain of WNV caused reduced activity, weight loss, abnormal neck and spine posture, and death with accompanying encephalitis and myocarditis (Swayne *et al.* 2001, p. 753). Of the three known cases of nene infected with WNV on the U.S. mainland, all were adults, and one died (Jarvi *et al.* 2008, p. 5,339).

Avian influenza has been reported to cause mortality in naturally infected Canada geese in Asia and Europe (Ellis *et al.* 2004, p. 496; Teifke *et al.* 2007, p. 138). Immunologically naive, juvenile birds are particularly susceptible (Pasick *et al.* 2007, p. 1,827). Migratory birds have been implicated in the long-range spread of highly pathogenic avian influenza (HPAI), a virus (H5N1) from Asia to Europe and Africa. In 2006, the U.S. Departments of the Interior (DOI) and Agriculture (USDA) conducted surveillance for the presence of highly pathogenic avian influenza H5N1 in wild birds in the Pacific islands (American Samoa, Guam, Hawaii, Marshall Islands, Northern Mariana Islands, and Palau) (USGS–NWHC 2017d, *in litt.*). Over 4,000 specimens were collected from waterfowl, shorebirds, and other species from throughout the Pacific, and no highly pathogenic avian influenza was detected (Work and Eismueller 2007, p. 2).

We are uncertain whether or not avian influenza or West Nile virus will be introduced to Hawaii, and current available data does not include modeling to determine any potential future risk.

The Hawaii Field Station of the USGS–NWHC continues to work with wildlife managers to monitor the impact of diseases and other mortality factors on nene and other wildlife populations. Cats are the sole known lifecycle host for the protozoan that causes toxoplasmosis. Ongoing conservation measures in nene breeding areas, such as predator control and predator-proof fences that exclude cats, reduce but do not eliminate the risk of exposure to toxoplasmosis due to the abundance and range of feral cat populations.

Predation

Predation by introduced mammals continues to be a major factor limiting nene breeding success and survival. Predators known to take nene eggs, goslings, or adults include: Dogs (*Canis familiaris*), feral pigs (*Sus domesticus*), cats, small Indian mongoose (*Herpestes auropunctatus*), and black, Norway, and Pacific rats (*Rattus rattus, R. norvegicus,* and *R. exulans,* respectively) (Hoshide *et al.* 1990, pp. 153–154; Baker and Baker 1995, p. 8; Banko *et al.* 1999, pp. 11–12; Hilton 2016, *in litt.*). In addition, cattle egrets (*Bubulcus ibis*) and barn owls (*Tyto alba*) are suspected to occasionally take goslings. When flightless and during molt, goslings and adults are extremely vulnerable to predation by any of these predators (USFWS 2004, p. 21). Yellow crazy ants (*Anoplolepis gracilipes*), tropical fire ants (*Solenopsis geminata*), and little fire ants (*Wasmannia auropunctata*) also have the potential to disturb incubating females and goslings (Plentovich 2019, *in litt.*).

The small Indian mongoose was introduced to the Hawaiian archipelago in 1883, and quickly became widespread on Oahu, Molokai, Maui, and Hawaii Island, from sea level to elevations as high as 7,000 ft (2,130 m) (Tomich 1986, pp. 93–94). Kauai remained mongoose-free when a planned introduction was aborted; however, there have been almost 350 reported sightings since 1968, and in 1976, a road-killed, lactating female was found on the island near Eleele (KISC 2016a, *in litt.*; Phillips and Lucey 2016). In 2012 and 2016, a total of three mongooses were captured in Lihue, Kauai, at air cargo and harbor facilities, as well as a resort adjacent to airport property (KISC 2016b, *in litt.*). The numerous sightings and four confirmed individuals have led to the perception that mongoose are now established on Kauai. While the recent arrivals of mongooses are troubling, there remains scant biological evidence that a breeding population of mongoose occurs on Kauai.

Mongoose are believed to be the most serious egg predator responsible for the most nene nest failures on Hawaii and Maui (Hoshide *et al.* 1990, p. 154; Banko 1992, pp. 101–102; Black and Banko 1994, p. 400; Baker and Baker 1995, p. 20). Mongoose also prey upon goslings and adults (Kear and Berger 1980, p. 57; Banko and Elder 1990, p. 122; Misajon 2016, pers. comm.). The success of the nene on Kauai demonstrates that mongoose may constitute the most significant predator elsewhere (Banko *et al.* 1999, p. 25). Despite limited data, recent estimates of nest success on Kauai for private lands (75 percent) and the Kauai NWR Complex (82 percent) are greater than estimates for both Haleakala (62 percent) and Hawaii Volcanoes (58 percent) National Parks (Hu, unpublished as cited in Banko *et al.* 1999; Bailey and Tamayose 2016, *in litt.*; Uyehara 2016a, *in litt.*).

Introduced European pigs hybridized with smaller, domesticated Polynesian pigs; became feral; and invaded forested areas, especially mesic and wet forests, from low to high elevations, and are present on all the main Hawaiian islands except Lanai and Kahoolawe, where they have been eradicated (Tomich 1986, pp. 120–121; Munro 2007, p. 85). Pigs may roam over nearly the entire extent of the range of nene.

Pigs are known to take eggs, goslings, and possibly adults (Kear and Berger 1980, p. 57; Banko and Elder 1990, p. 122; Baker and Baker 1995, p. 20; Misajon 2016, pers. comm.). The presence of pigs can also attract feral dogs that may then prey upon nene (NPS 2016, p. 2).

Three species of introduced rats occur in the Hawaiian Islands. Studies of Pacific rat DNA suggest they first appeared in the islands along with emigrants from the Marquesas Islands (French Polynesia) in about 400 A.D., with a second introduction around 1100 A.D. (Ziegler 2002, p. 315). The black rat and the Norway rat arrived in the islands more recently as stowaways on ships sometime in the late 19th century (Atkinson and Atkinson 2000, p. 25). The Pacific rat and the black rat are found primarily in rural and remote areas of Hawaii in dry to wet habitats, while the Norway rat typically is found in urban areas or agricultural fields (Tomich 1986, p. 41). The black rat is distributed widely throughout the main Hawaiian islands and can be found in a range of ecosystems and as high as 9,000 ft (2,700 m), but it is most common at low- to mid-elevations (Tomich 1986, pp. 38–40). Both black and Pacific rats have been found up to 7,000 ft (2,000 m) on Maui, but the Norway rat has been found only at lower elevations (Sugihara 1997, p. 194). Rats prey upon nene eggs and goslings (Kear and Berger 1980, p. 57; Hoshide *et al.* 1990, p. 154; Baker and Baker 1995, p. 20).

Cats were introduced to Hawaii in the early 1800s, and are present on all the main Hawaiian islands (Tomich 1986, p. 101). Although cats are more common at lower elevations, populations occur in areas completely isolated from human presence, including montane forests and alpine areas of Maui and Hawaii Island (Lindsey *et al.* 2009, p. 277; Scott *et al.* 1986, p. 363). Cats take nene goslings and adults, and have been observed moving eggs in nests, so they may also prey upon eggs (Kear and Berger 1980, p. 57; Banko and Elder 1990, p. 122; Baker and Baker 1995, p. 20; Zaun 2008, *in litt.*).

Dogs in Hawaii are products of animals brought by Polynesians and later introductions of mixed or selected breeds from all over the world (Tomich 1986, p. 52). Nene are particularly vulnerable to dogs because they have little instinctive fear of them. Along with mongoose, dogs are a significant predator of adult nene, and may also take goslings (Kear and Berger 1980, p. 57; Banko and Elder 1990, p. 122).

Predation by mongoose, pigs, rats, cats, and dogs is expected to continue into the foreseeable future, if not indefinitely. Complete eradication of non-native predators from the main Hawaiian islands is not feasible with current technology

Cattle egrets and barn owls were both introduced into Hawaii in the late 1950s, in an attempt to address agricultural pests on farms and ranches. In Hawaii, cattle egrets are now widespread on all the main islands, as well as on the islands and atolls of the Northwestern Hawaiian Islands. Barn owls occur on all of the main Hawaiian islands in all habitat types, from sea level to upper elevation forests, and in recent years have been sighted with increasing frequency on offshore islets. Barn owls and cattle egrets may also take goslings occasionally (Banko *et al.* 1999, p. 11; Franklin 2016, pers. comm.).

The yellow crazy ant occurs in low- to mid-elevations (less than 2,000 ft (600 m)) in rocky areas of moderate rainfall (less than 100 in (250 cm) annually) (Reimer *et al.* 1990, p. 42). The tropical fire ant is found in drier areas of all the main Hawaiian islands (Wong and Wong 1988, p. 175). Little fire ants have spread across the island of Hawaii with isolated locations on Kauai, Maui, and Oahu (Lee *et al.* 2015, p. 100). Little fire ants have yet to establish on the islands of Kahoolawe, Lanai, and Molokai (Hawaii Invasive Species Council 2019). All three ant species are nonnative and are known to cause significant injuries and developmental problems in adults and chicks of ground-nesting seabirds, and are expected to have similar effects on nene (S. Plentovich 2019, *in litt.*).

Predation by cattle egrets and barn owls, and disturbance by ants, may result in injury or mortality of nene; however, predation/disturbance by these species occurs infrequently and is not known to have population-level impacts.

A variety of predator control programs have been initiated in areas where nene currently reside. Since 1994, Haleakala National Park has conducted intensive control of introduced predators using trapping and toxicants (Bailey and Tamayose 2016, *in litt.*). Ongoing efforts on the different islands include predator control programs aimed at mongoose, feral dogs, feral cats, rodents, and pigs. Some open-top pens used previously to rear captive nene on National Park Service lands are now used to provide predator-free nesting and brooding habitat for free-flying pairs or as temporary holding pens for sick or injured birds (Hawaii Volcanoes National Park 2016, *in litt.*).

Nene population numbers at Hawaii Volcanoes National Park increased during a 10-year period (1989 to 1999), probably in part because of intensive predator control during that period (Rave *et al.* 2005, p. 14). Since then, ongoing predator trapping focused in the primary breeding and brooding areas at Hawaii Volcanoes National Park during the breeding season has likely contributed to the overall increase in nene observed. The general increase in population at Haleakala National Park over the last 25 years is likely a response to increased habitat management—first, the removal of feral ungulates and control to near zero populations; later, the additional intensive control of introduced predators (Bailey and Tamayose 2016, *in litt.*). At Hawaii Volcanoes National Park, various fence designs have been used successfully to exclude mongoose, cats, dogs, and pigs. Predator control programs are currently conducted in most areas where nene nest, including Hanalei, Kilauea Point, and Hakalau Forest NWRs; Haleakala and Hawaii Volcanoes National Parks; and Piiholo Ranch, Haleakala Ranch (Waiopae), and Puu O Hoku Ranch on Molokai.

While predator control programs have proven effective in localized areas, recovery of nene is dependent on more aggressive and widespread control of introduced predators. Despite documentation of the impact of mongoose, dogs, cats, rodents, and pigs on nene, there are relatively few predator control programs, and they are not being implemented over areas large enough to elicit a population response by native prey species (Scott *et al.* 2001, p. 11). Known control techniques should be applied at all habitats needed to recover nene (USFWS 2004, p. 41).

Summary of Factor C

Diseases such as toxoplasmosis, omphalitis, avian pox, avian malaria, and avian botulism cause low levels of mortality in nene, although without resulting in population-level effects, and are expected to continue to do so indefinitely into the future. Avian influenza and WNV are not currently established in Hawaii, and we have no reliable estimate of the risk of this occurring, but they could cause mortality of nene should they become established. Measures to control feral cat populations would reduce the risk of exposure of nene to toxoplasmosis. Continued monitoring of the occurrence of disease in nene populations, as well as early detection of avian botulism outbreaks or cases of avian influenza or WNV, should minimize the impacts of these threats.

Predation by introduced mammals is the most serious threat to nene.

Predation by mongoose, dogs, cats, rats, and feral pigs continues to affect all life stages of nene (eggs, goslings, and adults), negatively impacting breeding success and survival. Predator control measures have improved survival and reproductive success and contributed to population increases in managed areas. However, these efforts are localized and overall predator populations are not being reduced; therefore, predators can readily recolonize an area. In addition, as nene populations expand into areas in their former historical range, such as lowland areas, they will likely encounter higher predator populations in and around human-occupied urban, suburban, and agricultural areas. Predation by cattle egrets and barn owls, and disturbance by ants, may result in injury or mortality of nene; however, predation/disturbance by these species occurs infrequently and is not known to have population-level impacts. Predation is an ongoing threat that we expect will continue indefinitely into the future and require continued management, as the main Hawaiian islands are too large for complete eradication of nonnative predators to be feasible.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

The following section includes a discussion of Federal, State, and local laws, regulations, or treaties that apply to nene. It includes laws and regulations for Federal land management agencies and State and Federal regulatory authorities affecting land use or other relevant management.

Federal Laws and Regulations

National Wildlife Refuge System Improvement Act of 1997. The National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105–57, October 9, 1997) established the protection of biodiversity as the primary purpose of the NWR System. This has led to various management actions to benefit federally listed species, including development of comprehensive conservation plans (CCPs) on NWRs. The CCPs typically set goals and list needed actions to protect and enhance populations of key wildlife species on NWR lands. Where nene occur on NWR lands (Hanalei, Kilauea Point, Hakalau Forest, Kealia Pond, and James Campbell NWRs), their habitats in these areas are protected from large-scale loss or degradation due to the Service's mission ''to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans'' (16 U.S.C. 668dd(a)(2)). National wildlife refuges must also conduct section 7 consultations under the Act (discussed below) for any refuge activity that may result in adverse effects to nene.

Hanalei NWR was established in 1972, to aid in the recovery of the four endangered Hawaiian waterbirds and nene (Endangered Species Conservation Act of 1969; 16 U.S.C. 668aa *et seq.*). Kilauea Point NWR, established in 1985 to enhance seabird nesting colonies, was later expanded to include adjacent lands to be managed for the protection and recovery of endangered waterbirds and nene (The Kilauea Point National Wildlife Refuge Expansion Act of 2004, Pub. L. 108–481, December 23, 2004; 16 U.S.C. 668dd note). Approximately two-thirds of the Kauai nene population is supported by the Hanalei and Kilauea NWRs. The Kilauea Point CCP includes the following goals: (1) Protect, enhance, and manage the coastal ecosystem to meet the life-history needs of migratory seabirds and threatened and endangered species; (2) restore and/or enhance and manage populations of migratory seabirds and threatened and endangered species; and (3) gather scientific information (surveys, research, and assessments) to support adaptive management decisions (USFWS 2016, pp. 2:19–31). Both Hanalei and Kilauea Point NWRs conduct ongoing predator control and habitat improvement and enhancement actions.

At Hakalau Forest NWR, a new population was created with the reintroduction of 33 captive-bred nene between 1996 and 2003. Since then, Hakalau Forest NWR has supported approximately 20 to 25 percent of the nene population on Hawaii Island. The Hakalau Forest NWR CCP includes the following goals: (1) Protect and maintain grassland habitat to support nene population recovery; and (2) collect scientific information (inventories, monitoring, research, assessments) necessary to support adaptive management decisions on both units of the Hakalau Forest NWR (USFWS 2010, pp. 2:30–37).

Kealia Pond NWR, on the south-central coast of Maui, was established in 1992, to conserve habitat for the endangered Hawaiian stilt (*Himantopus mexicanus knudseni*) and Hawaiian coot (*Fulica alai*). Nene are occasionally observed at Kealia Pond NWR (USFWS 2011b, p. 4:14).

James Campbell NWR on the northern shore of Oahu was created in 1976, also for the conservation of endangered Hawaiian waterbirds, and later expanded in 2005, to include conservation of additional threatened and endangered species, migratory birds, and their habitats (USFWS 2011c, p. 1:1). In 2014, a pair of nene arrived on Oahu, nested at James Campbell NWR, and produced three offspring. Both parents and one of the offspring have since died, leaving the two remaining offspring on NWR and adjacent lands.

Hawaii National Park Act of 1916. Congress established Hawaii National Park (later to become, separately, Hawaii Volcanoes National Park and Haleakala National Park) on August 1, 1916 (39 Stat. 432), ''for the benefit and enjoyment of the people of the United States'' (16 U.S.C. 391) and to provide for, ''the preservation from injury of all timber, birds, mineral deposits, and natural curiosities or wonders within said park, and their retention in their natural condition as nearly as possible'' (16 U.S.C. 394). Since that time, the enabling legislation of the park has been modified several times, both to establish the national parks on the islands of Hawaii and Maui as separate parks and to expand the boundary of Hawaii Volcanoes National Park. In 1960, Congress authorized the establishment of the Haleakala National Park (Pub. L. 86–744, September 13, 1960); the park was established the following year. Haleakala National Park, on the eastern side of Maui, encompasses 33,222 acres (ac) (13,444 hectares (ha)), of which 24,719 ac (10,003 ha) are designated wilderness (74 percent of the park) (NPS 2018, *in litt.*). Hawaii Volcanoes National Park protects 330,086 ac (133,581 ha) of public land on Mauna Loa and Kilauea volcanoes on the southeastern side of Hawaii Island (NPS 2017, p. 3). Haleakala National Park (supporting half of the Maui population) and Hawaii Volcanoes National Park (supporting one-third of the statewide population) have conducted nene recovery actions since the 1960s and 1970s, respectively. Past and ongoing actions include releases of captive-bred nene, habitat management (*e.g.,* predator control, feral ungulate control, nonnative plant species control), provision of supplemental food and water, monitoring, and outreach and education.

Migratory Bird Treaty Act (MBTA). Nene are a protected species under the MBTA (16 U.S.C. 703–712, 50 CFR 10.13), a domestic law that implements the U.S. commitment to four international conventions (with Canada, Japan, Mexico, and Russia) for the protection of shared migratory bird resources. The MBTA regulates most aspects of take, possession, transport,

sale, purchase, barter, export, and import of migratory birds and prohibits the killing, capturing, and collecting of individuals, eggs, and nests, unless such action is authorized by permit. While the MBTA prohibits actions that directly kill a covered species, unlike the Endangered Species Act (Act), it does not prohibit habitat modification that indirectly kills or injures a covered species, affords no habitat protection when the birds are not present, and provides only very limited mechanisms for addressing chronic threats to covered species, such as nonnative predators.

State Laws and Regulations

The Hawaii Endangered Species law (Hawaii Revised Statutes (HRS) 195D) prohibits take, possession, sale, transport, or commerce in designated species. This State law also recognizes as endangered or threatened those species determined to be endangered or threatened pursuant to the Federal Endangered Species Act. This Hawaii law states that a threatened species (under the Act) or an indigenous species may be determined to be an endangered species under State law. Protection of these species is under the authority of Hawaii's DLNR, and under administrative rule (Hawaii Administrative Rules (HAR) 13–124–11). Incidental take of threatened and endangered species may be authorized through the issuance of a temporary license as part of a safe harbor agreement (SHA) or habitat conservation plan (HCP) (Hawaii Revised Statutes (HRS) 195D–21, HCPs; 195D–22, SHAs). Although this State law can address threats such as habitat modification, collisions, and other human-caused mortality through HCPs that address the effects of individual projects or programs on nene, it does not address the pervasive threats to the nene posed by introduced mammalian predators. DLNR also maintains HAR 13–124–3, which protects indigenous and introduced wildlife, including nene, from take and export out of Hawaii. The importation of nondomestic animals (including microorganisms) is regulated by a permit system (HAR 4–71) managed through the Hawaii Department of Agriculture (HDOA), reducing the likelihood of introducing new predators or new diseases that may adversely impact nene. The HDOA's Board of Agriculture maintains lists of nondomestic animals that are prohibited from entry, animals without entry restrictions, or those that require a permit for import and possession. The HDOA requires a permit to import animals, and conditionally approves entry for individual possession, businesses (*e.g.,* pets and resale trade, retail sales, and food consumption), or institutions.

Under statutory authorities provided by HRS title 12, subtitle 4, chapter 183D Wildlife, the DLNR maintains HAR title 13, chapter 124 (2014), which defines, at section 13–124–2, ''injurious wildlife'' as ''any species or subspecies of animal which is known to be harmful to agriculture, aquaculture, indigenous wildlife or plants, or constitute a nuisance or health hazard and is listed in the exhibit entitled ''Exhibit 5, Chapter 13–124, List of Species of Injurious Wildlife in Hawaii.'' Under HAR section 13–124–3(c), ''no person shall, or attempt to: (1) Release injurious wildlife into the wild; (2) transport live injurious wildlife to islands or locations within the State where they are not already established and living in a wild state; or (3) export any such species, or the dead body or parts thereof, from the State.'' Permits for these actions may be considered on a case-by-case basis. The small Indian mongoose, a serious predator of nene, is included in Exhibit 5, chapter 13–124, List of Species of Injurious Wildlife in Hawaii. While this HAR may address intentional attempts to transport or release mongoose, there is evidence that inspection and biosecurity measures at inter-island ports may not adequately address their unintentional introduction (*e.g.,* as stowaways in cargo) to islands such as Kauai and Lanai that are thought to be mongoose-free. Currently, there is no biosecurity at Honolulu ports focused on mongoose. Similarly, there is no interdiction being conducted on Lanai for mongoose. At Nawiliwili Harbor (Kauai), the Department of Health is actively implementing a mongoose detection program and has been for the past 2 years (Cecconi, 2019, pers. comm.). In 2016, Governor Ige finalized the Hawaii Interagency Biosecurity Plan 2017–2027. This plan outlines the myriad biosecurity threats (*e.g.,* mongoose and other harmful nonnative animals, diseases, and nonnative plants) in Hawaii and provides broad-scale solutions, including inspections at all air and sea ports to prevent inter-island, interstate, and international spread of invasive species. As of December 2018, all inspector positions were staffed; however, even with full staffing, only 1 to 5 percent of containers can be inspected (Ige 2018, *in litt.*).

Predation by mongoose is a serious threat to nene (see Factor C discussion, above). Currently, the nene population on Kauai represents approximately 43 percent of the total statewide population. Establishment of a breeding population of mongoose on Kauai would significantly reduce the survival and reproduction of nene on Kauai, and as a result, significantly increase the risk of extinction of nene. Although, based on limited data, nene nesting success estimates on unmanaged lands on Kauai (*i.e.,* no predator control) are higher than on managed lands on Maui and Hawaii, this difference may indicate the additional impact of nest predation by mongoose on other islands, which are not found on Kauai (Amidon 2017).

Critical biosecurity gaps that reduce the effectiveness of animal introduction controls include inadequate staffing, facilities, and equipment for Federal and State inspectors devoted to invasive species interdiction (Hawaii Legislative Reference Bureau 2002; USDA–APHIS–PPQ 2010; Coordinating Group on Alien Pest Species (CGAPS) 2009). In recognition of these gaps, a State law has been passed that allows the HDOA to collect fees for quarantine inspection of freight entering Hawaii (Act 36 (2011) HRS 150A–5.3). Hawaii legislation enacted in 2011 (House Bill 1568) requires commercial harbors and airports to provide biosecurity and inspection facilities to facilitate the movement of cargo through ports. This bill is a significant step toward optimizing biosecurity capacity in the State, but its effectiveness into the future will be dependent on adequate funding. In response to House Bill 1568, and other pressures resulting from the unintentional introduction of invasive nonnative species, the State presented the Hawaii Interagency Biosecurity Plan (2017) is a 10-year strategy that addresses Hawaii's most critical biosecurity gaps and provides a coordinated interagency path that includes policies and implementation tasks in four main areas: (1) Pre-border; (2) border; (3) post-border; and (4) education and awareness. Overall, there is an ongoing need for all civilian and military port and airport operations and construction to implement biosecurity measures in order to prevent the introduction or inter-island transportation of additional predators and diseases that could impact nene.

Feral pigs pose the threat of predation to nene (see Factor C discussion, above). The State provides opportunities to the public to hunt game mammals (ungulates, including feral pigs) on 91 State-designated public hunting areas (within 45 units) on all the main Hawaiian islands except Kahoolawe and Niihau (HAR–DLNR 2010; see HAR title 13, chapter 123; DLNR 2009, pp. 28–29). The State's management objectives for game mammals range from maximizing public hunting opportunities (*i.e.,*

''sustained yield'') in some areas to removal by State staff or their designees from other areas (HAR–DLNR 2010; see HAR title 13, chapter 123; DLNR 2009, pp. 28–29). Nene populations exist in areas where habitat is used for game enhancement and game populations are maintained at levels for public hunting (HAR–DLNR 2010; see HAR title 13, chapter 123; see Nene Use Area Maps in USFWS 2017). Public hunting areas are defined, but not fenced, and game mammals have unrestricted access to most areas across the landscape, regardless of underlying land-use designation. While fences are sometimes built to protect certain areas from impacts of game mammals, the current number and locations of fences are not adequate to address the threat of habitat degradation and predation on the nene in unfenced areas throughout its range. There are no other State regulations than those described above that address protection of nene and their habitat from feral pigs.

Local Mechanisms

Local groups are working to implement actions urgently needed to address the importation of nonnative, invasive species. We discuss the primary groups below.

The Coordinating Group on Alien Pest Species (CGAPS), a partnership of managers from Federal, State, County, and private agencies and organizations involved in invasive species work in Hawaii, was formed in 1995, in an effort to coordinate policy and funding decisions, improve communication, increase collaboration, and promote public awareness (CGAPS 2009). This group facilitated the formation of the Hawaii Invasive Species Council (HISC), which was created by gubernatorial executive order in 2002, to coordinate local initiatives for the prevention of introduction, and for control, of invasive species by providing policy-level direction and planning for the State departments responsible for invasive species issues (CGAPS 2009). In 2003, the Governor signed into law Act 85, which conveys statutory authority to the HISC to continue to coordinate approaches among the various State and Federal agencies, and international and local initiatives, for the prevention and control of invasive species (DLNR 2003, p. 3–15; HISC 2009, *in litt.;* HRS 194–2). Reduced funding beginning in 2009 restricted State funding support of HISC, resulting in a serious setback of conservation efforts (HISC 2009, *in litt.;* 2015, *in litt.*) and increasing the likelihood of new invasive plants and animals becoming established in nene habitat.

The Hawaii Association of Watershed Partnerships (HAWP) comprises 11 separate partnerships on six Hawaiian Islands. These partnerships are voluntary alliances of public and private landowners, ''committed to the common value of protecting forested watersheds for water recharge, conservation, and other ecosystem services through collaborative management'' (HAWP 2019, entire). Funding for the partnerships is provided through a variety of State and Federal sources, public and private grants, and in-kind services provided by the partners and volunteers. However, since 2009, decreases in contributed funding have limited the positive contributions of these groups to implementing the laws and rules that can protect and control threats to nene.

