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The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Part 4288

RIN 0570–AA75

Advanced Biofuel Payment Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (Agency or RBS) published an interim rule in the **Federal Register** on February 11, 2011. Through this action, RBS finalizes the rule based on public comments and new program requirements established in the Agricultural Improvement Act of 2018 (2018 Farm Bill).

DATES: Effective December 27, 2019.

FOR FURTHER INFORMATION CONTACT: For the Advanced Biofuel Payment Program, contact Anthony Crooks, USDA Rural Development, 1400 Independence Avenue SW, STOP 3225, Washington, DC 20250–3225. Telephone: (202) 205–9322. Fax: (202) 720–2213. Email: *Anthony.Crooks@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be non-significant for purposes of Executive Order (E.O.) 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Congressional Review Act

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

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this final rule: (1) All State and local laws and regulations that are in direct conflict with this rule will be preempted; (2) No retroactive effect will be given to this rule; and (3) Adminstrative proceedings of the National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require a consultation with State and local officials. See the final rule related document entitled, ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034) advising that RBS payment programs, loans and loan guarantees were not covered by Executive Order 12372.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the undersigned has determined and certified by signature of this document that this rule, while affecting small entities, will not have an adverse economic impact on small entities. This rule does not impose any significant new requirements on program recipients nor does it adversely impact proposed real estate transactions involving program recipients as the buyers.

National Environmental Policy Act/ Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1970, subpart A, ''Environmental Policies.'' It is the determination of the Agency that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, neither an Environmental Assessment nor an Environmental Impact Statement is required.

Catalog of Federal Domestic Assistance

The affected programs are listed in the Catalog of Federal Domestic Assistance (CFDA) Program under 10.865, Biorefinery Assistance. This catalog is available electronically through the free CFDA website on the internet at *https://www.cfda.gov/.* The print edition may be purchased by calling the Superintendent of Documents at (202) 512–1800 or toll free at (866) 512–1800, or by ordering online at *https://bookstore.gpo.gov/.*

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act 1995 (UMRA) of Public Law 104–4 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, Rural Development generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires Rural Development to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E-Government Act Compliance

RBS is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the National Government and States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This final rule has been designated as Non-Significant by OMB under Executive Order 12866. The promulgation of this regulation will not have a significant affect on energy supply, distribution, or use.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The Agency has determined that the final rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175. Consequently, the Agency will not conduct tribal consultation sessions. If a Tribe determines that this rule has implications of which RBS is not aware and would like to requires government-to-government consultation on this rule, please contact USDA Rural Development's Native American Coordinator at (720) 544–2911 or *AIAN@usda.gov.*

Civil Rights Impact Analysis

Rural Development has reviewed this rule in accordance with USDA Regulation 4300–4, Civil Rights Impact Analysis, to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After review and analysis of the rule and available data, it has been determined that based on the analysis of the program purpose, application submission and eligibility criteria, issuance of this final rule will neither adversely nor disproportionately impact very low, low and moderate-income populations, minority populations, women, Indian tribes or persons with disability, by virtue of their race, color, national origin, sex, age, disability, or marital or familiar status.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection activities associated with this rule are covered under OMB Number: 0570–0063. This final rule contains no new reporting or recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995.

I. Background

The Advanced Biofuel Payment Program is authorized by Section 9005 of the Farm Security and Rural Investment Act of 2002 as amended by the Agricultural Improvement Act of 2018 (Pub. L. 115–334). Section 9005 authorizes the Secretary of Agriculture to ''make payments to eligible producers to support and ensure an expanding production of advanced biofuels'' by entering into contracts for the production of advanced biofuels to both support existing advanced biofuel production and encourage new production. To be eligible for payments, advanced biofuels produced must be derived from renewable biomass, excluding corn kernel starch, in a biorefinery located in the United States.

On February 11, 2011, the Agency published an interim rule with request for comment for the Advanced Biofuel Payment Program at 7 CFR part 4288, subpart B, at 76 FR 7936. Comments that were received in response to publication of the Advanced Biofuel Payment Program proposed rule, published April 16, 2010 [75 FR 20085], were addressed in the preamble of the interim rule. After publication of a proposed rule and an interim rule, the Agency is now publishing this final rule for the Advanced Biofuel Payment Program. All changes made from the interim rule will be addressed in Section II.

Final Rule. USDA Rural Development is issuing this regulation as a final rule, effective December 27, 2019.

II. Summary of Changes to the Interim Rule

This section presents changes to the interim rule for the Advanced Biofuel Payment Program, as published on, February 11, 2011 [76 FR 7936]. Changes are a result of Agency experiences and lessons learned from administering the program, the need to bring the program into statutory compliance, a need to clarify earlier provisions, and the Agency's consideration of public comments. Unless otherwise indicated, rule citations refer to those in this final rule.

A. 7 CFR 4288.102 Definitions

This section is being amended in part. To conform with changes made to 7 CFR 4288.111, Biofuel eligibility, the definitions—''Final Product'', ''bailment'', ''derived'', ''sale'', ''third party production'', and ''toll producer'' have been added.

The definition of ''eligible advanced biofuel producer'' is revised to include governmental entities, schools, and other types of educational facilities. The definition ''biofuel facility'', is rescinded and replaced with the definition ''biorefinery'' in conformance with the statute.

To conform with changes made to 7 CFR 4288.131:

The definitions—''forest biomass'', ''incremental production'', ''larger producer'', and ''smaller producer'', are rescinded.

The definitions ''large producer'' and ''parent company'' are added to ensure compliance with the statutory funding limitation for producers of a certain size. The refining capacity equivalence for biogas and solid eligible advanced biofuels of 15,900,000 Million British Thermal Units (MMBTU) of biogas and/or solid advanced biofuel per year as established in the interim rule is continued in this final rule. The Agency is moving away from the use of ''refining capacity'' however, and instead is using ''production in the prior fiscal year'' in relation to the 150,000,000 gallons or equivalents. Experience led us to conclude that ''refining capacity'' is insufficiently specific to its purpose of imposing a funding limitation upon producers of a certain size. Therefore, the Agency determined instead to use the producer's reported advanced biofuel production in the previous year as a measurable proxy for refining capacity. Included also in this measure, is the prior year advanced biofuel production of any company/corporation in which the reporting producer has a controlling interest. The definition of ''parent company'' is added to ensure that all related biorefineries are being considered in the size threshold.

The definition of commodity is added to assist with program compliance of the statutory equitable distribution limitation that governs eligible feedstock, which provides that the total amount of payments made in a fiscal year under 7 U.S.C 8105 to producers for a single commodity shall not exceed one-third of the funds made available. ''Eligible renewable biomass'' is amended to refer to commodity in conformance with this change.

B. 7 CFR 4288.105 Oversight and Monitoring

7 CFR 4288.105(a)(1) Production and feedstock verification, is amended to refer to commodity.

7 CFR 4288.105(a)(3) Is amended to allow a Certificate of Analysis to be issued by an Agency-approved qualified entity, which may include the blender only if the blender is not associated with the biorefinery.

C. 7 CFR 4288.106 Forms, Regulations, and Instructions

This section is revised to update the Rural Development website as, *https://www.rd.usda.gov/.*

D. 7 CFR 4288.111 Applicant Eligibility

7 CFR 4288.111(c)(1) is amended to replace ''biofuel producer'' with ''producer''.

E. 7 CFR 4288.111 Biofuel Eligibility

Several changes are made to the biofuel eligibility provisions, § 4288.111.

(1) Section 4288.111(a)(3) is amended to provide that the advanced biofuel must be a Final Product. The definition of Final Product is being added based on Agency experience in administering the program. The definition will help ensure that payments are not being made for products that are used as feedstocks for advanced biofuels.

(2) Section 4288.111(b), is amended to state explicitly that certain biofuels are ineligible for payment. The Agency determined that flared gases are not a Final Product. The Agency also determined that waste stream products derived from paper milling and other processes commonly ascribed to wood products manufacturing and generically referred to as ''liquor'' (*e.g.,* black liquor, red liquor, brown liquor, white liquor, green liquor, etc.), which typically are blended with diesel and burned as boiler fuel are not products of an advanced biofuel Biorefinery. The Agency also determined that the production of advanced biofuel ''derived'' from eligible renewable biomass involves a conversion process that creates a physical, and/or chemical, and/or biological change in the Renewable Biomass/feedstock. An example of change in physical state includes processing energy grasses and/or woody biomass through a hammermill and pellet die at pressures sufficient to cause the feedstock to heat up and release natural lignins that bind the material together into pellets. An example of a biological change is the anaerobic digestion of livestock manure and food processing waste into biogas. Examples of chemical changes include the fatty acid methyl ester processing of fats, oils, and greases into biodiesel; the enzymatic hydrolysis of cellulosic material into fuel ethanol; and the torrefaction (a thermal process) of woody biomass into solid fuel. For purposes of this program, to be derived from eligible renewable biomass and so qualify as an advanced biofuel as defined in this subpart, a minimum of one change (physical, chemical, or biological) must occur in the feedstock. The activities of collection, baling, bundling, chopping, or chipping, are not considered advanced biofuel production. Baled/rolled energy grasses, screened/chipped/chunked woody biomass, and chopped firewood are not eligible advanced biofuels because in these examples no conversion process is evident. Payments will be made for the production of advanced biofuels in which the renewable biomass/feedstock (other than corn kernel starch), has undergone a conversion process, as described.

Lastly, § 4288.111(b)(4), incorporates the added definitions—bailment, derived, sale, third party production, and toll producer, and makes ineligible, ''biofuels produced under bailment.'' This Agency-determined prohibition is based upon numerable and significant concerns regarding: A disproportionately large amount of available funds paid to biofuels produced under bailment, coupled with the risks of duplicative or improper payments, and the overwhelming amount of administrative staff time and resources required to police this activity.

(3) Eligibility determination, formerly § 4288.111(b), is reassigned to § 4288.111(c).

F. 7 CFR 4288.120 Enrollment

This section is amended to include the requirement for applicants to be registered in the System for Award Management (SAM) prior to submitting an enrollment application and to rescind § 4288.120(a)(4), Supporting documentation. Additionally, this section is amended to renumber paragraph (a)(5) as paragraph (a)(4).

G. 7 CFR 4288.130 Payment Applications

Section 4288.130(d), Submittal information, is amended to provide that unless otherwise specified in a notice published in the **Federal Register,** eligible advanced biofuel producers must submit payment applications for this program no later than 4:30 p.m. local time on the last day of the calendar month following the quarter for which payment is being requested.

H. 7 CFR 4288.131 Payment Provisions

To bring the program into statutory compliance, improve program delivery, customer service, and administrative processes for participants and Agency staff, a number of fundamental changes are made to the payment provisions, § 4288.131.

(1) The two-tiered (actual and incremental) payment approach formerly outlined in 7 CFR 4288.131(a) is rescinded and replaced with a single tier based on actual production.

The two tiered approach was established originally to assist the advanced biofuels industry in maintaining its production capacity while the economy recovered (from the economic downturn). As the economy improved and as the demand for energy increased, the Agency believed it appropriate to focus the program on encouraging new production. The Agency also believed at the time that incremental payments would encourage production increases among producers that are likely to sustain such increases over time vis-à-vis producers who ''wildly'' vary production from year to year based on short term market conditions. What was not understood at the time was that the uncertainty surrounding incremental payments was chief among the causes of that ''wildly'' varying production.

The Agency now believes this single-tiered approach is best to encourage both existing and new advanced biofuel production for two reasons.

First, the single tiered scheme provides greater payment certainty to all eligible participants. Under the two tiered scheme, how much a producer could expect to receive from actual payment production and from incremental production was uncertain due to a number indeterminant factors that affected payments—the number of eligible participants, volumes of fuel produced, and most importantly, the portion of production eligible for incremental production payments. The single tiered approach eliminates altogether the incremental payment calculation.

Second, the single tiered payment system distributes equitably among all producers, what was the incremental payments portion, which amounted to one-half of available funds under the interim rule, and would otherwise have been awarded to a disproportionately few number of producers.

Under the single tiered system, payments are made for actual production during the fiscal year and on a quarterly basis for actual production during the quarter for which payments are sought. Payment rate calculations are based on available funds and on the amount of eligible advanced biofuel produced. Participating producers are required to submit payment request applications each quarter. Should a producer fail to submit a payment request by the submission deadline, the producer will not receive payment for

that quarter. No payment is made for incremental production.

To conform with these changes, the bonus and discount rates applied to various types of biofuels and the incremental payment provision that a facility have no more than 20 days of nonproduction, formerly found in 7 CFR 4288.131(a) and (c), respectively, are rescinded.

A payment provision is also added in compliance with the statutory ''equitable distribution amount'' requirement to, ''limit the amount of payments that may be received by a single eligible producer under this section in order to distribute the total amount of funding available in an equitable manner.'' This limitation amounts to eight percent of available funds per year and applies to any individual producer that is not a large producer.

A procedure is also provided to explain how payments are made to large producers and eligible advanced biofuel producers that are not large producers, subject to each payment provision.

I. 7 CFR 4288.190 Fisal Year 2010 Applications

Section 4288.190 is removed in its entirety as it is no longer applicable and is now reserved.

III. Summary of Comments and Responses

On February 11, 2011, Rural Business Cooperatives Service (RBS) published an interim rule in the **Federal Register** (76 FR 7935) for a payment program for producers of advanced biofuels to support existing advanced biofuel production and to encourage production of new advanced biofuels. The Agency enters into contracts with advanced biofuel producers to pay such producers to produce eligible advanced biofuels. To be eligible for payments, advanced biofuels must be derived from renewable biomass, excluding corn kernel starch, in a biorefinery located in the United States.

Four commenters—1 from Industry, 2 from Sponsoring organizations, and 1 from an individual not identified with an organization, provided a total of 22 comments in response to the interim rule. Ten of the comments were supportive of the changes to the interim rule.

Comments on rural area: Three comments supported the removal of the requirement that a facility had to be in a rural area and one comment did not support the removal of the rural area.

Response: The Agency disagrees with the comment that does not support the rescinded requirement that a facility be located in a rural area. Beneficial impacts of the program accrue generally to rural areas even if various biofuel facilities are not located there. Renewable biomass production occurs largely in rural areas. Rural economies benefit substantially from biofuel facilities' procurement and use of the renewable biomass in the production of advanced biofuels.

Domestic Ownership: Two comments supported the removal of the domestic ownership requirement. One comment did not support the removal of the domestic ownership requirement.

Reponse: The Agency disagrees with the comment that does not support the removal of the domestic ownership requirement. The program will have beneficial impacts, such as increased production of advanced biofuels and improved economic stability at the local level regardless of ownership, so long as the biorefinery is physically located in a State; which is why the domestic ownership requirement was removed from the interim rule.

Twelve of the 22 comments were averse to certain changes in the interim rule.

Incremental payment provision: Three comments did not support the incremental production payment provision, recommended the elimination of the disparity between the actual and incremental payments, and proposed a single level payment for all eligible fuels.

Response. The Agency agrees that there is a disparity between the base and incremental payments and is replacing the two tiered, actual and incremental payment provision with a single payment system based on actual production.

Non-production days. Two comments did not support the requirement that a facility can only have 20 days of non-production to be eligible for incremental payment.

Response. The incremental payment provision that a facility have no more than 20 days of nonproduction is rescinded as a conforming change with the replacement of the two tiered, actual and incremental payment provision with a single payment system based on actual production. Also rescinded are the use of terms—base production, base payments, incremental production, and incremental payments.

Bonus and discount rates. Two comments recommended payments be augmented with bonus BTUs for those fuels that meet a Renewable Fuel Standard identified by the EPA.

Response. The Agency disagrees with the comment. The two-tiered (actual and incremental) payment approach is rescinded and replaced with a single tier based on actual production. The Agency believes this single-tiered approach is best to encourage both existing and new advanced biofuel production for two reasons: It provides greater payment certainty to all eligible participants and it distributes equitably among all producers, the incremental payments portion, which amounted to one-half of available funds under the interim rule, and would otherwise be awarded to a disproportionate few number of producers. These payments are made for actual production during the fiscal year and on a quarterly basis for actual production during the quarter for which payments are sought. Payment rate calculations are based on available funds and on the amount of eligible advanced biofuel produced. To conform with these changes, the bonus and discount rates applied to various types of biofuels as well as the incremental payment provision that a facility have no more than 20 days of nonproduction, formerly outlined at 7 CFR 4288.131(c) and (a), respectively, are rescinded.

Third-party certification. Two comments indicated concern that the provision in the interim rule on independent third-party certification of analysis could be interpreted that it is required for every eligible gallon of biodiesel.

Response. The Agency agrees that third-party certification is not required for every gallon of Advanced Biofuel produced.

Two comments supported the removal of the BQ9000 certification requirement. One comment supported how the Agency defined large producers by the refining capacity if the producer owns more than 50% of the facility.

Response. The Agency acknowledges the supportive comments. The Agency is moving away from the use of ''refining capacity'' however, and instead is using ''production in the prior fiscal year'' in relation to the 150,000,000 gallons or equivalents. Experience led us to conclude that ''refining capacity'' is insufficiently specific to its purpose of imposing a funding limitation upon producers of a certain size. Therefore, the Agency determined instead to use the producer's reported advanced biofuel production in the previous year as a measurable proxy for refining capacity. Included also in this measure, is the prior year advanced biofuel production of any company/corporation in which the reporting producer has a controlling interest. The definition of ''parent company'' is added to ensure that all

related biorefineries are being considered in the size threshold.

IV. Advanced Biofuel Payment Program Applications

A Notice of Contract Proposals (NOCP) will be published separately from this rule and for each fiscal year, as necessary.

List of Subjects in 7 CFR Part 4288

Administrative practice and procedure, Biobased products, Energy, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Agency adopts the interim rule amending 7 CFR part 4288 which was published at 76 FR 7936 on February 11, 2011, is adopted as final with the following changes:

PART 4288—PAYMENT PROGRAMS

■ 1. The authority citation for part 4288 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart B—Advance Biofuel Payment Program General Provisions

■ 2. Section 4288.102 is amended by:
■ a. Revising the defintion of ''Advanced biofuel producer'';
■ b. Adding the definition ''Bailment'' in alphabetical order;
■ c. Removing the definition for ''Biofuel facility'';
■ d. Adding the definitions ''Biorefinery'', ''Commodity'', and ''Derived'' in alphabetical order;
■ e. Revising the definition of ''Eligible renewable biomass'';
■ f. Adding the definition ''Final Product'' in alphabetical order;
■ g. Removing the definition of ''Forest biomass'';
■ h. Adding the definition ''Large producer'' in alphabetical order;
■ i. Removing the definition of ''Larger producer'';
■ j. Adding the definitions ''Parent company'' and ''Sale'' in alphabetical order;
■ k. Removing the definition of ''Smaller producer'';
■ l. Adding the definitions ''Third party production'' and ''Toll producer'' in alphabetical order.