These three partnerships, CGAPS, HISC, and HAWP, are collaborative measures that attempt to address issues that are not resolved by individual State and Federal agencies. The capacity of State and Federal agencies and their nongovernmental partners in Hawaii to provide sufficient inspection services, enforce regulations, and mitigate or monitor the effects of nonnative species is limited due to the large number of taxa currently causing damage (CGAPS 2009). Many invasive, nonnative species established in Hawaii currently have limited but expanding ranges, and they cause considerable concern. Resources available to reduce the spread of these species and counter their negative effects are limited. Control efforts are focused on a few invasive species that cause significant economic or environmental damage to commercial crops and public and private lands. Comprehensive control of an array of nonnative species and management to reduce disturbance regimes that favor them remain limited in scope. If current levels of funding and regulatory support for control of nonnative species are maintained, the Service expects existing programs to continue to exclude, or, on a very limited basis, control these species in only in the highest priority areas. Threats from established nonnative species to nene are ongoing and are expected to continue into the future.

Summary of Factor D

Based on our analysis of existing regulatory mechanisms, there is a diverse network of laws and regulations that provide some protections to the nene and its habitat. Nene habitat that occurs on NWRs is protected under the National Wildlife Refuge System Improvement Act of 1997 and section 7 of the Endangered Species Act. Nene habitat is similarly protected on lands owned by the National Park Service. Additionally, nene receive protection under State law in Hawaii.

As a conservation-reliant species, nene are expected to require ongoing management to address the ongoing threat of predation by introduced mammals such as mongoose, dogs, cats, rats, and pigs (Factor C). Although State and Federal regulatory mechanisms have not prevented the introduction into Hawaii of nonnative predators or their spread between islands, with sustained management commitments, these mechanisms could be an important tool to ameliorate this threat.

On the basis of the information provided above, existing State and Federal regulatory mechanisms are not preventing the introduction of nonnative species and pathogens into Hawaii via interstate and international pathways, or via intrastate movement of nonnative species between islands and watersheds. These mechanisms also do not adequately address the current threats posed to the nene by established nonnative species. However, with sustained management commitment, these mechanisms could be tools to ameliorate these threats.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Low Genetic Variation

Nene went through a prehistoric population bottleneck and have very low genetic diversity (Paxinos *et al.* 2002, p. 1,827; Rave *et al.* 1999, p. 40; Veillet *et al.* 2008, pp. 1,158–1,160). Low levels of genetic diversity have been found in wild and captive nene populations, and there is some evidence that fertility and gosling survival have declined in captivity as inbreeding has increased (Rave *et al.* 1994, p. 747; Rave 1995, p. 87, Rave *et al.* 1999, p. 40). A condition known as ''hairy-down'' caused by a recessive gene, which creates a cottony appearance and impairs cold resistance in goslings, has been observed in captive and wild nene (USFWS 2004, pp. 33–34); such goslings observed in the wild at Hawaii Volcanoes National Park have not survived (Misajon 2017, pers. comm.).

Nene on Kauai have less genetic variation than birds sampled from six wild populations on Hawaii, Maui, and Kauai (Rave 1995, p. 87). Despite low genetic diversity and high levels of inbreeding, nene numbers have increased dramatically on Kauai. Thus, low genetic variation may not be a factor limiting reproductive success of the nene on Kauai (Rave 1995, p. 88).

Wind Energy Facilities

A significant number of nene mortalities have been reported at wind energy facilities. Nene collide with the towers or blades of wind turbine generators (WTGs). The diameter of rotor blades (approximately 330 ft (100 m)) and combined height of WTGs (up to 428 ft (131 m)) create large obstacles for nene during flight. On Maui, three facilities with a total of 40 WTGs are in operation, Kaheawa Wind Power I (20 WTGs) and Kaheawa Wind Power II (12 WTGs) in western Maui, and Auwahi Wind (8 WTGs) in southeastern Maui. From 2006 to 2016, a total of 26 nene fatalities and an adjusted take of 50 nene have been reported at the three Maui wind energy facilities (DOFAW 2016, *in litt.*). Take is adjusted by adding estimates of take undetected by search efforts, indirect take (*e.g.,* eggs or goslings taken by parental deaths in the current year), and lost productivity in future years. All three Maui facilities have approved habitat conservation plans (HCPs) and have received Federal incidental take permits and State incidental take licenses authorizing the total combined take of 95 nene during the 20-year period of operation for each project. The HCPs include the following conservation measures to offset the amount of authorized take: (1) Establish an additional population of 75 nene at an off-site location (Haleakala Ranch); (2) conduct predator control and habitat enhancement at the additional population site; (3) conduct on-site habitat restoration; (4) conduct on-site monitoring of nene; and (5) fund nene conservation actions at Haleakala National Park (DOFAW 2016, *in litt.*).

On Hawaii Island, three facilities with a total of 35 WTGs are in operation at Hawi (16 WTGs), South Point (14 WTGs), and Lalamilo Wind Farm (5 WTGs); however, there are no reports of nene being killed at these facilities (Sether 2019, pers. comm.). Based on the proximity of these facilities to areas used by nene, there is the potential for collisions. On Oahu, a total of 42 WTGs are in operation at Kawailoa Wind Power (30 WTGs) and Kahuku Wind Power (12 WTGs), and an additional 9 to 10 WTGs are proposed at the Na Pua Makani project in the Kahuku area. Na Pua Makani has submitted a draft HCP and requested incidental take for nene due to the proximity of the proposed wind energy project to James Campbell NWR, where nene have been observed frequently. Based on the recent occurrence of only two individuals, which failed to breed successfully in 2016, wind energy facilities on Oahu are not a current threat, but represent a potential future threat should a breeding population of nene become established. We are uncertain regarding any future impacts to nene's viability from wind turbines; however, we and the State will be monitoring and regulating wind farm activity through HCPs.

Human Activities

Nene are attracted to feeding opportunities provided by mowed grass and human handouts, and can become tame and unafraid of human activity, making them vulnerable to the impacts of various human activities. These activities include direct harm, such as that caused by vehicles and golf ball strikes, as well as possible disturbance by hikers, hunters, and other outdoor recreationists (Banko *et al.* 1999, pp. 23–24; Rave *et al.* 2005, p. 12; USFWS 2011a, p. 11; Hawaii Volcanoes National Park 2015, *in litt.;* Mello 2017, *in litt.*). Nene may also be impacted by human activities through the application of pesticides and other contaminants, ingestion of plastics and lead, collisions with stationary or moving structures or objects, entanglement in artificial hazards (*e.g.,* fences, fishing nets, erosion control material), disturbance at nest and roost sites, and mortality or disruption of family groups through direct and indirect human activities (Banko *et al.* 1999, pp. 23–24; USFWS 2004, pp. 30–31; Work *et al.* 2015, pp. 692–693). We anticipate impacts from human activities to continue into the foreseeable future.

Vehicle Collisions

Vehicle collisions are an ongoing cause of nene mortality (Hoshide *et al.* 1990, p. 153; Rave *et al.* 2005, p. 15; Work *et al.* 2015, pp. 692–693). In many areas, nene habitat is bisected by roads, with nesting and roosting on one side, and foraging on the other side. This poses a serious threat, particularly during the breeding season, when adults walk goslings across roads. The greatest number of vehicle collisions occurs between December and April, during peak breeding and molting season. During this time of year, both adults and goslings are flightless for a period of time and are especially vulnerable. The problem is worse in areas where birds are attracted to handouts by visitors and the young shoots of recently manicured or irrigated lawns of roadsides and golf courses. Nene are often seen foraging along the edges of highways and ditches as a result of regular mowing and runoff from the pavement creating especially desirable grass in these areas. The impact is further exacerbated when, after a nene is killed on a road, the remaining family members are often unwilling to leave the body, resulting in multiple birds being killed over a short period of time (DLNR 2016, *in litt.*) and potential loss of future reproductive output from breeding pairs.

In the past, a number of mortalities caused by vehicle collisions were reported in Hawaii Volcanoes (41) and Haleakala (14) National Parks (USFWS 2004, pp. 30–31; Rave *et al.* 2005, p. 12). More recent data indicate this is an ongoing issue both inside and outside park boundaries on Maui and Hawaii Island; the average annual number of nene killed by cars at Haleakala National Park was 1.2 ± 1.2 (from 1988 to 2011), and occurred at an average annual rate of 3 ± 2.39 at Hawaii Volcanoes National Park and an adjacent State highway (from 2009 to 2016) (Bailey and Tamayose 2016, *in litt.;* Misajon 2017, *in litt.*). Mortality of nene due to vehicle collisions has also been a continual problem on Kauai (Uyehara 2016c, *in litt.*). Over 50 nene were struck and killed by cars across the roadways of Kauai in 2 years (Kauai DOFAW 2016, *in litt.*). On Kauai, typically the majority of vehicle strikes occur in Hanalei and Kilauea, where the largest proportion of the Kauai population occurs; however, the most recent strikes are occurring on the western side of the island.

The National Park Service (NPS) is actively implementing aggressive traffic-calming measures (Haleakala National Park 2014, *in litt.;* USFWS 2016, *in litt.*). A press release is sent out at the beginning of the nesting season, asking park visitors to drive carefully. Posters are displayed at car rental agencies asking visitors to drive carefully when visiting the park. ''Nene Crossing'' postcards with ''Slow Down'' messages in different languages are handed out to vehicles entering the park. Cones, signs, and a radar trailer are placed along roadsides where nene are frequently seen. Permanent ''Nene Crossing'' signs alert drivers to the potential for birds in the primary area(s) of concern, and temporary crossing signs are deployed when birds are observed frequenting specific road side sites. The NPS conducts regular outreach and education to raise visitor awareness of nene near roads. The Kauai DOFAW conducts educational outreach and has signs placed to encourage driving at reduced speeds. The conservation measures reduce but do not eliminate the threat of vehicle collisions.

Natural and Artificial Hazards

Nene can become entangled or trapped in artificial hazards (*e.g.,* old grass-covered fence wire; fishing line, predator traps; spilled tar) and some

natural hazards (lava tube openings or deep depressions in ash deposits) (Banko *et al.* 1999, p. 24). Goslings occasionally drown in stock ponds, water troughs, and other water sources where exit to land is difficult (Banko *et al.* 1999, p. 24). Predator traps outfitted with protective guards have been effective at reducing the incidence of injury to goslings (NRCS 2007, p. 6).

The use of certain fencing and erosion control materials has resulted in entanglement of nene with the potential to cause impaired movement, injury, and in some cases mortality. Over 2 years, a total of 44 nene (27 adults and 17 hatch-year birds) in the Poipu/Koloa population on Kauai have been observed with woven threads from erosion control slope matting wrapped around their legs at a single construction site (Kauai DOFAW 2016, *in litt.*). Once the material is wrapped around their legs, nene have an increased risk of becoming entangled with other objects, experiencing skin lacerations, and having the circulation cut from their legs leading to infection and the death of the limb (Kauai DOFAW 2015, *in litt.*). Not all instances of entanglement result in harm to nene, as birds may free themselves from threads. Nine of the 44 entangled nene have been observed with constriction or swelling on their legs; 3 have received rehabilitation and been released; and 1 was euthanized due to injuries sustained from the material. Kauai DOFAW is working with the landowners to minimize impacts and has recommended that the use of this type of erosion control matting be discontinued.

Summary of Factor E

As nene populations continue to recover and increase in number and range, they will be subject to increased human interactions in and around urban, suburban, agricultural, and recreational areas. Vehicle collisions are an ongoing cause of nene injury and mortality; however, we do not have evidence that this factor is limiting population sizes. We acknowledge that increasing nene population sizes could result in increased mortality rates in the future, especially for those populations near areas with human presence. While vehicle collisions could potentially impact certain populations, they do not constitute a threat to the entire species now, and we do not expect them to be a threat in the foreseeable future. Artificial hazards that result in entanglement or drowning occur at low frequency and thus are not expected to result in population-level impacts. Collisions at wind energy facilities will result in take of nene now and in the foreseeable future; however, conservation measures in approved and permitted HCPs are expected to offset any population-level impacts to the species. While nene exhibit low levels of genetic variation, this does not appear to be a factor limiting reproductive success.

Overall Summary of Factors Affecting Nene

The current statewide nene population estimate is 3,252 birds (in comparison to an estimated 2,855 birds in 2015, as reported in the proposed rule (NRAG 2017; DLNR 2018, *in litt.*), and fewer than 300 birds at the time of listing in 1967 (USFWS 2004, pp. 110–112). The population on Kauai, most recently estimated at 1,482 birds, is stable and increasing, sustained by ongoing predator control and habitat management (NRAG 2017; DLNR 2018, *in litt.*). Nene on Kauai exhibit successful breeding, likely due to abundant food in managed grasslands and the absence of mongoose, which are a significant nest predator on other islands. Between 2011 and 2016, 646 nene were relocated from Kauai to Maui (48) and the island of Hawaii (598). Our current population estimate of nene on Kauai does not include birds that have been translocated from Kauai to other islands. The Kauai population is expected to continue to exhibit an increasing trend provided no significant nest predators are introduced to the island.

On Maui, the current population estimate is 627 (including translocated birds), with approximately half of the population in Haleakala National Park, and the remainder distributed across areas of western Maui, southern Maui, and the northwestern slopes of Haleakala. The population at Haleakala National Park shows a general increasing trend with numbers consistently above 200 birds since intensive habitat management (feral ungulate and predator control) measures were initiated in the 1990s.

On the island of Hawaii, the current population estimate is 1,091, which includes 598 birds relocated from Kauai (NRAG 2017; DLNR 2018, *in litt.*). Prior to the addition of nene from Kauai, population estimates on the island of Hawaii ranged between 331 and 611, and in general show an increasing trend during the 10-year period since the last major release of 53 birds in 2001. For many years, the largest population of nene on the island of Hawaii has occurred in Hawaii Volcanoes National Park. Over the last 10 years, population estimates at Hawaii Volcanoes National Park have remained relatively constant (ranging between 200 and 250 birds), sustained by ongoing predator control and habitat management. The second subpopulation on the island of Hawaii is found at Puu Oo (NPS 2018, *in litt.*).

On Molokai, the current population estimate of 37 (NRAG 2017; DLNR 2018, *in litt.*) is down from an estimate of 78 in 2015, likely due to predation (Franklin 2017, *in litt.*). While nene on Molokai have bred successfully, periodically low fledging success has been reported due to the high mortality of nestlings, possibly due to overcrowding at the release site. Estimates of the population on Molokai have fluctuated widely since the reintroduction of 74 birds was completed in 2004.

Nene are considered a conservation-reliant species, especially on the islands of Maui and Hawaii, where populations are spread across a large area and exposed to ongoing threats of predation and habitat loss (development, feral ungulates, nonnative plants) (Reed *et al.* 2012, p. 888). At a minimum, current management levels must be continued to sustain current population trends.

Threats to nene from habitat destruction or modification (Factor A) remain and will likely continue into the foreseeable future in the form of urbanization, agricultural activities, habitat alteration by feral ungulates and nonnative plants, drought, floods, and volcanic activity. These factors contribute to a lack of suitable breeding and flocking habitat and, in combination with predation (Factor C) and other human activities that cause mortality (Factor E), continue to threaten nene and limit expansion of nene populations. Some habitats are expected to be affected by habitat changes resulting from the effects of climate change (Factor A). Overutilization (Factor B) is no longer a threat. Diseases (Factor C) such as toxoplasmosis, avian malaria, omphalitis, and avian botulism are not currently known to contribute significantly to mortality in nene. Thus, we do not consider disease to be a current threat, although novel diseases such as West Nile virus could become a threat if introduced to Hawaii in the future. Predation (Factor C) by introduced mammals, including mongoose, dogs, cats, rats, and pigs, is a significant limiting factor for nene populations now and into the foreseeable future. Therefore, we consider predation to be a threat. Existing regulatory mechanisms, including those to prevent predation, will be an important component of ongoing management of nene as a

conservation-reliant species, but do not currently adequately ameliorate threats and will require a continuing commitment to implementation (Factor D). Human activities such as vehicle collisions, artificial hazards, and other human interactions (Factor E) continue to result in injury and mortality; while the individual impacts of these hazards do not constitute threats with population-level impacts to nene, they collectively and in combination with other factors (Factors A, C, and D) constitute an ongoing threat. Similarly, loss of individuals from flooding and volcanic activity (Factor E) do not independently constitute a threat with species-level impacts. However, if they occur in combination with other factors, the cumulative impacts constitute an ongoing threat.

Summary of Comments and Recommendations

In the proposed rule that published on April 2, 2018 (83 FR 13919), we requested that all interested parties submit written comments on the proposal by June 1, 2018. We also contacted appropriate Federal and State agencies, scientific experts, Native Hawaiian organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comments were published in the Honolulu Star Advertiser, West Hawaii Today, Hawaii Tribune Herald, The Garden Isle, The Maui News, and The Molokai Dispatch newspapers. We did not receive any requests for a public hearing.

We received a total of 36 comment letters on the proposed nene downlisting and associated 4(d) rule. Two of these comment letters were from a peer reviewer, 7 from Federal agencies, 6 from State agencies, and 21 from the general public. All new substantive information has either been incorporated directly into this final rule or is addressed below. All public and peer review comments are available at *http://www.regulations.gov* (Docket No. FWS–R1–ES–2017–0050) and from our Pacific Islands Fish and Wildlife Office by request (see **FOR FURTHER INFORMATION CONTACT**).

Peer Review

In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' published on July 1, 1994 (59 FR 34270), we solicited expert opinion from nine knowledgeable individuals with scientific expertise that included familiarity with nene and their habitat, biological needs, and threats. We received a response from one peer reviewer.

Peer Review Comments

(1) *Comment:* While low genetic variation in nene on Kauai does not appear to affect their fitness, this should not be assumed to be true for the species as a whole. Further, fitness on Kauai might be even higher if there was more genetic variation. It is hard to predict the consequences of bottlenecks, low genetic variation, and inbreeding. One consequence of a loss of overall genetic variation is often a loss of variation in important immune system genes, which makes low variation and inbred populations more susceptible to invasive disease (including epidemics and massive die-offs). Although the peer reviewer believes that the low genetic variation and inbreeding are not likely the dominating factors threatening nene population numbers (compared to for example, mongoose and other introduced predators), the peer reviewer thinks this section oversimplifies the potential threats of these factors to nene.

Our Response: We agree that it is important to track genetic diversity and implement conservation efforts that enable nene populations across the species' range to maximize genetic diversity. We also concur that low genetic variation and inbreeding, although threats, are not the dominating factors limiting nene population numbers. As we stated in the April 2, 2018, proposed rule, nene went through a prehistoric population bottleneck and have since had very low genetic diversity (Paxinos *et al.* 2002, p. 1,827; Rave *et al.* 1999, p. 40; Veillet *et al.* 2008, pp. 1,158 – 1,160). We recognize that populations with low genetic variability have increased susceptibility to disease (*e.g.,* West Nile virus, avian influenza). However, despite Kauai having the lowest level of genetic diversity and high levels of inbreeding, nene numbers have increased dramatically on Kauai. Additionally, we believe that having breeding populations on three separate islands provides a potential buffer should a lethal disease such as West Nile virus be introduced. Our analysis also considers that there may be an opportunity for nene to increase genetic diversity: The establishment of traditional movement patterns on Hawaii Island may provide opportunities for greater genetic exchange if pair bonds are formed between individuals from separate breeding subpopulations at non-breeding locations (Hess *et al.* 2012, pp. 479, 482 and Leopold and Hess 2014, pp. 73–74). Although we do not have specific data to support this hypothesis, we find it a reasonable assumption based on recent population genetics research. For example, genetic variation can occur over time when closely associated subpopulations occupy habitats with varying physical and biological elements within the same geographic area (Kristensen *et al.* 2018, pp. 1346–1347).

(2) *Comment:* Downlisting the nene, which is a uniquely adapted Hawaiian goose (and the only remnant species of a small *Branta* radiation in the islands), would reduce their standing for conservation mitigation and increase the likelihood of take. Therefore, if the downlisting proceeds, it should be accompanied by stringent adherence to regulations protecting the species.

Our Response: We are aware of the perception that conservation benefits afforded to nene would be reduced as a result of this reclassification and associated 4(d) rule. However, the combined purpose of these rules is to provide nene continued protection while facilitating conservation of nene and expansion of their range by increasing flexibility in management activities. As nene increase in number and range, they face increased interaction and potential conflict with the human environment. The exceptions from section 9 of the Act that are outlined in this final 4(d) rule are intended to decrease human-wildlife conflict while ensuring nene have the protections they need in order to continue their path toward recovery.

Upon the effective date of this reclassification and associated 4(d) rule (see **DATES**, above), nene will still be afforded protections under the Act. With the exception of the explicitly limited actions that are covered under the 4(d) rule, anyone taking, attempting to take, or otherwise possessing a nene, or parts thereof, in violation of section 9 of the Act will still be subject to a penalty under Federal law (see section 11 of the Act). This final rule does not alter the requirements of section 7 of the Act or the interagency regulations implementing section 7 that are found at 50 CFR part 402. Under section 7 of the Act, Federal agencies must still continue to ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of nene. Under 50 CFR 402.14, a Federal agency still needs to consult with the Service if the proposed action may affect nene, unless the agency determines with written concurrence from the Service that the proposed action is not likely to adversely affect the nene.

Although the 4(d) rule allows for select exceptions of take from the section 9 prohibitions of the Act, as outlined under the 4(d) Rule, below, this rule only addresses Federal Endangered Species Act requirements, and does not change the Hawaii Endangered Species Law. Current State of Hawaii (HRS section 195D–4) law does not include the authority to issue regulations, equivalent to those under section 4(d) of the Act, to except take prohibitions for endangered and threatened species. Instead, State law requires the issuance of a temporary license for the take of endangered and threatened animal species, if the activity otherwise prohibited is for scientific or conservation purposes or incidental to an otherwise lawful activity. Please see the 4(d) Rule, below, for more details on State law and associated requirements (*e.g.,* license, permit, safe harbor agreement, habitat conservation plan). Please also see our responses to related comments (5), (6), (15), and (24).

Federal Agency Comments

(3) *Comment:* The U.S. Department of Agriculture, National Resources Conservation Service (NRCS) commented that the participation of private landowners is considered essential to the recovery of nene, especially on Kauai, where there is limited habitat on Federal land. Privately held ranches on islands of Molokai, Maui, and Hawaii have stepped forward to support recovery of nene, and this should be recognized and supported. These private landowners are being affected by the expansion and dispersal of the nene populations and improving communication and developing partnerships with private landowners are proven means to maximize opportunities for success.

Our Response: We agree that developing and maintaining partnerships, especially with private landowners, is essential to the successful recovery of nene. We greatly appreciate the efforts made by privately held ranches on Hawaii, Maui, and Molokai. We plan to continue to work with these conservation champions and look forward to strengthening these partnerships to maximize conservation success.

(4) *Comment:* The NRCS commented that the recent gains in the statewide nene population as a whole appear strongly tied to the productivity of the Kauai population. The lack of mongoose on Kauai is a major factor in this population's success. They encourage a coordinated and sustained effort to increase both island biosecurity and eradication response to ensure mongoose do not become established on Kauai.

Our Response: We agree that the success of nene on Kauai is a major factor in the species overall trajectory toward recovery and that the potential establishment of mongoose on Kauai poses a serious threat to the island's nene population. We are involved in ongoing, coordinated efforts to increase biosecurity on Kauai as well as improve eradication efforts, and we welcome partnerships that will further these efforts. In 2016, the Service released the Kauai Mongoose Standard Operating Procedures to Conduct an Island-wide Status Assessment and Early Detection Rapid Response (Phillips and Lucey 2016, pp. 1–12, Appendices A and B).

(5) *Comment:* The NRCS commented that the 4(d) rule is an important mechanism for providing the regulatory assurance needed to successfully implement the voluntary Working Lands for Fish and Wildlife (WLFW) program in Hawaii, as it may provide provisions to ensure that private landowners and citizens are not disproportionately burdened by regulations that do not further the conservation of the species and are excepted from the ''take'' prohibitions. The WLFW is a collaborative effort between NRCS, the Service, and other conservation partners to provide technical and financial support to help private landowners make habitat improvements on their lands, while providing regulatory predictability under the Act. They encourage the Service to consider adding language that specifically includes the NRCS conservation plans related to WLFW in the 4(d) rule. They anticipate the Service being actively engaged in the development of this program and expect that any routine activities, such as prescribed grazing, predator control, and other habitat improvements, would be thoroughly vetted in advance by the Service.

Our Response: The Service considers all activities in a NRCS conservation plan that benefit nene habitat as being within the scope of the 4(d) rule exception for nene habitat management activities. The exceptions from the prohibitions of section 9 of the Act specified in this final 4(d) rule target activities to facilitate conservation and management of nene where they currently occur and may occur in the future through increased flexibility by eliminating the Federal take prohibition under certain conditions. These activities are intended to encourage support for the occurrence of nene in areas with land use practices compatible with the conservation of nene, and to redirect nene away from areas that do not support the conservation of the species.

(6) *Comment:* The Department of the Navy requested that the Service amend the proposed 4(d) rule to allow the safe hazing of nene families and goslings away from dangerous areas such as roadways, airfields, and construction areas.

Our Response: The 4(d) rule that we proposed and are finalizing in this rule allows for the safe hazing of nene from dangerous areas. Thus, the Navy's request has been addressed. This final 4(d) rule allows for specific exceptions of nene take under Federal law (*i.e.,* section 9 of the Act), including, but not limited to, hazing that is not likely to involve lethal or direct injurious take. Intentional harassment activities not likely to cause direct injury or mortality that are addressed in this final 4(d) rule are recommended to be implemented prior to the nene breeding season (September through April) wherever feasible. If, during the breeding season, a landowner desires to conduct an action that would intentionally harass nene to address nene loafing or foraging in a given area, a qualified biologist *(i.e.,* an individual with a combination of academic training in the area of wildlife biology or related discipline and demonstrated field experience in the identification and life history of nene) familiar with the nesting behavior of nene must survey in and around the area to determine whether a nest or goslings are present. The 4(d) rule does not apply to scenarios involving lethal or directly injurious take. Further, any take of nene is still prohibited under State law, and any action likely to adversely affect the nene continues to require consultation with the State. For more details, please see *Intentional Harassment Not Likely to Cause Mortality or Direct Injury* and *Justification* under 4(d) Rule, below, and our responses to comments (2) and (5).

(7) *Comment:* The Department of the Navy commented that the proposed rule does not list potential take from surveys. Installation biologists routinely conduct surveys to collect data on nene on installation property and in particular surveys for nests during the breeding season. The Navy requests that any unintentional take, specifically harassment, resulting from survey work be included in the 4(d) rule as allowable.

Our Response: We have added unintentional take, specifically harassment, resulting from survey work that benefits and furthers the recovery of nene to the excepted forms of take under *Intentional Harassment Not*

Likely to Cause Mortality or Direct Injury, below. Please see 4(d) Rule, below, and Summary of Changes from Proposed Rule, above.

(8) *Comment:* The Department of the Navy commented that consistent with the 2014 Formal Consultation for Pacific Missile Range Facility Base-wide Infrastructure, Operations, and Maintenance, Kauai, hazing is conducted, and signs are placed to alert drivers; however, collisions still occasionally occur. The Navy requests that vehicular collisions in general (not just during habitat management) be included in the 4(d) rule as allowable take (with the condition that other best management practices are in place to reduce risk of collisions).

Our Response: Vehicle strikes at Haleakala National Park, and across the species' range, are a threat to nene, particularly during breeding season, as discussed in the April 2, 2018, proposed rule and this final rule under *Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence.* As stated in our responses to comments (6) and (7), the purpose of this reclassification and associated 4(d) rule is to further the conservation of the nene. Vehicle collisions do not achieve this goal; therefore, we did not except them from take prohibitions in the 4(d) rule.

(9) *Comment:* The Department of the Navy noted that the 4(d) rule allows take by law enforcement officers for the aiding or euthanizing of sick, injured, or orphaned nene; disposing of a dead specimen; and salvaging a dead specimen that may be used for scientific study. The Navy requested that the rule allow Federal employees, specifically installation natural resource managers, or any biologists that support the implementation of integrated natural resources management plans (INRMPs) to perform these actions under the 4(d) rule.

Our Response: Under the 4(d) rule, law enforcement officers are allowed to aid or euthanize sick, injured, or orphaned nene; dispose of dead specimens; and salvage dead specimen that may be used for scientific study. In response to the Navy's comment, we noted that the September 2014 section 7 Biological Opinion for their Pacific Missile Range Facility on Kauai covers the incidental take of nene resulting from hazing activities. The Terms and Conditions in the Biological Opinion's Incidental Take Statement address disposition of injured or dead nene as well as who must be contacted. Naval personnel are not authorized to euthanize injured nene; however, they can recover and dispose of a dead specimen in accordance with the Terms and Conditions in the Incidental Take Statement. Injured nene can be collected and delivered to a previously specified care facility to determine if the specimen can be recuperated and returned to the wild. If it cannot be recuperated, the care facility has the authority to euthanize the bird. We do not believe the Navy's natural resource managers possess the expertise to make such a decision and therefore recommend the 4(d) rule not be revised to allow them to euthanize injured individuals. We also do not find it necessary to revise the 4(d) rule to provide the authority for incidental take that is already covered by the biological opinion.

State Comments

(10) *Comment:* The Hawaii State Department of Agriculture (HDOA) made two suggested edits to the proposed rule: (a) That the lease and special permits within the Hanalei NWR be amended to allow agricultural lessees the ability to exercise the same permitted practices identified in the 4(d) rule; and (b) assuming the rule is finalized, they encourage ongoing review of the nene's status on Kauai.

Our Response: Leases and special permits associated with the Hanalei NWR may be able to be revised to accommodate the Federal exceptions outlined in this final 4(d) rule. As discussed under 4(d) rule, below, the example is take by landowners or their agents conducting intentional harassment in the form of hazing or other deterrent measures not likely to cause direct injury or mortality. We recommend that such hazing not occur during the breeding season. Additionally, any form of hazing is still prohibited under State law, and any proposed action that may affect nene requires consultation with the State. Please also see our response to comment (2). In regard to reviewing the status of nene on Kauai, the Act requires the Service to conduct status reviews for all listed species at least once every 5 years; this analysis will include an analysis of the status of the nene on Kauai.

(11) *Comment:* The HDOA notes that the proposed rule indicates a substantial increase in the nene population on Kauai. In 2004, the Kauai population was estimated at 564 (83 FR 13923; April 2, 2018) and the 2017 population was estimated at 1,107 birds. The HDOA assumes the 2017 count did not include the 640 nene that were relocated from Kauai to Maui and Hawaii from 2011 to 2016 (83 FR 13935; April 2, 2018).

Our Response: As discussed below under comment (12), the Hawaii State Department of Land and Natural Resources (HDLNR) provided us an updated (2017) statewide nene population estimate of 3,252 birds, including 1,482 birds on Kauai, 1,104 birds on Hawaii, and 627 birds on Maui. We have added this estimate to this final rule under *Species Information.* The HDLNR noted that their 2017 count includes the most recent translocation efforts to Kauai and Maui. The April 2, 2018, proposed rule included nene population estimates from 2015, including any translocations through 2015.

(12) *Comment:* The HDLNR commented that a divide exists between the downlisting criteria outlined in the nene recovery plan and the definitions of ''endangered'' and ''threatened'' species under the Act. They stated that nene populations clearly do not meet the downlisting criteria as established in the recovery plan, but could qualify for downlisting under the Act's definition of endangered. The HDLNR provided updated nene population estimates. The HDLNR noted that their 2017 count includes the most recent translocation efforts. Between 2011 and 2016, 646 nene were translocated from Kauai to Hawaii (598 birds) and Maui (48 birds) to reduce aviation safety concerns at Lihue airport on Kauai. They also stated that if the recent translocations had not taken place, there would not be a population of 500 birds on the island of Hawaii; therefore, the nene's status would not meet the downlisting criteria of a minimum of seven populations, of which two consist of 500 or more breeding adults each on two of the islands of Hawaii, Kauai, and east Maui; and one population of 300 breeding adults. Additionally, they stated there are no populations of 100 breeding adults on ''two of the following: East Maui, Molokai, Kahoolawe, or Lanai,'' and that there are no nene on Kahoolawe or Lanai, and the population on Molokai has declined from 78 captive-bred birds to an estimated 37 birds after more than 10 years. They acknowledged that there are two or more populations of 250 to 300 breeding birds, depending on how they are divided, and more than two populations between 100 and 250 birds.

Our Response: We appreciate the updated population-wide estimate for nene and the island-specific estimates. We also appreciate the information on nene translocation efforts between 2011 and 2016. According to the values provided, 493 nene were on Hawaii prior to the recent translocations. State data are consistent with our assessment that there are self-sustaining populations on Hawaii (493, plus the

598 translocated birds, totaling 1,091), Kauai (1,482 birds), and Maui (579, plus the 48 translocated birds, totaling 627). We updated our *Species Information* discussion to include the new and most recent statewide population estimates and translocation efforts. Although the translocations were beneficial, the Hawaii and Maui populations would likely have been self-sustaining over time without the translocated birds. Further, as discussed under *Implementation of Recovery Actions for the Nene* in the April 2, 2018, proposed rule (83 FR 13923–13924), two breeding subpopulations of nene on the island of Hawaii have re-established traditional movement patterns, and recent data suggest that certain key populations are expected to maintain current numbers or increase in the future if the current level of management is continued.

Regarding the perceived divide between the recovery criteria and the Act's definition of ''endangered,'': We addressed this in the April 2, 2018, proposed rule under *Recovery Planning* (83 FR 13922–13923), where we discuss that a decision to revise the status of a species on, or to remove a species from, the Federal List of Endangered and Threatened Wildlife (50 CFR 17.11(h)) is ultimately based on an analysis of the best scientific and commercial data then available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan. Recovery may be achieved without all of the criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. For further information, please refer to the April 2, 2018, proposed rule (83 FR 13919), as well as the Recovery Planning section of this final rule. We have determined that the nene no longer meets the Act's definition of an endangered species, but does meet the definition of a threatened species; therefore, downlisting is appropriate regardless of how or whether the recovery criteria have been met.

(13) *Comment:* The HDLNR commented that the range of nene has contracted and that the species remains vulnerable to extinction on all islands, apart from Kauai (which makes up 9 percent of the nene's historical range) on which mongoose are currently not established but the potential for establishment is high. Mongoose are a significant predator and would dramatically threaten Kauai's nene population.

Our Response: We concur that the range of nene has contracted; however, due to captive-rearing and release efforts, nene are now self-sustaining on the islands of Hawaii, Kauai, and Maui. We acknowledge that nene is a conservation-reliant species, and we anticipate current conservation actions will continue into the foreseeable future. We also recognize that predation by mongoose is a serious threat to nene. As stated in the April 2, 2018, proposed rule and in this final rule, the establishment of a breeding population of mongoose on Kauai would significantly reduce the survival and reproduction of nene on Kauai and, as a result, would significantly increase the risk of extinction of nene. Please also see our response to comment (4).

(14) *Comment:* The HDLNR commented that over half of the island of Hawaii's nene are in two subpopulations at Puu Oo and Hawaii Volcanoes National Park, which are both currently under direct and indirect threats from the Kilauea's volcanic eruption.

Our Response: At the time of Kilauea's most recent activity (May 4, 2018), the April 2, 2018, proposed rule was in the comment period stage; therefore, volcanic activity was not addressed in the proposed rule. We have added an analysis of the effects of volcanic activity to the nene under *Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range* in this final rule.

(15) *Comment:* The HDLNR commented that some Division of Forestry and Wildlife (DOFAW) employees are concerned that downlisting nene and the establishment of a 4(d) rule, and associated provisions under State law, could result in inadequate regulatory mechanisms for the nene and other endangered species in Hawaii. On the other hand, DOFAW appreciates that a more flexible regulatory mechanism to authorize nonlethal take permits is needed in some circumstances (*e.g.,* hazing), and that the 4(d) rule may be effective in implementing a more intuitive approach to managing the bird in specific situations. Revisions to Hawaii Revised Statutes would be required to bring the State law into alignment, and that may take years due to opposition and associated litigation.

Our Response: This reclassification and associated 4(d) rule is designed to give more nene management authority to the State. Upon finalization of this rule, the State will be the main authority regarding how and whether any of the excepted forms of take outlined in this rule will be permitted. Any proposed action that may cause take of nene on Federal lands will still require consultation with the Service. Please also see our response to comments (2), (5), and (24).

Public Comments

(16) *Comment:* Two commenters stated that reclassification of nene will decrease funding for predator control (*i.e.,* mongoose).

Our Response: We are unaware of any reason why the reclassification of nene from endangered to threatened will result in a decrease in funding for predator control. Upon the effective date of this final rule (see **DATES**, above), nene will still be afforded protections under the Federal Endangered Species Act and the Hawaii Endangered Species Law. Efforts to protect nene, including predator control, are anticipated to continue into the foreseeable future. Although nene have made progress toward recovery, they are not considered to be recovered. Additionally, we recognize that the nene is considered a conservation-reliant species by scientists and thus will require management, including predator control, into the foreseeable future in order to achieve and sustain recovery. Please also see our responses to related comments (2), (4), (5), and (15).

(17) *Comment:* One commenter stated that the only reason nene are doing well on Kauai is because there are no mongoose.

Our Response: We agree that the success of the nene on Kauai is largely due to the lack of mongoose on the island. In addition to the lack of an established mongoose population, the greater availability of lowland habitat on Kauai is considered an important factor. Historically, nene are believed to have bred mainly in lowland habitat, and research has shown that reproductive success is higher in lowland habitats than in upland habitats. We also attribute the success of the nene on Kauai to all of our partners on the island who continue to work collaboratively toward the recovery of nene. Along with our partners, we will continue to implement current biosecurity efforts as well as seek innovative ways to continually improve such efforts to decrease the risk of mongoose establishing on Kauai. Please also see our response to comment (4).

(18) *Comment:* Three commenters expressed that inbreeding is a concern, especially on islands other than Kauai. They stated that genetic testing would be best to determine the threat of inbreeding. One commented that nene are recognized as the most genetically bottlenecked listed species given their

near extinction in the 1940s, and that genetic fecundity of nene is unknown and needs to be adequately assessed and demonstrated as independently viable on all islands on which it occurs before downlisting is biologically supportable.

Our Response: Please see our response to comment (1).

(19) *Comment:* Three commenters stated that the nene should have the highest level of protection because nene is a cultural symbol and the State bird.

Our Response: All listing decisions made under the Federal Endangered Species Act are based on a biological analysis of whether a species is an endangered species or a threatened species because of any of the five factors specified under section 4 of the Act. Please see Summary of Factors Affecting the Species, above, for our five-factor analysis on the nene, including new information we received since the publication of the April 2, 2018, proposed rule (83 FR 13919).

(20) *Comment:* Four commenters stated that predatory invasive species such as rats, mongoose, dogs, pigs, and cats are a threat to nene because nene are ground nesters, adults are incapable of flying during molting, and goslings do not fledge until after 10 weeks. Also, with the increase in human population, there is a subsequent increase in dogs, and nene are not instinctively afraid of dogs because they are not a natural predator, which together increases the threat of depredation by dogs. Further, nonnative species may also outcompete nene for food resources.

Our Response: We agree that predatory invasive species such as rats, mongoose, dogs, pigs, and cats are a threat to nene as discussed above under Summary of Factors Affecting the Species. Please also see our responses to comments (4), (13), (16) and (28).

(21) *Comment:* Six commenters stated that the nene is a rare species with low number of individuals (especially on Oahu) and endangered throughout a significant portion of its range. One of these commenters added that the nene is considered the sixth rarest waterfowl in world. Nene might be stable, but stable with a low number of individuals. One commented that breeding success is low on all islands except Kauai. Some of these commenters suggested that nene should be established on all islands on which it once occurred before downlisting is initiated, and that approximately 3,000 individuals is not enough to downlist or consider recovered.

Our Response: We agree that the nene is a relatively rare species, particularly in comparison to other waterfowl, and has a restricted distribution. However, rarity alone does not warrant listing a species as endangered or threatened under the Act. Because nene experience many threats that put them in danger of extinction, nene have been listed under the Act since 1967. The Act's definition of an ''endangered species'' is any species which is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)). The Act's definition of a ''threatened species'' is any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). At the time of its listing in 1967, the nene was at risk of extinction as defined by the Act. Since then, conservation efforts have slowly yet steadily made progress toward the recovery of the nene; today, nene have increased from 30 individuals to over 3,000 individuals with self-sustaining populations on Hawaii, Kauai, and Maui. These three islands make up over 80 percent of nene's historical range. Nene have not been recorded, nor are they known historically, on Oahu. Although nene have yet to become established (successfully breeding) on Molokai, a small portion of their historical range, our evaluation of the current range of nene indicates they do not meet the definition of an endangered species (*i.e.,* nene are not currently at risk of extinction throughout all or a significant portion of their range). Breeding success could be improved on Hawaii and Maui, and continued management is necessary for predator control and other biological and conservation factors that influence nene population numbers and survivorship. Reclassification of nene to threatened status does not mean we consider nene to be recovered. This reclassification rule recognizes the progress of conservation measures since listing.

(22) *Comment:* Seven commenters stated that habitat loss and modification (*i.e.,* human development, sea-level rise and associated erosion of coastal areas) are a threat to nene. One of these commenters provided an example of an upcoming development on the south shore of Kauai, the ''New City'' which will encompass 480 acres of planned development.

Our Response: We agree that habitat loss and modification are a threat to nene as outlined in the April 2, 2018, proposed rule and this final rule under *Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.* Sea-level rise and associated erosion caused by the effects of climate change are not anticipated to bring extensive alterations to nene habitat, as nene are not dependent on coastal areas. Increases in frequency and intensity of both drought and hurricanes are anticipated to bring direct and indirect impacts to nene; however, to what extent and when such impacts may occur is unknown. Please also see our response to comment (28). Regarding the ''New City'' plans on Kauai, this proposed development occurs in an area on Kauai that is currently at least partially developed, and nene are not known to occupy the project area nor adjacent areas.

(23) *Comment:* Two commenters stated that before downlisting is warranted, more research is needed to determine the impacts of climate change (*i.e.,* drought, hurricanes, and sea-level rise), the amount (if any) of genetic variability, the impacts from wind energy and wind turbines, and toxoplasmosis. Sea-level rise is not a future threat; it is happening now. Hawaii has already lost approximately 13 miles of beaches and shorelines (Hawaii Climate Change Mitigation and Adaptation Commission, *in litt.* 2015). Further, more intense hurricanes will increase flooding events and thus increase the loss of nene nests due to flooding.

Our Response: We agree that *Toxoplasma gondii* poses both direct and indirect threats to nene as discussed in the April 2, 2018, proposed rule and this final rule under *Factor C. Disease or Predation.* Please see our responses to comment (1) regarding low genetic variation; comments (2) and (24) regarding downlisting and the 4(d) rule; comments (22) and (28) regarding climate change; and comment (25) regarding wind farms.

(24) *Comment:* Six commenters suggested that reclassification from endangered to threatened status will significantly increase harassment and human wildlife conflict. Human-wildlife conflict still exists. With the observed increase in human population, there is subsequent increase in nene take (*e.g.,* more people equals more dogs). Also, more people will likely lead to an increase in hazardous situations, especially if take is allowed during nene breeding season because nene are ground-nesting birds. One of these commenters suggested only allowing hazing outside of nene breeding season, and then stated that hazing may be an advantage but is a narrow perspective to the conservation of the species. Further, the human dimensions side of nene acceptance deserves immediate Service emphasis (*i.e.,* outreach) to help broaden support for nene. One of these commenters suggested that downlisting

nene to threatened status may increase human hunting of nene.

Our Response: Please see our responses to comments (2), (5), (6), and (15), which address similar comments pertaining to downlisting nene and the promulgation of this 4(d) rule. Please also see our response to comment (31) regarding outreach. Regarding hunting, whether nene are listed as endangered or threatened under the Act, hunting nene is still prohibited under current law, and subject to civil and criminal penalties under both Federal and State law.

(25) *Comment:* One commenter stated that wind energy was harmful to nene and that there was a large increase in wind energy production between 2009 and 2015, with new prospects underway.

Our Response: We agree that wind energy production has increased over the past 10 years and that new prospects are underway. We also agree that wind turbines have the potential to harm nene. Nine wind energy facilities are either built or under construction on the islands of Oahu (3), Maui (3), and Hawaii (3). Four of these have active incidental take permits and associated HCPs, one is in the process of finalizing a HCP to receive an incidental take permit for take of nene, three are not permitted for take of nene (because take is unlikely to result from operations on Oahu), and one of the three not currently permitted for take of nene is just beginning the process to seek coverage for nene. Rigorous and standardized fatality monitoring is conducted on a 4- to 7-day interval year-round for all wind energy facilities that have incidental take permits. These wind energy facilities are required to fully offset their requested take through mitigation that includes predator control, improving foraging (*e.g.,* outplanting favored nene food plants), pen maintenance and construction, and other management actions that benefit the nene. The mitigation actions are carried out on the island where the incidental take occurs. The mitigation actions include specific monitoring components that ensure the mitigation actions are indeed offsetting the requested take above the baseline that exists without the additive mitigation actions. In other words, the mitigation actions must produce nene that, but for the mitigation, would not have been produced. Prior to the Service issuing an incidental take permit, the cumulative impacts of all projects existing and in the foreseeable future that may impact a species are analyzed to ensure the action does not significantly impact the survival and recovery of the species.

(26) *Comment:* One commenter stated that there are inadequate regulatory mechanisms in place to protect nene.

Our Response: We addressed regulatory mechanisms in the April 2, 2018, proposed rule and this final rule under *Factor D. The Inadequacy of Existing Regulatory Mechanisms.* Based on our analysis of existing regulatory mechanisms, a diverse network of laws and regulations provide some protections to the nene and its habitat. Nene habitat that occurs on NWRs is protected under the National Wildlife Refuge System Improvement Act of 1997 and section 7 of the Endangered Species Act. Nene habitat is similarly protected on lands owned by the National Park Service. Additionally, nene receive protection under State law in Hawaii. Although we conclude State and Federal regulatory mechanisms do not adequately address the threats to nene and their habitats from potential new introductions of nonnative species or continued expansion of existing nonnative species populations on and between islands and watersheds, we believe that with sustained management commitment, these mechanisms could be important tools to ameliorate these threats.

(27) *Comment:* Four commenters expressed conditional support for the proposed downlisting rule if the Service would withdraw or limit the 4(d) proposal. These commenters stated that nene do not eat taro or harm taro production, and the commenters do not want the Service to permit hazing on taro farms on Kauai. To allow this would impermissibly disrupt nene populations in an area where they are highly concentrated. These commenters support efforts to decrease motor vehicle strikes, as a lot occur in Hanalei Valley. They support the 4(d) rule as long as the purpose is to open up and increase positive management for nene.

Our Response: We agree that taro farms on Kauai support large numbers of nene and that taro farms are important, although not ideal, habitat. As outlined in the April 2, 2018, proposed rule and this final rule, the purpose of the 4(d) rule is to facilitate the expansion of nene into additional areas with land use practices compatible with the conservation of nene, and reduce the occurrence of nene in areas that do not support the conservation of nene across the landscape. The final 4(d) rule provides incentives to landowners to support the occurrence of nene on their properties, as well as neighboring properties, by alleviating concerns about unauthorized take of nene. Nonlethal take on any farms, taro or otherwise, is allowed consistent with the 4(d) rule if permitted by the State and in the case of the NWRs, if permitted by their lease language. Harm or harassment that is likely to cause mortality or injury will continue to be prohibited under the 4(d) rule here because allowing these forms of take would be incompatible with restoring robust populations of nene and restoring and maintaining their habitat. Please also see our response to comment (2); 4(d) Rule, below; and *Factor D. The Inadequacy of Existing Regulatory Mechanisms,* above, for more information. Regarding vehicle strikes, we agree vehicle strikes are a threat to nene, as outlined in the April 2, 2018, proposed rule and this final rule under *Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence,* and we will continue to work with partners to reduce the impacts from vehicle strikes on Kauai and throughout the nene's range.

(28) *Comment:* Five commenters stated that continued conservation actions are essential for this rule to work, and that a stronger management plan is needed if reclassification is finalized with the 4(d) rule, as well as to address impacts from climate change. An increase in protection for crucial nene nesting areas is needed, perhaps a large predator-free preserve. The Service also needs to include climate change as part of the larger regulatory discussion, as well as focus on ecosystem stabilization. Federal management is essential for nene.

Our Response: We agree that continued conservation actions are essential to the full recovery of nene. This is true with or without this final reclassification and 4(d) rule as the nene is considered a conservation-reliant species, as discussed in the April 2, 2018, proposed rule under *Recovery Planning* (83 FR 13922–13923). Although classified as threatened upon the effective date of this final rule (see **DATES**, above), nene are still protected under both the Act and Hawaii Endangered Species Law. Please also see our response to comment (2). We also agree that current and future anticipated impacts from climate change should be part of both regulatory and management discussions at all levels, as well as ecosystem stabilization. However, impacts to nene and nene habitat from the effects of climate change are not fully known. We expect there will be both anticipated (*e.g.,* increased intensity and frequency of drought and hurricane) and unanticipated impacts, although we do not know when such impacts will

manifest. Please also see our response to related comment (22). Federal management of nene is expected to continue into the foreseeable future. We also anticipate continued collaboration with State and private partners. The nene recovery plan is rooted in adaptive management, and as the species needs become evident in light of climate change, we will adapt accordingly. We are aware that data indicate an increase in frequency and intensity of both drought and hurricanes, and indicate species range shifts due to a warming ambient global temperature, and we will work with partners to do our best to minimize such impacts to nene and nene habitat.

(29) *Comment:* Two commenters stated that there is an alarming increase in motor vehicle collisions, either because there are more nene or more people, or both.

Our Response: We agree that vehicle strikes at Haleakala National Park, and across the species' range, are a threat to nene, particularly during breeding season, as discussed in the April 2, 2018, proposed rule and this final rule under *Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence.* The Service uses the best available scientific and commercially data during the compilation of both proposed and final rules. Any pertinent new information we received during the comment period has been included in this final rule.

(30) *Comment:* One commenter shared that there is an investigation underway in Koloa on Kauai regarding a homeowner that allegedly killed four nene with a BB gun.

Our Response: We are unable to comment on alleged or actual investigations. Shooting nene is prohibited under Federal and State law, and subject to both civil and criminal penalties.

(31) *Comment:* Two commenters asked the Service to conduct more outreach for nene and associated current issues, and stated that it would have been better to provide more public information rather than simply referring to readers to *http://www.regulations.gov.* It would be advantageous to broadly communicate the nene as a success for the recovery progress that has been made, and use that to educate the public about endorsing biodiversity.

Our Response: We agree that additional outreach regarding the status of nene and associated current issues would further advance the conservation of nene. We are always seeking more effective ways to best reach the public and create awareness about endangered species and surrounding issues, including nene. Our current methods of outreach include releases to media (local television and newspaper stations), multiple social media stories and website postings, and outreach to the community. We also welcome the public to contact our office if they have questions about nene (please see **FOR FURTHER INFORMATION CONTACT**, above). The nene's trajectory toward recovery is the culmination of years of collaborative efforts between Federal, State, and private partners. Working with partners, we will continue to use a variety of tools to provide information to the public regarding nene, including, but not limited to, social media, websites, news releases, environmental education, and outreach and interpretation.

(32) *Comment:* One commenter questioned the success of nene outlined in the April 2, 2018, proposed rule by citing the release of 2,400 birds between 1960 and 2006, yet the statewide population is currently only 3,000.

Our Response: As discussed in the April 2, 2018, proposed rule under *Species Information* (83 FR 13921–13922), approximately 2,800 captive-bred nene were released between 1960 and 2008. The population estimate provided in the proposed rule (2,855 individuals) was the result of a combination of captive-bred and wild (naturally produced offspring from released birds) nene. We received a more recent statewide population estimate of 3,252 birds from the State. Estimated mortality rates retrieved from capture-recapture analysis on over 2,000 captive-bred nene that were released to the wild ranged from 0 to 87 percent (Black *et al.* 1997, p. 1161; Banko *et al.* 1999, p. 20). Variability was attributed to year of release, age class, and method of release (Black *et al.* 1997, pp. 1167–1168, 1171, 1173). Survival for nene released before the drought years of 1976 to 1983 ranged from 84 to 95 percent; however, during the drought period, nearly 1,200 captive-bred nene perished (Banko *et al.* 1999, p. 20). The cumulative data (including values for captive-bred release, translocated birds, mortality rates, fledging success, life span (up to 28 years for one captive-bred released nene at Haleakala National Park), and other factors discussed in the April 2, 2018, proposed rule) indicate that although nene are conservation-reliant, they are on a path toward recovery. There are self-sustaining nene populations on Hawaii, Kauai, and Maui, and the most recent population estimate we received from the State shows an increase in number of individuals from the 2015 value cited in the April 2, 2018, proposed rule.

(33) *Comment:* Two commenters stated that nene are conservation reliant, especially outside of Kauai.

Our Response: We agree, as stated in the April 2, 2018, proposed rule and this final rule. We anticipate that current conservation actions will continue or increase in the foreseeable future. Please also see our response to comment (28).

(34) *Comment:* One commenter stated the need for an increase in biosecurity efforts. This is most important on Kauai because mongoose are not established there. It is only a matter of time before mongoose establish on Kauai; therefore, nene should remain classified as endangered.

Our Response: We agree that there is a need for increased biosecurity efforts across the island, both for interisland crafts and those from overseas, to address introduction and movement of all invasive species. Currently, the Department of Health is actively implementing a mongoose detection program at Nawiliwili harbor (the location of the 2012 live mongoose capture), and has been for the past two years (Cecconi 2019, pers. comm.; KISC 2019). Additionally, Kauai has adopted the Kauai Mongoose Standard Operating Procedure to conduct island-wide State assessment and early detection rapid response (Phillips and Lucey 2016, entire). Please also see our response to comment (4).