The revisions and additions read as follows:

§ 4288.102 Definitions.

* * * * *

Advanced biofuel producer. An individual, corporation, company, foundation, governmental entity, school or other educational facility, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or non-profit entity that produces advanced biofuel. An entity that blends or otherwise combines advanced biofuels into a blended biofuel is not considered an advanced biofuel producer under this subpart. An entity that produces biofuel exclusively under a toll/bailment arrangement/third part production contract is not considered an advanced biofuel producer under this subpart.

* * * * *

Bailment. The temporary placement of control over, or possession of property by an individual or entity, the bailor, into the hands of another, the bailee, for a designated purpose upon which the parties have agreed. For purposes of this Program any advanced biofuel produced by a toll producer of any form, or under any form of third-party production agreement, is regarded/considered as produced under bailment and is ineligible for payment; to either bailor or bailee.

* * * * *

Biorefinery. The term ''biorefinery'' means a facility (including equipment and processes) that—

(1) Converts renewable biomass or an intermediate ingredient or feedstock of renewable biomass into any 1 or more, or a combination, of—

(i) Biofuels;

(ii) Renewable chemicals; or

(iii) Biobased products; and

(2) May produce electricity.

* * * * *

Commodity. Renewable biomass, other than corn kernel starch, used primarily for the purposes of this Program, by advanced biofuel producers as feedstock from which to produce/derive advanced biofuel. Eligible renewable biomass is organized into the following commodity categories:

(1) Title I grains and oilseeds including: Wheat, corn, grain sorghum, barley, oats, and rice; sugars, and starches (other than corn kernel starch); Soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard, crambe, sesame, and peanuts; as identified under Title I, Public Law 115–334, and as determined by the Secretary;

(2) Other oilseeds and nuts including cottonseed, palm, camelina, coconut, and olive; and algae;

(3) A cellulosic commodity grown for energy purposes, such as, hybrid poplar and other energy trees, switch grass and other energy grasses; cellulose, hemicellulose, or lignin;

(4) Waste material, including crop residue/Stover, other vegetative waste material/orchard waste, animal waste/manure, food waste/food processing waste, and yard waste/biodegradable solid waste/organic matter;

(5) Fats, oils, and greases, derived from an agricultural product, including: Recycled fats, oils, and greases, such as used cooking oil and reclaimed-industrial grade-distillers' corn/sorghum oil; tallow, white grease, yellow grease, and other livestock renderings; and

(6) Any animal byproduct (in addition to oils, fats, and greases) that may be used to produce bioenergy, as determined by the Secretary.

* * * * *

Derived. A process that creates a physical, and/or chemical, and/or biological change in renewable biomass/feedstock.

* * * * *

Eligible renewable biomass. Renewable biomass, as defined in this section, excluding corn kernel starch. See also commodity.

* * * * *

Final Product. A product of a biorefinery that is ready for sale/distribution without further processing. For purposes of this Program, an advanced biofuel is a Final Product eligible for payment if it is ready for distribution and sale as a fuel.

* * * * **

Large producer. (1) An advanced biofuel producer which in the prior fiscal year, produced more than:

(i) 150,000,000 gallons of liquid advanced biofuel per year; or

(ii) 15,900,000 Million British Thermal Units (MMBTU) of biogas and/or solid advanced biofuel per year.

(2) The amount of gallons and MMBTUs listed in paragraphs (1)(i) and (ii) of this definition include the advanced biofuel production at all facilities, in the United States, in which the producer and/or its parent company(ies) have a 50-percent or greater ownership.

Parent company. A company/corporation that has a controlling interest in another company/corporation, giving it control of its operations. The company is deemed a subsidiary of the parent company.

* * * * *

Sale. A transaction between two or more parties, typically a buyer and a seller, in which goods or services are exchanged for money or other assets.

* * * * *

Third party production. Third party production involves outsourcing production processes to a third-party company whereby the third-party company, hired to produce, is supplying

the manufacturing process as well as sourcing the raw materials/commodity feedstock. The contract producer is responsible for manufacturing the product to specification and disposition/delivery requirements. For purposes of this Program, any advanced biofuel produced under a contractual third-party production agreement is ineligible for payment. A producer that is strictly a third-party contractor produces no eligible advanced biofuel.

Toll producer. See also bailment. Toll production/manufacturing is an arrangement, where a company with specialised equipment processes raw materials or unfinished goods for a different company. A toll producer of advanced biofuels produces advanced biofuels for another company. For purposes of this Program, any advanced biofuel produced by a toll producer of any form, or under any form of third-party production agreement, is regarded/considered as produced under bailment and is ineligible for payment.

* * * * *

■ 3. Amend § 4288.105 by revising paragraphs (a)(1) and (3) to read as follows:

§ 4288.105 Oversight and monitoring.

(a) * * *

(1) *Production and feedstock verification.* The Agency will review producer records to verify the type and amount of biofuel produced and the type and amount of commodity/eligible renewable biomass used.

* * * * *

(3) *Certificate of Analysis.* The Agency will review the producer records for quarterly payments to ensure that each Certificate of Analysis has been issued by an Agency-approved qualified entity, which may include the blender only if the blender is not associated with the biorefinery.

* * * * *

■ 4. Revise § 4288.106 to read as follows:

§ 4288.106 Forms, regulations, and instructions.

Copies of all forms, regulations, instructions, and other materials related to this Program may be obtained from the USDA Rural Development State Office, Rural Energy Coordinator and the USDA Rural Development website at *https://www.rd.usda.gov/.*

§ 4288.110 [Amended]

■ 5. Amend § 4288.110(c)(1) by removing ''advanced biofuel producer'' and adding in its place ''producer''.

■ 6. Amend § 4288.111 by:

■ a. Revising the introductory text and paragraph (a)(3);

■ b. Redesignating paragraph (b) as paragraph (c); and

■ c. Adding new paragraph (b).

The revisions and addition read as follows:

§ 4288.111 Biofuel elibility.

To be eligible for this Program, a biofuel must meet the requirements specified in paragraph (a) of this section, and must not be listed in paragraph (b) of this section, and the biofuel's producer must provide additional information as may be requested by the Agency under paragraph (c) of this section.

(a) * * *

(3) The advanced biofuel must be a Final Product; and

* * * * *

(b) *Ineligible fuels.* Notwithstanding the provisions of paragraph (a) of this section, for the purposes of this Program, the following fuels, and as may be supplemented by the Agency through the publication of documents in the **Federal Register**, are not eligible for payment:

(1) Flared gases;

(2) Fuels derived from paper milling and other processes commonly ascribed to wood products manufacturing and generically referred to as ''liquor'' (*e.g.,* black liquor, red liquor, brown liquor, white liquor, green liquor, etc.), which typically are blended with diesel and burned as boiler fuel;

(3) Biofuels produced from solid eligible renewable biomass primarily by mechanical means, whether by hand or by machine, such as collecting, baling, bundling, chopping, screening, and chipping of the renewable biomass. Examples of ineligible biofuels that are not eligible advanced biofuels for the purposes of this subpart include, but are not limited to, baled energy grasses, chipped or chunked woody biomass, and chopped or split firewood; and

(4) Any advanced biofuel produced under bailment or third-party production contract and/or any variation thereof.

* * * * *

■ 7. Amend § 4288.120 by:

■ a. Revising paragraph (a) introductory text;

■ b. Removing paragraph (a)(4); and

■ c. Redesignating paragraph (a)(5) as paragraph (a)(4); and

■ d. In newly redesignated paragraph (a)(4), removing the paragraph heading and removing ''this paragraph'' and adding ''this paragraph (a)(4)'' in its place.

The revision reads as follows:

§ 4288.120 Enrollment.

* * * * *

(a) *Enrollment.* To enroll in the Program, an advanced biofuel producer must submit to the Agency a completed enrollment application during the applicable sign-up period, as specified in paragraph (b) of this section. Applicants must be registered in the System for Award Management (SAM) prior to submitting an application; which can be obtained at no cost via a toll-free request line at (866) 705–5711 or online at *www.sam.gov/SAM.* Registration of a new entity in SAM requires an original, signed, and notarized letter stating that the applicant is the authorized Entity Administrator, before the registration will be activated.

* * * * *

■ 8. Amend § 4288.130 by revising paragraph (d) introductory text to read as follows:

§ 4288.130 Payment applications.

* * * * *

(d) *Submittal information.* Unless otherwise specified in a notice published in the **Federal Register**, eligible advanced biofuel producers must submit payment applications for this Program no later than 4:30 p.m. local time on the last day of the calendar month following the quarter for which payment is being requested. No payment applications received after the specified date and time will be considered, regardless of the postmark on the application.

* * * * *

■ 9. Revise § 4288.131 to read as follows:

§ 4288.131 Payment provisions.

Payments to advanced biofuel producers for eligible advanced biofuel production will be determined in accordance with the provisions of this section.

(a) *Actual production.* Participating producers will be paid on a quarterly basis for the actual quantity of eligible advanced biofuel produced during the quarter. Payment for actual production will be determined according to paragraph (d) of this section.

(b) *Amount of payment funds available.* Based on the amount of funds made available to this Program each fiscal year, the Agency will allocate available program funds according to paragraphs (c), (d), and (e) of this section.

(c) *Quarterly allocations.* For each fiscal year, the Agency will allocate in each quarter one-fourth of the funds identified in paragraph (b) of this

section allocated for the entire fiscal year.

(d) *Determination of payment rate.* Each quarter, the Agency will establish an actual production payment rate using the procedures specified in paragraphs (d)(1) through (4) of this section. This rate will be applied to the actual quantity of eligible advanced biofuel produced to determine payments to eligible advanced biofuel producers.

(1) Based on the information provided in each payment application, the Agency will determine the eligible advanced biofuel production. If the Agency determines that the amount of advanced biofuel production reported in a payment application is not supported by the documentation submitted with the payment application, the Agency may revise the reported production to an amount that is commensurate with the submitted documentation.

(2) For each producer, the Agency will convert the production determined to be eligible under paragraph (c) of this section into British Thermal Unit (BTU) equivalent using factors published by the Energy Information Administration (EIA) (or successor organization). If the Energy Information Administration does not publish such conversion factor for a specific type of advanced biofuel, the Agency will use a conversion factor developed by another appropriate entity. If no such conversion factor exists, the Agency, in consultation with other Federal agencies, will establish and use a conversion formula as appropriate, until the Energy Information Administration or other appropriate entity publishes a conversion factor for said advanced biofuel. The Agency will then calculate the total eligible BTUs across all eligible applications.

(3) For each quarter, the Agency will determine the actual production payment rate ($/BTU) based on paragraphs (b), (c), and (d) of this section. The rate will be calculated such that all quarterly funds for actual production will be distributed, subject to the payment provisions specified in paragraph (e) of this section.

(4) Using the actual production payment rate determined and the actual production for each type of advanced biofuel produced at a biorefinery, the Agency will calculate each quarter payment for each eligible advanced biofuel producer for that quarter.

(e) *Other payment provisions.* The following provisions apply:

(1) Notwithstanding any other provisions in this section, the Agency will provide payments to one or more eligible advanced biofuel producers from a single eligible Commodity, including intermediate ingredients of that single Commodity or use of that single Commodity and its intermediate ingredients in combination with another Commodity, of not more than one-third of available program funds in each quarter.

(i) Payments to producers for advanced biofuel derived from a commodity listed in Title I grains and oilseeds (as defined paragraph (1) of the defintion of commodity in § 4288.102), are subject to the one-third limitation as tracked individually for each commodity. For example, with respect to the Title I grains and oilseeds commodity—grain sorghum, all payments for the quarter to producers of advanced biofuel derived from grain sorghum are tabulated and subject to the one-third payment limitation. This is similarly true for each commodity listed under Title I grains and oilseeds—barley, oats, rice, soybeans, etc.

(ii) Payments to producers for advanced biofuel derived from a commodity listed in paragraphs (2) through (6) of the defintion of commodity in § 4288.102, inclusively, are subject to the one-third limitation as tracked cumulatively with each commodity group. For example, with respect to the commodity in paragraph (2) of the definition of commodity (other oilseeds and nuts including cottonseed, palm, camelina, coconut, and olive and algae), all payments for the quarter to producers of fuel derived from ''other oilseeds, nuts and algae'' are tabulated cumulatively (all are tracked as ''other oilseeds, nuts, and algae'' whether olive, or coconut, or camelina, etc.) and subject cumulatively to the one-third payment limitation. This is similarly true for the commodity in paragraphs (3) through (6) of the definition of commodity.

(2) Notwithstanding any other provision of this section, the Agency will provide payments to large producers of not more than five (5) percent of available program funds in any fiscal year. At any time during the year, if the limit on payments to large producers would be reached, the Agency will pro-rate payments to large producers based on the BTU content of their eligible advanced biofuel production so as not to exceed the limit.

(3) Notwithstanding any other provision of this section, the Agency will provide payments to any eligible advanced biofuel producer, that is not a large producer, of not more than eight (8) percent of available funds in any fiscal year. At any time during the year, if the eight percent to the advanced biofuel producer would be reached, the Agency will pro-rate payments based on the BTU content of the eligible advanced biofuel production so as not to exceed the limit.

(4) Advanced biofuel producers will be paid based on the amount of eligible renewable energy content of the advanced biofuels only if the producer provides sufficient documentation, including a Certificate of Analysis, for the Agency to determine the eligible renewable energy content for which payment is being requested, and quantity produced through such documentation as, but not limited to, records of sale and calibrated flow meter records.

(5) Payment will be made to only one eligible advanced biofuel producer per biorefinery. If a producer owns more than one facility, the Agency's tracking system will add all actual BTUs and calculate one payment amount. For facilities owned by more than one producer, only one payment will be issued per facility.

(6) Subject to other provisions of this section, advanced biofuel producers shall be paid any sum due.

(7) A producer will be paid only for the advanced biofuels identified in the enrollment application submitted during the sign-up period and which are produced during the fiscal year. If the producer starts producing a new advanced biofuel or changes the type of advanced biofuel during the fiscal year, the producer will not receive any payments for those new advanced biofuels. However, during each sign-up period, a producer may identify new advanced biofuels and production levels compared to the previous year.

(8) When determining the quantity of eligible advanced biofuel, if an applicant is blending its advanced biofuel using ineligible feedstocks (*e.g.,* fossil gasoline or methanol, corn kernel starch), only the quantity of advanced biofuel being produced from Renewable Biomass, other than corn kernel starch, will be used in determining the payment rates and for which payments will be made.

§ 4288.190 [Removed and Reserved]

■ 10. Remove the undesiganted center heading ''Fiscal Year 2010 Applications'' and remove and reserve § 4288.190.

Bette Brand,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2019–27396 Filed 12–26–19; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0992; Product Identifier 2019–NM–197–AD; Amendment 39–21016; AD 2019–25–17]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER (Model 737 NG) series airplanes (although the scope of the AD requirements is limited to operation at specific runways in the U.S., Colombia, and Guyana). This AD requires revising the airplane flight manual (AFM) to prohibit selection of certain runways for airplanes equipped with certain software. This AD was prompted by reports of display electronic unit (DEU) software errors on airplanes with a selected instrument approach to a specific runway. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 27, 2019.

The FAA must receive comments on this AD by February 10, 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.

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–2019–0992; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: David Sumner, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3538; email: *David.Sumner@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA received reports earlier this year of three incidents of display electronic unit (DEU) software errors on Model 737 NG airplanes flying into runway PABR in Barrow, Alaska. All six display units (DUs) blanked with a selected instrument approach to a runway with a 270-degree true heading, and all six DUs stayed blank until a different runway was selected. The Integrated Standby Flight Display (ISFD) and Heads-Up-Display (HUD) remained operational during this failure of the primary flight displays. The investigation has traced the behavior to a combination of common display system (CDS) block point (BP) 15 software in the DEUs and U12 or later software in the flight management computer (FMC). The investigation revealed that the problem occurs when this combination of software is installed and a susceptible runway with a 270-degree true heading is selected for instrument approach. Not all runways with a 270-degree true heading are susceptible; only seven runways worldwide, as identified in this AD, have latitude and longitude values that cause the blanking behavior. If CDS BP15 software and FMC U12 or later software are installed, all six DUs can blank when a susceptible runway with a 270-degree true heading is selected. The FAA has confirmed that the faulty version of DEU software has already been removed from all airplanes conducting scheduled airline service into the affected airports. This AD is intended to address unscheduled diversions and Boeing Business Jet (BBJ) flights into the affected airports. This condition, if not addressed, could prevent continued safe flight and landing.

FAA's Determination

The FAA is issuing this AD because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires revising the AFM to prohibit selection of certain runways for airplanes equipped with certain software.

Although all Model 737 NG airplanes are affected, the scope of the AD requirements is limited to operation at specific runways in the U.S., Colombia, and Guyana, as identified in this AD.

Interim Action

The FAA considers this AD interim action. The manufacturer is currently developing a software update that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, the FAA might consider additional rulemaking.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the combination of CDS BP15 software and FMC U12 or later software installed can result in all six DUs blanking when a susceptible runway with 270 degree true heading is selected; this condition can prevent continued safe flight and landing. The compliance time for the required action is shorter than the time necessary for the public to comment and for publication of the final rule. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reasons stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2019–0992 and Product Identifier 2019–NM–197–AD at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

The FAA will post all comments received, 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 received about this final rule.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 1,739 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
AFM revision	1 work-hour × $85 per hour = $85	$0	$85	$147,815

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–25–17 The Boeing Company: Amendment 39–21016; Docket No. FAA–2019–0992; Product Identifier 2019–NM–197–AD.

(a) Effective Date

This AD is effective December 27, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category.

Note 1 to paragraph (c): The scope of the AD requirements is limited to operation at the seven runways identified in figure 1 to paragraph (g) of this AD.

(d) Subject

Air Transport Association (ATA) of America Code 31, Indicating/recording system.

(e) Unsafe Condition

This AD was prompted by reports of display unit (DU) software errors on airplanes with a selected instrument approach to a specific runway. The FAA is issuing this AD to address the potential for all six DUs to blank, which can prevent continued safe flight and landing.

(f) Compliance

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

(g) AFM Revision

Within 14 days after the effective date of this AD, revise the Miscellaneous Limitations section of the existing airplane flight manual (AFM) to include the information in figure 1 to paragraph (g) of this AD. This may be done by inserting a copy of figure 1 to paragraph (g) of this AD into the Miscellaneous Limitations section of the existing AFM.