(35) *Comment:* One commenter stated that nene regulations are costly for businesses, due to bird droppings in restaurants and pools and nene eating of farm crops. As nene rebound, businesses are burdened. The 4(d) rule will decrease this burden. Additionally, it is still against both Federal and State law to harm, abuse, or kill a nene.

Our Response: Although this 4(d) rule provides select exceptions from section 9 of the Federal Endangered Species Act, any type of nene take is still prohibited by the Hawaii Endangered Species Law. Please also see our responses to comments (2) and (5).

(36) *Comment:* One commenter stated that nene are a risk to aircraft and the ability to haze nene at the airport will reduce this risk.

Our Response: We agree that nene, and other birds, are a risk to aircraft and aircraft passengers. The effect of this final rule is the exception of certain specific actions from the Act's section 9 prohibitions on take. However, under 50 CFR 402.14, a Federal agency would still need to consult with the Service if the proposed action may affect nene, unless the agency determines with written concurrence from the Service that the proposed action is not likely to

adversely affect the nene. Additionally, under State law, a permit is required to haze a federally or State-listed species at airports or elsewhere. Furthermore, State issuance of an incidental take license requires the development of an HCP (HRS 195D–21) or a safe harbor agreement (HRS 195D–22), and consultation with the State's Endangered Species Recovery Committee.

Determination of Nene 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.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we carefully examined the best scientific and commercial information available regarding the past, present, and future threats faced by nene. We reviewed the information available in our files and other available published and unpublished information, and we consulted with recognized experts and State agencies. The current statewide nene population estimate is 3,252 individuals, with the wild populations on the islands of Hawaii, Kauai, Maui, Molokai, and Oahu estimated to have 1,104, 1,482, 627, 37, and 2 individuals, respectively. Populations on Kauai, Maui, and Hawaii are exhibiting a stable or increasing trend, while the nene population on Molokai is experiencing a fluctuation in population numbers. Continuation of current population trends into the future is dependent on, at a minimum, maintaining current levels of management (*e.g.,* predator control and habitat enhancement). Nene are still affected by predation (Factor C), loss and degradation of habitat (Factor A), and effects of human activities (Factor E). Some subpopulations may potentially be affected in the future by habitat changes resulting from the effects of climate change such as increases in drought, hurricanes, or sea-level rise (Factor A), and nene may potentially be affected in the future by introduction of diseases such as West Nile virus (Factor C). Regulatory mechanisms do not adequately address these threats. While threat intensity and management needs vary somewhat across the range of the species (for example, the current lack of an established mongoose population on Kauai influences predator control strategies there), nene populations on islands throughout the range of the species continue to be reliant on active conservation management and require adequate implementation of regulatory mechanisms, and all remain vulnerable to threats that could cause substantial population declines in the foreseeable future. Despite the existing regulatory mechanisms and conservation efforts (Factor D), the factors identified above continue to affect the nene such that it is likely to become in danger of extinction within the foreseeable future throughout all of its range. Thus, after assessing the best available information, we conclude that the nene is not currently in danger of extinction, but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

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. Because we have determined that the nene is likely to become an endangered species within the foreseeable future throughout all of its range, we find it unnecessary to proceed to an evaluation of potentially significant portions of the range. Where the best available information allows the Services 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. We note that the court in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), did not address this issue, and our conclusion is therefore consistent with the opinion in that case.

Determination of Status

Our review of the best available scientific and commercial information indicates that the nene meets the definition of a threatened species. Therefore, we are listing the nene as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

The Act does not define the term ''foreseeable future.'' For the purposes of this rule, we define the ''foreseeable future'' to be the extent to which we can reasonably rely on predictions about the future in making determinations about the future conservation status of nene. The degree of foreseeability varies with respect to the different various threats to nene. While nene are adversely affected by many types of direct and indirect threats, as outlined under Summary of Factors Affecting the Species, most of these threats are ongoing (*e.g.,* predation by already established nonnative animals) and only abated by continued management, such that future threat impacts on nene populations are likely to be dependent on the availability of resources for management. For some potential threats (*e.g.,* introduction of West Nile virus, establishment of mongoose on Kauai), we cannot predict whether or when they will manifest.

The threats with the greatest potential to cause significant nene population declines relate to predation and loss and degradation of habitat (primarily due to ungulates and invasive plants). Both management (*e.g.,* control of predators, ungulates, and invasive plant control) and biosecurity (*e.g.,* predator and disease control at some ports) have improved the status of nene. However, continuing these efforts into the future is necessary to prevent substantial reductions in the species' viability since nene populations are expected to continue to be conservation-reliant. Thus, the foreseeable future in relation to management and biosecurity is largely dependent on the reliability of management commitments and funding for these purposes in coming decades.

Most nene populations currently exist on lands managed by agencies that function under conservation mandates and have management plans in place (*i.e.,* National Parks, National Wildlife Refuges, and some State lands).

Availability of funding for conservation of natural resources, including threatened and endangered species, is increasingly difficult to predict into the more distant future. However, management plans currently in effect are likely to continue for a decade or more (*e.g.,* comprehensive conservation plans for National Wildlife Refuges and general management plans for National Parks function on a roughly 15-year planning cycle [see Service Manual 602 FW 3; National Park Management Policies 2.3.1.12]), and given funding availability, predator management actions are likely to continue as a significant priority in future iterations based on established conservation mandates. Thus, we conclude that there is a reasonable likelihood of continued management for the benefit of nene on these lands over the next 15 to 30 years. Similar constraints apply to the level of foreseeability of governmental commitments to implementation of biosecurity measures (see Hawaii Interagency Biosecurity Plan).

Over this time frame, we anticipate that threats to nene associated with climate change (*e.g.,* increased duration and intensity of drought, increased frequency and intensity of hurricanes, and flooding associated with hurricanes and sea-level rise) to continue to increase, although we expect the primary issues driving nene population viability will continue to be predation and habitat degradation.

Because the species is likely to become in danger of extinction in the foreseeable future throughout all of its range, the species meets the definition of a threatened species. This rule finalizes the reclassification of the nene from an endangered species to a threatened species.

This final rule revises 50 CFR 17.11(h) to reclassify nene from endangered to threatened on the List of Endangered and Threatened Wildlife. Reclassification of nene from endangered to threatened is due to the substantial efforts made by Federal, State, and local government agencies and private landowners to recover the species. This rule formally recognizes that this species is no longer in danger of extinction throughout all or a significant portion of its range and, therefore, does not meet the definition of endangered, but is still impacted by predation, habitat loss and degradation, and inadequacy of regulatory mechanisms to the extent that the species meets the definition of a threatened species under the Act. However, this reclassification does not significantly change the protection afforded this species under the Act. Other than the ''take'' that will be allowed for the specific activities outlined in the accompanying 4(d) rule, the regulatory protections of the Act will remain in place. Anyone taking, attempting to take, or otherwise possessing a nene, or parts thereof, in violation of section 9 of the Act will still be subject to penalties under section 11 of the Act, except for the actions covered under the 4(d) rule.

4(d) Rule

Section 4(d) of the Act states that the ''Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation'' of species listed as threatened. The U.S. Supreme Court has noted that very similar statutory language demonstrates a large degree of deference to the agency. See *Webster* v. *Doe,* 486 U.S. 592 (1988). Conservation is defined in the Act to mean ''the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the Act] are no longer necessary.'' Additionally, section 4(d) of the Act states that the Secretary ''may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1). . . . or 9(a)(2).'' Thus, regulations promulgated under section 4(d) of the Act provide the Secretary with wide latitude of discretion to select appropriate provisions tailored to the specific conservation needs of the threatened species. The statute grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have approved rules developed under section 4(d) that include a taking prohibition for threatened wildlife, or include a limited taking prohibition. See *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002). Courts have also approved 4(d) rules that do not address all of the threats a species faces. *See State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species,'' or he may choose to forbid both taking and importation but allow the transportation of such species, as long as the prohibitions, and exceptions to those prohibitions, will ''serve to conserve, protect, or restore the species concerned in accordance with the purposes of the Act'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

The Service has developed a species-specific 4(d) rule that is designed to address the nene's specific threats and conservation needs. Although the statute does not require the Service to make a ''necessary and advisable'' finding with respect to the adoption of specific prohibitions under section 9, we find that this regulation is necessary and advisable to provide for the conservation of the nene. As discussed above in the Summary of Factors Affecting the Species, the Service has concluded that the nene is at risk of extinction within the foreseeable future primarily due to predation (Factor C), loss and degradation of habitat (Factor A), and effects of human activities (Factor E) . Some subpopulations may potentially be affected in the future by habitat changes resulting from the effects of climate change such as increases in drought, hurricanes, or sea-level rise (Factor A) and nene may potentially be affected in the future by introduction of diseases such as West Nile virus (Factor C). This 4(d) rule targets activities to facilitate conservation and management of nene where they currently occur and may occur in the future by excepting the Federal take prohibition under certain conditions. This change is intended to encourage support for the occurrence of nene in areas with land use practices compatible with the conservation of nene, and to redirect nene use away from areas that do not support the conservation of nene. The provisions of this 4(d) rule will promote conservation of nene and expansion of their range by increasing flexibility in management activities for our State and private landowners. The provisions of this rule are one of many tools that the Service will use to promote the conservation of the nene.

Provisions of the 4(d) Rule

This 4(d) rule will provide for the conservation of the nene by specifically prohibiting the following actions that can affect nene, except as otherwise authorized or permitted: Import or export; take; possess and other acts with unlawfully taken specimens; deliver, receive, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce.

These prohibitions will result in regulating a range of human activities that have the potential to affect nene, including agricultural or urban development; energy development; recreational and commercial activities; introduction of predators; and direct capture, injury, or killing of nene. Regulating these activities will help preserve the species' remaining populations.

Prohibition of Import, Export, and Interstate and Foreign Commerce

We have included the prohibition of import, export, interstate and foreign commerce, and sale or offering for sale in such commerce due in part to the increased risk of exposing nene to diseases such as West Nile virus. While there are currently no diseases present in Hawaii that jeopardize the viability of nene, unrestricted transport of captive nene in and out of the Hawaiian Islands would have the potential to result in introduction of new avian diseases to the wild population in the foreseeable future. As discussed under Factor C, the introduction of diseases such as West Nile virus could significantly impair the viability of nene in Hawaii. Additionally, although the nene population is currently stable, it is considered a conservation-reliant species and requires active management to maintain this stability. The nene is not thriving to the degree that its population is considered capable of sustaining unrestricted trade, and the resulting increased incentive for capture of nene from the wild, without the likelihood of negative impacts to the long-term viability of the species.

Prohibition of Possession and Other Acts With Unlawfully Taken Specimens

Although the nene population is currently stable, it is considered a conservation-reliant species and requires active management to maintain this stability. The nene is not thriving to the degree that its population is considered capable of sustaining unrestricted capture or collection from the wild without the likelihood of negative impacts to the long-term viability of the species. Because capture and collection of nene remains prohibited as discussed below, maintaining the complementary prohibition on possession and other acts with illegally taken nene will further discourage such illegal take. Thus, the possession, sale, delivery, carrying, transporting, or shipping of illegally taken nene should continue to be prohibited in order to maintain the viability of the nene population.

Prohibition of Take

''Take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulation at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating incidental and intentional take will help preserve the nene's remaining populations.

Although the statewide number of individual nene is stable, if not increasing, species experts consider the nene a conservation-reliant species. The nene is not thriving to the degree that its population is considered able to withstand unregulated take, either intentional or unintentional, without the likelihood of negative impacts to the long-term viability of the species. There are a few circumstances in which allowing either intentional or unintentional take may benefit the nene as a species and further its recovery. We have outlined such circumstances below as exceptions to the prohibitions of take. By allowing take under specified circumstances, the rule will provide needed protection to the species while allowing management flexibility to benefit the species' long-term conservation. Harm or harassment that is likely to cause mortality or injury continues to be prohibited because allowing these forms of take is incompatible with restoring robust populations of nene and restoring and maintaining their habitat. Anyone taking, attempting to take, or otherwise possessing a nene, or parts thereof, in violation of section 9 of the Act will still be subject to a penalty under section 11 of the Act, except for the actions that are specifically excepted under the 4(d) rule.

Take Exceptions

Under this 4(d) rule, take will generally continue to be prohibited, but the following specific take will be excepted under the Act, provided the additional measures described in the rule are adhered to:

- Take by landowners or their agents conducting intentional harassment in the form of hazing or other deterrent measures not likely to cause direct injury or mortality, or nene surveys;
- Take that is incidental to conducting lawful control of introduced predators or habitat management activities for nene; and
- Take by authorized law enforcement officers for the purposes of aiding or euthanizing sick, injured, or orphaned nene; disposing of dead specimens; and salvaging a dead specimen that may be used for scientific study.

Intentional Harassment Not Likely To Cause Mortality or Direct Injury

The increased interaction of nene with the human environment increases the potential for nene to cause conflicts for business, agricultural, residential, and recreational activities, as well as the potential for nene to become habituated to hazardous areas (*e.g.,* golf courses, roadways, parks, and farms). One of the limiting factors in the recovery of nene has been the concern of landowners regarding nene on their property due to the potential damage to agricultural crops and potential conflicts with normal business, recreational, and residential activities. Landowners express concern over their inability to prevent or address the damage or conflicts caused by nene because of the threat of penalties under the Act. Furthermore, State and Federal wildlife agencies expend resources addressing landowner complaints regarding potential nene damage to agricultural crops and conflicts during normal business, recreational, and residential activities. By providing more flexibility to the landowners regarding management of nene, we expect enhanced support for the conservation of the species, by providing a tool to reduce potential human-wildlife conflicts in areas incompatible with the conservation of nene, as well as to promote expansion of the species' range into additional areas compatible with conservation of nene across the State.

Hazing and other persistent deterrence actions are management strategies that may be used to address wildlife conflict issues. As nene populations increase, particularly in heavily human-populated lowland areas, they may often come into conflict with human activities. For example, nene are known to use a variety of human-modified areas including wind farms, airports, resorts, golf courses, agricultural operations, residential areas, parks, public recreation areas, and transportation routes. Nene using these areas may present a conflict with normal business activities or cause crop depredation or safety hazards to humans. Humans may also inadvertently harm nene by feeding them, which could result in nene showing aggressive behaviors towards humans, being injured or killed by vehicles or humans, or being placed at increased risk from predators. Methods such as hazing are necessary to prevent and address these potential human-nene

conflicts, allowing nene to coexist with areas of established human activity and providing for continued public support of nene recovery actions.

Any deterrence activity that does not create a likelihood of injury by significantly disrupting normal nene behavioral patterns such as breeding, feeding, or sheltering is not take and is not prohibited under the Act.

If an activity creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns such as breeding, feeding, and sheltering, then the activity has the potential to cause take in the form of harassment. Hazing of nene is considered intentional harassment, which creates the likelihood of injury and has been prohibited take. Under this 4(d) rule, hazing and other deterrence activities that may cause indirect injury to nene by disrupting normal behavioral patterns, but are not likely to be lethal or cause direct injury (including the need for veterinary care or rehabilitation), are classified as intentional harassment not likely to cause direct injury or mortality, and are allowed under Federal law. Such activities may include the use of predator effigies (including raptor kites, predator replicas, etc.), commercial chemical bird repellents, ultrasonic repellers, audio deterrents (noisemakers, pyrotechnics, etc.), herding or harassing with trained or tethered dogs, or access control (including netting, fencing, etc.). Harassment of nene in the course of surveys that benefit and further the recovery of nene is also considered to be within the scope of this 4(d) rule. This 4(d) rule does not apply to activities involving lethal or directly injurious take. For example, laser irradiation used for hazing may cause ocular damage resulting in temporary or permanent loss of visual acuity or blindness (Oregon State University 2017, *in litt.*), impairing the ability of nene to feed or avoid predators or other hazards (*e.g.,* vehicle collisions). Feral dogs or unrestrained pets are known to take nene adults and goslings, and nene are particularly vulnerable to dogs because they have little instinctive fear of them (NRCS 2007, p. 6). Therefore, this 4(d) rule does not cover hazing methods such as lasers or untrained dogs.

Intentional harassment activities not likely to cause direct injury or mortality that are addressed in this 4(d) rule are recommended to be implemented prior to the nene breeding season (September through April) wherever feasible. If, during the breeding season, a landowner desires to conduct an action that would intentionally harass nene to address nene loafing or foraging in a given area, a qualified biologist familiar with the nesting behavior of nene must survey in and around the area to determine whether a nest or goslings are present. If a nest or families with goslings is discovered, a qualified biologist must be notified and the following measures implemented to avoid disturbance of nests and broods: (1) No disruptive activities may occur within a 100-foot (30-meter) buffer around all active nests and broods until the goslings have fledged; and (2) brooding adults (*i.e.,* adults with an active nest or goslings) or adults in molt may not be subject to intentional harassment at any time. Any observation of nene nest(s) or gosling(s) should be reported to the Service and authorized State wildlife officials within 72 hours. Additionally, follow-up surveys of the property by qualified biologists should be arranged by the landowner to assess the status of birds present.

This 4(d) rule addresses intentional harassment of nene by landowners and their agents that is not likely to result in mortality or direct injury, predator control, and habitat management. Excepting targeted activities that may normally result in take under the prohibitions of the Act will increase the incentive for all landowners to support nene recovery and provide enhanced options for wildlife managers with respect to nene management, thereby encouraging their participation in recovery actions for nene.

We expect that the actions and activities that are allowed under this 4(d) rule, while they may cause some minimal level of harm or disturbance to individual nene, will not cause mortality or direct injury, will not adversely affect efforts to conserve and recover nene, and in fact should facilitate these efforts because they will make it easier to implement recovery actions and redirect nene activity toward lands that are managed for conservation.

Predator Control and Habitat Management

Control of introduced predators and habitat management are identified as two primary recovery actions for nene (USFWS 2004, p. 52). Control of predators (*e.g.,* mongoose, dogs (feral and domestic), feral pigs, cats (feral and domestic), rats, cattle egrets, and barn owls) may be conducted to eliminate or reduce predation on nene during all life stages. These predators are managed using a variety of methods, including fencing, trapping, shooting, and toxicants. All methods must be used in compliance with State and Federal regulations. In addition to the application of the above tools, predator control as defined here includes activities related to predator control, such as performing efficacy surveys, trap checks, and maintenance duties. Predator control may occur year-round or during prescribed periods. During approved predator control activities, incidental take of nene may occur in the following manner: (1) Injury or death to goslings, juveniles, or adults from accidental trapping; (2) injury or death due to fence strikes caused by introduction of equipment or materials in a managed area; and (3) injury or death due to ingestion of chemicals approved for use in predator control. Under this 4(d) rule, take resulting from actions implementing predator control activities to benefit nene are not prohibited as long as reasonable care is practiced to minimize the effects of such taking. Reasonable care may include, but is not limited to: (1) Procuring and implementing technical assistance from a qualified biologist(s) on predator control methods and protocols prior to application of methods; (2) compliance with all applicable regulations and following principles of integrated pest management; and (3) judicious use of methods and tool adaptations to reduce the likelihood that nene would ingest bait, interact with mechanical devices, or be injured or die from an interaction with mechanical devices.

Nene productivity and survival are currently limited by insufficient nutritional resources due to habitat degradation and the limited availability of suitable habitat due to habitat loss and fragmentation, especially in lowland areas (USFWS 2004, pp. 29–30). Active habitat management is necessary for populations of nene to be sustained or expanded without the continued release of captive-bred birds. Active habitat management in protected nesting and brooding areas should improve productivity and survival, as well as attract birds to areas that can be protected during sensitive life stages. Habitat management actions may include: (1) Mowing, weeding, fertilizing, herbicide application, and irrigating existing pasture areas for nene conservation purposes; (2) planting native food resources; (3) providing watering areas, such as water units or ponds or catchments, designed to be safe for goslings and flightless/molting adults; (4) providing temporary supplemental feeding and watering stations when appropriate, such as under poor quality forage or extreme conditions (*e.g.,* drought or fire); (5) if mechanical mowing of pastures for

conservation management purposes is not feasible, alternative methods of keeping grass short, such as grazing; or (6) large-scale restoration of native habitat (*e.g.,* feral ungulate control, fencing).

In the course of habitat management activities, incidental take of nene may occur in the following manner: (1) Accidental crushing of non-flighted juveniles, goslings, or nests with eggs; (2) injury or death due to collisions with vehicles and equipment; (3) injury or death due to ingestion of plants sprayed with herbicides for conservation purposes or ingestion of fertilizers; (4) injury or death due to entanglement with landscaping materials or choking on foreign materials; and (5) injury or death of goslings if goslings are separated from parents because of disturbance by restoration activities (*e.g.,* use of heavy equipment or mechanized tools). Under this 4(d) rule, take resulting from habitat management activities is not prohibited as long as reasonable care is practiced to minimize the effects of such taking. Reasonable care may include, but is not limited to: (1) Procuring and implementing technical assistance from a qualified biologist on habitat management activities prior to implementation; and (2) best efforts to minimize nene exposure to hazards (*e.g.,* predation, habituation to feeding, entanglement, and vehicle collisions).

Additional Authorizations for Law Enforcement Officers

The increased interaction of nene with the human environment also increases the likelihood of encounters with injured, sick, or dead nene. This 4(d) rule excepts take of nene by law enforcement officers in consultation with State wildlife biologists to provide aid to injured or sick nene, or disposal or salvage of dead nene. Law enforcement officers are allowed take of nene for the following purposes: Aiding or euthanizing sick, injured, or orphaned nene; disposing of a dead specimen; and salvaging a dead specimen that may be used for scientific study.

Under certain circumstances we may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened wildlife. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: Scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

The Service recognizes the special and unique relationship with our state natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Services in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Services shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State Conservation Agency which is a party to a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, will be able to conduct activities designed to conserve nene that may result in otherwise prohibited take without additional authorization.

Nothing in this 4(d) rule will change in any way the recovery planning provisions of section 4(f) of the Act, the ability of the Service to enter into partnerships for the management and protection of the nene, or the consultation requirements under section 7 of the Act. Under section 7 of the Act, Federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of nene; this 4(d) rule does not alter the section 7 requirements, and Federal actions covered by this rule are still subject to those requirements. The effect of this rule is to exclude certain specific actions from the prohibitions on take so that such actions may not require an exemption through section 7(o) of the Act. However, under 50 CFR 402.14, the Federal agency will still need to consult with the Service if the proposed action may affect nene, unless the agency determines with written concurrence from the Service that the proposed action is not likely to adversely affect the nene. Interagency cooperation may be further streamlined through planned programmatic consultations for the species between Federal agencies and the Service.

This 4(d) rule addresses only Federal Endangered Species Act requirements, and does not change State law. It is our understanding that current State of Hawaii (HRS section 195D–4) law does not include the authority to issue regulations, equivalent to those under section 4(d) of the Act, to except take prohibitions for endangered and threatened species. Instead, State law requires the issuance of a temporary license for the take of endangered and threatened animal species, if the activity otherwise prohibited is: (1) For scientific purposes or to enhance the propagation or survival of the affected species (HRS 195D–4(f)); or (2) incidental to an otherwise lawful activity (HRS 195D–4(g)). Incidental take licenses require the development of an HCP (HRS 195D–21) or a safe harbor agreement (HRS 195D–22), and consultation with the State's Endangered Species Recovery Committee. Therefore, persons may need to obtain a State permit for some of the actions described in this 4(d) rule. In addition, it is our understanding that current State regulations for endangered and threatened wildlife (HAR 13–124, subchapter 3) do not allow permits for the intentional harassment or hazing of endangered or threatened species; thus, changes to these State regulations may be necessary to allow the State to issue such permits.

Required Determinations

National Environmental Policy Act

We have determined that an environmental assessment or an environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations such as this. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this final rule is available at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2017–0050, or upon request from the Pacific Islands Fish and Wildlife Office (see **ADDRESSES**).

Authors

The primary authors of this document are staff members of the Pacific Islands Fish and Wildlife Office in Honolulu, Hawaii (see **FOR FURTHER INFORMATION CONTACT**).

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.

■ 2. Amend § 17.11(h) by removing the entry for ''Goose, Hawaiian'' and adding an entry for ''Goose, Hawaiian (Nene)'' in its place under BIRDS in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
BIRDS				
*	*	*	*	*
Goose, Hawaiian (Nene)	*Branta sandvicensis*	Wherever found	T	32 FR 4001, 3/11/1967; 84 FR [insert **Federal Register** page where the document begins], 12/19/2019; 50 CFR 17.41(d) [4d].
*	*	*	*	*

■ 3. Amend § 17.41 by adding paragraph (d) to read as follows:

§ 17.41 Special rules—birds.

* * * * *

(d) Hawaiian goose (*Branta sandvicensis*) (nene). (1) *Definitions.* For the purposes of this paragraph (d):

(i) *Nene* means the Hawaiian goose (*Branta sandvicensis*).

(ii) *Intentional harassment* means an intentional act that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns, which include, but are not limited to, breeding, feeding, or sheltering. Intentional harassment may include prior purposeful actions to attract, track, wait for, or search out nene, or purposeful actions to deter nene.

(iii) *Person* means a person as defined by section 3(13) of the Act.

(iv) *Qualified biologist* means an individual with a combination of academic training in the area of wildlife biology or related discipline and demonstrated field experience in the identification and life history of nene.

(2) *Prohibitions.* The following prohibitions apply to the nene except as provided under paragraph (d)(3) of this section and §§ 17.4 through 17.6:

(i) Import or export as provided in § 17.21(b).

(ii) Take as provided in § 17.21(c)(1).

(iii) Possession and other acts with unlawfully taken specimens as provided in § 17.21(d)(1).

(iv) Interstate or foreign commerce in the course of commercial activity as provided in § 17.21(e).

(v) Sale or offer for sale as provided in § 17.21(f).

(vi) Attempt to commit, solicit another to commit, or to cause to be committed, any of the acts described in paragraphs (d)(2)(i) through (v) of this section.

(3) *Exceptions from prohibitions.* The following exceptions from prohibitions apply to the nene:

(i) Authorization provided under § 17.32.

(ii) Take as provided in § 17.21(c)(2) through (7). However, § 17.21(c)(5)(i) through (iv) does not apply.

(iii) Take incidental to an otherwise lawful activity caused by:

(A) *Intentional harassment of nene that is not likely to cause direct injury or mortality.* A person may harass nene on lands they own, rent, or lease, if the action is not likely to cause direct injury or mortality of nene. Techniques for such harassment may include the use of predator effigies (including raptor kites, predator replicas, etc.), commercial chemical bird repellents, ultrasonic repellers, audio deterrents (noisemakers, pyrotechnics, etc.), herding or harassing with trained or tethered dogs, or access control (including netting, fencing, etc.). Nene may also be harassed in the course of surveys that benefit and further the recovery of nene. Such harassment techniques must avoid causing direct injury or mortality to nene. Before implementation of any such intentional harassment activities during the nene breeding season (September through April), a qualified biologist knowledgeable about the nesting behavior of nene must survey in and around the area to determine whether a nest or goslings are present. If a nest is discovered, the Service and authorized State wildlife officials must be notified within 72 hours (see paragraph (d)(4) of this section for contact information) and the following measures implemented to avoid disturbance of nests and broods:

(*1*) No disruptive activities may occur within a 100-foot (30-meter) buffer around all active nests and broods until the goslings have fledged;

(*2*) Brooding adults (*i.e.,* adults with an active nest or goslings) or adults in molt may not be subject to intentional harassment at any time; and

(*3*) The landowner must arrange follow-up surveys of the property by qualified biologists to assess the status of birds present.

(B) *Nonnative predator control or habitat management activities.* A person may incidentally take nene in the course of carrying out nonnative predator control or habitat management activities for nene conservation purposes if reasonable care is practiced to minimize effects to the nene.

(*1*) Nonnative predator control activities for the conservation of nene include use of fencing, trapping, shooting, and toxicants to control predators, and related activities such as performing efficacy surveys, trap checks, and maintenance duties. Reasonable care for predator control activities may include, but is not limited to, procuring and implementing technical assistance from a qualified biologist on predator control methods and protocols prior to application of methods; compliance with all State and

Federal regulations and guidelines for application of predator control methods; and judicious use of methods and tool adaptations to reduce the likelihood of nene ingesting bait, interacting with mechanical devices, or being injured or dying from interaction with mechanical devices.

(*2*) Habitat management activities for the conservation of nene include: Mowing, weeding, fertilizing, herbicide application, and irrigating existing pasture areas for conservation purposes; planting native food resources; providing watering areas, such as water units or ponds or catchments, designed to be safe for goslings and flightless/molting adults; providing temporary supplemental feeding and watering stations when appropriate, such as under poor quality forage or extreme conditions (*e.g.,* drought or fire); if mechanical mowing of pastures for conservation management purposes is not feasible, alternate methods of keeping grass short, such as grazing; and large-scale restoration of native habitat (*e.g.,* feral ungulate control, fencing). Reasonable care for habitat management may include, but is not limited to, procuring and implementing technical assistance from a qualified biologist on habitat management activities, and best efforts to minimize nene exposure to hazards (*e.g.,* predation, habituation to feeding, entanglement, and vehicle collisions).

(C) *Actions carried out by law enforcement officers in the course of official law enforcement duties.* When acting in the course of their official duties, State and local government law enforcement officers, working in conjunction with authorized wildlife biologists and wildlife rehabilitators in the State of Hawaii, may take nene for the following purposes:

(*1*) Aiding or euthanizing sick, injured, or orphaned nene;

(*2*) Disposing of a dead specimen; or

(*3*) Salvaging a dead specimen that may be used for scientific study; or

(*4*) Possession and other acts with unlawfully taken specimens as provided in § 17.21(d)(2) through (4)).

(4) *Reporting and disposal requirements.* Any injury or mortality of nene associated with the actions excepted under paragraphs (d)(3)(iii)(A) through (C) of this section must be reported to the Service and authorized State wildlife officials within 72 hours, and specimens may be disposed of only in accordance with directions from the Service. Reports should be made to the Service's Office of Law Enforcement at (808) 861–8525, or the Service's Pacific Islands Fish and Wildlife Office at (808) 792–9400. The State of Hawaii Department of Land and Natural Resources, Division of Forestry and Wildlife may be contacted at (808) 587–0166. The Service may allow additional reasonable time for reporting if access to these offices is limited due to closure.

* * * * *

Dated: November 27, 2019.

Margaret E. Everson,

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

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Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to THwaites Offshore Research (THOR) Project in the Amundsen Sea, Antarctica; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR069]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to THwaites Offshore Research (THOR) Project in the Amundsen Sea, Antarctica

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the National Science Foundation (NSF) Office of Polar Programs on behalf of the University of Houston for authorization to take marine mammals incidental to the THOR project in the Amundsen Sea, Antarctica. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than January 21, 2020.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.DeJoseph@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Bonnie DeJoseph, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On July 24, 2019, NMFS received a request from NSF for an IHA to take marine mammals incidental to conducting a low-energy marine geophysical survey and icebreaking as necessary in the Amundsen Sea. The application was deemed adequate and complete on November 21, 2019. NSF's request is for take of a small number of 18 species of marine mammals, by harassment. Neither NSF nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. The planned activity is not expected to exceed one year.

Description of Proposed Activity

Overview

NSF plans to conduct low-energy marine seismic surveys in the Amundsen Sea during February 2019. The proposed activity will complement Thwaites Glacier and other Amundsen Sea oceanographic and geological/geophysical studies and provide reference data that can be used to initiate and evaluate the reliability of ocean models. Data obtained by the project would assist in establishing boundary conditions seaward of the Thwaites Glacier grounding line, obtaining records of external drivers of change, improving knowledge of processes leading to the collapse of Thwaites Glacier, and determining the

history of past change in grounding line migration and conditions at the glacier base.

The seismic surveys would be conducted in approximately 8400 km² between 75.25°–73.5° S and 101.0°–108.5°W of the Amundsen Sea in water depths ranging from approximately 100 to 1000 m plus. The surveys would involve one source vessel, the Research Vessel/Icebreaker (RVIB) *Nathaniel B. Palmer* (*Palmer*). The *Palmer* would deploy up to two 45-in³ generator injector (GI) airguns at a depth of 2–4 m with a total maximum discharge volume for the largest, two-airgun array of 3441 cm³ maximum total volume (210 in³) along predetermined track lines. Because of the extent of sea ice in the Amundsen Sea that typically occurs between January and February annually, icebreaking activities are expected to be required during the cruise.

Dates and Duration

The RVIB *Palmer* would likely depart from Punta Arenas, Chile, on or about January 25, 2020. Seismic surveys will begin on or about February 6, 2020 for approximately eight days. An additional two contingency days are allotted for unforeseen events such as weather, logistical issues, or mechanical issues with the research vessel and/or equipment. Weather conditions permitting, it is anticipated that seismic surveying would not exceed 240 hours of operation.

Specific Geographic Region

The proposed surveys would take place within the Amundsen Sea, between approximately between 75.25°–73.5° S and 101.0°–108.5° W. Surveys will be contained in approximately 8400 km² in the Amundsen Sea along representative track lines totaling approximately 1600 km, shown in Figure 1.

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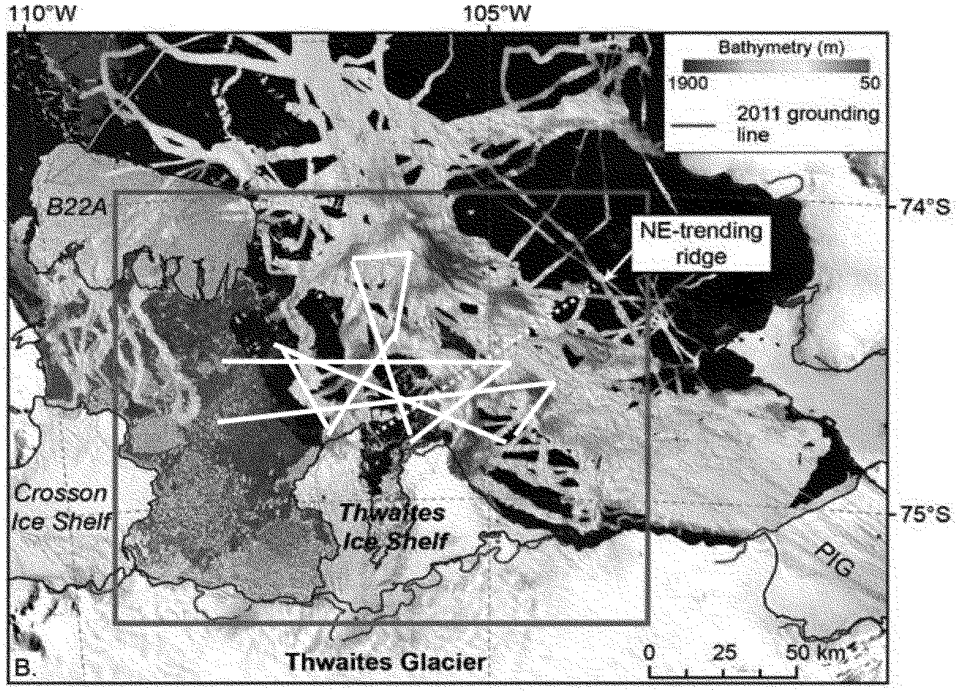
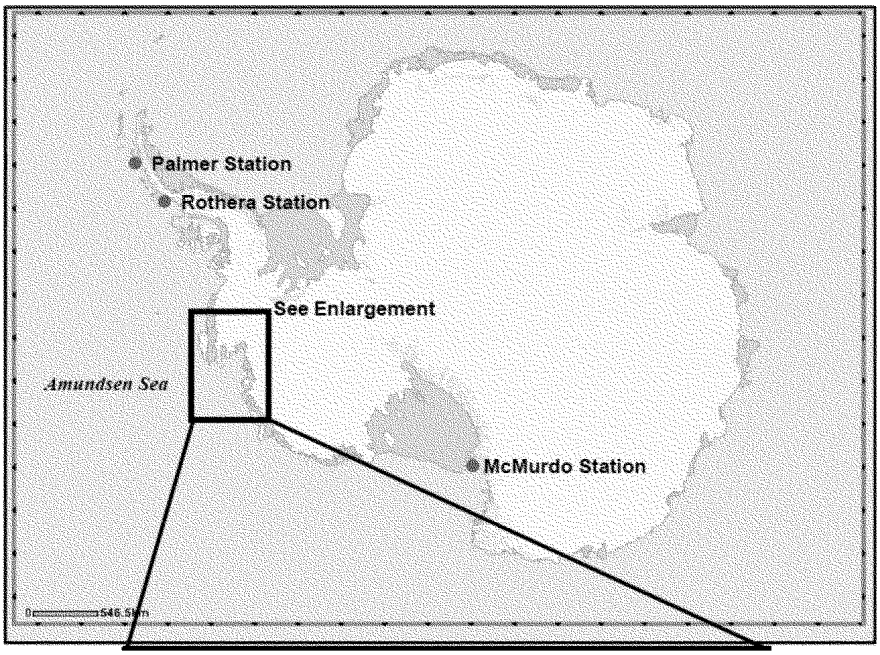
Figure 1 – Amundsen Sea Study Area





Note: Thwaites Glacier study area (red box) and approximate seismic survey lines (white line within box). Black line is generalized coastline-grounding line (from *http://www.add.scar.org/*) and purple line is 2011 grounding line from Rignot *et al*., 2014.
PIG = Pine Island Glacier.
Source: Scambos *et al*. 2017 in Global and Planetary Change.

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Detailed Description of Specific Activity

Seismic Surveys and Other Acoustic Sources

NSF proposes to conduct low-energy seismic surveys along a 1600-km track (Figure 1) using a one or two-generator injector airgun array, with a ''hot spare'', (Table 1) as a low-energy seismic source and returning acoustic signals would be collected via a hydrophone streamer (100–300 m in length). Other acoustic sources to be used include the following: acoustic doppler current profilers (ADCPs) and multi, single, and splitbeam echosounders. Data acquisition in the THOR survey area will occur in water depths that range between 100–1,000 m in 65 percent of the survey area and depths greater than 1,000 m in 35 percent of the study area (Figure 1).

The procedures to be used for the seismic surveys would be similar to those used during previous seismic surveys by NSF and would use conventional seismic methodology. The surveys would involve one source vessel, RVIB *Palmer,* which is managed by Galliano Marine Service LLC. The airgun array would be deployed at a depth of approximately 2–4 m below the surface, spaced approximately 3 m apart for the two-gun array, and between 15–40 m astern. Each airgun would be configured in the true GI or harmonic mode, with varying displacement volumes (Table 1). The total maximum discharge volume for the largest, two-airgun array would be 3441 cm3 (210 in^3; Table 1). The receiving system would consist of one hydrophone streamer, 100–300 m in length, with the vessel traveling at 8.3 km/hr (4.5 knots) to achieve high-quality seismic reflection data. As the airguns are towed along the survey lines, the hydrophone streamer would receive the returning acoustic signals and transfer the data to the on-board processing system.

TABLE 1—PROPOSED SEISMIC SURVEY ACTIVITIES IN THE AMUNDSEN SEA [1]

Configuration	Airgun array total volume (GI configuration)	Frequency between seismic shots (seconds)	Streamer length
Preferred	2 x 45/105 in^3 (300 in^3 total) (true GI mode)	5	100–300 m (328–984 ft).
Alternate 1	1 x 45/105 in^3 (150 in^3 total) (true GI mode)	5	
Alternate 2 (used for take request).	2 x 105/105 in^3 (420 in^3 total) (harmonic mode)	5	
Alternate 3	1 x 105/105 in^3 (210 in^3 total) (harmonic mode)	5	

[1] Seismic surveying operations are planned for 1600 km (994 mi) in length.

The airguns would fire compressed air at an approximate firing pressure of 140 kg/cm^2 (2000 psi). In harmonic mode, the injector volume is designed to destructively interfere with the reverberations of the generator (*i.e.,* the

source component). Firing the airguns in harmonic mode maximizes resolution in the data and minimizes excess noise in the water column or in the data, caused by the reverberations (*i.e.,* bubble pulses). There would be approximately 720 shots per hour, and the relative linear distance between shots would be 12.5 m. The cumulative duration of airgun operation is anticipated to be no more than 240 hours, which includes equipment testing, ramp-up, line changes, and repeat coverage. If the preferred airgun configuration, the two-gun array in true GI mode, does not provide data to meet scientific objectives, alternate configurations would be utilized as shown in Table 1.

There could be additional seismic operations in the project area associated with equipment testing, re-acquisition due to reasons such as but not limited to equipment malfunction, data degradation during poor weather, or interruption due to shut-down or track deviation in compliance with IHA requirements. To account for these additional seismic operations, 25 percent has been added in the form of operational days, which is equivalent to adding 25 percent to the proposed line km to be surveyed. There would be approximately 720 shots per hour, and the relative linear distance between shots would be 12.5 m (41 ft). The cumulative duration of airgun operation is anticipated to be no more than 240 hours, which includes equipment testing, ramp-up, line changes, and repeat coverage.

In addition to the operations of the airgun array, a hull-mounted Single Beam Echo Sounder (Knudsen 3260 CHIRP), Multibeam Sonar (Kongsberg EM122), Acoustic Doppler Current Profiler (ADCP) (Teledyne RDI VM–150), and ADCP (Ocean Surveyor OS–38), as well as EK biological echo sounder (Simrad ES200–7C, ES38B, ES–120–7C) would also be operated from the *Palmer* continuously throughout the cruise. The vessel would be self-contained, and the crew would live aboard the vessel for the entire cruise.

The *Palmer* has a length of 93.9 m, a beam of 18.3 m, and a design draft of 6.8 m. It is equipped with four Caterpillar Model 3608 diesel engines (each rated at 3300 brake horsepower [BHP] at 900 revolutions per minute [rpm]) and a water jet azimuthing bow thruster. Electrical power is provided by four Caterpillar 3512, 1050-kW diesel generators. When not towing seismic survey gear, the *Palmer* cruises at approximately 9.2 km/hr (5 knots), varying between 7.4–11.1 km/hr (4–6 knots) when GI airguns are operating, and has the maximum speed of 26.8 km/hr (14.5 knots). The *Palmer* would also serve as the platform from which vessel-based protected species visual observers (PSVO) would watch for marine mammals before and during airgun operations.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Icebreaking

The research activities and associated contingencies are designed to avoid areas of heavy sea ice condition since the *Palmer* is not suited to break multi-year sea ice. If the *Palmer* breaks ice during transit operations within the Amundsen Sea, seismic operations would not be conducted concurrently. It is noted that typical transit through areas of primarily open water and containing brash or pancake, ice are not considered icebreaking for the purposes of this activity.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

The populations of marine mammals considered in this document do not occur within the U.S. Exclusive Economic Zone (EEZ) and are therefore not assigned to stocks and are not assessed in NMFS' Stock Assessment Reports (SAR). As such, information on potential biological removal (PBR; defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population) and on annual levels of serious injury and mortality from anthropogenic sources are not available for these marine mammal populations. Abundance estimates for marine mammals in the survey location are lacking; therefore estimates of abundance presented here are based on a variety of other sources including International Whaling Commission population estimates (IWC 2019), The International Union for Conservation of Nature's (IUCN) Red List of Threatened Species, and various literature estimates (see IHA application for further detail), as this is considered the best available information on potential abundance of marine mammals in the area.

Table 2 lists all species with expected potential for occurrence in the Amundsen Sea, Antarctica, and summarizes information related to the population, including regulatory status under the MMPA and ESA. For taxonomy, we follow Committee on Taxonomy (2018).

TABLE 2—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN THE PROJECT AREA EXPECTED TO BE AFFECTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock [1]	ESA/MMPA status; strategic (Y/N) [2]	Stock abundance	PBR
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)					
Family Balaenopteridae (rorquals):					
Blue whale	*Balaenoptera musculus*	N/A	E/D;Y	[3] 5,000	N/A
Fin whale	*Balaenoptera physalus*	N/A	E/D;Y	[4] 38,200	N/A
Humpback whale	*Megaptera novaeangliae*	N/A		[5] 42,000	N/A
Minke whale [6]	*Balaenoptera acutorostrata*	N/A	-	[7] 515,000	N/A
Sei whale	*Balaenoptera borealis*	N/A	E	[8] 10,000	N/A
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)					
Family Physeteridae:					
Sperm whale	*Physeter macrocephalus*	N/A	E	[9] 12,069	N/A

TABLE 2—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN THE PROJECT AREA EXPECTED TO BE AFFECTED BY THE SPECIFIED ACTIVITIES—Continued

Common name	Scientific name	Stock [1]	ESA/MMPA status; strategic (Y/N) [2]	Stock abundance	PBR
Family Ziphiidae (beaked whales):					
Arnoux's beaked whale	*Berardius arnuxii*	N/A	-	[10] 599,300	N/A
Gray's beaked whale	*Mesoplodon grayi*	N/A	-	[10] 599,300	N/A
Southern bottlenose	*Hyperoodon planifrons*	N/A	-	[11] 500,000	N/A
Family Delphinidae:					
Killer whale	*Orcinus orca*	N/A	-	[12] 25,000	N/A
Long-finned whale	*Globicephala macrorhynchus*	N/A	-	[13] 200,000	N/A
Family Hyperoodontidae:					
Layard's beaked whales	*Mesoplodon layardii*	N/A		[10] 599,300	N/A
Family Phocidae (earless seals):					
Crabeater seal	*Lobodon carcinophaga*	N/A	-	[14] 5,000,000	N/A
Leopard seal	*Hydrurga leptonyx*	N/A	-	[15] 222,000	N/A
Southern elephant seal	*Mirounga leonina*	N/A	-	[16] 750,000	N/A
Ross seal	*Ommatophoca rossii*	N/A	-	[17] 250,000	N/A
Weddell seal	*Leptonychotes weddellii*	N/A	-	[18] 750,000	N/A

N.A. = data not available.
[1] The populations of marine mammals considered in this document do not occur within the U.S. EEZ and are therefore not assigned to stocks.
[2] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.
[3] Perrin et al 2009, IWC 2019.
[4] Antarctic Range 5–8,000 (Cooke 2018).
[5] Aguilar & García-Vernet 2018.
[6] Partial coverage of Antarctic feeding grounds (IWC 2019).
[7] Antarctic and Dwarf Minke whales information is combined.
[8] Antarctic (Boyd 2002).
[9] Cooke 2018.
[10] Estimate for the Antarctic, south of 60° S (Whitehead 2002).
[11] All beaked whales south of the Antarctic Convergence; mostly southern bottlenose whales (Kasamatsu & Joyce 1995).
[12] Jefferson *et al.* 2008.
[13] Branch & Butterworth 2001.
[14] Antarctic (Boyd 2002).
[15] Global population 5–10 million (Bengtson & Stewart 2018).
[16] Global population is 222,000–440,000 (Rogers 2018).
[17] Total world population (Hindell *et al.,* 2016)
[18] Hückstädt 2015.

All species that could potentially occur in the proposed survey areas are included in Table 2. As described below, all 18 species temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it.

We have reviewed NSF's species descriptions, including life history information, distribution, regional distribution, diving behavior, and acoustics and hearing, for accuracy and completeness. We refer the reader to Section 4 of NSF's IHA application for a complete description of the species, and offer a brief introduction to the species here, as well as information regarding population trends and threats, and describe information regarding local occurrence.

Mysticetes

Blue Whale

The blue whale has a cosmopolitan distribution, but tends to be mostly pelagic, only occurring nearshore to feed and possibly breed (Jefferson *et al.* 2015). It is most often found in cool, productive waters where upwelling occurs (Reilly and Thayer 1990). The distribution of the species, at least during times of the year when feeding is a major activity, occurs in areas that provide large seasonal concentrations of euphausiids (Yochem and Leatherwood 1985). Seamounts and other deep ocean structures may be important habitat for blue whales (Lesage *et al.* 2016). Generally, blue whales are seasonal migrants between high latitudes in summer, where they feed, and low latitudes in winter, where they mate and give birth (Lockyer and Brown 1981).

Historically, blue whales were most abundant in the Southern Ocean. Although, the population structure of the Antarctic blue whale (*Balaenoptera musculus intermedia*) in the Southern Ocean is not well understood, there is evidence of discrete feeding stocks (Sears & Perrin 2018). Cooke (2018) explains that ''there are no complete estimates of recent or current abundance for the other regions, but plausible total numbers would be 1,000–3,000 in the North Atlantic, 3,000–5,000 in the North Pacific, and possibly 1,000–3,000 in the eastern South Pacific. The number of Pygmy Blue whales is very uncertain but may be in the range 2,000–5,000. Taken together with a range of 5,000–8,000 in the Antarctic, the global population size in 2018 is plausibly in the range 10,000–25,000 total or 5,000–15,000 mature, compared with a 1926 global population of at least 140,000 mature.'' Blue whales begin migrating north out of the Antarctic to winter breeding grounds earlier than fin and sei whales.

Fin Whale

The fin whale (*Balaenoptera physalus*) is widely distributed in all the world's oceans (Gambell 1985), although it is most abundant in temperate and cold waters (Aguilar and García-Vernet 2018). Nonetheless, its overall range and distribution is not well known (Jefferson *et al.* 2015). Fin whales most commonly occur offshore, but can also be found in coastal areas (Jefferson *et al.* 2015). Most populations migrate seasonally between temperate waters where mating and calving occur in winter, and polar waters where feeding occurs in the summer; they are known to use the shelf edge as a migration route (Evans 1987). The northern and southern fin whale populations likely do not interact owing to their alternate seasonal migration; the

resulting genetic isolation has led to the recognition of two subspecies, *B. physalus quoyi* and *B. p. physalus* in the Southern and Northern hemispheres, respectively (Anguilar & García-Vernet 2018).

They likely migrate beyond 60° S during the early to mid-austral summer, arriving at southern feeding grounds after blue whales. Overall, fin whale density tends to be higher outside the continental slope than inside it. During the austral summer, the distribution of fin whales ranges from 40° S–60° S in the southern Indian and South Atlantic oceans and 50° S–65° S in the South Pacific. Aguilar and García-Vernet (2018) found abundance estimates resulted in 38,200 individuals in the Antarctic south of 307° S. The RV *Polarstern* observed 33 fin whales in the Amundsen Sea during seismic survey transects (Gohl 2010). The New Zealand stock of fin whales spends summers from 170° E–145° W. Fin whales migrate north before the end of the austral summer toward breeding grounds in and around the Fiji Sea.

Humpback Whale

Humpback whales (*Megaptera novaeangliae*) are found worldwide in all ocean basins. In winter, most humpback whales occur in the subtropical and tropical waters of the Northern and Southern Hemispheres (Muto *et al.,* 2015). These wintering grounds are used for mating, giving birth, and nursing new calves. Humpback whales were listed as endangered under the Endangered Species Conservation Act (ESCA) in June 1970. In 1973, the ESA replaced the ESCA, and humpbacks continued to be listed as endangered. NMFS recently evaluated the status of the species, and on September 8, 2016, NMFS divided the species into 14 distinct population segments (DPS), removed the previousspecies-level listing, and in its place listed four DPSs as endangered and one DPS as threatened (81 FR 62259; September 8, 2016). The remaining nine DPSs were not listed.

In the Southern Hemisphere, humpback whales migrate annually from summer foraging areas in the Antarctic to breeding grounds in tropical seas (Clapham 2018). Whales migrating southward from Brazil have been shown to traverse offshore, pelagic waters (Zerbini *et al.* 2006, 2011) en route to feeding areas along the Scotia Sea, including the waters around Shag Rocks, South Georgia and the South Sandwich Islands (Stevick *et al.* 2006; Zerbini *et al.* 2006, 2011; Engel *et al.* 2008; Engel and Martin 2009). Southern Hemisphere humpback whales share feeding grounds in the Antarctic, near 60° S and between 120° E and 110° W during the austral summer (December–March). The *Polarstern* observed 44 humpback whales in the Amundsen Sea during seismic survey transects (Gohl 2010). The IWC's (2019) best population estimate of humpback whales in the southern hemisphere (*i.e.,* partial coverage of Antarctic feeding grounds) is 42,000.

Minke Whale

The common minke whale has a cosmopolitan distribution ranging from the tropics and subtropics to the ice edge in both hemispheres (Jefferson *et al.* 2015). A smaller form of the common minke whale, known as the dwarf minke whale (*Balaenoptera acutorostrata*), occurs in the Southern Hemisphere, where its distribution overlaps with that of the Antarctic minke whale (*B. bonaerensis*) during summer (Perrin *et al.* 2018). The dwarf minke whale is generally found in shallower coastal waters and over the shelf in regions where it overlaps with *B. bonaerensis* (Perrin *et al.* 2018). The range of the dwarf minke whale is thought to extend as far south as 65° S (Jefferson *et al.* 2015) and as far north as 2° S in the Atlantic off South America, where it can be found nearly year-round. In the far south, it is seasonally sympatric with the Antarctic minke whale on the feeding grounds during austral summer and transitions off South Africa during the fall and winter. Where the dwarf minke whale is sympatric with the Antarctic minke whale, it tends to occur in shallower, more coastal waters over the continental shelf (Perrin *et al.* 2018). Because the counts did not properly differentiate between the two species, IWC's (2019) best estimate for population abundance (515,000) will be divided evenly and assigned to each for our purposes.