Figure 1 to paragraph (g) – *AFM revision*

Common Display System	**(Required by AD 2019-25-17)**
The following is applicable only if configured with CDS BP15 and FMC U12 or later. Do not select the following runways in the FMC ARRIVALS page, as it may result in blanking of all six display units:	
82V RW26	Pine Bluffs, Wyoming, USA
KBJJ RW28	Wayne County, Ohio, USA
KCIU RW28	Chippewa County, Michigan, USA
KCNM RW26	Cavern City, New Mexico, USA
PABR RW25	Barrow, Alaska, USA
SKLM RW28	La Mina, La Guajira, Colombia
SYCJ RW29	Cheddi Jagan, Georgetown, Guyana

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (i) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(i) Related Information

For more information about this AD, contact David Sumner, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3538; email: *David.Sumner@faa.gov.*

(j) Material Incorporated by Reference

None.

Issued on December 20, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–27966 Filed 12–26–19; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2019–0267; FRL–10003–54–Region 5]

Air Plan Approval; Indiana; Limited Maintenance Plans for the 1997 Ozone NAAQS; Evansville, Fort Wayne, Greene County, Jackson County, Muncie, and Terre Haute Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to Indiana's State Implementation Plan (SIP). The state submitted an update to its 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS or standard) Limited Maintenance Plans (LMP) for the Evansville, Fort Wayne, Greene County, Jackson County, Muncie, and Terre Haute areas. The plans for these areas provide for the maintenance of the 1997 8-hour ozone NAAQS through the end of the second 10-year portion of the maintenance period. This action makes federally enforceable as part of the Indiana SIP certain commitments related to maintenance of the 1997 8-hour ozone NAAQS in these areas. EPA proposed to approve this submission on August 19, 2019.

DATES: This final rule is effective on January 27, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2019–0267. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Michael Leslie, Environmental Engineer, at (312) 353–6680 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Michael Leslie, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6680, *leslie.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever

''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is being addressed by this document?
II. What comments did we receive on the proposed SIP revision?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. What is being addressed by this document?

On April 25, 2019, Indiana submitted a request to update its 1997 8-hour ozone NAAQS LMPs for the Evansville, Fort Wayne, Greene County, Jackson County, Muncie, and Terre Haute areas. These LMPs are designed to maintain the 1997 8-hour ozone NAAQS through the end of the second 10-year period beyond redesignation.

II. What comments did we receive on the proposed SIP revision?

On August 19, 2019, EPA proposed approval (84 FR 42876) of Indiana's LMPs. An explanation of the Clean Air Act (CAA) requirements, a detailed analysis of the revisions, and EPA's reasons for proposing approval were provided in the notice of proposed rulemaking (NPRM), and will not be restated here. The comment period closed on September 18, 2019. EPA received one anonymous comment during the public comment period. This comment was not adverse and supports EPA's approval of Indiana's submittal.

III. What action is EPA taking?

Under the CAA, EPA is finalizing approval of Indiana's 1997 8-hour ozone NAAQS LMPs for the following areas: Evansville, Fort Wayne, Greene County, Jackson County, Muncie, and Terre Haute, as proposed. These LMPs meet all applicable requirements under CAA sections 110 and 175A.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 25, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: December 9, 2019.

Cheryl L. Newton,

Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

■ 2. In § 52.770, the table in paragraph (e) is amended by:

■ a. Removing the entry for ''Evansville Hydrocarbon Control Strategy'' and adding in its place the entry ''Ozone (8-Hour, 1997): Evansville, IN (Vanderburgh and Warrick Counties)'';

■ b. Removing the entry for ''Fort Wayne Hydrocarbon Control Strategy'' and adding in its place the entry ''Ozone (8-Hour, 1997): Fort Wayne, IN (Allen County)'';

■ c. Removing the entry for ''Greene and Jackson Counties Hydrocarbon Control Strategy'' and adding in its place the entry ''Ozone (8-Hour, 1997): Jackson Co., IN (Jackson County)'';

■ d. Removing the entry for ''Greene County 1997 8-hour ozone maintenance plan'' and adding in its place the entry ''Ozone (8-Hour, 1997): Greene Co., IN (Greene County)'';

■ e. Removing the entries for ''Muncie 1997 8-hour ozone maintenance plan'' and ''Muncie Hydrocarbon Control Strategy'' and adding in its place the

entry ''Ozone (8-Hour, 1997): Muncie, IN (Delaware County)''; and

■ f. Removing the entry for ''Terre Haute Hydrocarbon Control Strategy'' and adding in its place the entry ''Ozone (8-Hour, 1997): Terre Haute, IN (Vigo County)''.

The revisions read as follows:

§ 52.770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
* * *		* *	* *
Ozone (8-Hour, 1997): Evansville, IN (Vanderburgh and Warrick Counties).	6/20/2019	12/27/2019, [insert **Federal Register** citation].	2nd limited maintenance plan.
* * *		* *	* *
Ozone (8-Hour, 1997): Fort Wayne, IN (Allen County).	6/20/2019	12/27/2019, [insert **Federal Register** citation].	2nd limited maintenance plan.
Ozone (8-Hour, 1997): Jackson Co., IN (Jackson County).	6/20/2019	12/27/2019, [insert **Federal Register** citation].	2nd limited maintenance plan.
Ozone (8-Hour, 1997): Greene Co., IN (Greene County).	6/20/2019	12/27/2019, [insert **Federal Register** citation].	2nd limited maintenance plan.
* * *		* *	* *
Ozone (8-Hour, 1997): Muncie, IN (Delaware County).	6/20/2019	12/27/2019, [insert **Federal Register** citation].	2nd limited maintenance plan.
* * *		* *	* *
Ozone (8-Hour, 1997): Terre Haute, IN (Vigo County).	6/20/2019	12/27/2019, [insert **Federal Register** citation].	2nd limited maintenance plan.
* * *		* *	* *

[FR Doc. 2019–27544 Filed 12–26–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 17–287, 11–42 and 09–197; FCC 19–111; FRS 16302]

Bridging the Digital Divide for Low-Income Consumers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) acts to restore the traditional role of states in the eligible telecommunications carrier (ETC) designation process. The Commission also acts to strengthen the Lifeline program's enrollment, recertification, and reimbursement processes so that limited Universal Service Fund (USF or Fund) dollars are directed only toward qualifying low-income consumers.

DATES: Effective January 27, 2020, except for amendatory instruction 7 (§ 54.406(b)) which is effective February 25, 2020 and amendatory instruction 8 (§ 54.406(a)) which is effective March 26, 2020 and amendatory instructions 6.b. (§ 54.404(b)(12)) and 11 (§ 54.410(f)), which are delayed. The Federal Communications Commission will publish a document in the **Federal Register** announcing this effective date.

FOR FURTHER INFORMATION CONTACT: Jodie Griffin, Wireline Competition Bureau, 202–418–7550 or TTY: 202–418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration (Order), in WC Docket Nos. 17–287, 11–42 and 09–197; FCC 19–111 adopted October 30, 2019 and released November 14, 2019. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW, Washington, DC 20554 or at the following internet address: *https://docs.fcc.gov/public/attachments/FCC-19-111A1.pdf.*

Synopsis

I. Introduction

1. The Commission's Lifeline program plays a critical role in closing the digital divide for low-income Americans. Abuse of the program, however, continues to be a significant concern and undermines the Lifeline program's integrity and effectiveness. Strengthening the accountability of the program is therefore essential to ensuring that it effectively and efficiently helps qualifying low-income Americans obtain the communications services they need to participate in the digital economy.

2. Today, the Commission continues that work to strengthen the Lifeline program's enrollment, recertification, and reimbursement processes so that limited Universal Service Fund (USF or Fund) dollars are directed only toward qualifying low-income consumers. Specifically, restoring the states' proper role in designating eligible telecommunications carriers (ETCs) to participate in the Lifeline program, clarify the obligations of participating carriers, and take targeted steps to improve compliance by Lifeline ETCs and reduce waste, fraud, and abuse in the program. The Commission also clarifies several of the program's rules in response to petitions for reconsideration and requests for clarification.

II. Discussion

3. In the Order, the Commission takes significant steps to promote the integrity, effectiveness, and efficiency of the Lifeline program. First, the Commission restores the traditional state role in designating ETCs and traditional ETC designation categories, while taking steps to increase transparency with states to improve oversight functions. Next, the Commission amends the Lifeline program rules to improve the integrity of providers' enrollment and recertification processes, and also

establishing protections to help prevent improper payment claims before they occur. Finally, the Commission acts to improve its rules regarding Lifeline auditing practices.

4. *Respecting the States' Role in Program Administration.* For the Lifeline program to be successful, the parties involved in its operations—from the Commission to the participating ETCs—must respect their particular roles and obligations under the law. To that end, in the Order, the Commission first restores longstanding recognition of the states' primary role in the ETC designation process, as established in the Communications Act of 1934 as amended (''the Act''), and restores the traditional categories of ETC and ETC obligations consistent with section 214(e)(1)(A) of the Act.

5. *Restoring States' Traditional and Lawful Role in ETC Designations.* Congress made states—not the Commission—primarily responsible for designating ETCs. And States have vigorously exercised their oversight authority to combat waste, fraud, and abuse in the Lifeline program. In some cases, states have been the first to identify waste, fraud, and abuse by ETCs—the Hawaii Public Utilities Commission first identified the issues with Blue Jay's overclaims of Tribal subscribers, and the Oklahoma Corporation Commission ''first identified fraudulent funding requests from Icon Telecom.'' More recently, an apparent violation of the Commission's non-usage rule was initially uncovered by an investigation by the Oregon Public Utility Commission. States have also conducted further investigations of ETCs for which the FCC first identified compliance issues. For example, in 2013, following the consent decree resolving the Commission's investigation of Lifeline reseller TerraCom regarding intracompany duplicate subscribers, the Indiana Utility Regulatory Commission conducted its own investigation of TerraCom and identified instances of waste and abuse. States have also filtered out ineligible carriers by refusing designations to those with substandard services and weeded out bad actors by revoking designations for unlawful practices. Most recently, in May 2019, the Illinois Commerce Commission (ICC) denied wireless reseller Q Link LLC's request for a Lifeline-only ETC designation. The ICC cited Q Link's ''inability to provide accurate, consistent and reliable information'' as ''reason enough for it to deny Q Link's request for ETC designation,'' and found that Q Link ''failed to demonstrate it has the financial and technical capability to provide service in its requested service areas.'' States have also performed audits, addressed consumer complaints, and maintained valuable state matching programs. In doing all this, states have brought to bear personnel and resources far greater than the Commission alone could offer.

6. By contrast, Congress cast the Commission in a supporting role. For its part, the Commission merely designates carriers where states are ill suited to do so—for example, where states lack jurisdiction, or in unserved areas where no carrier is willing to provide USF services. For the two decades since Congress passed the Telecommunications Act of 1996, this is how the Commission understood its role.

7. With the *2016 Lifeline Order* (FCC 16–38; 81 FR 33026 (May 24, 2016)), the Commission departed from the parameters set by statutory text and longstanding practice. First, that order created a new type of ETC—the Lifeline Broadband Provider ETC. It then purported to preempt any state authority over this new ETC, demoting states from the job they had performed well. Finally, to fill the void it had created by preempting state authority, it adopted a view of the Commission's role under section 214(e) that was expansive enough to permit the Commission to exercise designation authority over Lifeline Broadband Provider ETCs. In the Order, the Commission finds that the actions taken by the Commission in the *2016 Lifeline Order* were contrary to both statutory text and sound public policy. The Commission restores the lawful role of states in the ETC designation process.

8. *Section 214 and the 2016 Lifeline Order.* To obtain universal service funds for providing Lifeline service, a provider must be designated as an ''eligible telecommunications carrier''—or ''ETC''—under section 214(e) of the Act. Section 214(e)(1) of the Act establishes eligibility requirements for ETCs. These include that common carriers offer the services supported by the USF ''support mechanisms'' under section 254(c)—Lifeline is one of four such ''mechanisms''—and that they advertise the availability of those services.

9. The next paragraph—214(e)(2)—orders state commissions to designate common carriers that meet these requirements as ETCs. In relevant part, section 214(e)(2) provides that ''[a] State commission shall upon its own motion or upon request designate a common carrier that meets the requirements [for eligibility in section 214(e)(1)] as an eligible telecommunications carrier for a service area designated by the State commission.'' The general rule, in other words, is that state commissions are responsible for designating ETCs.

10. There are limited exceptions to the rules. Later provisions in section 214 address gaps in the ordinary designation process—areas where a state commission may be unable or ill-suited to exercise designation authority. The Commission's limited role in designating ETCs falls within these gaps.

11. The first gap occurs where no common carrier is willing to provide supported services to all or part of an unserved community. In that case, section 214(e)(3) generally orders the Commission and states to (1) identify the common carriers best able to serve these communities and (2) require them to do so. The section divides responsibility for this task along jurisdictional lines: It orders state commissions to address the provision of *intrastate* services, and orders the Commission to address the provision of *interstate* services, as well as services in areas served by carriers outside of the jurisdiction of state commissions.

12. The second gap occurs where ''a common carrier providing telephone exchange service and exchange access . . . is not subject to the jurisdiction of a State commission.'' This provision gives the Commission designation authority over, for example, wireless carriers operating in states lacking jurisdiction over such carriers and certain Tribal carriers. Congress adopted section 214(e)(6) over a year after the passage of the Telecommunications Act to rectify the ''oversight'' that a handful of common carriers might otherwise fall outside the jurisdiction of state commissions. Without the fix of section 214(e)(6), that oversight would leave certain carriers—including most notably, Tribal carriers—wholly ineligible for universal service support. The legislative history confirms that the gap-filling section 214(e)(6) ''w[ould] apply to only a limited number of carriers'' and that it was not ''intended to restrict or expand the existing jurisdiction of State commissions over any common carrier.'' The Commission itself recognized that Congress had not intended section 214(e)(6) to ''alter the basic framework of section 214(e), which gives the state commissions the principal role in designating eligible telecommunications carriers under section 214(e)(2).''

13. That is the extent of the Commission's role in designating ETCs. There is no suggestion in sections 214(e)(2), (3), or (6) that the Commission can supersede the states' designation

authority, or that the states' designation authority is generally limited to specific services, such as intrastate services. While section 214(e)(3) limits state authority to intrastate services *in unserved areas,* this specific jurisdictional limitation only highlights the absence of a general jurisdictional limitation on states' authority. Instead, the text of section 214 makes clear that Congress gave primary authority for ETC designations to the states, and that the Commission's role is merely to fill gaps in the ordinary designation process.

14. This is how the Commission read section 214 for nearly two decades—from the passage of the Telecommunications Act until the *2016 Lifeline Order.* In 2000, the Commission reviewed the text and legislative history of section 214(e) and concluded that ''state commissions have primary responsibility for the designation of [ETCs] under section 214(e)(2).'' In 2005, it affirmed this conclusion and again noted that section 214(e)(2) ''provides state commissions with the primary responsibility for performing ETC designations.'' In 2011, the Commission again found that states have ''primary jurisdiction to designate ETCs,'' and that its role was to ''designate[ ] ETCs where states lack jurisdiction.'' Even the *2015 Lifeline Order and FNPRM* (FCC 15–71; 80 FR 40923 (July 14, 2015) and 80 FR 42670 (July 17, 2015)) recognized that ''[s]ection 214(e)(2) assigns primary responsibility for designating ETCs to the states.''

15. The *2016 Lifeline Order* abandoned this longstanding interpretation. That order created a new category of ETC, which offered only a single supported Lifeline service (broadband internet access service) and was subject to the Commission's (not states') designation authority. Arriving at this unlikely outcome required standing section 214(e) on its head: First, the *2016 Lifeline Order* found that section 214(e)(1) authorized an ETC to offer only a single supported service rather than all services supported under the Lifeline program. This enabled the creation of the Lifeline Broadband Provider ETC. Next, despite the absence of any legal or factual conflict justifying preemption, the *2016 Lifeline Order* preempted state commissions from designating this new type of ETC. Then—in part by forbearing from a limit on the Commission's own authority—the *2016 Lifeline Order* determined that the Commission had newfound authority to designate this new category of ETC under section 214(e)(6).

16. *Restoring Traditional Designation Roles and ETC Categories.* The Commission eliminates the Lifeline Broadband Provider ETC category and restore the traditional state and Federal roles in designating ETCs under the Act. The Commission does this for two principal reasons. First, the Commission concludes that the 2016 rules rested on a legally insupportable construction of section 214(e). Nothing in the *2016 Lifeline Order* or the record persuades the Commission otherwise. Second, the Commission concludes that the Lifeline Broadband Provider rules announced in the *2016 Lifeline Order* did not serve the public interest. Instead, the Commission concludes that the record in the proceeding demonstrates that the traditional designation framework and ETC categories better serve the Commission's direction to efficiently and responsibly promote universal service. Tampering with this framework was not sound policy, nor did it appropriately balance the interest in promoting competition or encouraging new providers to participate in the program, while also guarding the program against further waste, fraud, and abuse.

17. The Commission begins by concluding that the approach embodied in the *2016 Lifeline Order* was not supported by the statute. To explain this conclusion, the Commission must retrace the long path that the *2016 Lifeline Order* took around the obstacle posed by the statutory text. In brief, the steps on this path were: (1) Reinterpreting section 214(e)(1) to mean that ETCs need not offer all supported services; (2) relying on this reinterpretation to establish Lifeline broadband support as a ''separate element of the Lifeline program;'' (3) reinterpreting section 214(e)(6) to suggest that state commissions have no authority to designate ETCs with respect to supported interstate services; and (4) preempting states from designating ETCs for the separate element of Lifeline broadband support. The *2016 Lifeline Order* then filled the gap in designation authority it created by (5) reinterpreting out of existence the limit on FCC authority that an FCC-designated ETC must be a ''common carrier providing telephone exchange service and exchange access'' and, (6) alternatively, forbearing from that same limit on the FCC's authority. Each of these steps was unlawful.

18. *First,* ETCs must offer each of the Lifeline supported services designated by the Commission. Section 214(e)(1) requires that a ''common carrier designated as an eligible telecommunications carrier'' must, ''throughout the service area for which the designation is received,'' ''offer the services that are supported by Federal universal service support mechanisms'' under section 254(c). The *2016 Lifeline Order* began by interpreting section 214(e)(1)(A) not to require an ETC to offer *all* supported services for the mechanism for which it was designated; instead, the *2016 Lifeline Order* concluded that the obligations in section 214(e)(1)(A) could be ''tailored to match'' an ETC designation. This tailoring would allow ETCs to obtain a designation to provide only one supported service, and to trim from their Lifeline offerings other services that the Commission has designated under the Lifeline mechanism.