Sei Whale

The sei whale (*Balaenoptera borealis*) occurs in all ocean basins (Horwood 2018), predominantly inhabiting deep waters throughout their range (Acevedo *et al.* 2017a). It undertakes seasonal migrations to feed in sub-polar latitudes during summer, returning to lower latitudes during winter to calve (Horwood 2018). Recent observation records indicate that the sei whale may utilize the Vitória-Trindade Chain off Brazil as calving grounds (Heissler *et al.* 2016). In the Southern Hemisphere, sei whales typically concentrate between the Subtropical and Antarctic convergences during the summer (Horwood 2018) between 40° S and 50° S, with larger, older whales typically travelling into the northern Antarctic zone while smaller, younger individuals remain in the lower latitudes (Acevedo et al. 2017a).Population estimates are not available for the Amundsen Sea region.

Odontocetes

Sperm Whale

The sperm whale (*Physeter macrocephalus*) is widely distributed, occurring from the edge of the polar pack ice to the Equator in both hemispheres, with the sexes occupying different distributions (Whitehead 2018). In general, it is distributed over large temperate and tropical areas that have high secondary productivity and steep underwater topography, such as volcanic islands (Jaquet & Whitehead 1996). Its distribution and relative abundance can vary in response to prey availability, most notably squid (Jaquet & Gendron 2002). Females generally inhabit waters >1000 m deep at latitudes <40 ° where sea surface temperatures are <15° C; adult males move to higher latitudes as they grow older and larger in size, returning to warm-water breeding grounds according to an unknown schedule (Whitehead 2018).

Ainley *et al.* (2007) observed 19 sperm whales during their 1994 cetacean surveys (3,494 km) in the Amundsen and Bellingshausen seas.

Arnoux's Beaked Whale

Arnoux's beaked whale (*Berardius arnuxii*) is distributed in deep, cold, temperate, and subpolar waters of the Southern Hemisphere, occurring between 24° S and Antarctica (Thewissen 2018), as far south as the Ross Sea at approximately 78° S (Perrin *et al.* 2009). Most records exist for southeastern South America, Falkland Islands, Antarctic Peninsula, South Africa, New Zealand, and southern Australia (MacLeod *et al.* 2006; Jefferson *et al.* 2015).

Marine mammal observations conducted during seismic surveys in West Antarctica between January and April of 2010 counted 12 Arnoux's beaked whales (Gohl 2010).

Gray's Beaked Whale

Gray's beaked whale (*Mesoplodon grayi*), also known as Haast's beaked whale, the scamperdown whale, or the southern beaked whale, typically lives in the Southern Hemisphere, between 30° S–45° S. Numerous strandings have occurred off New Zealand; others have occurred off South America and the Falkland Islands. This species has been sighted in groups in the Antarctic area.

Abundance estimates are not available for the Amundsen Sea.

Southern Bottlenose Whale

The southern bottlenose whale (*Hyperoodon planifrons*) is found throughout the Southern Hemisphere from 30° S to the ice edge, with most sightings reported between ~57° S and 70° S (Jefferson *et al.* 2015; Moors-Murphy 2018). It is migratory, occurring in Antarctic waters during summer (Jefferson *et al.* 2015).

Killer Whale

Killer whales (*Orcinus orca*) have been observed in all oceans and seas of the world (Leatherwood and Dahlheim 1978). Based on sightings by whaling vessels between 1960 and 1979, killer whales are distributed throughout the South Atlantic (Budylenko 1981; Mikhalev *et al.* 1981). Although reported from tropical and offshore waters (Heyning and Dahlheim 1988), killer whales prefer the colder waters of both hemispheres, with greatest abundances found within 800 km of major continents (Mitchell 1975). Branch and Butterworth (2001) determined 25,000 as the minimum estimate for the Southern Ocean.

Long-Finned Pilot Whales

Three distinct populations or subspecies of long-finned pilot whales are recognized: Southern Hemisphere (*Globicephala melas edwardii*), North Atlantic (*Globicephala melas melas*), and an unnamed extinct form in the western North Pacific. In the Southern Hemisphere, their range extends from 19°–60° S, but they have been regularly sighted in the Antarctic Convergence Zone (47°–62° S) and in the Central and South Pacific as far south as 68° S. Their distribution is considered circumpolar, and they have been documented near the Antarctic sea ice. They have been associated with the colder Benguela and Humboldt Currents, which may extend their normal range, as well as the Falklands. In the winter and spring, they are more likely to occur in offshore oceanic waters or on the continental slope. In the summer and autumn, long-finned pilot whales generally follow their favorite foods farther inshore and on to the continental shelf. In the Southern Hemisphere, there are an estimated 200,000 long-finned pilot whales in Antarctic waters (Jefferson *et al.* 2008, Reeves *et al.* 2002, Shirihai & Jarrett 2006).

Layard's Beaked Whales

Layard's beaked whale (*Mesoplodon layardii*), also known as the strap-toothed whale due to its unusual tooth configuration, is distributed in cool temperate waters of the Southern Hemisphere between 30° S and the Antarctic Convergence. Strandings have been reported in New Zealand, Australia, southern Argentina, Tierra del Fuego, southern Chile, and the Falkland Islands. The world-wide population of all beaked whales south of the Antarctic Convergence is estimated at approximately 599,300 animals (Kasamatsu and Joyce 1995).

Crabeater Seal

Crabeater seals (*Lobodon carcinophaga*) have a circumpolar distribution off Antarctica and generally spend the entire year in the advancing and retreating pack ice; occasionally they are seen in the far southern areas of South America though this is uncommon (Bengtson and Stewart 2018). Vagrants are occasionally found as far north as Brazil (Oliveira et al. 2006). Telemetry studies show that crabeater seals are generally confined to the pack ice, but spend ~14 percent of their time in open water outside of the breeding season (reviewed in Southwell *et al.* 2012). During the breeding season crabeater seals were most likely to be present within 5° or less (~550 km) of the shelf break in the south, though non-breeding animals ranged further north. Pupping season peaks in mid- to late-October and adults are observed with their pubs as late as mid-December (Bengtson and Stewart 2018).

Twenty-four hundred crabeater seals were counted during the 2010 seismic surveys aboard the RV *Polarstein* in the Amundsen Sea (Gohl 2010).

Leopard Seal

The leopard seal (*Hydrurga leptonyx*) has a circumpolar distribution around the Antarctic continent where it is solitary and widely dispersed (Rogers 2018). Most leopard seals remain within the pack ice; however, members of this species regularly visit southern continents during the winter (Rogers 2018). Rogers (2018) estimates the global population to range from 222,000–440,000; however, densities are thought to be higher than previously thought from visual surveys alone (Southwell *et al.* 2008, Rogers *et al.* 2013).

Leopard seals are top predators, consuming everything from krill and fish to penguins and other seals (*e.g.,* Hall-Aspland & Rogers 2004; Hirukie *et al.* 1999). Pups are born during October to mid-November and weaned approximately one month later (Rogers 2018). Mating occurs in the water during December and January.

Fifteen leopard seals were observed in the Amundsen Sea during transects conducted by Gohl (2010) and company from the RV *Polarstern.*

Southern Elephant Seal

The southern elephant seal (*Mirounga leonina*) has a near circumpolar distribution in the Southern Hemisphere (Jefferson *et al.* 2015), with breeding sites located on islands throughout the subantarctic (Hindell 2018). In the South Atlantic, southern elephant seals breed at Patagonia, South Georgia, and other islands of the Scotia Arc, Falkland Islands, Bouvet Island, and Tristan da Cunha archipelago (Bester & Ryan 2007). Península Valdés, Argentina, is the sole continental South American large breeding colony, where tens of thousands of southern elephant seals congregate (Lewis *et al.* 2006). Breeding colonies are otherwise island-based, with the occasional exception of the Antarctic mainland (Hindell 2018).

When not breeding (September to October) or molting (November to April), southern elephant seals range throughout the Southern Ocean from areas north of the Antarctic Polar Front to the pack ice of the Antarctic, spending >80 percent of their time at sea each year, up to 90 percent of which is spent submerged while hunting, travelling and resting in water depths ≥200 m (Hindell 2018). Males generally feed in continental shelf waters, while females preferentially feed in ice-free Antarctic Polar Front waters or the marginal ice zone in accordance with winter ice expansion (Hindell 2018). Southern elephant seals tagged at South Georgia showed long-range movements from ~April through October into the open Southern Ocean and to the shelf of the Antarctic Peninsula (McConnell & Fedak 1996). One adult male that was sighted on Gough Island had previously been tagged at Marion Island in the Indian Ocean (Reisinger and Bester 2010). Vagrant southern elephant seals, mainly consisting of juvenile and subadult males, have been documented in Uruguay, Brazil, Argentina, Falkland Islands, and South Georgia (Lewis *et al.* 2006a; Oliveira *et al.* 2011; Mayorga *et al.* 2015).

Ross Seal

Ross seals (*Ommatophoca rossii*) are considered the rarest of all Antarctic seals; they are the least documented because they are infrequently observed. Ross seals have a circumpolar Antarctic distribution. They are pelagic through most of the year. Satellite tracking data showed individuals traveled from East Antarctica and the Amundsen Sea north to forage in lower latitudes, spending the majority of their time south of the Antarctic polar front. They reach

distances of ~2000 km from the capture sites (Blix & Nordøy 2007, Arcalis-Planas *et al.* 2015); yet, they return to areas with heavy pack ice for breeding (October to December) and again at the time of molting (January to March). Vagrants have been reported at several subantarctic islands, including South Georgia Island, Heard and McDonald Islands, Kerguelen Island, South Sandwich Islands, and Falklands/Malvinas Islands. Their behavior, habitat preference, and life cycle make it difficult to estimate population size. Genetic studies, estimating the effective population size of the species, are larger (~250,000 individuals) than traditional population size surveys (Curtis *et al.* 2011). There are no estimates available for Ross seal populations in the Amundsen Sea, but four individuals were observed during transects conducted aboard the RV *Polarstern* (Gohl 2010).

Weddell Seal

The Weddell seal (*Leptonychotes weddellii*) has a circumpolar distribution around Antarctica, preferring land-fast ice habitats with access to open water. Their range is farther south than that of all other Antarctic seals. Occasionally, Weddell seals are seen at sub-Antarctic islands (Perrin *et al.* 2009).

Since they do not migrate north, adult Weddell seals live under the vast coating of sea ice during the coldest months and maintain breathing holes open by reaming them with their canine and incisor teeth, which are robust and project forward (Kooyman 1981b). They may suffer shortened lives due to damage sustained by their teeth and gums. They haul-out through cracks in the ice. Weddell seals give birth on fast ice, in late September to early November, while mating takes place in the water.

Forty Weddell seals were observed in the Amundsen Sea during seismic survey transects conducted from the RV *Polarstern* (Gohl 2010).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall et al. 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Eighteen marine mammal species (13 cetacean and 5 pinniped (0 otariid and 5 phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 2. Of the cetacean species that may be present, six are classified as low-frequency cetaceans (*i.e.,* all mysticete species), seven are classified as mid-frequency cetaceans (*i.e.,* all delphinid and ziphiid species and the sperm whale), and none are classified as high-frequency cetaceans (*i.e.,* harbor porpoise and Kogia spp.).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take* section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the *Estimated Take* section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Active Acoustic Sound Sources

This section contains a brief technical background on sound, the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document.

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the dB. A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is one microPascal (μPa)) and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of one m from the source (referenced to one μPa) while the received level is the SPL at the listener's position (referenced to one μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 μPa^2-s) represents the total energy contained within a pulse and considers both intensity and duration of exposure. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0–p) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source and is represented in the same units as the rms sound pressure. Another common metric is peak-to-peak sound pressure (pk–pk), which is the algebraic difference between the peak positive and peak negative sound pressures. Peak-to-peak pressure is typically approximately six dB higher than peak pressure (Southall *et al.,* 2007).

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources), as is the case for pulses produced by the airgun arrays considered here. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including the following (Richardson *et al.,* 1995):

- *Wind and waves:* The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf sound becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions;
- *Precipitation:* Sound from rain and hail impacting the water surface can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times;
- *Biological:* Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz; and
- *Anthropogenic:* Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly. Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.,* a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from a given activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. Details of source types are described in the following text.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts.

Pulsed sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that

may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems (such as those used by the U.S. Navy). The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Airgun arrays produce pulsed signals with energy in a frequency range from about 10–2,000 Hz, with most energy radiated at frequencies below 200 Hz. The amplitude of the acoustic wave emitted from the source is equal in all directions (*i.e.,* omnidirectional), but airgun arrays do possess some directionality due to different phase delays between guns in different directions. Airgun arrays are typically tuned to maximize functionality for data acquisition purposes, meaning that sound transmitted in horizontal directions and at higher frequencies is minimized to the extent possible.

As described above, a Kongsberg EM122 MBES and a Knudsen Chirp 3260 SBP would be operated continuously during the proposed surveys, but not during transit to and from the survey areas. Additionally a 12-kHz pinger would be used during coring, when seismic airguns, are not in operation (more information on this pinger is available in NSF–USGS (2011). Each ping emitted by the MBES consists of eight (in water >1,000 m deep) or four (<1,000 m) successive fan-shaped transmissions, each ensonifying a sector that extends 1° fore-aft. Given the movement and speed of the vessel, the intermittent and narrow downward-directed nature of the sounds emitted by the MBES would result in no more than one or two brief ping exposures of any individual marine mammal, if any exposure were to occur.

Due to the lower source levels of the Knudsen Chirp 3260 SBP relative to the *Palmer's* airgun array (maximum SL of 222 dB re 1 μPa · m for the SBP, versus a minimum of 230.9 dB re 1 μPa · m for the 2 airgun array (LGL, 2019)), sounds from the SBP are expected to be effectively subsumed by sounds from the airgun array. Thus, any marine mammal potentially exposed to sounds from the SBP would already have been exposed to sounds from the airgun array, which are expected to propagate further in the water.

The use of pingers is also highly unlikely to affect marine mammals given their intermittent nature, short-term and transitory use from a moving vessel, relatively low source levels, and brief signal durations (NSF–USGS, 2011). As such, we conclude that the likelihood of marine mammal take resulting from exposure to sound from the MBES or SBP (beyond that which is already quantified as a result of exposure to the airguns) is discountable. Additionally the characteristics of sound generated by pingers means that take of marine mammals resulting from exposure to these pingers is discountable. Therefore we do not consider noise from the MBES, SBP, or pingers further in this analysis.

Acoustic Effects

Here, we discuss the effects of active acoustic sources on marine mammals.

Potential Effects of Underwater Sound—Please refer to the information given previously regarding sound, characteristics of sound types, and metrics used in this document. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. We first describe specific manifestations of acoustic effects before providing discussion specific to the use of airgun arrays.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal, but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects of certain non-auditory physical or physiological effects only briefly as we do not expect that use of airgun arrays are reasonably likely to result in such effects (see below for further discussion). Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Tal *et al.,* 2015). The survey activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

Threshold Shift—Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can

be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several dBs above (a 40-dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.,* Southall *et al.* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as airgun pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

For mid-frequency cetaceans in particular, potential protective mechanisms may help limit onset of TTS or prevent onset of PTS. Such mechanisms include dampening of hearing, auditory adaptation, or behavioral amelioration (*e.g.,* Nachtigall and Supin, 2013; Miller *et al.,* 2012; Finneran *et al.,* 2015; Popov *et al.,* 2016).

TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts.

Finneran *et al.* (2015) measured hearing thresholds in three captive bottlenose dolphins before and after exposure to ten pulses produced by a seismic airgun in order to study TTS induced after exposure to multiple pulses. Exposures began at relatively low levels and gradually increased over a period of several months, with the highest exposures at peak SPLs from 196 to 210 dB and cumulative (unweighted) SELs from 193–195 dB. No substantial TTS was observed. In addition, behavioral reactions were observed that indicated that animals can learn behaviors that effectively mitigate noise exposures (although exposure patterns must be learned, which is less likely in wild animals than for the captive animals considered in this study). The authors note that the failure to induce more significant auditory effects likely due to the intermittent nature of exposure, the relatively low peak pressure produced by the acoustic source, and the low-frequency energy in airgun pulses as compared with the frequency range of best sensitivity for dolphins and other mid-frequency cetaceans.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale, harbor porpoise, and Yangtze finless porpoise) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). In general, harbor porpoises have a lower TTS onset than other measured cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes.

Critical questions remain regarding the rate of TTS growth and recovery after exposure to intermittent noise and the effects of single and multiple pulses. Data at present are also insufficient to construct generalized models for recovery and determine the time necessary to treat subsequent exposures as independent events. More information is needed on the relationship between auditory evoked potential and behavioral measures of TTS for various stimuli. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and NMFS (2016a).

Behavioral Effects—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant

experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007). However, many delphinids approach acoustic source vessels with no apparent discomfort or obvious behavioral change (*e.g.,* Barkaszi *et al.,* 2012).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely, and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Ng and Leung, 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013a, b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.;* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Visual tracking, passive acoustic monitoring, and movement recording tags were used to quantify sperm whale behavior prior to, during, and following exposure to airgun arrays at received levels in the range 140–160 dB at distances of 7–13 km, following a phase-in of sound intensity and full array exposures at 1–13 km (Madsen *et al.,* 2006; Miller *et al.,* 2009). Sperm whales did not exhibit horizontal avoidance behavior at the surface. However, foraging behavior may have been affected. The sperm whales exhibited 19 percent less vocal (buzz) rate during full exposure relative to post exposure, and the whale that was approached most closely had an extended resting period and did not resume foraging until the airguns had ceased firing. The remaining whales continued to execute foraging dives throughout exposure; however, swimming movements during foraging dives were six percent lower during exposure than control periods (Miller *et al.,* 2009). These data raise concerns that seismic surveys may impact foraging behavior in sperm whales, although more data are required to understand whether the differences were due to exposure or natural variation in sperm whale behavior (Miller *et al.,* 2009).

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005, 2006; Gailey *et al.,* 2007, 2016).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Cerchio *et al.* (2014) used passive acoustic monitoring to document the presence of singing humpback whales off the coast of northern Angola and to opportunistically test for the effect of seismic survey activity on the number of singing whales. Two recording units were deployed between March and December 2008 in the offshore environment; numbers of singers were counted every hour. Generalized Additive Mixed Models were used to assess the effect of survey day (seasonality), hour (diel variation), moon phase, and received levels of noise (measured from a single pulse during each ten minute sampled period) on singer number. The number of singers significantly decreased with increasing received level of noise, suggesting that humpback whale breeding activity was disrupted to some extent by the survey activity.

Castellote *et al.* (2012) reported acoustic and behavioral changes by fin whales in response to shipping and airgun noise. Acoustic features of fin whale song notes recorded in the Mediterranean Sea and northeast Atlantic Ocean were compared for areas with different shipping noise levels and traffic intensities and during a seismic airgun survey. During the first 72 h of

the survey, a steady decrease in song received levels and bearings to singers indicated that whales moved away from the acoustic source and out of the study area. This displacement persisted for a time period well beyond the 10-day duration of seismic airgun activity, providing evidence that fin whales may avoid an area for an extended period in the presence of increased noise. The authors hypothesize that fin whale acoustic communication is modified to compensate for increased background noise and that a sensitization process may play a role in the observed temporary displacement.

Seismic pulses at average received levels of 131 dB re 1 μPa^2-s caused blue whales to increase call production (Di Iorio and Clark, 2010). In contrast, McDonald *et al.* (1995) tracked a blue whale with seafloor seismometers and reported that it stopped vocalizing and changed its travel direction at a range of 10 km from the acoustic source vessel (estimated received level 143 dB pk–pk). Blackwell *et al.* (2013) found that bowhead whale call rates dropped significantly at onset of airgun use at sites with a median distance of 41–45 km from the survey. Blackwell *et al.* (2015) expanded this analysis to show that whales actually increased calling rates as soon as airgun signals were detectable before ultimately decreasing calling rates at higher received levels (*i.e.,* 10-minute SEL_{cum} of ~127 dB). Overall, these results suggest that bowhead whales may adjust their vocal output in an effort to compensate for noise before ceasing vocalization effort and ultimately deflecting from the acoustic source (Blackwell *et al.,* 2013, 2015). These studies demonstrate that even low levels of noise received far from the source can induce changes in vocalization and/or behavior for mysticetes.

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). Humpback whales showed avoidance behavior in the presence of an active seismic array during observational studies and controlled exposure experiments in western Australia (McCauley *et al.,* 2000). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Stone (2015) reported data from at-sea observations during 1,196 seismic surveys from 1994 to 2010. When large arrays of airguns (considered to be 500 in^3 or more) were firing, lateral displacement, more localized avoidance, or other changes in behavior were evident for most odontocetes. However, significant responses to large arrays were found only for the minke whale and fin whale. Behavioral responses observed included changes in swimming or surfacing behavior, with indications that cetaceans remained near the water surface at these times. Cetaceans were recorded as feeding less often when large arrays were active. Behavioral observations of gray whales during a seismic survey monitored whale movements and respirations pre-, during and post-seismic survey (Gailey *et al.,* 2016). Behavioral state and water depth were the best 'natural' predictors of whale movements and respiration and, after considering natural variation, none of the response variables were significantly associated with seismic survey or vessel sounds.

Stress Responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are

affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficiently to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Auditory Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe *et al.,* 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited, although there are few specific data on this. Because of the intermittent nature and low duty cycle of seismic pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However, in exceptional situations, reverberation occurs for much or all of the interval between pulses (*e.g.,* Simard *et al.* 2005; Clark and Gagnon 2006), which could mask calls. Situations with prolonged strong reverberation are infrequent. However, it is common for reverberation to cause some lesser degree of elevation of the background level between airgun pulses (*e.g.,* Gedamke 2011; Guerra *et al.* 2011, 2016; Klinck *et al.* 2012; Guan *et al.* 2015), and this weaker reverberation presumably reduces the detection range of calls and other natural sounds to some degree. Guerra *et al.* (2016) reported that ambient noise levels between seismic pulses were elevated as a result of reverberation at ranges of 50 km from the seismic source. Based on measurements in deep water of the Southern Ocean, Gedamke (2011) estimated that the slight elevation of background levels during intervals between pulses reduced blue and fin whale communication space by as much as 36–51 percent when a seismic survey was operating 450–2,800 km away. Based on preliminary modeling, Wittekind *et al.* (2016) reported that airgun sounds could reduce the communication range of blue and fin whales 2000 km from the seismic source. Nieukirk *et al.* (2012) and Blackwell *et al.* (2013) noted the

potential for masking effects from seismic surveys on large whales.

Some baleen and toothed whales are known to continue calling in the presence of seismic pulses, and their calls usually can be heard between the pulses (*e.g.,* Nieukirk *et al.* 2012; Thode *et al.* 2012; Bröker *et al.* 2013; Sciacca *et al.* 2016). As noted above, Cerchio *et al.* (2014) suggested that the breeding display of humpback whales off Angola could be disrupted by seismic sounds, as singing activity declined with increasing received levels. In addition, some cetaceans are known to change their calling rates, shift their peak frequencies, or otherwise modify their vocal behavior in response to airgun sounds (*e.g.,* Di Iorio and Clark 2010; Castellote *et al.* 2012; Blackwell *et al.* 2013, 2015). The hearing systems of baleen whales are undoubtedly more sensitive to low-frequency sounds than are the ears of the small odontocetes that have been studied directly (*e.g.,* MacGillivray *et al.* 2014). The sounds important to small odontocetes are predominantly at much higher frequencies than are the dominant components of airgun sounds, thus limiting the potential for masking. In general, masking effects of seismic pulses are expected to be minor, given the normally intermittent nature of seismic pulses.

Ship Noise

Vessel noise from the *Palmer* could affect marine animals in the proposed survey areas. Houghton *et al.* (2015) proposed that vessel speed is the most important predictor of received noise levels, and Putland *et al.* (2017) also reported reduced sound levels with decreased vessel speed. Sounds produced by large vessels generally dominate ambient noise at frequencies from 20 to 300 Hz (Richardson *et al.* 1995). However, some energy is also produced at higher frequencies (Hermannsen *et al.* 2014); low levels of high-frequency sound from vessels has been shown to elicit responses in harbor porpoise (Dyndo *et al.* 2015). Increased levels of ship noise have been shown to affect foraging by porpoise (Teilmann *et al.* 2015; Wisniewska *et al.* 2018); Wisniewska *et al.* (2018) suggest that a decrease in foraging success could have long-term fitness consequences.

Ship noise, through masking, can reduce the effective communication distance of a marine mammal if the frequency of the sound source is close to that used by the animal, and if the sound is present for a significant fraction of time (*e.g.,* Richardson *et al.* 1995; Clark *et al.* 2009; Jensen *et al.* 2009; Gervaise *et al.* 2012; Hatch *et al.* 2012; Rice *et al.* 2014; Dunlop 2015; Erbe *et al.* 2015; Jones *et al.* 2017; Putland *et al.* 2017). In addition to the frequency and duration of the masking sound, the strength, temporal pattern, and location of the introduced sound also play a role in the extent of the masking (Branstetter *et al.* 2013, 2016; Finneran and Branstetter 2013; Sills *et al.* 2017). Branstetter *et al.* (2013) reported that time-domain metrics are also important in describing and predicting masking. In order to compensate for increased ambient noise, some cetaceans are known to increase the source levels of their calls in the presence of elevated noise levels from shipping, shift their peak frequencies, or otherwise change their vocal behavior (*e.g.,* Parks *et al.* 2011, 2012, 2016a,b; Castellote *et al.* 2012; Melcón *et al.* 2012; Azzara *et al.* 2013; Tyack and Janik 2013; Luís *et al.* 2014; Sairanen 2014; Papale *et al.* 2015; Bittencourt *et al.* 2016; Dahlheim and Castellote 2016; Gospić and Picciulin 2016; Gridley *et al.* 2016; Heiler *et al.* 2016; Martins *et al.* 2016; O'Brien *et al.* 2016; Tenessen and Parks 2016). Harp seals did not increase their call frequencies in environments with increased low-frequency sounds (Terhune and Bosker 2016). Holt *et al.* (2015) reported that changes in vocal modifications can have increased energetic costs for individual marine mammals. A negative correlation between the presence of some cetacean species and the number of vessels in an area has been demonstrated by several studies (*e.g.,* Campana *et al.* 2015; Culloch *et al.* 2016).

Baleen whales are thought to be more sensitive to sound at these low frequencies than are toothed whales (*e.g.,* MacGillivray *et al.* 2014), possibly causing localized avoidance of the proposed survey area during seismic operations. Reactions of gray and humpback whales to vessels have been studied, and there is limited information available about the reactions of right whales and rorquals (fin, blue, and minke whales). Reactions of humpback whales to boats are variable, ranging from approach to avoidance (Payne 1978; Salden 1993). Baker *et al.* (1982, 1983) and Baker and Herman (1989) found humpbacks often move away when vessels are within several kilometers. Humpbacks seem less likely to react overtly when actively feeding than when resting or engaged in other activities (Krieger and Wing 1984, 1986). Increased levels of ship noise have been shown to affect foraging by humpback whales (Blair *et al.* 2016). Fin whale sightings in the western Mediterranean were negatively correlated with the number of vessels in the area (Campana *et al.* 2015). Minke whales and gray seals have shown slight displacement in response to construction-related vessel traffic (Anderwald *et al.* 2013).

Many odontocetes show considerable tolerance of vessel traffic, although they sometimes react at long distances if confined by ice or shallow water, if previously harassed by vessels, or have had little or no recent exposure to ships (Richardson *et al.* 1995). Dolphins of many species tolerate and sometimes approach vessels (*e.g.,* Anderwald *et al.* 2013). Some dolphin species approach moving vessels to ride the bow or stern waves (Williams *et al.* 1992). Pirotta *et al.* (2015) noted that the physical presence of vessels, not just ship noise, disturbed the foraging activity of bottlenose dolphins. Sightings of striped dolphin, Risso's dolphin, sperm whale, and Cuvier's beaked whale in the western Mediterranean were negatively correlated with the number of vessels in the area (Campana *et al.* 2015).

There are few data on the behavioral reactions of beaked whales to vessel noise, though they seem to avoid approaching vessels (*e.g.,* Würsig *et al.* 1998) or dive for an extended period when approached by a vessel (*e.g.,* Kasuya 1986). Based on a single observation, Aguilar Soto *et al.* (2006) suggest foraging efficiency of Cuvier's beaked whales may be reduced by close approach of vessels.

In summary, project vessel sounds would not be at levels expected to cause anything more than possible localized and temporary behavioral changes in marine mammals, and would not be expected to result in significant negative effects on individuals or at the population level. In addition, in all oceans of the world, large vessel traffic is currently so prevalent that it is commonly considered a usual source of ambient sound (NSF–USGS 2011).

Ship Strike

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. Wounds resulting from ship strike may include massive trauma, hemorrhaging, broken bones, or propeller lacerations (Knowlton and Kraus, 2001). An animal at the surface may be struck directly by a vessel, a surfacing animal may hit the bottom of a vessel, or an animal just below the surface may be cut by a vessel's propeller. Superficial strikes may not kill or result in the death of the animal. These interactions are typically associated with large whales (*e.g.,* fin whales), which are occasionally found draped across the bulbous bow of large

commercial ships upon arrival in port. Although smaller cetaceans are more maneuverable in relation to large vessels than are large whales, they may also be susceptible to strike. The severity of injuries typically depends on the size and speed of the vessel, with the probability of death or serious injury increasing as vessel speed increases (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007; Conn and Silber, 2013). Impact forces increase with speed, as does the probability of a strike at a given distance (Silber *et al.,* 2010; Gende *et al.,* 2011).

Pace and Silber (2005) also found that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45 to 75 percent as vessel speed increased from 10 to 14 kn, and exceeded 90 percent at 17 kn. Higher speeds during collisions result in greater force of impact, but higher speeds also appear to increase the chance of severe injuries or death through increased likelihood of collision by pulling whales toward the vessel (Clyne, 1999; Knowlton *et al.,* 1995). In a separate study, Vanderlaan and Taggart (2007) analyzed the probability of lethal mortality of large whales at a given speed, showing that the greatest rate of change in the probability of a lethal injury to a large whale as a function of vessel speed occurs between 8.6 and 15 kn. The chances of a lethal injury decline from approximately 80 percent at 15 kn to approximately 20 percent at 8.6 kn. At speeds below 11.8 kn, the chances of lethal injury drop below 50 percent, while the probability asymptotically increases toward one hundred percent above 15 kn.

The *Palmer* travels at a speed of either 5 kn (9.2 km/hour) or 4–6 kn (7.4–11.1 km/hr). At these speeds, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are discountable. At average transit speed, the probability of serious injury or mortality resulting from a strike is less than 50 percent. However, the likelihood of a strike actually happening is again discountable. Ship strikes, as analyzed in the studies cited above, generally involve commercial shipping, which is much more common in both space and time than is geophysical survey activity. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). No such incidents were reported for geophysical survey vessels during that time period.

It is possible for ship strikes to occur while traveling at slow speeds. For example, a hydrographic survey vessel traveling at low speed (5.5 kn) while conducting mapping surveys off the central California coast struck and killed a blue whale in 2009. The State of California determined that the whale had suddenly and unexpectedly surfaced beneath the hull, with the result that the propeller severed the whale's vertebrae, and that this was an unavoidable event. This strike represents the only such incident in approximately 540,000 hours of similar coastal mapping activity ($p = 1.9 \times 10^{-6}$; 95 percent CI = $0–5.5 \times 10^{-6}$; NMFS, 2013b). In addition, a research vessel reported a fatal strike in 2011 of a dolphin in the Atlantic, demonstrating that it is possible for strikes involving smaller cetaceans to occur. In that case, the incident report indicated that an animal apparently was struck by the vessel's propeller as it was intentionally swimming near the vessel. While indicative of the type of unusual events that cannot be ruled out, neither of these instances represents a circumstance that would be considered reasonably foreseeable or that would be considered preventable.

Although the likelihood of the vessel striking a marine mammal is low, we require a robust ship strike avoidance protocol (see Proposed Mitigation), which we believe eliminates any foreseeable risk of ship strike. We anticipate that vessel collisions involving a seismic data acquisition vessel towing gear, while not impossible, represent unlikely, unpredictable events for which there are no preventive measures. Given the required mitigation measures, the relatively slow speed of the vessel towing gear, the presence of bridge crew watching for obstacles at all times (including marine mammals), and the presence of marine mammal observers, we believe that the possibility of ship strike is discountable and, further, that were a strike of a large whale to occur, it would be unlikely to result in serious injury or mortality. No incidental take resulting from ship strike is anticipated, and this potential effect of the specified activity will not be discussed further in the following analysis.

Stranding—When a living or dead marine mammal swims or floats onto shore and becomes ''beached'' or incapable of returning to sea, the event is a ''stranding'' (Geraci *et al.,* 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). The legal definition for a stranding under the MMPA is that (A) a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance.

Marine mammals strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most strandings are unknown (Geraci *et al.,* 1976; Eaton, 1979; Odell *et al.,* 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; DeVries *et al.,* 2003; Fair and Becker, 2000; Foley *et al.,* 2001; Moberg, 2000; Relyea, 2005a; 2005b, Romero, 2004; Sih *et al.,* 2004).

Use of military tactical sonar has been implicated in a majority of investigated stranding events. Most known stranding events have involved beaked whales, though a small number have involved deep-diving delphinids or sperm whales (*e.g.,* Mazzariol *et al.,* 2010; Southall *et al.,* 2013). In general, long duration (~1 second) and high-intensity sounds (>235 dB SPL) have been implicated in stranding events (Hildebrand, 2004). With regard to beaked whales, mid-frequency sound is typically implicated (when causation can be determined) (Hildebrand, 2004). Although seismic airguns create predominantly low-frequency energy, the signal does include a mid-frequency component. We have considered the potential for the proposed surveys to result in marine mammal stranding and have concluded that, based on the best available

information, stranding is not expected to occur.

Effects to Prey—Marine mammal prey varies by species, season, and location and, for some, is not well documented. Fish react to sounds which are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pulsed sound on fish, although several are based on studies in support of construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Sound pulses at received levels of 160 dB may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.,* 1992; Skalski *et al.,* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality. The most likely impact to fish from survey activities at the project area would be temporary avoidance of the area. The duration of fish avoidance of a given area after survey effort stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated.

Information on seismic airgun impacts to zooplankton, which represent an important prey type for mysticetes, is limited. However, McCauley *et al.* (2017) reported that experimental exposure to a pulse from a 150 inch^3 airgun decreased zooplankton abundance when compared with controls, as measured by sonar and net tows, and caused a two- to threefold increase in dead adult and larval zooplankton. Although no adult krill were present, the study found that all larval krill were killed after air gun passage. Impacts were observed out to the maximum 1.2 km range sampled.

In general, impacts to marine mammal prey are expected to be limited due to the relatively small temporal and spatial overlap between the proposed survey and any areas used by marine mammal prey species. The proposed use of airguns as part of an active seismic array survey would occur over a relatively short time period (~28 days) and would occur over a very small area relative to the area available as marine mammal habitat in the Southwest Atlantic Ocean. We believe any impacts to marine mammals due to adverse effects to their prey would be insignificant due to the limited spatial and temporal impact of the proposed survey. However, adverse impacts may occur to a few species of fish and to zooplankton.

Acoustic Habitat—Acoustic habitat is the soundscape—which encompasses all of the sound present in a particular location and time, as a whole—when considered from the perspective of the animals experiencing it. Animals produce sound for, or listen for sounds produced by, conspecifics (communication during feeding, mating, and other social activities), other animals (finding prey or avoiding predators), and the physical environment (finding suitable habitats, navigating). Together, sounds made by animals and the geophysical environment (*e.g.,* produced by earthquakes, lightning, wind, rain, waves) make up the natural contributions to the total acoustics of a place. These acoustic conditions, termed acoustic habitat, are one attribute of an animal's total habitat.

Soundscapes are also defined by, and acoustic habitat influenced by, the total contribution of anthropogenic sound. This may include incidental emissions from sources such as vessel traffic, or may be intentionally introduced to the marine environment for data acquisition purposes (as in the use of airgun arrays). Anthropogenic noise varies widely in its frequency content, duration, and loudness and these characteristics greatly influence the potential habitat-mediated effects to marine mammals (please see also the previous discussion on masking under *Acoustic Effects*), which may range from local effects for brief periods of time to chronic effects over large areas and for long durations Depending on the extent of effects to habitat, animals may alter their communications signals (thereby potentially expending additional energy) or miss acoustic cues (either conspecific or adventitious). For more detail on these concepts see, *e.g.,* Barber *et al.,* 2010; Pijanowski *et al.,* 2011; Francis and Barber, 2013; Lillis *et al.,* 2014.

Problems arising from a failure to detect cues are more likely to occur when noise stimuli are chronic and overlap with biologically relevant cues used for communication, orientation, and predator/prey detection (Francis and Barber, 2013). Although the signals emitted by seismic airgun arrays are generally low frequency, they would also likely be of short duration and transient in any given area due to the nature of these surveys. As described previously, exploratory surveys such as this one cover a large area but would be transient rather than focused in a given location over time and therefore would not be considered chronic in any given location.

Potential Effects of Icebreaking

Icebreakers produce more noise while breaking ice than ships of comparable size due, primarily, to the sounds of propeller cavitating (Richardson *et al.,* 1995). Icebreakers commonly back and ram into heavy ice until losing momentum to make way. The highest noise levels usually occur while backing full astern in preparation to ram forward through the ice. Overall the noise generated by an icebreaker pushing ice was 10 to 15 dB greater than the noise produced by the ship underway in open water (Richardson *et al.,* 1995). In general, the Antarctic and Southern Ocean is a noisy environment. Calving and grounding icebergs as well as the break-up of ice sheets, can produce a large amount of underwater noise. Little information is available about the increased sound levels due to icebreaking.

Cetaceans—Few studies have been conducted to evaluate the potential interference of icebreaking noise with marine mammal vocalizations. Erbe and Farmer (1998) measured masked hearing thresholds of a captive beluga whale. They reported that the recording of a Canadian Coast Guard Ship (CCGS) *Henry Larsen,* ramming ice in the Beaufort Sea, masked recordings of beluga vocalizations at a noise to signal pressure ratio of 18 dB, when the noise pressure level was eight times as high as the call pressure. Erbe and Farmer (2000) also predicted when icebreaker noise would affect beluga whales through software that combined a sound propagation model and beluga whale impact threshold models. They again used the data from the recording of the *Henry Larsen* in the Beaufort Sea and predicted that masking of beluga whale vocalizations could extend between 40 and 71 km (21.6 and 38.3 nmi) near the surface. Lesage *et al.* (1999) report that beluga whales changed their call type and call frequency when exposed to boat noise. It is possible that the whales adapt to the ambient noise levels and are able to communicate despite the sound. Given the documented reaction of belugas to ships and icebreakers it is highly unlikely that beluga whales would remain in the proximity of vessels where vocalizations would be masked.

Beluga whales have been documented swimming rapidly away from ships and icebreakers in the Canadian high Arctic when a ship approaches to within 35 to 50 km (18.9 to 27 nmi), and they may travel up to 80 km (43.2 nmi) from the vessel's track (Richardson *et al.,* 1995). It is expected that belugas avoid icebreakers as soon as they detect the

ships (Cosens & Dueck, 1993). However, the reactions of beluga whales to ships vary greatly and some animals may become habituated to high levels of ambient noise (Erbe & Darmber, 2000).

There is little information about the effects of icebreaking ships on baleen whales. Migrating bowhead whales appeared to avoid an area around a drill site by greater than 25 km (13.5 mi) where an icebreaker was working in the Beaufort Sea. There was intensive icebreaking daily in support of the drilling activities (Brewer *et al.,* 1993). Migrating bowheads also avoided a nearby drill site at the same time of year where little icebreaking was being conducted (LGL & Greeneridge, 1987). It is unclear as to whether the drilling activities, icebreaking operations, or the ice itself might have been the cause for the whale's diversion. Bowhead whales are not expected to occur in the proximity of the proposed action area.

Pinnipeds—Brueggeman *et al.* (1992) reported on the reactions of seals to an icebreaker during activities at two prospects in the Chukchi Sea. Reactions of seals to the icebreakers varied between the two prospects. Most (67 percent) seals did not react to the icebreaker at either prospect. Reaction at one prospect was greatest during icebreaking activity (running/maneuvering/jogging) and was 0.23 km (0.12 nmi) of the vessel and lowest for animals beyond 0.93 km (0.5 nmi). At the second prospect however, seal reaction was lowest during icebreaking activity with higher and similar levels of response during general (non-icebreaking) vessel operations and when the vessel was at anchor or drifting. The frequency of seal reaction generally declined with increasing distance from the vessel except during general vessel activity where it remained consistently high to about 0.46 km (0.25 nmi) from the vessel before declining.

Similarly, Kanik *et al.* (1980) found that ringed (*Pusa hispida*) and harp seals (*Pagophilus groenlandicus*) often dove into the water when an icebreaker was breaking ice within 1 km (0.5 nmi) of the animals. Most seals remained on the ice when the ship was breaking ice 1 to 2 km (0.5 to 1.1 nmi) away.

Sea ice is important for pinniped life functions such as resting, breeding, and molting. Icebreaking activities may damage seal breathing holes and would also reduce the haul-out area in the immediate vicinity of the ship's track. Icebreaking along a maximum of 500 km of tracklines would alter local ice conditions in the immediate vicinity of the vessel. This has the potential to temporarily lead to a reduction of suitable seal haul-out habitat. However, the dynamic sea-ice environment requires that seals be able to adapt to changes in sea, ice, and snow conditions, and they therefore create new breathing holes and lairs throughout the winter and spring (Hammill and Smith, 1989). In addition, seals often use open leads and cracks in the ice to surface and breathe (Smith and Stirling, 1975). Disturbance of the ice would occur in a very small area relative to the Southern Ocean ice-pack and no significant impact on marine mammals is anticipated by icebreaking during the proposed low-energy seismic survey.

In summary, activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat or populations of fish species or on the quality of acoustic habitat. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to the stressors of acoustic sources. Based on the nature of the activity (*i.e.,* small Level A zones) and the anticipated effectiveness of the mitigation measures (*i.e.,* visual mitigation monitoring; establishment of an exclusion zone; shutdown procedures; ramp-up procedures; and vessel strike avoidance measures)—discussed in detail below in Proposed Mitigation section, Level A harassment is neither anticipated, nor proposed to be authorized.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

NSF includes the use of impulsive seismic sources and continuous

icebreaking, and therefore the 120 dB re 1 μPa (rms) is applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). NSF's proposed activity includes the use of impulsive seismic and icebreaking sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For mobile sources such as seismic surveys and icebreaking, the User Spreadsheet predicts the closest distance at which a stationary animal would not incur PTS if the sound source traveled by the animal in a straight line at a constant speed. Inputs used in the User Spreadsheet, and the resulting isopleths are reported below in Tables 5 and 6.

TABLE 5—SEL_{cum} METHODOLOGY

Source Velocity (meters/second)	* 2.315
1/Repetition rate^ (seconds)	** 5

Note:

† Methodology assumes propagation of 20 log R; Activity duration (time) independent.

^ Time between onset of successive pulses.

* 4.5 kts.

** shot interval will be assume to be 5 seconds.

TABLE 6—TABLE SHOWING THE RESULTS FOR ONE SINGLE SEL SL MODELING WITHOUT AND WITH APPLYING WEIGHTING FUNCTION TO THE FIVE HEARING GROUPS

SEL_{cum} Threshold	183	185	155	185	203
Distance(m) (no weighting function)	19.8808	209.2295	209.5266	209.2295	210.1602
Modified Farfield SEL *	208.9687	209.2295	209.5266	209.2295	210.1602
Distance (m) (with weighting function)	10.1720	N/A	N/A	N/A	N/A
Adjustment (dB)	−5.82	N/A	N/A	N/A	N/A

Note: The modified farfield signature is estimated using the distance from the source array geometrical center to where the SELcum threshold is the largest. Apropagation of 20 log10 (Radial distance) is used to estimate the modified farfield SEL.

* Propagation of 20 $_{log}$ R.

Figure 2 -- Results for Single Shot SEL Source Level Modeling for the Two 150 in³ Airguns with Weighting Function Calculations for SELcum Criteria

	Modified farfield SEL	209.6801	209.5954	209.8512	209.5954	210.9198
	Source Factor	1.85798E+20	1.82209E+20	1.93264E+20	1.82209E+20	2.47178E+20
RESULTANT ISOPLETHS*	*Impulsive sounds have dual metric thresholds (SELcum & PK). Metric producing largest isopleth should be used.					
	Hearing Group	Low-Frequency Cetaceans	Mid-Frequency Cetaceans	High-Frequency Cetaceans	Phocid Pinnipeds	Otariid Pinnipeds
	SEL_{cum} Threshold	183	185	155	185	203
	PTS SEL_{cum} Isopleth to threshold (meters)	31.1	0.0	0.0	0.3	0.0
WEIGHTING FUNCTION CALCULATIONS						
	Weighting Function Parameters	Low-Frequency Cetaceans	Mid-Frequency Cetaceans	High-Frequency Cetaceans	Phocid Pinnipeds	Otariid Pinnipeds
	a	1	1.6	1.8	1	2
	b	2	2	2	2	2
	f_1	0.2	8.8	12	1.9	0.94
	f_2	19	110	140	30	26
	C	0.13	1.2	1.36	0.75	0.64
	Adjustment (dB)†	-6.09	-55.09	-64.39	-24.14	-31.05

OVERIDE Using LDEO Modeling

The proposed survey would entail the use of a 2-airgun array with a total discharge of 300 in³ at a two depth of 2–4 m. Lamont-Doherty Earth Observatory (L–DEO) model results are used to determine the 160 dB_{rms} radius for the 2-airgun array in deep water (<1,000 m) down to a maximum water depth of 2,000 m. Received sound levels were predicted by L–DEO's model (Diebold *et al.,* 2010) as a function of distance from the airguns, for the two 45 in³ airguns. This modeling approach uses ray tracing for the direct wave traveling from the array to the receiver and its associated source ghost (reflection at the air-water interface in the vicinity of the array), in a constant-velocity half-space (infinite homogenous ocean layer, unbounded by a seafloor). In addition, propagation measurements of pulses from a 36-airgun array at a tow depth of 6 m have been reported in deep water (~1,600 m), intermediate water depth on the slope (~600–1,100 m), and shallow water (~50 m) in the Gulf of Mexico in 2007–2008 (Tolstoy *et al.,* 2009; Diebold *et al.,* 2010).

For deep and intermediate water cases, the field measurements cannot be used readily to derive the Level A and Level B harassment isopleths, as at those sites the calibration hydrophone was located at a roughly constant depth of 350–550 m, which may not intersect all the SPL isopleths at their widest point from the sea surface down to the maximum relevant water depth (~2,000 m) for marine mammals. At short ranges, where the direct arrivals dominate and the effects of seafloor interactions are minimal, the data at the deep sites are suitable for comparison with modeled levels at the depth of the calibration hydrophone. At longer ranges, the comparison with the model—constructed from the maximum SPL through the entire water column at varying distances from the airgun array—is the most relevant.

In deep and intermediate water depths at short ranges, sound levels for direct arrivals recorded by the calibration hydrophone and L–DEO model results for the same array tow depth are in good alignment (see Figures 12 and 14 in Appendix H of NSF–USGS 2011). Consequently, isopleths falling within this domain can be predicted reliably by the L–DEO model, although they may be imperfectly sampled by measurements recorded at a single depth. At greater distances, the calibration data show that seafloor-reflected and sub-seafloor-refracted arrivals dominate. Although the direct arrivals become weak and/or incoherent. Aside from local topography effects, the region around the critical distance is where the observed levels rise closest to the model curve. However, the observed sound levels are found to fall almost entirely below the model curve. Thus, analysis of the Gulf of Mexico calibration measurements demonstrates that although simple, the L–DEO model is a robust tool for conservatively estimating isopleths.

The proposed surveys would acquire data with two 45-in³ guns at a tow depth of 2–4 m. For deep water (>1000 m), we use the deep-water radii obtained from L–DEO model results down to a maximum water depth of 2,000 m for the airgun array with 2-m and 8-m airgun separation. The radii for intermediate water depths (100–1,000 m) are derived from the deep-water ones by applying a correction factor (multiplication) of 1.5, such that observed levels at very near offsets fall below the corrected mitigation curve (see Figure 16 in Appendix H of NSF–USGS 2011). The shallow-water radii are obtained by scaling the empirically derived measurements from the Gulf of Mexico calibration survey to account for the differences in source volume and tow depth between the calibration survey (6,000 in³; 6-m tow depth) and the proposed survey (90 in³; 4-m tow depth); whereas the shallow water in the Gulf of Mexico may not exactly replicate the shallow water environment at the proposed survey sites, it has been shown to serve as a good and very conservative proxy (Crone *et al.,* 2014). A simple scaling factor is calculated from the ratios of the isopleths determined by the deep-water L–DEO model, which are essentially a measure of the energy radiated by the source array.

L–DEO's modeling methodology is described in greater detail in NSF's IHA application. The estimated distances to the Level B harassment isopleths for the two proposed airgun configurations in each water depth category are shown in Table 7.

TABLE 7—LEVEL B—PREDICTED DISTANCES TO THE LEVEL B THRESHOLD

[160 re 1μPa$_{rms}$ isopleths]

Source and volume (cm^3)[in^3]	Tow depth (m)[ft]	Water depth (m)[ft] [1]	Predicted 160 re 1μPa$_{rms}$ (m)[ft] isopleth [2]
2 x 45/105 in^3 (300 in^3) GI guns	3 [9.8]	100–1000 [328–3280]	979 [3211]
		>1000 [>3280]	653 [2142]
1 x 45/105 in^3 (150 in^3) GI guns	3 [9.8]	100–1000 [328–3280]	503 [1650]
		>1000 [>3280]	335 [1099]
2 x 105/105 in^3 (420 in^3) GI guns	3 [9.8]	100–1000 [328–3280]	1044 [3425]
		>1000 [>3280]	696 [2283]
1 x 105/105 in^3 (210 in^3) GI guns	3 [9.8]	100–1000 [328–3280]	531 [1742]
		>1000 [>3280]	354 [1161]

[1] No seismic operations would be conducted in shallow depths (0–100 m [0–328 ft]).
[2] RMS radii is based on LDEO modeling and empirical measurements. Radii for 100–1000 m (328–3280 ft) depth values = deep water values * 1.5 correction factor.

Table 8 presents the proposed exclusion zone (EZ) for each marine mammal hearing group, which are based on LDEO modeling incorporated into the companion user spreadsheet (NMFS 2018).

TABLE 8—PREDICTED DISTANCES TO THE LEVEL A THRESHOLD FOR MARINE MAMMALS

Hearing group	SEL cumulative PTS threshold (dB) [1]	SEL cumulative PTS distance (m)[ft] [1]	Peak PTS threshold (dB) [1]	Peak PTS distance (m)[ft] [1]
Low-frequency cetaceans	183	31.1 [102]	219	7.55 [24.8]
Mid-frequency cetaceans	185	0.0	230	1.58 [5.2]
Phocid pinnipeds	185	0.3 [0.98]	218	8.47 [27.8]

[1] Cumulative sound exposure level for PTS (SEL$_{cum}$PTS) or Peak (SPLflat) resulting in Level A harassment (*i.e.,* injury). Based on 2018 NMFS Acoustic Technical Guidance (NMFS 2018).
[2] Per NMFS Acoustic Technical Guidance (NMFS 2018), the larger of the dual criteria results are used for the EZ.

Predicted distances to Level A harassment isopleths, which vary based on marine mammal hearing groups, were calculated based on modeling performed by L–DEO using the NUCLEUS software program and the NMFS User Spreadsheet, described below. The updated acoustic thresholds for impulsive sounds (*e.g.,* airguns) contained in the Technical Guidance were presented as dual metric acoustic thresholds using both SEL$_{cum}$ and peak sound pressure metrics (NMFS 2016a). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The SEL$_{cum}$ metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group. In recognition of the fact that the requirement to calculate Level A harassment ensonified areas could be more technically challenging to predict due to the duration component and the use of weighting functions in the new SEL$_{cum}$ thresholds, NMFS developed an optional User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to facilitate the estimation of take numbers.

The SEL$_{cum}$ for the two-GI airgun array is derived from calculating the modified farfield signature. The farfield signature is often used as a theoretical representation of the source level. To compute the farfield signature, the source level is estimated at a large distance (right) below the array (*e.g.,* 9 km), and this level is back projected mathematically to a notional distance of 1 m from the array's geometrical center. However, it has been recognized that the source level from the theoretical farfield signature is never physically achieved at the source when the source is an array of multiple airguns separated in space (Tolstoy *et al.,* 2009). Near the source (at short ranges, distances <1 km), the pulses of sound pressure from each individual airgun in the source array do not stack constructively as they do for the theoretical farfield signature. The pulses from the different airguns spread out in time such that the source levels observed or modeled are the result of the summation of pulses from a few airguns, not the full array (Tolstoy *et al.,* 2009). At larger distances, away from the source array center, sound pressure of all the airguns in the array stack coherently, but not within one time sample, resulting in smaller source levels (a few dB) than the source level derived from the farfield signature. Because the farfield signature does not take into account the interactions of the two airguns that occur near the source center and is calculated as a point source (single airgun), the modified farfield signature is a more appropriate measure of the sound source level for large arrays. For this smaller array, the modified farfield changes will be correspondingly smaller as well, but this method is used for consistency across all array sizes.