19. The statute says otherwise. Again, section 214(e)(1)(A) requires an ETC to ''offer . . . services'' that are supported by a universal service ''mechanism[ ].'' Lifeline—one of four such mechanisms under section 254(c)—supports both voice *and* broadband internet access services. Participating in the Lifeline program without assuming any obligations with respect to voice service, then, conflicts with the requirement in section 214(e)(1) that ETCs ''offer the *services* that are supported'' by the Lifeline program. Forbearance—not interpretation—would have been the appropriate way for the Commission to refrain from enforcing what section 214(e)(1)(A) plainly requires. But the Commission did not use this mechanism here and, in any case, the conditions for forbearance were not met. Accordingly, the Commission finds that based on the language of section 214(e)(1)(A), the Lifeline program is a single, uniform support mechanism. ETCs therefore must offer *all* Lifeline supported services, unless the ETC qualifies for and avails itself of the forbearance granted in the *2016 Lifeline Order,* which established limited forbearance from section 214(e)(1)'s service requirements, including (1) targeted forbearance from obligations to offer broadband internet access service, and (2) conditional forbearance from existing non-Lifeline only ETCs' Lifeline voice obligations where several objective competitive criteria are met.

20. *Second,* and relatedly, it follows that Lifeline broadband internet access service support is not a separate ''element'' of the Lifeline program. After concluding that section 214(e)(1) service obligations could be tailored to particular services, the *2016 Lifeline Order* deemed Lifeline broadband internet access service support a ''separate element of the Lifeline program.'' But again, section 214(e)(1) does not permit the *à la carte* designation of services; instead, it

groups ETC service offerings by universal service *mechanism.*

21. The notion of separate, service-specific ''elements'' has no statutory basis. The *2016 Lifeline Order* patches together authority for this inventive approach by referring to sections 214(e)(3), 214(e)(1), 254(e), and the *2014 E-Rate Order* (FCC 14–99; 79 FR 49160 (Aug. 19, 2014)). Standing alone, these authorities provide little support for the *2016 Lifeline Order's* novel interpretation: The three statutory provisions respectively confer designation authority in unserved areas, specify which carriers can receive universal service support, and govern how that support can be used. And they offer no more support for the notion of a universal service ''element'' when read together. Accordingly, the Commission concludes that the *2016 Lifeline Order's* distinction underlying Lifeline Broadband Provider designations fails on its own terms.

22. *Third,* section 214(e)(6) does not suggest that state commissions lack the authority to designate ETCs with respect to supported interstate services. The *2016 Lifeline Order* found it ambiguous whether, for the Commission to have jurisdiction under section 214(e)(6), a carrier seeking ETC designation must be (1) *entirely* outside a state commission's jurisdiction *or* (2) only outside a state commission's jurisdiction *with respect to a particular service,* even if a state commission retains general jurisdiction over the carrier. Seizing on this supposed ambiguity, the *2016 Lifeline Order* held that section 214(e)(6) provided the Commission the authority to take over designations where a carrier provides only a service that is jurisdictionally interstate (for example, broadband internet access service).

23. The Commission sees no such ambiguity. First, the jurisdictional nature of a particular service that a carrier offers is irrelevant for the purposes of determining whether *the carrier itself* is ''subject to the jurisdiction of a State commission.'' And while section 214(e)(6) may not address the situation where specific *services* fall outside the jurisdiction of a state commission, there is a ready explanation for that silence: Section 214(e)(1) does not countenance the separate designation of specific interstate services. Sealing this conclusion is the fact that other provisions in section 214(e) plainly contemplate states designating ETCs that provide both interstate and intrastate services. The fact that Congress expressly limited states' designation authority under section 214(e)(3) to intrastate services underscores that the states' designation authority is not so limited under section 214(e)(2); if Congress had intended to limit states' designation authority under 214(e)(2) to intrastate services, it would have expressly done so.

24. *Fourth,* the *2016 Lifeline Order's* decision to preempt states from designating Lifeline Broadband Provider ETCs was unlawful. This preemption rested largely on the ground that allowing state commissions to designate those ETCs would hinder the goals of Federal universal service and dampen broadband competition. The Commission disagrees with both justifications and find that this preemption analysis was otherwise flawed in several respects.

25. As an initial matter, no conflict with Federal law justifies preemption. As the *2016 Lifeline Order* explains, ''[F]ederal law preempts any conflicting state laws or regulatory actions that would prohibit a private party from complying with [F]ederal law or that 'stand[ ] as an obstacle to the accomplishment and execution' of [F]ederal objectives.'' Here, while Congress established the goal of promoting broadband deployment in section 254(b), it also placed the primary responsibility for designating ETCs on state commissions in section 214(e)(2). Read together, these provisions establish that section 254(b) seeks to promote broadband deployment to the extent possible within the state-focused designation process set forth in section 214. Disregarding section 214(e)(2), the *2016 Lifeline Order* found a purported ''conflict[ ]'' between state designation of Lifeline Broadband Providers and the Commission's implementation of the goals of section 254(b). But this ''conflict'' assumes, without explanation, that the relevant goal under section 254(b) is promoting broadband deployment in the abstract, unconstrained by the state-focused designation process mandated by section 214. The Commission finds that no such conflict exists, and that the principles listed in section 254(b) may not lawfully be construed in a manner that would ignore or override other statutory provisions, including the state-focused framework of section 214(e).

26. In addition, the *2016 Lifeline Order* wrongly relied on section 706 as authority for preemption. Section 706, among other things, directs the Commission to focus its efforts on removing barriers to investment in ''advanced telecommunications services.'' The *2016 Lifeline Order* found that the burdens of obtaining separate designations from states ran afoul of this directive by posing ''a barrier to investment and competition in the Lifeline marketplace.''

27. This reasoning stumbles from the gate because section 706 does not furnish a basis for the preemption of states' designation authority. The Commission has previously concluded that the directives in section 706 to promote broadband deployment ''are better interpreted as hortatory, and not as grants of regulatory authority.'' But even if section 706 did confer regulatory authority, it would be trumped by the more specific grants of authority in section 214(e). ''[I]t is a commonplace of statutory construction that the specific governs the general.'' In contrast to sections 214(e)(2) and 214(e)(6), which expressly confer designation authority, section 706 merely directs the Commission and states to encourage the deployment of broadband services and generally instructs the Commission to take action to accelerate deployment if it finds advanced telecommunications capability is not being deployed in a reasonable and timely fashion. The specific grant of designation authority to states prevails over section 706's general language regarding broadband deployment.

28. Furthermore, as a practical matter, the preemption regime instituted by the *2016 Lifeline Order* created confusion and anomalies in the division of labor between the Commission and the states that the Commission's new approach avoids. The *2016 Lifeline Order* preempted states from designating Lifeline Broadband Providers, but left untouched states' designation authority over traditional ETCs—who in some cases could effectively become Lifeline Broadband Provider ETCs without seeking FCC designation. The *2016 Lifeline Order* also suggests that states could oversee federally designated Lifeline Broadband Providers in their jurisdictions vis-à-vis consumer protection. In other words, the *2016 Lifeline Order* preempted state authority to designate Lifeline Broadband Provider ETCs, but left states with uncertain residual authority to oversee and impose conditions on Lifeline Broadband Provider ETCs. The Commission finds that the arbitrariness of this result is another reason for reversing the Commission's preemption decision.

29. Conversely, the Commission finds that the state designation process furthers Federal universal service goals—it does not ''thwart'' them. As explained further, the traditional state designation role better serves section 254(b)'s policy goals by facilitating thorough state reviews of carriers seeking ETC designations, as well as

state monitoring of carriers who have received ETC designations. This helps prevent, detect, and curb waste, fraud, and abuse in the program, which in turn promotes the efficient and responsible use of limited program funds. States' traditional designation role also encourages states to maintain their own support programs, furthering the universal service goals.

30. The Commission notes that the reversal of the preemption decision in the *2016 Lifeline Order* in no way conflicts with the Commission's determination in other contexts—such as in the *Restoring Internet Freedom Order* (83 FR 7852 (Feb. 22, 2018))—that broadband internet access service is jurisdictionally interstate and that inconsistent state and local regulation may be preempted on that ground. Several commenters argue otherwise, relying on the premise that states' ETC designation authority under section 214(e)(2) can be preempted simply because of the interstate nature of broadband internet access service. This argument ignores the fact that section 214 itself expressly confers on state commissions the primary responsibility to designate carriers that are subject to state jurisdiction. It also ignores—the absence of a conflict justifying preemption. The Commission therefore finds no inconsistency between the reversal of the unlawful preemption in the *2016 Lifeline Order* and the Commission's preemption of inconsistent state and local regulation of broadband internet access services in other contexts.

31. *Fifth,* the *2016 Lifeline Order* unlawfully expanded the Commission's designation authority under section 214(e)(6). Section 214(e)(6) gives the Commission designation authority only ''in the case of a common carrier providing telephone exchange access service and exchange access that is not subject to the jurisdiction of a State commission.'' The limit on the Commission's authority is clear: The Commission's designation authority under section 214(e)(6) is predicated, in part, on a common carrier ''providing telephone exchange access service or exchange access.'' Yet the *2016 Lifeline Order* interpreted this limit on the Commission's authority to mean (1) that the supported service need not be telephone exchange service or exchange access, (2) that the carrier itself need not provide telephone exchange service or exchange access, (3) that the carrier need not have any facilities to provide telephone exchange service or exchange access, (4) that the carrier need not have any customers for telephone exchange service or exchange access, and (5) that the carrier need not provide telephone exchange service or exchange access for any length of time beyond when the carrier's ETC application is pending at the Commission.

32. The effect is to remove the phrase ''providing telephone exchange access service and exchange access'' from the statute. By emptying the word ''providing'' of all meaning, the Commission's interpretations violate the canon of statutory construction dictating that a statute should be interpreted in a manner that gives effect to each of its words and clauses. If Congress intended for the provision to have the overly broad meaning that the Commission ascribed to it in the *2016 Lifeline Order,* Congress would have used more expansive language in section 214(e)(6). The Commission therefore finds that the *2016 Lifeline Order*'s interpretations of section 214(e)(6) unlawfully expanded the Commission's jurisdiction to designate ETCs.

33. *Sixth,* and finally, the *2016 Lifeline Order*'s alternative forbearance from section 214(e)(6)'s requirement that carriers be providing telephone exchange service and exchange access was improper. Section 10 provides that the Commission may forbear from applying provisions of the Act to carriers and services—not that it can forbear from statutory limitations on its own authority. To read section 10 otherwise would render statutory constraints on the Commission meaningless: Take, for example, the absurdity of the Commission forbearing from the limitations imposed by the phrase ''interstate or foreign'' in the Communications Act. This would expand the Commission's authority to *all* telecommunications services, obliterating the jurisdictional divide established by Congress. Clearly, Congress did not intend the Commission to use forbearance to so aggrandize itself. Here, the qualifying language ''providing telephone exchange service and exchange access'' limits the category of carriers that the Commission may designate under section 214(e)(6). It therefore constrains the Commission's authority—not the authority of ETCs. Section 10 does not authorize the Commission to forbear from the limitation on its own authority.

34. *The Traditional ETC Designation Framework Best Promotes the Goals of the Lifeline Program.* In addition to lacking legal authority for the 2016 approach, the Commission independently concludes that the goals of the Lifeline program are best served when states play the primary role in ETC designations.

35. The traditional framework also has the advantage of providing strong state and Federal oversight of ETCs. The cooperative federalism that exists under the traditional framework provides states certainty with respect to their role in monitoring and enforcing the activities of ETCs. This in turn encourages states to devote staff and resources to thoroughly reviewing ETC designation applications and policing ETCs, providing a stronger system for promoting the efficient use of universal service funds, protecting Lifeline consumers, and reducing waste, fraud, and abuse than if states did not serve these critical roles. States have a record of more than twenty years of sound performance in their statutory role and monitoring the ETCs they designate. As NARUC has noted, states have been ''crucial'' in ''policing the [F]ederal fund to eliminate bad actors.'' Many states have robust processes for analyzing ETC designation petitions, addressing concerns with Lifeline-supported services, ensuring that the ETCs they designate satisfy the Lifeline service and other requirements, and preventing and identifying waste, fraud, and abuse in the Lifeline program. States' traditional designation role has also encouraged the continuation of state matching programs.

36. By contrast, state commenters explain in the record that the stand-alone Federal Lifeline Broadband Provider ETC category ''complicates administration,'' ''frustrates'' state policies and procedures, ''undermine[s] state programs,'' and ''adds an unnecessary layer of complexity to the ETC framework.'' State commenters also express concern that the Lifeline Broadband Provider ETC designation creates uncertainty with respect to states' role in monitoring and enforcing ETC activities, and engenders consumer confusion.

37. This burdensome creation cannot be justified on the grounds that it is necessary to promote competition, as some commenters maintain. To the contrary, the traditional state role has not resulted in a lack of competition in the Lifeline marketplace or lack of affordable broadband internet access service for Lifeline consumers. The traditional designation roles and ETC categories better allow the Commission and states to appropriately balance the interest in encouraging more providers to participate in the Lifeline program and promote competitive broadband options, innovation, and choice for Lifeline consumers, while also guarding the program against further waste, fraud, and abuse. Existing ETCs continue to participate in the Lifeline program

based on their traditional state designations and in some cases have expanded their Lifeline offerings to new states, and new providers continue to receive traditional state ETC designations, permitting them to participate in the Lifeline program. As of October 1, 2019, for the September data month, the National Lifeline Accountability Database (NLAD) data indicates that approximately 355 unique holding companies claimed Lifeline support for providing approximately 3.8 million Lifeline subscribers with Lifeline-supported broadband internet access service that meets the Commission's minimum service standards.

38. *Other Considerations.* Importantly, the elimination of Lifeline Broadband Provider designations does not preclude new providers from entering the Lifeline program or prevent Lifeline subscribers from receiving Lifeline discounts for qualifying broadband internet access service under current rules. Providers interested in participating in the Lifeline program remain able to obtain ETC status through existing state designation processes or from the Commission where the Commission has designation authority under section 214(e)(6). Further, Lifeline customers are able to receive discounts on Lifeline service offerings that include broadband internet access service. The Commission also clarifies that while section 254(e) authorizes the Commission to provide Lifeline reimbursements only to ETCs, the statute and Lifeline program rules do not preclude ETCs from offering broadband internet access service satisfying the Lifeline minimum service standards through affiliated broadband internet access service providers that operate under the ETC's existing designation. However, the Commission makes clear that where ETCs offer qualifying broadband internet access service to Lifeline subscribers through such affiliated entities, only the ETC is eligible to receive reimbursement from the Lifeline program, and the ETC remains legally responsible for ensuring compliance with the requirements and obligations for ETCs in the statute and in the rules, as well as all Lifeline program rules and reporting requirements.

39. *Conclusion.* In the *2016 Lifeline Order,* the Commission interfered with a process that has functioned smoothly for over twenty years, without a compelling reason, and without the proper authority to do so. For over twenty years, state commissions have performed well in their statutory role of designating ETCs. The Commission finds that there was no policy basis to depart from the framework established by Congress, and that, in any case, the Commission lacked the authority to do so. For these reasons, the Commission here concludes that the approach in the *2016 Lifeline Order* is foreclosed by the plain text of section 214 and hence was contrary to law. Moreover, to the extent that the statute is ambiguous, the Commission believes that the reading of section 214 endorsed in the *Order* far better comports with the Act's language, structure, and policy objectives, for the reasons stated herein, and is thus at minimum a reasonable exercise of the discretion delegated by Congress.

40. Consistent with the actions to restore states' traditional ETC designation role, § 54.201(j) of the rules is eliminated, which precluded states from designating Lifeline Broadband Providers. The rule change will become effective January 27, 2020. In addition, because of the elimination of the Lifeline Broadband Provider designations, §§ 54.202(d)(1) through (3) and (e) and 54.205(c) of the rules are eliminated. The Commission finds that there is no need for a transition period before the rule changes take effect because, currently, no provider has a Federal Lifeline Broadband Provider designation. The rule changes will become effective January 27, 2020.

41. *Increased Transparency with Stated to Improve Program Oversight.* The Commission next directs the Universal Service Administrative Company (USAC) to take a number of measures intended to increase the transparency of the Lifeline program and support enforcement against program non-compliance. In the *2017 Lifeline Order and NPRM* (FCC 17–155; 83 FR 2075 and 83 FR 2104 (Jan. 16, 2018)), the Commission sought comment on the types of reports USAC should make available to states and information that should be shared with the relevant state agencies to increase transparency and accountability within the Lifeline program. State agencies support the proposal that USAC notify the Commission and state agencies of suspicious ETC activity within the Lifeline program and encouraged further data sharing as an additional means for weeding out waste, fraud, and abuse in the Lifeline program.

42. In light of the support, the Commission directs USAC to compile and make available on its website program aggregate subscribership data, including data broken out at the county level and by service type. USAC shall compile and present the data in a way that will be most clear to the states and the public. USAC already makes program statistics and other information available on its website. Making the additional subscribership data available increases program transparency and continues to promote accountability in the Lifeline program. Better insight into the program also will provide states with another tool in detecting anomalies that might indicate wasteful and fraudulent activity in the Lifeline program.

43. The Commission also agrees with state commenters that sharing information regarding trends related to eligibility check failures, for example, will enable states to recognize compliance issues and act appropriately. The states play an important role in identifying and stopping wasteful and fraudulent activity in the Lifeline program, and the Commission finds that it is essential to the integrity of the program that evidence of suspicious activity is shared with the appropriate state officials. Therefore, the Commission instructs USAC to develop a process by which it will share with the Commission staff, the Commission's Office of Inspector General (OIG), and relevant state agencies' information regarding suspicious activity. To further the sharing of information regarding such activity, USAC should work with state personnel to identify appropriate state officials who should have access to these reports. USAC is instructed to make suspicious reports and trends available upon request from the state officials, and USAC is cautioned to ensure that the sharing of data, which could potentially contain sensitive information, complies with the Privacy Act and any other restrictions. The record is clear that the states value the information, and the Commission encourages the states to use the data provided in a way that furthers the integrity of the Lifeline program.

44. *Improving Program Integrity in Program Enrollment and Recertification.* The Commission next turns to improving the Lifeline program's enrollment and recertification procedures to prevent waste, fraud, and abuse in the program. First, the Commission establishes new rules and limitations on ETCs' use of enrollment representatives to remove incentives to commit fraud and abuse in the Lifeline eligibility determination process. Second, the Commission acts to improve the integrity of Lifeline enrollments and direct USAC to continue targeted reviews of enrollment documentation. Finally, the Commission requires additional documentation during the annual

recertification process for certain Lifeline subscribers.

45. *Preventing Waste, Fraud, and Abuse by Enrollment Representatives.* The Commission first concludes that ETCs should be prohibited from paying commissions based on the number of submitted Lifeline applications or approved enrollments to individuals who enroll Lifeline subscribers or who verify eligibility of Lifeline subscribers on behalf of ETCs. In this context, the Commission understands ''commissions'' to broadly include direct financial compensation or other incentives such as non-cash rewards and travel incentives. In addition, the Commission codifies the requirement that USAC register all Lifeline ETC enrollment representatives. For these purposes, the Commission defines an enrollment representative as an employee, agent, contractor, or subcontractor, acting on behalf of an ETC or third-party organization, who directly or indirectly provides information to USAC or a state entity administering the Lifeline Program for the purpose of eligibility verification, enrollment, recertification, subscriber personal information updates, benefit transfers, or de-enrollment. The Commission also makes clear that ETCs are ultimately responsible for ensuring that all enrollment representatives register with USAC, and ETCs will be subject to enforcement action if an individual who has not registered with USAC acts as an enrollment representative on that ETC's behalf. The combination of (1) prohibiting ETCs from paying commissions to individuals who enroll Lifeline subscribers or who provide information for eligibility verification, recertification and changes to subscribers' information, and (2) requiring registration of each individual enrollment representative, will help to ensure accountability and prompt ETCs to crack down on improper behavior before it happens, thereby preventing waste, fraud, and abuse in the Lifeline program.

46. *Prohibiting Enrollment Representative Commissions.* Much of the waste, fraud, and abuse in the Lifeline program revealed by audits, enforcement investigations, and criminal proceedings has involved non-compliance by the ETC employees and contractors charged with reviewing applicants' eligibility documentation and enrolling new Lifeline subscribers. However, the Commission's rules have thus far not directly addressed the common practice by ETCs of providing commissions for enrollment representatives to enroll consumers in the Lifeline program. The Commission has long held that ETCs are liable for rule violations committed by their agents or representatives, but there is no specific Commission rule targeting enrollment representative misbehavior.

47. Since the *2012 Lifeline Order* (FCC 12–11; 77 FR 12952 (March 2, 2012)), there have been reports of ETCs hiring enrollment representatives who did not comply with the Lifeline program rules for eligibility determinations. It is common practice for ETCs to offer commissions for agents to enroll consumers in the Lifeline program. However, even ETCs have acknowledged the mixed incentives these compensation schemes foster, with TracFone, for example, filing a petition asking the Commission to ''prohibit[ ] incentive-based agent compensation.'' Moreover, members of Congress have expressed concern to the Commission about the use of enrollment representatives who fraudulently enroll subscribers in the Lifeline program.

48. The Commission also has tangible evidence of enrollment representative impropriety leading to waste and abuse of the program. In December 2016, the Commission's Enforcement Bureau entered into a Consent Decree with Lifeline ETC Total Call Mobile (TCM), where TCM admitted it used a commission compensation system for enrolling Lifeline subscribers that had resulted in ''[h]undreds of TCM field agents [engaging] in fraudulent practices to enroll consumers who were . . . otherwise not eligible for the Lifeline program.'' TCM had ''sought and received reimbursement for tens of thousands of consumers who did not meet the Lifeline eligibility requirements,'' and TCM agreed to pay a fine of $30 million dollars for violating the Lifeline rules.

49. Even with public reports of enrollment abuse and successful enforcement actions against Lifeline ETCs, the Commission's insight into the day-to-day enrollment operations of all ETCs is limited. The General Accounting Office (GAO) raised concerns in 2017, when it confirmed in a report on its performance audit of the program that, after conducting extensive data review and covert investigations into ETC Lifeline enrollment practices, the Commission and USAC ''have limited knowledge about potentially adverse incentives that providers might offer employees to enroll [Lifeline] subscribers'' but noted that apparent findings of large-scale improper enrollments from enforcement investigations was cause for concern. The GAO raised similar concerns regarding the recertification process. Since that report was issued, additional investigations and reports have provided more indications that enrollment representative commissions create incentives that increase the likelihood of waste, fraud, and abuse in the program. The Commission OIG's 2018 Semiannual Report to Congress noted that a Lifeline enrollment agent ''pled guilty to conspiracy to commit wire fraud'' and was ordered to pay restitution to the Commission of over $200,000 for having enrolled ''850–950 non-existent Lifeline customers in the program'' and having received commission for those fake enrollments.

50. Finally, in October 2018, the Commission released the largest Notice of Apparent Liability for Forfeiture (NAL) to date against a Lifeline provider when it proposed a $63 million forfeiture against American Broadband & Telecommunications Company (American Broadband). American Broadband's agents apparently repeatedly enrolled ineligible or fake subscribers and relied on master agents and sales agents paid on commission. Over 42,000 customers were apparently claimed by American Broadband over the NAL period, and many of those were claimed due to improper enrollments by the agents.

51. In the *2017 Lifeline Order and NPRM,* the Commission sought comment on prohibiting an ETC from offering or providing ETC personnel with commissions based on enrollments or verification of eligibility and on codifying a requirement that ETC representatives who enroll consumers in Lifeline must register with USAC. The Commission stated its belief that prohibiting commissions related to enrolling subscribers in the Lifeline program ''may benefit ratepayers by reducing waste, fraud, and abuse in the program.'' It also noted that many ETCs use commissions as a means of compensating sales employees and contractors and that such compensation schemes ''can encourage the employees and agents of ETCs to enroll subscribers in the program regardless of eligibility, enroll consumers in the program without their consent, or engage in other practices that increase waste, fraud, and abuse in the program.''

52. In response to the *2017 Lifeline Order and NPRM,* numerous commenters supported limiting or prohibiting ETCs from offering or providing commissions to sales agents or employees who verify the eligibility of potential Lifeline subscribers. Some commenters suggested that the Commission should only address commissions for third-party sales agents or representatives. However, while an ETC may have more supervision over its

direct employees than third-party sales agents or representatives, the Commission does not believe that employees are immune from the financial motivation that commissions might offer to commit potentially fraudulent activity. Several commenters also suggested that any limitation on commissions was unnecessary or needed further evaluation in light of the rollout of the National Verifier. While the National Verifier plays an important role in helping to address waste, fraud, and abuse in the program, the Commission does not believe that it will eliminate the financial incentives for individuals to attempt to defraud the Lifeline program. Commissions based on the number of Lifeline applications or successful Lifeline enrollments are one such incentive, and by limiting them, the Commission removes a financial incentive for committing fraudulent activity.

53. Based on the record and to limit a potential source for fraud or abuse in the program, the Commission prohibits ETCs from offering or providing commissions to enrollment representatives and their direct supervisors based on the number of consumers who apply for or are enrolled in the Lifeline program with that eligible telecommunications carrier. This restriction applies to employees, agents, officers, or contractors working on behalf of the ETC who enroll Lifeline applicants, review eligibility documents or recertification forms, including sales and field agents, and any direct supervisors of those individuals, whether employed by the ETC or employed by a third-party contractor of the ETC. For purposes of the rule, an ETC's payment to a third-party entity that in turn provides commissions to an enrollment representative is subject to the prohibition. This restriction is not intended to prevent ETCs from using customer service representatives to assist consumers in the Lifeline application and recertification processes. The Commission adds § 54.406(b) of the Commission's rules to prohibit ETCs from utilizing commission structures for those enrollment representatives involved in the eligibility determination, enrollment process, or recertification process. These changes will become effective February 25, 2020.

54. The Commission expects that the targeted prohibition of certain practices by ETC employees and agents will help reduce the incentive for enrollment, customer service, and recertification employees to commit fraud against the Lifeline program. In the Commission's investigation of American Broadband, the conduct of the agents hired by the company ranged from enrolling subscribers who were apparently not eligible and apparently falsifying eligibility documentation, to apparently creating false identities and enrolling false and deceased individuals into the program. While an ETC is liable for the actions of its agents and representatives, and the Commission has the authority to recover improper reimbursements distributed to ETCs, the record demonstrates that the liability has not been sufficient to successfully deter fraud committed by employees and agents. The Commission believes prohibiting ETCs from offering commissions to certain employees or agents, along with other measures taken in the Order, will prevent improper enrollments before they happen.

55. *Enrollment Representative Registration with USAC.* To further prevent waste, fraud, and abuse, the Commission next requires that all ETC enrollment representatives register with USAC to access USAC's Lifeline systems in the process of Lifeline enrollment, benefit transfers, subscriber information updates, recertification, and de-enrollment. In July 2017, USAC was directed to require enrollment representatives of ETCs to register with USAC to enable USAC to both verify the identity of individual enrollment representatives and ''determine the ETC(s) he or she works for.'' USAC was directed to provide each enrollment representative with a unique identifier to be used by the enrollment representative to interact with NLAD and to lock enrollment representatives out of the NLAD ''for a set period of time after too many invalid subscriber entry attempts.'' USAC was further directed to incorporate the data gained from the enrollment representative registration system into its audit findings and to report any suspected abuse by individual enrollment representatives to the Commission's OIG ''for evaluation as to whether civil or criminal action is appropriate and to the Enforcement Bureau for administrative action and remedies.''

56. The Commission then asked for public comment on codifying a rule to require enrollment representative registration in the *2017 Lifeline Order and NPRM.* The Commission sought comment on having the representative registration identifiers be used when enrolling consumers via the National Verifier, as well as when interacting with the NLAD. The Commission reiterated that it is ''aware of certain practices of sales representatives resulting in improper enrollments or otherwise violating the Lifeline rules. . . . [including] data manipulation to defeat NLAD protections, using personally identifying information of an eligible subscriber to enroll non-eligible subscribers, and obtaining false certifications from subscribers.'' In light of recent developments, such as the *American Broadband NAL* where several enrollment representatives allegedly engaged in the aforementioned practices and the OIG Report citing of an enrollment representative who suffered criminal penalties for fraudulently enrolling subscribers in Lifeline, the Commission concludes that codifying in the Commission's rules the requirement that specified ETC enrollment representatives must register with USAC would help to combat waste, fraud, and abuse.

57. Several commenters supported a Commission rule requiring that ETCs' enrollment representatives register with USAC to submit information to the NLAD or National Verifier. The Commission agrees the requirement would provide clarity to all parties and would assist the Commission and USAC in detecting and investigating potential waste, fraud, or abuse by an ETC's enrollment representatives. The Commission therefore amends the Commission's rules and requires each ETC enrollment representative to register with USAC and obtain a unique representative identification number. When enrolling or recertifying individuals in the Lifeline Program, ETCs must use the Lifeline Program Application Form ''in all states and territories to obtain the information necessary to evaluate whether a consumer is eligible to receive Lifeline service and to obtain the consumer's certifications,'' and the Lifeline Program Annual Recertification Form ''in all states and territories to recertify the eligibility [of] subscribers who are receiving Lifeline service.'' As such, an ETC will be in violation of section 54.410 of the Commission's rules, as well as this new rule, if the ETC's enrollment representative enrolling a consumer in Lifeline or submitting a consumer's recertification form does not enter their representative identification number as required by the rule and by Section 5 of the Lifeline Program Application Form and Section 5 of the Lifeline Program Annual Recertification Form. ETCs are responsible for ensuring that their enrollment representatives complete this registration process. This registration process does not absolve ETCs of Commission rule or state law violations committed by their enrollment representatives or other

employees. The rule shall become effective March 26, 2020.

58. For the purposes of the ETC representative registration system, all enrollment representatives must register with USAC and receive a unique identifier. In order to register, each such ETC enrollment representative must provide information that USAC, after consultation with the Bureau and the Office of Managing Director, determines is necessary to identify and contact him or her; this information may include first and last name, date of birth, the last four digits of his or her social security number, personal email address, and residential address. It is critical that USAC confirms that individuals that interact with its systems are actually who they claim to be, and the Commission expects that this information would allow USAC to conduct a successful identity check during the registration process for the vast majority of registrants. In light of ETCs' concerns about requiring their employees to submit the last four digits of their social security number to the registration system, the Commission permits USAC to make the submission of such information optional. However, the Commission notes that if a registrant declines to provide the last four digits of his or her social security number, that registration may be significantly less likely to be automatically validated through the third-party identity check, thus requiring the registrant to provide additional documentation confirming his or her identity to complete the registration process. Once issued, the representative identification number will be tied to a specific enrollment representative and will not be transferable. To ensure compliance, the Commission also concludes that ETCs are responsible for the proper enrollment of their representatives in this system, as an ETC's enrollment representative needs to be registered with USAC prior to enrolling or recertifying consumers in the Lifeline program and prior to completing and submitting the Lifeline Program Application Form and Lifeline Program Annual Recertification forms.

59. The Commission recognizes the concern with collecting and retaining personal information from ETC enrollment representatives; however, such information is necessary to verify the identity of the person completing enrollment representative activities, and to assign that individual a unique identification number to access the NLAD and the National Verifier. In particular, it is essential that USAC and the Commission be able to monitor for and detect patterns of noncompliant or fraudulent behavior by specific enrollment representatives, especially because it is not uncommon for enrollment representatives to be employed by multiple ETCs. The requested enrollment representative information is narrowly tailored and is no broader than necessary to verify the identity of the enrollment representative before providing him or her access to the NLAD and National Verifier and to enable USAC to monitor the activities of specific enrollment representatives. Furthermore, this information will allow USAC and others to take action against an enrollment representative who has engaged in noncompliant or fraudulent behavior and prevent such a representative from enrolling or recertifying Lifeline subscribers for any ETC. Given the sensitive nature of this information, the Commission directs USAC to comply with both the Privacy Act of 1974 and the Federal Information Security Management Act of 2002. In implementing this change, the Commission recognizes that USAC may, for administrative efficiency, consolidate the registration system codified in the *Order* with existing or future registration processes that it uses to allow access to its technological systems (for example, allowing authorized certifying officers to log into the Lifeline Claims System).

60. The Commission believes that these security measures and the narrowly tailored nature of the personal information that USAC is collecting address the concerns that stakeholders have recently expressed regarding a registration requirement. These stakeholders also raised concerns about the application of any registration requirement to direct ETC employees and suggested that any direct ETC employees not be required to submit the same level of personal information as agents or representatives not directly employed by an ETC. However, limiting the personal information collected for those individuals to the individual's name and business contact information would impede USAC's ability to independently verify the identity of registered individuals and could obscure potential duplicate registrations. Also, in addition to documenting fraudulent activity from sales agents and external representatives, the Commission has documented apparently fraudulent practices executed by direct ETC employees. A two-tiered approach to registering enrollment representatives would create an unacceptable risk of fake or duplicate accounts and could give ETCs the opportunity to improperly characterize their enrollment representatives as direct employees to minimize USAC's ability to oversee enrollment representative activity, creating an avenue for waste, fraud, and abuse. As such, the Commission believes that it is appropriate for this registration requirement to include direct ETC employees, better positioning the Commission, USAC, and even ETCs to address potentially fraudulent activity.

61. One stakeholder group specifically suggested that the Commission issue a Public Notice seeking further comment on the enrollment representative registration requirement. However, the Commission provided ample notice to stakeholders and sought comment on a range of issues impacting this effort in the *2017 Lifeline Order and NPRM.* The *2017 Lifeline Order and NPRM* sought comment on the codification process generally, how the Commission should define an ETC enrollment representative, what information should be solicited for this database, and what privacy and security practices should be used to safeguard this information. These are all considerations that the Commission acts on, and the suggestion that stakeholders did not have ample notice or time to comment on these issues is not supported by the factual history of this proceeding.

62. TracFone Wireless, Inc. (TracFone) also raised several proposals for addressing different aspects of the enrollment representative registration process. TracFone suggested that the Commission prohibit third party agents from representing more than one Lifeline provider at any one time. However, the Commission believes that such a prohibition would be overly broad and unsupported by the proceeding's record. TracFone also argued that registration should only be required for individuals involved in the eligibility verification process if those individuals are compensated with commissions. However, since the *Order* prohibits commissions for enrollment representatives and their supervisors, applying the registration requirement only to representatives who receive commission-based compensation would render the requirement meaningless. USAC and the Commission would lose the ability to monitor enrollment representatives' practices and to proactively address potential fraud committed by these individuals.

63. As part of the enrollment representative registration process, the Commission also requires individual enrollment representatives with direct access to USAC's systems to sign a user agreement for NLAD and the National

Verifier before gaining access to NLAD or the National Verifier. The Commission directs USAC to develop a user agreement that requires these enrollment representatives to acknowledge that they will only use NLAD and the National Verifier for the specified purposes and that their access to either or both databases may be suspended or terminated for unauthorized or unlawful use. Individual enrollment representatives with direct access to these systems must re-submit the user agreements annually and must also confirm in USAC's database that their contact information is up to date within 30 days of any change in such information. This will ensure that enrollment representatives' information in the database remains current and that the enrollment representative is still actively using the National Verifier or the NLAD on behalf of the ETC. In operating the ETC representative registration system, USAC shall have the authority to protect the integrity of its registration system by, among other things, locking the NLAD and National Verifier accounts of ETC enrollment representatives with a prolonged inactive period (*i.e.,* consecutive months) or a pattern of suspicious activity, such as unusual rates of invalid enrollment attempts. While a representative's account is locked, the representative will lose the ability to enter, alter, remove, or view subscriber information in the NLAD and National Verifier systems.

64. *Enrollment Process Improvement—Independent Economic Household Worksheets.* Next the Commission amends the rules to limit when an ETC can record an Independent Economic Household (IEH) worksheet in the NLAD. Specifically, an ETC will be permitted to do so only where the consumer completing the worksheet shares an address with another Lifeline subscriber. This limitation will assist USAC's efforts to detect improper duplicate addresses among Lifeline subscribers listed in the NLAD and will reduce administrative burdens on USAC.

65. The Commission's rules limit Lifeline service to one subscription per household. There are instances, however, where multiple subscribers share the same residential address but are considered independent economic households under the Lifeline program rules. For example, multiple subscribers living in a shelter may share the same address, or multiple subscribers may provide the same apartment building address without a unit number. Alternatively, subscribers might share the same home address, but would not be part of the same household if they do not contribute to and share in the household income and expenses. The IEH worksheet asks several questions that help the ETC and subscriber determine if the subscriber is an independent household in the event that another subscriber lives at the same address. The Commission's rules require that the IEH worksheet certifying compliance with the one-subscription-per-household rule be completed at the time of enrollment if the consumer resides at the same address as another individual receiving a Lifeline benefit and during any recertification in which the subscriber changes households, and as a result, shares an address with another Lifeline subscriber. However, an ETC often will record the collection of an IEH worksheet in the NLAD and note that the applicant is in an independent economic household, even if the subscriber does not share an address with other Lifeline subscribers.

66. In the *2017 Lifeline Order and NPRM,* the Commission sought comment on the practice of collecting and recording worksheets from all subscribers, regardless of whether that subscriber shares an address with another Lifeline subscriber and asked whether that practice makes it more difficult for USAC to detect improper activity. Noting that the ''[p]rophylactic use of the household worksheet can therefore subvert the duplicate address protections and may result in increased waste, fraud, and abuse,'' the Commission asked whether it should amend its rules to permit the use of the form only in instances where the ETC has been notified that the applicant shares the same residential address as another Lifeline subscriber.