NSF used the same acoustic modeling as Level B harassment with a small grid step in both the inline and depth directions to estimate the SEL$_{cum}$ and peak SPL. The propagation modeling takes into account all airgun

interactions at short distances from the source including interactions between subarrays using the NUCLEUS software to estimate the notional signature and the MATLAB software to calculate the pressure signal at each mesh point of a grid. For a more complete explanation of this modeling approach, please see ''Attachment A: Modeling Data'' in NSF's IHA application.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

For the proposed survey area in west Antarctica, NSF provided density data for marine mammal species that might be encountered in the project area. NMFS concurred with these data and additionally included information regarding the Southern elephant seal Densities were estimated using sightings and effort during aerial- and vessel-based surveys conducted in and adjacent to the proposed project area (see NSF IHA application). The three other major sources of animal abundance included the Navy Marine Species Density Database (NMSDD) 2012, Ainley *et al.* 2007, and Gohl 2010. Data sources and density calculations are described in detail in Attachment B of NSF's IHA application. For some species, the densities derived from past surveys may not be representative of the densities that would be encountered during the proposed seismic surveys. However, the approach used is based on the best available data. Estimated densities used to inform take estimates are presented in Table 9.

TABLE 9—MARINE MAMMAL DENSITIES IN THE PROPOSED SURVEY AREA

Species	Estimated density (#/km2)
Low-frequency Cetaceans:	
Blue whale	0.0000510
Fin whale	0.0072200
Humpback whale	0.0001000
Minke whale	0.0930166
Sei whale	0.0002550
Mid-frequency Cetaceans:	
Arnoux's beaked whale	0.0062410
Killer whale	0.0014110
Southern bottlenose whale	0.0067570
Sperm whale	0.0169934
Phocids:	
Crabeater	0.00762
Leopard	0.00005
Ross	0.00001
Weddell	0.000126984
Southern Elephant	[a] 1.03

Note: See Attachment B in NSF's IHA application for density sources.
[a] Hofmeyr 2015.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

Seismic Surveys

In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in Level A harassment or Level B harassment, radial distances from the airgun array to predicted isopleths corresponding to the Level A harassment and Level B harassment thresholds are calculated, as described above. Those radial distances are then used to calculate the area(s) around the airgun array predicted to be ensonified to sound levels that exceed the Level A harassment and Level B harassment thresholds. The area estimated to be ensonified in a single day of the survey is then calculated (Table 10), based on the areas predicted to be ensonified around the array and the estimated trackline distance traveled per day. This number is then multiplied by the number of survey days. The product is then multiplied by 1.25 to account for the additional 25 percent contingency. This results in an estimate of the total area (km^2) expected to be ensonified to the Level A and Level B harassment thresholds for each survey type (Table 11).

TABLE 10—AREAS (km^2) TO BE ENSONIFIED TO LEVEL A AND LEVEL B HARASSMENT THRESHOLDS

% Distance at depth	Distance/day (km) [length]	Radius to Level B (km)	Distance/day * 2r [length * width = area]	πr2 (km) = [endcaps-both ends]	Distance/day * 2r + πr2 = daily ensonified area(km2) [Adding of 2 endcaps]	Number days of survey	Plus 25% buffer (days)	Total ensonified area (km^2)
Level A Area:								
Low-frequency	160.00	0.03	9.95	0.00	9.96	8.00	10.00	99.55
Mid-frequency	160.00	0.00	0.51	0.00	0.51	8.00	10.00	5.06
Phocids	160.00	0.01	2.71	0.00	2.71	8.00	10.00	27.11
Level B Area:								
65% = 100-1000 m	104.00	1.04	217.15	3.42	220.57	8.00	10.00	2,205.74
35% = >1000 m	56.00	0.70	77.95	1.52	79.47	8.00	10.00	794.73
All Depths								3,000.47

The marine mammals predicted to occur within these respective areas, based on estimated densities (Table 9), are assumed to be incidentally taken. Based on the small anticipated Level A harassment isopleths and in consideration of the proposed mitigation measures (see Proposed Mitigation section below), take by Level A harassment is not expected to occur and has not been proposed to be authorized. Estimated exposures for the proposed survey are shown in Table 11.

TABLE 11—CALCULATED AND PROPOSED LEVEL B EXPOSURES, AND PERCENTAGE OF STOCK EXPOSED

Species	Calculated total Level B	Proposed Level B	Stock abundance regional or worldwide	Percent of population
Low-frequency cetaceans:				
Blue whale	0.15	<1	5,000	0.0
Fin whale	21.66	24	38,200	0.1

TABLE 11—CALCULATED AND PROPOSED LEVEL B EXPOSURES, AND PERCENTAGE OF STOCK EXPOSED—Continued

Species	Calculated total Level B	Proposed Level B	Stock abundance regional or worldwide	Percent of population
Humpback whale	0.30	<1	42,000	0.0
Minke whale	279.09	311	515,000	0.1
Antarctic minke whale	139.55	.....	257,500	0.1
Common (dwarf) minke whale	139.55	.....	257,500	0.1
Sei whale	0.77	1	10,000	0.0
Mid-frequency cetaceans:				
Arnoux's beaked whale	18.73	21	599,300	0.0
Killer whale	4.23	5	25,000	0.0
Layard's beaked whale	1.91	.....	599,300	0.0
Long-finned pilot whale	23.58	.....	200,000	0.0
Southern bottlenose whale	20.27	23	500,000	0.0
Sperm whale	50.99	57	12,069	0.4
Gray's beaked whale	0.84	.....	599,300	0.0
Phocids:				
Crabeater seal	22.86	25	5,000,000	0.0
Leopard seal	0.14	<1	222,000	0.0
Ross seal	0.04	<1	250,000	0.0
Southern Elephant Seal	3,095.73	.....	325,000	1.0
Weddell seal	0.38	<1	413,671	0.0

It should be noted that the proposed take numbers shown in Table 10 are expected to be conservative because in the calculations of estimated take, 25 percent has been added in the form of operational survey days. This is to account for the possibility of additional seismic operations associated with airgun testing and repeat coverage of any areas where initial data quality is sub-standard, and in recognition of the uncertainties in the density estimates used to estimate take as described above. However, the extent to which marine mammals would move away from the sound source is difficult to quantify and is, therefore, not accounted for in the take estimates.

Icebreaking

As the vessel passes through the ice, the ship causes the ice to part and travel alongside the hull. This ice typically returns to fill the wake as the ship passes. The effects are transitory, hours at most, and localized, constrained to a relatively narrow swath to each side of the vessel. Applying the maximum estimated amount of icebreaking expected by NSF, *i.e.,* 500 km, we calculate the ensonified area of icebreaking, including endcaps (Table 12).

TABLE 12—ENSONIFIED AREA FOR ICEBREAKING

Distance/day (km)	Radius (km)	Distance/ day * 2r [length * width = area]	πr2 (km) = [endcaps]	Distance/day * 2r + πr2 = daily ensonified area(km2) [adding of 2 endcaps]	Number days of survey	Plus 25% buffer (days)	Total ensonified area (km^2)
62.50	6.456	807.00	130.87	937.87	8.00	10.00	9,378.75

TABLE 13—LEVEL B TAKE FOR ICEBREAKING

Species	Density (#/km^2)	Daily ensonified area (km^2)	Calculated Level B	Proposed Level B	Stock abundance regional or worldwide	Percent of population
Low-frequency cetaceans:						
Blue whale	0.000051	937.87	0.05	<1	5,000	0.0
Fin whale	0.00722	937.87	6.77	4	38,200	0.018
Humpback whale	0.0001	937.87	0.09	<1	42,000	0.0
Minke whale	0.0930166	937.87	87.24	53	515,000	0.0
Antarctic minke whale	0.046508	937.87	43.62	.....	257,500	0.0
Common (dwarf) minke whale	0.0465083	937.87	43.62	.....	257,500	0.0
Sei whale	0.000255	937.87	0.24	<1	10,000	0.0
Mid-frequency cetaceans:						
Arnoux's beaked whale	0.006241	937.87	5.85	4	599,300	0.0
Killer whale	0.001411	937.87	1.32	<1	25,000	0.0
Layard's beaked whale	0.000638	937.87	0.60	.....	599,300	0.0
Long-finned pilot whale	0.007859	937.87	7.37	.....	200,000	0.0
Southern bottlenose whale	0.006757	937.87	6.34	4	500,000	0.0
Sperm whale	0.0169934	937.87	15.94	10	12,069	0.1
Gray's beaked whale	0.000281	937.87	0.26	.....	599,300	0.0

TABLE 13—LEVEL B TAKE FOR ICEBREAKING—Continued

Species	Density (#/km^2)	Daily ensonified area (km^2)	Calculated Level B	Proposed Level B	Stock abundance regional or worldwide	Percent of population
Phocids:						
Crabeater seal	0.007619	937.87	7.15	4	5,000,000	0.0
Leopard seal	0.0000476	937.87	0.04	<1	222,000	0.0
Ross seal	0.0000127	937.87	0.01	<1	250,000	0.0
Southern Elephant Seal	1.03	937.87	967.65	.....	325,000	0.3
Weddell seal	0.000127	937.87	0.12	<1	413,671	0.0

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation for Marine Mammals and Their Habitat

NSF has reviewed mitigation measures employed during seismic research surveys authorized by NMFS under previous incidental harassment authorizations, as well as recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), Weir and Dolman (2007), Nowacek *et al.* (2013), Wright (2014), and Wright and Cosentino (2015), and has incorporated a suite of proposed mitigation measures into their project description based on the above sources.

To reduce the potential for disturbance from acoustic stimuli associated with the activities, NSF has proposed to implement mitigation measures for marine mammals. Mitigation measures that would be adopted during the proposed surveys include (1) Vessel-based visual mitigation monitoring; (2) Establishment of a marine mammal EZ and buffer zone; (3) shutdown procedures; (4) ramp-up procedures; and (4) vessel strike avoidance measures.

Vessel-Based Visual Mitigation Monitoring

Visual monitoring requires the use of trained observers (herein referred to as visual Protected Species Observers (PSOs)) to scan the ocean surface visually for the presence of marine mammals. PSO observations would take place during all daytime airgun operations and nighttime start ups (if applicable) of the airguns. If airguns are operating throughout the night, observations would begin 30 minutes prior to sunrise. If airguns are operating after sunset, observations would continue until 30 minutes following sunset. Following a shutdown for any reason, observations would occur for at least 30 minutes prior to the planned start of airgun operations. Observations would also occur for 30 minutes after airgun operations cease for any reason. Observations would also be made during daytime periods when the *Palmer* is underway without seismic operations, such as during transits, to allow for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Airgun operations would be suspended when marine mammals are observed within, or about to enter, the designated EZ (as described below).

During seismic operations, three visual PSOs would be based aboard the *Palmer.* PSOs would be appointed by NSF with NMFS approval. One dedicated PSO would monitor the EZ during all daytime seismic operations. PSO(s) would be on duty in shifts of duration no longer than four hours. Other vessel crew would also be instructed to assist in detecting marine mammals and in implementing mitigation requirements (if practical). Before the start of the seismic survey, the crew would be given additional instruction in detecting marine mammals and implementing mitigation requirements.

The *Palmer* is a suitable platform from which PSOs would watch for marine mammals. Standard equipment for marine mammal observers would be 7 x 50 reticule binoculars and optical range finders. At night, night-vision equipment would be available. The observers would be in communication with ship's officers on the bridge and scientists in the vessel's operations laboratory, so they can advise promptly of the need for avoidance maneuvers or seismic source shutdown.

The PSOs must have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements. PSO resumes shall be provided to NMFS for approval. At least one PSO must have a minimum of 90 days at-sea experience working as a PSO during a seismic survey. One ''experienced'' visual PSO will be designated as the lead for the entire protected species observation team. The

lead will serve as primary point of contact for the vessel operator.

Exclusion Zone and Buffer Zone

An EZ is a defined area within which occurrence of a marine mammal triggers mitigation action intended to reduce the potential for certain outcomes, *e.g.,* auditory injury, disruption of critical behaviors. The PSOs would establish a minimum EZ with a 100 m radius for the airgun array. The 100-m EZ would be based on radial distance from any element of the airgun array (rather than being based on the center of the array or around the vessel itself). With certain exceptions (described below), if a marine mammal appears within, enters, or appears on a course to enter this zone, the acoustic source would be shut down (see Shutdown Procedures below).

The 100-m radial distance of the standard EZ is precautionary in the sense that it would be expected to contain sound exceeding injury criteria for all marine mammal hearing groups (Table 5) while also providing a consistent, reasonably observable zone within which PSOs would typically be able to conduct effective observational effort. In this case, the 100-m radial distance would also be expected to contain sound that would exceed the Level A harassment threshold based on sound exposure level (SEL_{cum}) criteria for all marine mammal hearing groups (Table 5). In the 2011 Programmatic Environmental Impact Statement for marine scientific research funded by the National Science Foundation or the U.S. Geological Survey (NSF–USGS 2011), Alternative B (the Preferred Alternative) conservatively applied a 100-m EZ for all low-energy acoustic sources in water depths >100 m, with low-energy acoustic sources defined as any towed acoustic source with a single or a pair of clustered airguns with individual volumes of ≤250 in^3. Thus the 100-m EZ proposed for this survey is consistent with the PEIS.

Our intent in prescribing a standard EZ distance is to (1) encompass zones within which auditory injury could occur on the basis of instantaneous exposure; (2) provide additional protection from the potential for more severe behavioral reactions (*e.g.,* panic, antipredator response) for marine mammals at relatively close range to the acoustic source; (3) provide consistency for PSOs, who need to monitor and implement the EZ; and (4) define a distance within which detection probabilities are reasonably high for most species under typical conditions.

PSOs will also establish and monitor a 200-m buffer zone. During use of the acoustic source, occurrence of marine mammals within the buffer zone (but outside the EZ) will be communicated to the operator to prepare for potential shutdown of the acoustic source. The buffer zone is discussed further under *Ramp-up Procedures* below.

An extended EZ of 500 m would be enforced for all beaked whales and Southern right whales. This is a precautionary measure as right whales are not expected in the survey area. NSF would also enforce a 500-m EZ for aggregations of six or more large whales (*i.e.,* sperm whale or any baleen whale) or a large whale with a calf (calf defined as an animal less than two-thirds the body size of an adult observed to be in close association with an adult).

Shutdown Procedures

If a marine mammal is detected outside the EZ but is likely to enter the EZ, the airguns would be shut down before the animal is within the EZ. Likewise, if a marine mammal is already within the EZ when first detected, the airguns would be shut down immediately.

Following a shutdown, airgun activity would not resume until the marine mammal has cleared the 100-m EZ. The animal would be considered to have cleared the 100-m EZ if the following conditions have been met:

- It is visually observed to have departed the 100-m EZ;
- it has not been seen within the 100-m EZ for 15 minutes in the case of small odontocetes and pinnipeds; or
- it has not been seen within the 100-m EZ for 30 minutes in the case of mysticetes and large odontocetes, including sperm, pygmy sperm, and beaked whales.

Shutdown of the acoustic source would also be required upon observation of a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized number of takes are met, observed approaching or within the Level A or Level B harassment zones.

Ramp-Up Procedures

Ramp-up of an acoustic source is intended to provide a gradual increase in sound levels following a shutdown, enabling animals to move away from the source if the signal is sufficiently aversive prior to its reaching full intensity. Ramp-up would be required after the array is shut down for any reason for longer than 15 minutes. Ramp-up would begin with the activation of one 45 in^3 airgun, with the second 45 in^3 airgun activated after 5 minutes.

Two PSOs would be required to monitor during ramp-up. During ramp up, the PSOs would monitor the EZ, and if marine mammals were observed within the EZ or buffer zone, a shutdown would be implemented as though the full array were operational. If airguns have been shut down due to PSO detection of a marine mammal within or approaching the 100 m EZ, ramp-up would not be initiated until all marine mammals have cleared the EZ, during the day or night. Criteria for clearing the EZ would be as described above.

Thirty minutes of pre-clearance observation are required prior to ramp-up for any shutdown of longer than 30 minutes (*i.e.,* if the array were shut down during transit from one line to another). This 30-minute pre-clearance period may occur during any vessel activity (*i.e.,* transit). If a marine mammal were observed within or approaching the 100 m EZ during this pre-clearance period, ramp-up would not be initiated until all marine mammals cleared the EZ. Criteria for clearing the EZ would be as described above. If the airgun array has been shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for a period of less than 30 minutes, it may be activated again without ramp-up if PSOs have maintained constant visual observation and no detections of any marine mammal have occurred within the EZ or buffer zone. Ramp-up would be planned to occur during periods of good visibility when possible. However, ramp-up would be allowed at night and during poor visibility if the 100 m EZ and 200 m buffer zone have been monitored by visual PSOs for 30 minutes prior to ramp-up.

The operator would be required to notify a designated PSO of the planned start of ramp-up as agreed-upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up. A designated PSO must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed. The operator must provide information to PSOs documenting that appropriate procedures were followed. Following deactivation of the array for reasons other than mitigation, the operator would be required to communicate the near-term operational plan to the lead PSO with justification for any planned nighttime ramp-up.

Vessel Strike Avoidance Measures

Vessel strike avoidance measures are intended to minimize the potential for collisions with marine mammals. These

requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

The proposed measures include the following: Vessel operator and crew would maintain a vigilant watch for all marine mammals and slow down or stop the vessel or alter course to avoid striking any marine mammal. A visual observer aboard the vessel would monitor a vessel strike avoidance zone around the vessel according to the parameters stated below. Visual observers monitoring the vessel strike avoidance zone would be either third-party observers or crew members, but crew members responsible for these duties would be provided sufficient training to distinguish marine mammals from other phenomena. Vessel strike avoidance measures would be followed during surveys and while in transit.

The vessel would maintain a minimum separation distance of 100 m from large whales (*i.e.,* baleen whales and sperm whales). If a large whale is within 100 m of the vessel, the vessel would reduce speed and shift the engine to neutral, and would not engage the engines until the whale has moved outside of the vessel's path and the minimum separation distance has been established. If the vessel is stationary, the vessel would not engage engines until the whale(s) has moved out of the vessel's path and beyond 100 m. If an animal is encountered during transit, the vessel would attempt to remain parallel to the animal's course, avoiding excessive speed or abrupt changes in course. Vessel speeds would be reduced to 10 kts or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near the vessel.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

NSF described marine mammal monitoring and reporting plan within their IHA application. Monitoring that is designed specifically to facilitate mitigation measures, such as monitoring of the EZ to inform potential shutdowns of the airgun array, are described above and are not repeated here. NSF's monitoring and reporting plan includes the following measures:

Vessel-Based Visual Monitoring

As described above, PSO observations would take place during daytime airgun operations and nighttime start-ups (if applicable) of the airguns. During seismic operations, three visual PSOs would be based aboard the *Palmer.* PSOs would be appointed by NSF with NMFS approval. The PSOs must have successfully completed relevant training, including completion of all required coursework and passing a written and/or oral examination developed for the training program, and must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences and a minimum of 30 semester hours or equivalent in the biological sciences and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate training, including (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.

During the majority of seismic operations, one PSO would monitor for marine mammals around the seismic vessel. PSOs would be on duty in shifts of duration no longer than four hours. Other crew would also be instructed to assist in detecting marine mammals and in implementing mitigation requirements (if practical). During daytime, PSOs would scan the area around the vessel systematically with reticle binoculars (*e.g.,* 7×50 Fujinon) and with the naked eye. At night, PSOs would be equipped with night-vision equipment.

PSOs would record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data would be used to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They would also provide information needed to order a shutdown of the airguns when a marine mammal is within or near the EZ. When a sighting is made, the following information about the sighting would be recorded:

(1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (*e.g.,* none, avoidance, approach, paralleling, etc.), and behavioral pace; and

(2) Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

All observations and shutdowns would be recorded in a standardized format. Data would be entered into an electronic database. The accuracy of the data entry would be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database. These procedures would allow initial summaries of data to be prepared during and shortly after the field program and would facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving. The time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare would also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

Results from the vessel-based observations would provide:

(1) The basis for real-time mitigation (*e.g.,* airgun shutdown);

(2) Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS;

(3) Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted;

(4) Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and

(5) Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Reporting

A draft report would be submitted to NMFS within 90 days after the end of the survey. The report would describe the operations that were conducted and sightings of marine mammals near the operations. The report would provide full documentation of methods, results, and interpretation pertaining to all monitoring and would summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report would also include estimates of the number and nature of exposures that occurred above the harassment threshold based on PSO observations, including an estimate of those that were not detected in consideration of both the characteristics and behaviors of the species of marine mammals that affect detectability, as well as the environmental factors that affect detectability.

The draft report shall also include geo-referenced time-stamped vessel tracklines for all time periods during which airguns were operating. Tracklines should include points recording any change in airgun status (*e.g.,* when the airguns began operating, when they were turned off, or when they changed from full array to single gun or vice versa). GIS files shall be provided in ESRI shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available to NMFS. The draft report must be accompanied by a certification from the lead PSO as to the accuracy of the report, and the lead PSO may submit directly NMFS a statement concerning implementation and effectiveness of the required mitigation and monitoring. A final report must be submitted within 30 days following resolution of any comments on the draft report.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all the species listed in Table 2, given that NMFS expects the anticipated effects of the proposed seismic survey to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis.

NMFS does not anticipate that serious injury or mortality would occur as a result of NSF's proposed seismic survey, even in the absence of proposed mitigation. Thus, the proposed authorization does not authorize any mortality. As discussed in the *Potential Effects of Specified Activities on Marine Mammals and their Habitat* section, non-auditory physical effects, stranding, and vessel strike are not expected to occur.

No takes by Level A harassment are proposed to be authorized. The 100-m exclusion zone encompasses the Level A harassment isopleths for all marine mammal hearing groups, and is expected to prevent animals from being exposed to sound levels that would cause PTS. Also, as described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice of the *Palmer's* approach due to the vessel's relatively low speed when conducting seismic surveys. We expect that any instances of take would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity were occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007).

Potential impacts to marine mammal habitat were discussed previously in this document (see Potential Effects of Specified Activities on Marine Mammals and their Habitat). Marine mammal habitat may be impacted by elevated sound levels, but these impacts would be temporary. Feeding behavior is not likely to be significantly impacted, as marine mammals appear to be less likely to exhibit behavioral reactions or avoidance responses while engaged in feeding activities (Richardson *et al.,* 1995). Prey species are mobile and are broadly distributed throughout the project area; therefore,

marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance, the availability of similar habitat and resources in the surrounding area, and the lack of important or unique marine mammal habitat, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. In addition, there are no feeding, mating or calving areas known to be biologically important to marine mammals within the proposed project area.

As explained above in the *Marine Mammal* section, marine mammals in the survey area are not assigned to NMFS stocks. For purposes of the small numbers analysis (discussed in the next section), we rely on the best available information on the abundance estimates for the species of marine mammals that could be taken. The activity is expected to impact a very small percentage of all marine mammal populations that would be affected by NSF's proposed survey (less than two percent each for all marine mammal populations where abundance estimates exist). Additionally, the acoustic ''footprint'' of the proposed survey would be very small relative to the ranges of all marine mammal species that would potentially be affected. Sound levels would increase in the marine environment in a relatively small area surrounding the vessel compared to the range of the marine mammals within the proposed survey area. The seismic array would be active 24 hours per day throughout the duration of the proposed survey. However, the very brief overall duration of the proposed survey (eight days) would further limit potential impacts that may occur as a result of the proposed activity.

The proposed mitigation measures are expected to reduce the number and/or severity of takes by allowing for detection of marine mammals in the vicinity of the vessel by visual and acoustic observers, and by minimizing the severity of any potential exposures via shutdowns of the airgun array. Based on previous monitoring reports for substantially similar activities that have been previously authorized by NMFS, we expect that the proposed mitigation will be effective in preventing at least some extent of potential PTS in marine mammals that may otherwise occur in the absence of the proposed mitigation.

Of the marine mammal species under our jurisdiction that are likely to occur in the project area, the following species are listed as endangered under the ESA: Blue, fin, humpback, sei, and sperm whales. We are proposing to authorize very small numbers of takes for these species (Table 11), relative to their population sizes (again, for species where population abundance estimates exist), therefore we do not expect population-level impacts to any of these species. The other marine mammal species that may be taken by harassment during NSF's seismic survey are not listed as threatened or endangered under the ESA. There is no designated critical habitat for any ESA-listed marine mammals within the project area; of the non-listed marine mammals for which we propose to authorize take, none are considered ''depleted'' or ''strategic'' by NMFS under the MMPA.

NMFS concludes that exposures to marine mammal species due to NSF's proposed seismic survey would result in only short-term (temporary and short in duration) effects to individuals exposed, or some small degree of PTS to a very small number of individuals. Marine mammals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Major shifts in habitat use, distribution, or foraging success are not expected. NMFS does not anticipate the proposed take estimates to impact annual rates of recruitment or survival.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality, serious injury and Level A harassment is anticipated or authorized;
- The anticipated impacts of the proposed activity on marine mammals would primarily be temporary behavioral changes of small percentages of the affected species due to avoidance of the area around the survey vessel. The relatively short duration of the proposed survey (eight days) would further limit the potential impacts of any temporary behavioral changes that would occur;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the proposed survey to avoid exposure to sounds from the activity;
- The proposed project area does not contain areas of significance for feeding, mating or calving;
- The potential adverse effects on fish or invertebrate species that serve as prey species for marine mammals from the proposed survey would be temporary and spatially limited; and
- The proposed mitigation measures, including visual and acoustic monitoring and shutdowns, are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The numbers of marine mammals that we authorize to be taken would be considered small relative to the relevant populations (less than two percent for all species) for the species for which abundance estimates are available.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population sizes of the affected species.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the ESA Interagency Cooperation Division, whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize take of blue, fin, humpback, sei, and sperm whales, which are listed under the ESA. The Permit and Conservation Division has requested initiation of Section 7 consultation with the Interagency Cooperation Division for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to NSF for conducting seismic surveys, other acoustic sources, and icebreaking in the Amundsen Sea from on or about February 6–14, 2020, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed low-energy marine geophysical survey and icebreaking activity in the Amundsen Sea. We also request at this time comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal.

On a case-by-case basis, NMFS may issue a one-year IHA renewal with an additional 15 days for public comments when (1) another year of identical or nearly identical activities as described in the Specified Activities section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA.
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take because only a subset of the initially analyzed activities remain to be completed under the Renewal).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: December 13, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–27269 Filed 12–18–19; 8:45 am]

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Part V

The President

Notice of December 18, 2019—Continuation of the National Emergency With Respect to Serious Human Rights Abuse and Corruption

Federal Register
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Presidential Documents

Title 3—

The President

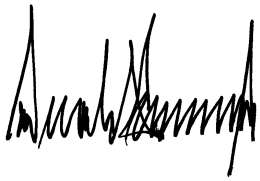
Notice of December 18, 2019

Continuation of the National Emergency With Respect to Serious Human Rights Abuse and Corruption

On December 20, 2017, by Executive Order 13818, the President declared a national emergency with respect to serious human rights abuse and corruption around the world and, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), took related steps to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.

The prevalence and severity of human rights abuse and corruption that have their source, in whole or in substantial part, outside the United States, continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For this reason, the national emergency declared on December 20, 2017, must continue in effect beyond December 20, 2019. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13818 with respect to serious human rights abuse and corruption.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
December 18, 2019.

[FR Doc. 2019–27618
Filed 12–18–19; 11:15 am]
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