67. Some commenters argue that it is important that providers be able to collect the IEH worksheet from the applicant at the time of enrollment because providers may not receive a real time notification that the applicant shares an address with another Lifeline customer. Others are generally supportive of the Commission's proposal to restrict the collection of the IEH worksheets. The Commission recognizes the strong preference that some ETCs have for routinely collecting the IEH worksheet at the outset from Lifeline applicants, regardless of whether that applicant shares an address with another Lifeline customer. Upon a review of the record, the Commission finds no compelling reason to prohibit the practice of collecting the IEH worksheet from all applicants, but in order to more readily identify through use of the ''IEH flag'' which subscribers share an address with another Lifeline subscriber, the Commission finds it necessary to restrict the recordation of the IEH worksheet in the NLAD. Accordingly, the Commission amends § 54.404(b)(3) of the Commission's rules to permit ETCs to record an IEH worksheet in the NLAD only when the NLAD has alerted the ETC that the prospective subscriber shares the same residential address as another Lifeline subscriber is a reasonable approach to support USAC's efforts in identifying duplicate addresses. ETCs shall not record an IEH worksheet in NLAD in any other situation. These changes shall be effective January 27, 2020.

68. Finally, the rule does not alter ETCs' conduct in NLAD opt-out states (California, Oregon, and Texas) because the rule only covers the information that ETCs submit to the NLAD. More specifically, ETCs in NLAD opt-out states must continue to follow the relevant state laws, regulations, or agency instructions. To be clear, because this rule change impacts the recordation of IEH worksheets in the NLAD and not the use of the IEH worksheet itself, ETCs are still permitted to collect IEH worksheets prior to enrollment. ETCs may not record that subscriber's IEH form in the NLAD, however, unless the NLAD has alerted the ETC that the subscriber shares an address with another Lifeline subscriber.

69. *Deceased Subscribers.* In its report, GAO identified 6,378 deceased individuals that remained enrolled in Lifeline even though they were reported as deceased for over a year before enrollment or recertification. To combat this issue, USAC was directed to de-enroll the subscribers GAO identified as deceased, and going forward on a quarterly basis, to check a sample of subscribers against the Social Security Death Master File and to de-enroll subscribers and recoup reimbursements as appropriate. Since then, USAC has added a check of the Social Security Death Master File when validating a consumer's identity, which prevents a consumer appearing on the Social Security Death Master File from enrolling in the program unless the consumer successfully disputes the automated result through documentation. In the *2017 Lifeline Order and NPRM,* the Commission sought comment on whether it should codify USAC's current practice of cross-checking a subscriber's information against the Social Security Death Master File at the time of enrollment and recertification. Commenters agree that a codification of USAC's current practice is a reasonable way to help control

waste, fraud, and abuse. Accordingly, the Commission adds a new rule, § 54.404(b)(12), notifying ETCs that they must not enroll a prospective Lifeline subscriber if the NLAD or National Verifier cannot identify the subscriber as living, unless that subscriber can produce documentation demonstrating his or her identity and status as living. The revised rules prohibit ETCs from claiming subscribers that are identified as deceased for purposes of requesting or receiving reimbursement from Lifeline. The changes contain new or modified information collection requirements, which will not be effective until approved by the Office of Management and Budget. The effective date will be announced in a future **Federal Register** document.

70. If an ETC has claimed reimbursement for a period during which a subscriber was deceased, USAC is directed to reclaim reimbursements back to the time of enrollment or recertification if the subscriber was deceased and listed on the Social Security Death Master File at the time of enrollment or recertification. The Commission also directs USAC to continue its efforts to prevent ETCs from claiming and seeking reimbursement for subscribers identified as deceased and listed on the Social Security Death Master File. Specifically, USAC shall continue sampling existing subscribers on a quarterly basis and, for any subscriber identified as deceased according to the Social Security Death Master File, USAC shall first require ETCs to provide ''proof of life'' documentation and then de-enroll any subscribers who cannot produce such documentation to successfully dispute the Social Security Death Master File match.

71. *Reimbursement Process.* The Commission next revises the rules to include a limitation on the subscribers for which an ETC may claim and receive reimbursement. In the *2017 Lifeline Order and NPRM,* the Commission sought comment on whether it should amend its rules to require that disbursements be based on the subscribers enrolled in NLAD as a way to prevent reimbursements for fictitious or ''phantom'' subscribers that are not in NLAD and are improperly claimed by providers. Section 54.407 of the Commission's rules provides that reimbursement for providing Lifeline service will be provided directly to the ETC ''based on the number of actually qualifying low-income customers it serves directly as of the first day of the month.'' The Commission now codifies the requirement that the number of eligible subscribers an ETC may claim for reimbursement must be no more than the number of qualifying subscribers the ETC directly serves as of the snapshot date as indicated by the data in the NLAD. In the three NLAD opt-out states, ETCs may also base claims for reimbursement on any reports or information the state administrator provides to the ETC concerning which subscribers can be claimed. The Commission directs USAC to continue to base its Lifeline claims and reimbursement process on the number of qualifying subscribers the ETC serves on the snapshot date. USAC shall base the reimbursement on data available in NLAD, future USAC systems that record program enrollment, or on data provided by a state administrator for the NLAD opt-out states. Section 54.407(a) is amended to reflect the requirement. The rule change will become effective January 27, 2020.

72. *Recertification—Improving Recertification Integrity.* The Commission next amends the Commission's rules to require ETCs to collect eligibility documentation from the subscriber at the time of recertification in certain circumstances. In the *2017 Lifeline Order and NPRM,* the Commission acknowledged that the current rules allow a subscriber to self-certify that he or she continues to be eligible for the Lifeline program, even if a database indicates that the subscriber's participation in a qualifying program has changed and his or her eligibility cannot be determined by querying any available state or Federal eligibility or income database. The Commission asked for comment ''on prohibiting subscribers from self-certifying their continued eligibility during the Lifeline program's annual recertification process if the consumer is no longer participating in the program they used to demonstrate their initial eligibility for the program.''

73. To help ensure the integrity of the recertification process, the Commission amends the Commission's rules to require ETCs to collect eligibility documentation from the subscriber at the time of recertification if the subscriber's eligibility was previously verified through a state or Federal eligibility or income database and the subscriber's continued eligibility can no longer be verified through that same database or another eligibility database. The rule change creates a more rigorous and verifiable recertification process and is tailored to provide additional focus on subscribers who have changes in their eligibility from year to year. The Commission also amends the rules to accommodate this process in the National Verifier. If the ETC is unable to re-certify the subscriber's eligibility or is notified by the National Verifier or the relevant state administrator that the subscriber is unable to be re-certified, the ETC shall proceed with the de-enrollment requirements in § 54.405(e)(4) of the rules.

74. Amending the Commission's rules to require this additional recertification step closes off another avenue for waste, fraud, and abuse within the Lifeline program by requiring additional documentation from subscribers whose eligibility was previously confirmed through an eligibility database but are no longer included in any eligibility database. This change balances the need to increase the integrity of the Lifeline program by ensuring that subscribers continue to demonstrate eligibility each year, with the limited burden of providing additional documentation only when the situation warrants it. The proposal is supported by state agency commenters, many of whom noted the importance of verifying eligibility in situations where a subscriber's eligibility cannot be determined through a check of a database. The National Lifeline Association and ETCs also note their support for the requirement.

75. Some commenters express concern that this requirement would be burdensome for low-income subscribers because it would require them to produce additional documentation. Smith Bagley, Inc. (SBI) also argues that subscribers aged 60 years or older and residing on Tribal lands should be exempt from the requirement to produce additional documentation if their eligibility cannot be first determined through a database check. SBI contends that if such a customer can no longer be verified as a Medicaid participant in a database, ''it is statistically likely that they also qualify via household income or [Supplemental Security Income]'' because, among SBI's Lifeline customers aged 60 years or older, ''approximately 39% qualified via household income compared to 12% of its entire Lifeline base.'' SBI contends that for this subset of subscribers, requiring the submission of eligibility documentation would be particularly burdensome because of mobility restrictions and other difficulties. The Commission is cognizant of the burdens that providing additional documentation can have on some low-income consumers, including those over the age of 60, and so the rule is tailored to only require supporting documentation when eligibility was confirmed through a database check, the subscriber is no longer included in that database, and eligibility cannot otherwise be verified through a check of another state or Federal eligibility or

income database. Accordingly, the Commission declines to implement SBI's suggestion to permit Lifeline subscribers on Tribal lands over the age of 60 to self-certify their eligibility when they cannot otherwise be verified through a database. Recognizing that it may be a challenge for some to submit documentation in accordance with this rule, but this yearly requirement balances the need to maintain the integrity of the Lifeline program while minimizing the burden on individual subscribers. Also declining to implement the recommendation of the Oklahoma Corporation Commission's Public Utility Division to eliminate all self-certifications, as finding that the self-certification process at the time of recertification strikes a balance by limiting administrative burdens on program participants while still maintaining the integrity of the Lifeline program by enforcing a verifiable process by which to confirm eligibility.

76. The Commission therefore amends § 54.410(f) of the Commission's rules to reflect these changes, and directs USAC to update the recertification forms as necessary to reflect these changes. The changes contain new or modified information collection requirements, which will not be effective until approved by the Office of Management and Budget. The effective date will be announced in a future **Federal Register** document. Any recertification initiated on or after the effective date must comply with the amended rules.

77. *Risk-Based Auditing.* The Commission next modifies the Lifeline program's audit requirements to better target potential non-compliance and reduce burdens on some ETCs. Participants in the Lifeline program are subject to substantial oversight and compliance reviews. With oversight from the Commission's Office of the Managing Director (OMD), USAC is responsible for conducting, either itself or through third parties, Beneficiary and Contributor Audit Program (BCAP) audits and Payment Quality Assurance (PQA) reviews of program participants. More recently, USAC has conducted additional reviews as requested in the July 2017 Letter to USAC. Additionally, under the Commission's Biennial Audit framework, ETCs receiving $5 million or more in reimbursements from the Lifeline program are required to obtain an independent audit that is intended ''to assess the ETC's overall compliance with the program's requirements.'' In the *2017 Lifeline Order and NPRM,* the Commission sought comment on its proposal to modify the Biennial Audit requirements from a $5 million reimbursement threshold to a purely risk-based model.

78. Finding that targeted tools are necessary to identify abusers of the program and to ensure that USAC's procedures are sufficient to properly administer the Lifeline program, the Commission adopts a new approach that will use risk-based factors—rather than the level of Lifeline disbursements—to identify ETCs that must complete Biennial Audits pursuant to § 54.420(a) of the Commission's rules. As one commenter argues, ''the number of subscribers served by a provider,'' and thus the level of reimbursements made to the provider, ''is not indicative of its risk profile.'' The Commission agrees that the amount of reimbursements should not be the only factor to consider in determining when a Biennial Audit is necessary under § 54.420(a) of the rules. Accordingly, the Commission directs USAC to develop and submit for approval by OMD and the Bureau a list of proposed risk-based factors that would trigger a Biennial Audit under § 54.420(a) of the Commission's rules in accordance with the guidance provided in the GAO's Yellow Book and the Office of Management and Budget (OMB) Circular No. A–123, *Management's Responsibility for Internal Control.* A risk-based approach for biennial audits will incorporate a wider range of risk factors that will better identify waste, fraud, and abuse in the program because these factors will target potential violations rather than only companies that happen to receive a certain level of Lifeline reimbursements. To ensure the efficient and effective implementation of the approach, the Commission directs OMD and the Bureau, in conjunction with USAC, to update the Biennial Audit Plan as necessary to reflect the changes made herein and otherwise implemented since the development and release of the last Biennial Audit Plan. Commenters generally welcome this move to a targeted, risk-based approach, noting that this approach will be much more effective at weeding out waste, fraud, and abuse than the current method. The move also would likely result in cost savings for ETCs that were targeted simply due to their size. Risk-based audits will direct resources to where they are needed more—the monitoring of providers that exhibit certain risk factors that warrant further investigation through an audit.

79. ETC commenters request that the Commission work with stakeholders in developing the risk register. While the Commission appreciates ETCs' interest in developing risk-based factors, it is important that the Commission receive recommendations from USAC, including any experts it may hire, based on standard methodologies for identifying risk-based factors and developing risk registers. As such, the Commission declines to direct OMD or USAC to seek comment on the risk register from any particular stakeholders, but instead anticipate that OMD and the Bureau will direct USAC to use auditing best practices, including the GAO Yellow Book, for identifying risk-based factors and developing the recommendations for the risk register. The Commission expects that such efforts by USAC to develop the risk register will follow relevant Federal guidance on evaluating and managing risk. The Commission highlights that the approach is designed to maintain the integrity of the audit process such that the risk register will serve its intended purpose of aiding in the detection and prevention of fraud, waste, and abuse in the program. The Commission notes that it already uses the approach for other Lifeline audit plans. For example, the FCC and USAC do not share the annual risk analyses used to select auditees pursuant to the Beneficiary and Contributor Audit Program. The Commission further notes that, pursuant to the guidance in OMB Circular A–123, it is within the Commission's discretion to adopt an approach ''that will ensure the greatest financial benefit for the government,'' and the Commission believes that this risk-based approach will do so by directing resources toward audits where instances of waste, fraud, and abuse are more likely to be revealed. Finally, the approach will ensure that the development of the risk register will remain flexible so that USAC can adjust the risk register to meet any changes in the Lifeline program. The changes will become effective January 27, 2020.

80. The Commission also addresses several outstanding petitions to resolve pending questions pertaining to the rules and oversight of the Lifeline program and to provide clarity to program participants. The Commission addresses USTelecom's petition for reconsideration and clarification of the *2016 Lifeline Order;* the National Association of State Utility Consumer Advocates (NASUCA) petition for reconsideration of the *2016 Lifeline Order;* the petitions of USTelecom and General Communication, Inc. (GCI) and the joint petition of NTCA—the Rural Broadband Association (NTCA) and WTA—Advocates for Rural Broadband (WTA) seeking reconsideration of the *2016 Lifeline Order;* the National Lifeline Association (NaLA) 2018

petition for declaratory ruling that the Commission allow ETCs to seek reimbursement for eligible subscribers during the non-usage cure period; and TracFone's 2012 petition for declaratory ruling and interim relief regarding actions taken by the Puerto Rico Telecommunications Regulatory Board to address duplicate Lifeline subscribers identified by the Board. The Commission partially grants the petitions of USTelecom and GCI and the joint petition of NTCA and WTA and the Commission dismisses as moot or denies the other petitions.

81. *ETC Service Obligations.* Pending before the Commission is USTelecom's Petition for Reconsideration and Clarification of the *2016 Lifeline Order.* The Commission dismisses as moot USTelecom's requests that the Commission (1) extend the effective date for the requirement to offer Lifeline-supported broadband internet access service, and (2) apply to non-Lifeline Broadband Providers the Commission's clarification that for Lifeline Broadband Providers, ''media of general distribution'' in section 214(e)(1)(B)'s advertising requirement means media reasonably calculated to reach ''the specific audience that makes up the demographic for a particular service offering.'' The requirement to offer Lifeline-supported broadband internet access service took effect on December 2, 2016. The Fifth Report and Order, eliminates the Lifeline Broadband Provider category. As a result, the Commission's clarification concerning the advertising requirements for Lifeline Broadband Providers no longer applies to any ETC. Accordingly, the Commission dismisses the requests as moot.

82. The Commission denies USTelecom's request for reconsideration of the requirement that the last ETC in a Census block continue to offer Lifeline stand-alone voice service. USTelecom argues that this requirement is ''arbitrary and capricious'' and is inconsistent with the Commission's decision to shift Lifeline support from voice service to broadband internet access service. Two parties filed comments opposing USTelecom's request for reconsideration of this requirement.

83. USTelecom's arguments do not warrant reconsideration of this requirement. The Commission adopted the requirement in the *2016 Lifeline Order,* notwithstanding its conclusion that the Lifeline program should transition to focus more on broadband internet access services, after considering (1) the historical importance of voice service, (2) that consumer migrations to new technologies are not always uniform, and (3) that measures to continue addressing the affordability of voice service may still be appropriate consistent with the objectives of sections 254(b)(1), (b)(3), and 254(i) of the Act. Based on its consideration of these factors, the Commission concluded that, consistent with its ''responsibility to be a prudent guardian of the public's resources,'' continued support for voice services should prioritize in an ''administrable way, those areas where the Commission anticipates there to be the greatest likely need for doing so,'' and that it made the most sense to provide any continued support for stand-alone voice to the last ETC serving the Census block. The Commission acknowledged that this support could be targeted in other ways (*e.g.,* based on other geographies, or demographic criteria), but was not persuaded that these other approaches would be easily administrable. The Commission also determined that it made the most sense to provide this continued support to the single, existing ETC serving the Census block rather than requiring the designation of a new provider for this purpose.

84. Finding that the Commission's decision to require the last ETC serving a Census block to continue offering Lifeline-supported voice service is not inconsistent with the decision and supporting rationale for shifting Lifeline dollars from voice service to broadband internet access service. As explained in the *2016 Lifeline Order,* the Commission adopted this requirement after considering a number of factors, including the objectives of section 254(b), and also narrowly tailored this approach to meet the needs of areas where the Commission anticipated the greatest likely need for addressing the affordability of stand-alone voice services. USTelecom has not demonstrated that the Commission erred in considering these factors or adopting a narrowly tailored solution to address them.

85. While USTelecom argues that the existence of one ETC does not correlate to the absence of multiple voice providers, and that the rates of non-ETC voice providers would not be higher in Census blocks where there is only one ETC, USTelecom's petition fails to provide any specific evidence to support those arguments. USTelecom also has not demonstrated that the Commission erred in determining that focusing on Census blocks with one ETC was the most readily administrable approach, or that it made the most sense to require the single existing ETC already serving the Census block to continue to provide stand-alone Lifeline voice service. Accordingly, the Commission denies USTelecom's request for reconsideration of the requirement that the last ETC in a Census block continue offering Lifeline standalone-voice service.

86. *Backup Power.* The Commission next addresses a June 23, 2016, NASUCA petition for reconsideration of the *2016 Lifeline Order* arguing that, among other issues, the *Order* did not ''require that payment arrangements be offered for back-up power for Lifeline customers.'' NASUCA requests that the Commission ''at the very least require Lifeline ETCs to offer [Lifeline subscribers] extended payment plans for the back-up power option'' or permit ''back-up power [to] be provided at no additional cost to the Lifeline consumer.'' CenturyLink, GVNW and USTelecom opposed this portion of NASUCA's petition for reconsideration and argue that the Commission should reject or decline to consider NASUCA's back-up power proposals for Lifeline consumers. The Commission declines to grant NASUCA's request.

87. NASUCA's arguments concerning Lifeline support for backup power arrangements do not warrant reconsideration of the *2016 Lifeline Order.* NASUCA's petition does not point to any errors of fact or law in the *2016 Lifeline Order.* Instead, NASUCA's petition reprises the same arguments that NASUCA made in its comments responding to the *2015 Lifeline Order and FNPRM* and requests a change in the Commission's policies that would allow Lifeline support for backup power. The Commission's current rules do not require Lifeline providers to allow Lifeline consumers to make installment payments for backup power and do not provide Lifeline support for backup power options. The approach is consistent with the Commission's determination in 2015 and 2016 that backup power is a matter of consumer choice and should be funded by individual consumers. Specifically, in the *Ensuring Continuity of 911 Communications Reconsideration Order* (FCC 15–98; 80 FR 62470 (Oct. 16, 2015)), the Commission recognized the importance of ''ensur[ing] that all (including low-income) consumers have the ability to communicate during a power outage,'' but ultimately found that its previous conclusion that backup power is a matter of consumer choice to be funded by individual consumers ''appropriately balanced competing interests in ensuring that consumers had the ability to purchase backup power.'' Given the Commission's prior, thorough

consideration of backup power issues for all consumers, including low-income consumers, the fact that the *2016 Lifeline Order* does not adopt NASUCA's backup power proposals for Lifeline consumers does not warrant reconsideration of the *2016 Lifeline Order.*

88. *Rolling Recertification.* The Commission next partially grants the petitions of USTelecom and GCI and the joint petition of NTCA and WTA (collectively, Petitioners) that request reconsideration of the 2016 decision to implement rolling recertification prior to the implementation of the National Verifier. Petitioners argue that the Commission failed to provide sufficient notice of the rule change prior to adoption in the *2016 Lifeline Order.* The Petitioners raise strong arguments that the logical outgrowth standard is not satisfied here. In light of the Petitioners' arguments and the desire to develop a full and complete record, the Commission hereby grants the petitions for reconsideration as they apply to the discrete rule and reverses the rolling recertification requirement for ETCs pending future disposition of the issues raised.

89. In the *2016 Lifeline Order,* the Commission mandated rolling recertification, which required an ETC to recertify each Lifeline customer's eligibility every 12 months, as measured from the customer's service initiation date, except in states where the National Verifier, state Lifeline administrator, or other state agency conducts the recertification. The Commission found that the change would create administrative efficiencies while avoiding the imposition of undue burdens on providers, USAC, or the National Verifier. Previously, ETCs were simply required to annually certify the continued eligibility of subscribers, except for those in states where the state Lifeline administrator or other state agency conducts the recertification. In the *2015 Lifeline Order and FNPRM,* the Commission sought comment on the National Verifier's role in the recertification process and other potential National Verifier functions, but did not propose or seek specific comment on changes to the recertification process in states where the National Verifier had not yet launched.

90. Petitioners contend that the language of the *2015 Lifeline Order and FNPRM* did not provide adequate notice, as required by the Administrative Procedure Act (APA), that the Commission was contemplating revising § 54.410(f)(1) to implement a rolling recertification requirement for providers before the National Verifier launched. On reconsideration, the Commission agrees that the *2015 Lifeline Order and FNPRM* did not explicitly notice the Commission's intent to require rolling recertification before the National Verifier launched. Although the APA does not require that the notice ''specify every precise proposal which [the agency] may ultimately adopt as a rule'' or that the final rule ''be the one proposed in the NPRM,'' the final rule must be a '''logical outgrowth' of its notice.'' A rule is considered a ''logical outgrowth'' of the Notice if a party should have anticipated that the rule ultimately adopted was possible.

91. Here, the Commission agrees that a party could not be expected to have anticipated that a notice of proposed rulemaking seeking comment on the National Verifier's role in the recertification process would result in a rule requiring ETCs to recertify subscribers every 12 months as measured from each subscriber's service initiation date, even in states where the National Verifier has not launched. Accordingly, the Commission reverses, solely on notice grounds, the rolling recertification requirement on ETCs. As of the effective date of the *Order,* ETCs will not be required to complete recertification of a Lifeline customer's eligibility by the anniversary of that customer's service initiation date. Instead, the recertification process must merely be completed on an annual basis pursuant to the revised § 54.410(f)(1) of the Commission's rules. The Commission notes that ETCs, USAC, and the National Verifier may continue to use a rolling recertification approach, as that would meet the requirement for annual recertification. Recertifications for all eligible Lifeline subscribers must be completed by the end of each calendar year, unless the requirement otherwise is waived by the Bureau or Commission. All other Commission guidance and rules with respect to the recertification process remain in effect.

92. *Reimbursement Under the Usage Requirement.* The Commission next denies the Petition for Declaratory Ruling filed by NaLA asking the Commission to permit ETCs to seek reimbursement ''for all Lifeline eligible subscribers served as of the first day of the month'' pursuant to the Commission's non-usage rules, ''including those subscribers that are in an applicable 15-day cure period following 30 days of non-usage.''

93. In the *2012 Lifeline Order,* as a measure intended to reduce waste in the program, the Commission introduced a requirement that an ETC that did not assess and collect from its subscribers a monthly charge could not receive support for subscribers who had either not activated service, or who had not used the service within a consecutive 60-day period. In this way, ETCs would only receive support for eligible low-income subscribers who actually use the service. ETCs were also required to notify their subscribers of possible de-enrollment at the end of the 60-day period if the subscriber failed to use the Lifeline supported service during the next 30 days. In the *2016 Lifeline Order,* the Commission shortened the non-usage period from 60 to 30 days, along with a corresponding reduction in the time allotted for service providers to notify their subscribers of possible termination from 30 to 15 days. Per the change, ETCs must notify subscribers of possible de-enrollment on the 30th day of non-usage and de-enroll the subscriber if, during the subsequent 15 days, the subscriber has not used the service.

94. NaLA's petition for declaratory ruling requested that the Commission permit Lifeline ETCs to seek reimbursement for all Lifeline subscribers served on the first day of the month, including those subscribers receiving free-to-the-end-user Lifeline service who are in the 15-day cure period per the Commission's non-usage rules. NaLA states that USAC's website changed its guidance from allowing reimbursement for Lifeline subscribers during the 15-day cure period of the non-usage rule to disallowing ETCs to claim reimbursement for subscribers during the 15-day cure period. NaLA further states that disallowing reimbursement for those subscribers enrolled during the 15-day cure period would be arbitrary and capricious because it ignores the language of § 54.407(a) and disregards ETCs' ''reasonable reliance on the initial guidance'' provided by USAC. NaLA also asserts that disallowing reimbursement for subscribers in the 15-day cure period for non-usage potentially would constitute a regulatory taking without just compensation, in violation of the United States Constitution.

95. SBI, Sprint Corporation, and Q Link Wireless all filed comments in support of NaLA's Petition. SBI states that the Lifeline rules ''entitle SBI to reimbursement for all Lifeline customers it serves directly as of the first of the month'' making ''SBI entitled to reimbursement for a customer whose 'cure' period includes the snapshot date.'' It further states that nowhere do the rules require ''SBI to go back after the end of the 'cure' period and return

the Lifeline subsidy [because] there is nothing to return since SBI was providing service during that period.'' Sprint states that ''service providers incur significant costs for accounts in mandatory cure status'' as that subscriber's account ''remains active, and the service provider continues to incur the costs associated with an active account.'' Both Sprint and SBI argue that inefficiencies result from an ETC not being able to claim a subscriber during the cure period but then filing for reimbursement if the subscriber ultimately ends up using the service during the cure period. Q Link reiterates NaLA's argument that mandating Lifeline service to subscribers in a cure period but prohibiting ETCs from claiming such subscribers would effect a regulatory taking.

96. The Commission denies NaLA's Petition requesting permission to seek reimbursement for subscribers who have not used the Lifeline supported service in 30 consecutive days. The non-usage rule states that an ETC offering free-to-the-end-user Lifeline service ''shall only continue to receive universal service support reimbursement for such Lifeline service provided to subscribers who have used the service within the last 30 days . . . .'' ETCs are further obligated to provide a subscriber who has not used her or his service within those 30 days ''15 days' notice . . . that the subscriber's failure to use the Lifeline service within the 15-day notice period will result in service termination for non-usage.'' Read together, the plain language of the rules does not confer any right for the ETC to receive reimbursement during the 15-day cure period. The rules expressly state that ETCs can seek reimbursement only for subscribers who use their service within a consecutive 30-day period. The 15-day cure period serves as a notification to the subscriber that she must use her service, or it will be automatically terminated at the end of the 15 days. NaLA's argument that it should be able to seek support during the 15-day notice and cure period is intended effectively to extend the non-usage period by 50%.

97. The Commission is not persuaded by NaLA's argument for granting the petition because it relied on informal staff guidance and USAC's website. Commission precedent is clear that carriers must rely on the Commission's rules and orders even in the face of conflicting informal advice or opinion from USAC or Commission staff. NaLA and others must rely on the plain language of the non-usage rules, as codified by the Commission, which state that ETCs will not be eligible to be reimbursed for those subscribers who are in a 15-day non-usage cure period regardless of whether the subscriber's 15-day cure period includes the snapshot date. Additionally, the Commission notes that a group of ETCs with at least some overlap with the current NaLA Petitioners acknowledged that the Commission's rules require ETCs to keep Lifeline subscribers enrolled in the program during the cure period without requesting reimbursement for that service.

98. The Commission also rejects NaLA's argument that § 54.407(a) and (c)(2) of the Commission's rules are inconsistent and in conflict. Section 54.407(c)(2) prohibits ETCs providing free-to-the-end-user Lifeline service from claiming support for subscribers who have not used their Lifeline service in the last consecutive thirty days or who have not cured their non-usage. While § 54.407(a) of the rules generally provides for the payment of reimbursements to ETCs for qualifying subscribers in the NLAD on the first day of the month, § 54.407(c)(2) of the rules places a specific restriction on the general rule declaring which subscribers an ETC can claim for reimbursement. The specific language in a rule prevails over more general language. Because the specific language of § 54.407(c)(2) of the rules provides a limitation on the general reimbursement rule of § 54.407(a) and also clearly states that an ETC ''shall *only* continue to receive universal service support reimbursement'' for subscribers who have used their service within a 30 consecutive day period, it is not arbitrary for the Commission to determine that ETCs are not owed payment for the 15-day notification period required by § 54.405(c)(3) that falls beyond the 30-day non-usage period per the rule. The Commission also notes that the alternative to the 15-day cure period is to require an ETC to immediately de-enroll a subscriber from the Lifeline program on day 30 of non-usage, which would result in the subscriber's service being disconnected with no notice to the subscriber and would therefore be contrary to the public interest.

99. Finally, the Commission disagrees with NaLA's argument that requiring ETCs to provide uncompensated service during the 15-day cure period would violate the Takings Clause of the Fifth Amendment. The Takings Clause prohibits the government from taking ''private property . . . for public use, without just compensation.'' While NaLA's Petition does not elaborate on the argument, Q-Link explains that denying compensation during the 15-day cure period would effectively mandate that subscribers ''be permitted physically to occupy portions of the ETC's network and airtime . . . without just compensation.'' There is a simple problem with the argument: Any actual use of an ETC's network—even the sending of a single text message—would establish subscriber ''usage,'' entitling the ETC to reimbursement. In other words, the Commission's rules deny compensation only where there is no use—and therefore, under Q-Link's formulation, no physical occupation. Where there *is* actual use during this 15-day period, ETCs would receive compensation.

100. The potential taking, then, is merely the burden of providing a wholly unused service for fifteen days. While NaLA and other commenters provide no information on the weight of the burden, it is far from the kind of permanent condemnation of physical property that typifies a *per se* taking. Nor would it amount to a regulatory taking: (1) The economic impact of a 15-day period of uncompensated service would be light; (2) the rule would not upend any reasonable investment-backed expectation; and (3) any interference could not fairly be characterized as a ''physical invasion by government,'' notwithstanding Q-Link's arguments to the contrary.

101. For these reasons, the Commission denies NaLA's Petition. ETCs are not entitled to reimbursement during the 15-day cure period for a subscriber who has not used the service within 30 consecutive days unless the subscriber cures the non-usage, after which the ETC may seek reimbursement.

102. *State Efforts to Eradicate Duplicate Claims.* The Commission denies a TracFone Petition for Declaratory Ruling and Interim Relief filed in 2012 concerning actions taken by the Puerto Rico Telecommunications Regulatory Board (Board or TRB) to address duplicate Lifeline subscribers as identified by the Board. The regulations and processes enacted by the Board to address duplicative Lifeline support in Puerto Rico were valid and not subject to preemption by the Commission. Specifically, the Commission finds that the Board was not required to adopt the interim procedures concerning duplicate Lifeline subscribers outlined in the Commission's *2011 Duplicative Payments Order* (FCC 11–97; 76 FR 38040 (June 29, 2011)) because those procedures established a minimum set of requirements for USAC to use to address duplicate Lifeline subscribers that USAC identified through in-depth data validations and other similar audits. In addition, the Commission

finds that the Board's de-enrollment procedures did not conflict with or serve as an obstacle to the de-enrollment procedures adopted by the Commission and, as a result, were not subject to preemption. The Commission also notes that many of the policy concerns raised by TracFone and commenters concerning the Board's process have either been addressed by (1) changes the Board made to its duplicate policies and procedures soon after TracFone's petition was filed, (2) the fact that the Board filed a request to opt out of the NLAD in November 2012, or (3) the fact that the NLAD now conducts duplicate checks for Puerto Rico subscribers following the Bureau's 2015 grant of Puerto Rico's request to opt into the NLAD.

103. According to TracFone's Petition, the Board sent letters to TracFone and several other ETCs in January and February 2012 together with a list of duplicate subscribers, and instructed the ETCs to de-enroll these subscribers by a specified date. TracFone argues that the Board letters instructing ETCs to de-enroll the consumers violate (1) the intent of section 254(b)(3) of the Communications Act, which establishes as a core principle the goal that consumers in all regions of the Nation, ''including low-income consumers,'' have access to affordable telecommunications services, and (2) the rules and procedures governing de-enrollment of ''duplicates'' established by the Commission on an interim basis in 2011 and those later adopted on a permanent basis in 2012. TracFone argues that the Board should be required to adopt the Industry Duplicate Resolution Process outlined by the Commission in its *2011 Duplicative Payments Order.* TracFone also points to the opt-out process outlined in the *2012 Lifeline Order,* which codified a permanent approach for addressing duplicates in the Federal rules, and argues that the Board did not follow the process, and that the Board's process has the potential to leave residents without service, in violation of the *2012 Lifeline Order.* Finally, TracFone requests that the Commission issue an order concluding that the directives to ETCs contained in the Board's letters are unlawful and preempted.

104. Multiple commenters filed in support of TracFone's Petition, agreeing that the Commission should issue a declaratory ruling and arguing that the Board's actions directing TracFone and other ETCs to de-enroll duplicate subscribers were unlawful, contrary to universal service program policy and inconsistent with Federal procedures. NASUCA, in its comments, also recommended that the Commission issue a ruling (1) that Puerto Rico consumers who are eligible for Lifeline be allowed to maintain one Lifeline service per household, even if they had received duplicate Lifeline service previously, and (2) clarifying that states that operate their own systems for identifying duplicates are required, as a condition of opting out of the Federal duplicate resolution process, to include safeguards to allow eligible consumers to receive one Lifeline service per household.

105. Several commenters point to the duplicates resolution measures adopted by the Commission and raise concerns that the Board process for addressing duplicates deviates from the process the FCC outlined in the *2011 Duplicative Payments Order,* the *2012 Lifeline Order,* and the *June 2011 Guidance Letter* (DA 11–1082). NASUCA, for example, argues the Commission should clarify that state systems that opt out of following the Federal approach must include both the functional capabilities and safeguards equivalent to those administered by USAC. Sprint and PRTC argue that the Board should adopt the FCC's processes and procedures. Sprint, PRTC, and T-Mobile point to the need for nationwide consistency in addressing the duplicates issue. PR Wireless agrees with Tracfone that the Board's processes are inconsistent with Federal procedures. Several commenters raise concerns that the process established by the Board will result in consumers being barred from receiving service for an extended period of time (from four months to a year) if they are determined to be receiving service from more than one carrier. One commenter also raises concerns regarding how the Board was addressing situations where there are multiple households at a single address.

106. The Commission has taken a number of important steps to create robust processes and procedures to address the issue of duplicative Lifeline support. In the Commission's *2011 Duplicative Payments Order,* the Commission clarified that qualifying low-income consumers may receive no more than a single Lifeline benefit and established the requirement that an ETC, upon notification from USAC, de-enroll any subscriber that is receiving multiple benefits in violation of that rule. The Commission also directed the Bureau to send a letter to USAC to implement an administrative process to detect and resolve duplicative claims that was consistent with the proposed Industry Duplicate Resolution Process submitted by a group of ETCs. This was intended as an interim process, ''while the Commission considers more comprehensive resolution of this and other issues raised in the *2011 Lifeline and Link Up NPRM* (FCC 11–32 [76 FR 16482 (March 23, 2011)]).'' Then, in 2012, the Commission adopted a number of Lifeline program reforms and codified a more permanent approach to address duplicative support. Specifically, in the *2012 Lifeline Order,* the Commission created and mandated the use by ETCs of the NLAD with specified features and functionalities designed to ensure that multiple ETCs do not seek and receive reimbursement for the same subscriber.

107. The Commission finds that the Board's actions did not run afoul of the rules or the Act. Under section 254(f) of the Telecommunications Act of 1996, ''[a] State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service.'' In addition, ''[a] State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.'' In the *2011 USF/ICC Transformation Order* (FCC 11–161; 76 FR 73830 (Nov. 29, 2011)), the Commission stated that section 254(f) permitted states to impose additional reporting requirements as long as they ''do not create burdens that thwart achievement of the universal service reforms set forth in this *Order.*'' The Commission concludes the Board's policies and procedures did not rely on or burden Federal universal service support mechanisms. In fact, the Board's policies were assisting the Federal universal service program by addressing the Lifeline duplicates issue, consistent with the overall objectives of the *2011 Duplicative Payments Order* and were being undertaken and implemented using the Board's own resources. The Board is responsible for regulating telecommunications services in Puerto Rico. In accordance with statutes adopted by the Puerto Rico General Assembly, the Board has a mandate to ''preserve and promote universal service through predictable, specific and sufficient support mechanisms'' and to ensure that the Lifeline subsidy is limited to ''a single wireless telephone line or to a single wireless service for the family unit.'' It was with this mandate in mind that the Board took action to address duplicate Lifeline recipients after the Board

became aware that this was a significant concern in Puerto Rico. According to the Board, based on a review of information it had requested from ETCs on a quarterly basis, ''the Board became aware of many cases where the subscribed participants were receiving the service from more than one carrier.''

108. The actions of the Board were not in conflict with the rules and thus did not trigger the criteria for Federal preemption. When the Board sent the letters to TracFone concerning duplicate Lifeline subscribers in January and February of 2012, only the Commission's interim procedures established in the *2011 Duplicative Payments Order* were in effect. The rule regarding de-enrollment adopted in the *2011 Duplicative Payments Order* specified that, ''upon notification by the Administrator to any ETC'' that a subscriber is already receiving Lifeline service from another ETC, ''the ETC shall de-enroll the subscriber from participation in that ETC's Lifeline program within 5 business days.'' The policy adopted by the Board, however, did not relate to duplicates identified by the Administrator but, rather, to those duplicates identified *by the Board.* The Board regulations specified that the Board would identify duplicates and that ETCs would have no more than 10 working days (from the date the Board duplicates notice was sent) to notify consumers they were ineligible for the service. The Board also adopted other policies related to duplicates, but these policies did not conflict with or serve as an obstacle to the Commission's rules. While the Commission stated in its *2011 Duplicative Payments Order* that ''these new rules would apply to ETCs in all states, regardless of that state's status as a [F]ederal default state or a non-default state,'' the *2011 Duplicative Payments Order* did not explicitly bar states from imposing their own policies and procedures, unless such regulations were ''in conflict with or serve[d] as an obstacle to implementation of the de-enrollment procedures'' adopted in the *2011 Duplicative Payments Order.* The Commission finds the Board's policies were neither in conflict with nor an obstacle to implementation of the Commission's *2011 Duplicative Payments Order* procedures.

109. Indeed, the Commission finds that the Board's process was consistent with the overall approach that the Bureau directed USAC to follow in the *June 2011 Guidance Letter.* There, the Bureau directed USAC, in cases where the duplicate subscriber was the same individual at the same address, to identify duplicative subscribers and notify ETCs, identify a ''default ETC,'' and notify subscribers that they had 35 days to either choose a provider or begin receiving service from only the default provider. After the 35-day timeframe, USAC was directed to notify the provider regarding the subscribers that should be de-enrolled. The Board process enabled consumers to appeal the Board decision regarding their duplicate status and, as later amended, also enabled subscribers to continue to receive service ''with the service to which the subsidy was first applied.'' As a result, the Board process allowed subscribers to dispute the Board's findings and continue to receive service while also addressing the duplicates issue, which was in line with the overall approach the Bureau recommended for USAC to follow.

110. TracFone's claims that the Board failed to make the required opt-out filing (claims which were made before the opt-out deadline occurred) are not accurate. At the time the Board sent the letters to TracFone concerning duplicate Lifeline subscribers, the Commission's changes in the *2012 Lifeline Order* to adopt more permanent duplicate procedures and establish the NLAD, and permit states to opt out of the NLAD, were not yet in effect. In the *2012 Lifeline Order,* the Commission approvingly acknowledged that some states had already developed their own systems to check for duplicative Lifeline support, stating its intent not to inhibit state progress. The Commission also clarified that ''[w]e allow states to opt-out of the duplicates database requirements outlined in the *Order* if they certify one time to the Commission that they have a comprehensive system in place to check for duplicative [F]ederal Lifeline support that is as *at least as robust* as the processes adopted by the Commission and that covers all ETCs operating in the state and their subscribers.'' In October 2012, the Bureau issued a public notice outlining the process states must follow to opt out of the NLAD. The Board made a filing with the Commission seeking to opt out of the NLAD and the duplicates resolution process in November 2012 in which the Board described the system and processes it had in place to check for duplicative Lifeline support. Therefore, TracFone's claims that the Board failed to make the required opt-out filing are not accurate. For all of these reasons, the Commission denies TracFone's petition.

III. Severability

111. All of the actions taken by the Commission in the Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration are designed to work in unison to make voice and broadband services more affordable to low-income households and to strengthen the efficiency and integrity of the Lifeline program's administration. However, each of the separate Lifeline reforms the Commission undertakes in the Fifth Report and Order, Memorandum Opinion, and Order and Order on Reconsideration serves a discrete function. Therefore, it is the intent that each of the rules adopted shall be severable. If any of the rules is declared invalid or unenforceable for any reason, it is the Commission's intent that the remaining rules shall remain in full force and effect.

IV. Procedural Matters

A. Paperwork Reduction Act Analysis

112. The *Order* contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the revised information collection requirements contained in the proceeding. In addition, the Commission noted that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, the Commission previously sought specific comment on how it might further reduce the information collection burden on small business concerns with fewer than 25 employees.

B. Congressional Review Act

113. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that the rules are non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration and the FRFA (or summaries thereof) will also be published in the **Federal Register.**

C. Final Regulatory Flexibility Analysis

114. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to the Fifth Report and Order, and Memorandum Opinion and Order and Order on Reconsideration. The Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

115. Need for, and Objectives of, the Final Rules. The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254. The Lifeline program was implemented in 1985 in the wake of the 1984 divestiture of AT&T. On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Since the *2012 Lifeline Order,* the Commission has acted to address waste, fraud, and abuse in the Lifeline program and improved program administration and accountability. In the *Order,* the Commission eliminates the Lifeline Broadband Provider (LBP) designation category and the Federal designation process for Lifeline Broadband Providers. The Commission also takes steps to strengthen the reliability and integrity of the Lifeline program's enrollment, recertification, reimbursement, and audit processes.

116. Pursuant to these objectives, the Commission adopts changes to its Lifeline program rules. First, to restore the traditional categories of eligible telecommunications carriers (ETC) and ETC obligations, the Commission eliminates the Lifeline Broadband Provider ETC category and the Federal designation process for Lifeline Broadband Providers. Accordingly, the Commission eliminates § 54.201(j) of the rules, which precluded states from designating Lifeline Broadband Providers. In addition, the Commission also eliminates §§ 54.202(d)(1) through (3) and (e) and 54.205(c) of the rules.

117. To further improve the integrity of the Lifeline enrollment process, the *Order* prohibits ETCs from offering or paying commissions to enrollment representatives or their direct supervisors based on the number of Lifeline applications submitted or enrollments approved. Additionally, to prevent waste, fraud, and abuse in the Lifeline program, the Commission further requires all ETC enrollment representatives who provide information to USAC or a state entity administering a state Lifeline program during the Lifeline enrollment process to register with USAC. The Commission amends its rules to require each ETC enrollment representative to register with USAC and obtain a unique registration number prior to accessing the NLAD or National Verifier. Ultimately, ETCs are responsible for ensuring that their enrollment representatives complete the registration process.

118. The Commission also amends its rules regarding the recordation of information related to the Independent Economic Household (IEH) Worksheet. The Commission finds that amending § 54.404(b)(3) of the Commission's rules to permit ETCs to record an IEH worksheet in the NLAD only when the NLAD has alerted the ETC that the prospective subscriber shares the same residential address as another Lifeline subscriber is a reasonable approach to support USAC's efforts in identifying duplicate addresses. ETCs shall not record an IEH worksheet in NLAD in any other situation. Additionally, to further combat waste, fraud, and abuse in the Lifeline program, the Commission adds a new rule, § 54.404(b)(12), notifying ETCs that they must not enroll a prospective Lifeline subscriber if the NLAD or National Verifier cannot identify the subscriber as living, unless that subscriber can produce documentation demonstrating his or her identity and status as living. The revised rule prohibits ETCs from claiming subscribers that are identified as deceased for purposes of requesting or receiving reimbursement from Lifeline. If an ETC has claimed reimbursement for a period during which a subscriber was deceased, USAC is directed to reclaim reimbursements back to the time of enrollment or recertification if the subscriber was deceased and listed on the Social Security Death Master File at the time of enrollment or recertification.

119. The Commission also modifies § 54.407 of the rules to clarify that the number of eligible subscribers that an ETC may claim for reimbursement must be the number of qualifying subscribers the ETC directly serves as of the snapshot date as indicated by the NLAD. In the case of NLAD opt-out states (California, Oregon, and Texas), ETCs may also base claims for reimbursement on any reports or information the state administrator provides to the ETC concerning the subscribers that can be claimed. The Commission amends § 54.410(f)(2)(iii) of the rules to require ETCs to collect eligibility documentation from the subscriber at the time of recertification if the subscriber's eligibility was previously verified through a state or Federal eligibility or income database and the subscriber's continued eligibility can no longer be verified through that same database or another eligibility database. The rule change creates a more verifiable recertification process and is tailored to provide additional focus on subscribers who have changes in their eligibility from year to year. The Commission also amends its rules to accommodate the process in the National Verifier. If the ETC is unable to re-certify the subscriber's eligibility or is notified by the National Verifier or the relevant state administrator that the subscriber is unable to be re-certified, the ETC shall proceed with the de-enrollment requirements in § 54.405(e)(4) of the rules.

120. The Commission also amends its recertification rules to require ETCs to collect eligibility documentation from the subscriber at the time of recertification if the subscriber's eligibility was previously verified through a state or Federal eligibility or income database and the subscriber's continued eligibility can no longer be verified through that same database or another one. The Commission also modifies § 54.420(a) of the rules, regarding biennial audits by removing the $5 million reimbursement threshold and implementing a purely risk-based model.

121. The Commission acts on several Petitions for Reconsideration and requests to clarify ETCs' obligations under the Lifeline program. The Commission dismisses as moot USTelecom's request that the Commission extend the effective date for the requirement to offer Lifeline-supported broadband internet access service and apply to non-Lifeline Broadband Providers a clarification extended to Lifeline Broadband Providers regarding an advertising requirement. The Commission also denies USTelecom's request for reconsideration of the requirement that the last ETC in a Census block continue to offer Lifeline standalone voice service. The Commission denies the Petition for Reconsideration of the National Association of State Utility Consumer Advocates, in which the petitioners objected to the Commission's previous decision not to require ETCs to provide back-up power payment arrangements or other options to Lifeline consumers. The Commission also clarifies when an ETC may seek reimbursement for subscribers who are within the cure period that is triggered by the non-usage rules. The Commission also grants requests for reconsideration

of the Commission's rolling recertification requirement filed by USTelecom, NTCA and WCA (jointly), and GCI and revises § 54.410(f)(1) of the rules by removing the rolling recertification requirement and reinstating the requirement that recertifications be completed annually. Furthermore, the Commission also denies a TracFone Petition for Declaratory Ruling and Interim Relief filed in 2012 concerning actions taken by the Puerto Rico Telecommunication Regulatory Board to address duplicate Lifeline subscribers as defined by that board.

122. *Summary of Significant Issues Raised by Public Comments to the IRFA.* The Commission received no comments in direct response to the IRFA contained in the *2017 Lifeline Order and NPRM.*

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

124. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. Therefore, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 29.6 million businesses.

125. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

126. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 12,184 special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on the data the Commission estimates that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

127. The small entities that may be affected are Wireline Providers, Wireless Carriers and Service Providers and internet Service Providers.

128. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* A number of the rule changes will result in additional reporting, recordkeeping, or compliance requirements for small entities. For all of the rule changes, the Commission has determined that the benefit the rule change will bring for the Lifeline program outweighs the burden of the increased requirements. Other rule changes decrease reporting, recordkeeping, or compliance requirements for small entities. The Commission noted the applicable rule changes impacting small entities.

129. *Compliance burdens.* The rules implemented impose some compliance burdens on small entities by requiring them to become familiar with the new rules to comply with them. For several of the new rules, the burden of becoming familiar with the new rule in order to comply with it is the only additional burden the rule imposes.

130. *Improving Program Integrity in Program Enrollment and Recertification.* The Commission modifies its rules to improve the integrity within the Lifeline program. The *Order* prohibits ETCs from offering or providing commissions to enrollment representatives and their direct supervisors based on the number of Lifeline applications submitted or enrollments approved and requires that enrollment representatives register with USAC. The *Order* further modifies the rules regarding the recertification process, and now requires Lifeline subscribers to provide supporting documentation to prove eligibility when the subscriber's continued eligibility cannot be verified in a state or Federal eligibility database. While the changes will require ETCs to undertake additional steps to ensure compliance with the new rules, the rules will strengthen the Lifeline program by removing avenues for fraud.

131. *Limiting the Recordation of IEH Worksheets.* The Commission modifies the rules to limit the recording of an IEH worksheet in USAC's Lifeline systems only to situations where the Lifeline subscriber resides at the same address as another Lifeline subscriber. Requiring ETCs to record the collection of an IEH worksheet only where the Lifeline subscriber resides at a duplicate address decreases the burden on the carrier by reducing the situations in which an ETC must record the worksheet.

132. *Modifications to the Biennial Audit Rule.* The Commission modifies its rules to require that a risk-based approach be used to identify ETCs that must complete independent audits pursuant to § 54.420(a) of the Commission's rules rather the level of USF reimbursements. Under the new standard, which replaces the outdated threshold that limited third-party biennial audits to those providers that receive at least $5 million in Lifeline reimbursements, ETCs that receive less than $5 million in Lifeline reimbursements may now be subject to an independent audit pursuant to the rule.

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

134. The rulemaking could impose minimal additional burdens on small entities. In the *Order,* the Commission modifies certain Lifeline rules to target funding to areas where it is most needed. In developing the rules, the Commission worked to ensure the burdens associated with implementing these rules would be minimized for all service providers, including small entities. In taking these actions, the Commission considered potential impacts on service providers, including small entities. The Commission considered alternatives to the rulemaking changes that increase projected reporting, recordkeeping and other compliance requirements for small entities. The Commission's decision to amend the rules to permit an ETC to record an IEH worksheet in NLAD only in situations where a consumer shares an address with another Lifeline subscriber allows ETCs, including small entities, to continue collecting worksheets from subscribers at the enrollment process. The Commission considered the comments urging for no change to that process and found no compelling reason to prohibit the practice. By not disturbing the practice of collecting worksheets at the outset, the Commission minimized the burden on small entities. Given the narrow and targeted scope of the changes being made, no alternative readily presents itself to limit the burdens on small business or organizations. The identified increase in burden is minimal and outweighed by the advantages in combating waste, fraud, and abuse in the program.

V. Ordering Clauses

135. *Accordingly, it is ordered,* that pursuant to the authority contained in sections 1–4, 201, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201, 214, 254, and 403, and § 1.2 of the Commission's rules, 47 CFR 1.2, the Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration *is adopted* and will be *effective* January 27, 2020, except to the extent provided herein.

136. *It is further ordered,* that part 54 of the Commission's rules, 47 CFR part 54, is *amended* and such rule amendments shall be *effective* January 27, 2020, except for the amendments to § 54.406(b), which shall be *effective* February 25, 2020; amendments to § 54.406(a), which shall be *effective* March 26, 2020; and §§ 54.404(b)(12) and 54.410(f), containing new or modified information collection requirements, which will not be effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

137. *It is further ordered,* that, pursuant to the authority contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154 and 254, and § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration and Clarification filed by United States Telecom Association on June 23, 2016 is *granted in part, dismissed in part* and *denied in part.*

138. *It is further ordered* that, pursuant to the authority contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154 and 254, and § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration filed by National Association of State Utility Consumer Advocates on June 23, 2016 is *denied.*

139. *It is further ordered* that, pursuant to authority contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154 and 254, the Petition for Declaratory Ruling filed by National Lifeline Association on February 7, 2018 is *denied.*

140. *It is further ordered,* pursuant to the authority contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154 and 254, that the Emergency Petition for Declaratory Ruling and For Interim Relief filed by TracFone on February 22, 2012 is *denied.*

141. *It is further ordered,* pursuant to the authority contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154 and 254, and § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration and Clarification filed by NTCA—The Rural Broadband Association—and WTA—Advocates for Rural Broadband—on June 23, 2016 is *granted in part.*

142. *It is further ordered,* pursuant to the authority contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154 and 254, and § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration and/or Clarification filed by General Communication, Inc. on June 23, 2016 is *granted in part.*

143. *It is further ordered* that the Commission *shall send* a copy of the Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration to the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

144. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Communications common carriers, internet, Telecommunications, Telephone, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302, unless otherwise noted.

§ 54.201 [Amended]

■ 2. Effective January 27, 2020, amend § 54.201 by removing paragraph (j).

§ 54.202 [Amended]

■ 3. Effective January 27, 2020, amend § 54.202 by removing paragraphs (d) and (e).

§ 54.205 [Amended]

■ 4. Effective January 27, 2020, amend § 54.205 by removing paragraph (c).

■ 5. Effective January 27, 2020, amend § 54.400 by adding paragraph (p) to read as follows:

§ 54.400 Terms and definitions.

* * * * *

(p) *Enrollment representatives.* An employee, agent, contractor, or subcontractor, acting on behalf of an eligible telecommunications carrier or third-party entity, who directly or indirectly provides information to the Universal Service Administrative Company or a state entity administering the Lifeline Program for the purpose of eligibility verification, enrollment, recertification, subscriber personal information updates, benefit transfers, or de-enrollment.

■ 6. Amend § 54.404 by:

■ a. Effective January 27, 2020, revising paragraph (b)(3); and

■ b. Effective upon publication of a rule document in the **Federal Register** announcing the effective date, adding paragraph (b)(12).

The revision and addition read as follows:

§ 54.404 The National Lifeline Accountability Database.

* * * * *

(b) * * *

(3) If the Database indicates that another individual at the prospective subscriber's residential address is currently receiving a Lifeline service, the eligible telecommunications carrier must not seek and will not receive Lifeline reimbursement for providing service to that prospective subscriber, unless the prospective subscriber has certified, pursuant to § 54.410(d), that to the best of his or her knowledge, no one in his or her household is already receiving a Lifeline service. This certification may be collected by the eligible telecommunications carrier prior to initial enrollment, but the certification shall not be recorded in the Database unless the eligible telecommunications carrier receives a notification from the Database or state administrator that another Lifeline subscriber resides at the same address as the prospective subscriber.

* * * * *

(12) An eligible telecommunications carrier must not enroll or claim for reimbursement a prospective subscriber in Lifeline if the National Lifeline Accountability Database or National Verifier cannot verify the identity of the subscriber or the subscriber's status as alive, unless the subscriber produces documentation to demonstrate his or her identity and status as alive.

* * * * *

■ 7. Effective February 25, 2020, add § 54.406 to read as follows:

§ 54.406 Activities of representatives of eligible telecommunications carriers.

(a) [Reserved]

(b) *Prohibition of commissions for enrollment representatives.* An eligible telecommunications carrier shall not offer or provide to enrollment representatives or their direct supervisors any commission compensation that is based on the number of consumers who apply for or are enrolled in the Lifeline program with that eligible telecommunications carrier.

■ 8. Effective March 26, 2020, § 54.406 is further amended by adding paragraph (a) to read as follows:

§ 54.406 Activities of representatives of eligible telecommunications carriers.

(a) *Enrollment representative registration.* An eligible telecommunications carrier must require that enrollment representatives register with the Universal Service Administrative Company before the enrollment representative can provide information directly or indirectly to the National Lifeline Accountability Database or the National Verifier.

(1) As part of the registration process, eligible telecommunications carriers must require that all enrollment representatives must provide the Universal Service Administrative Company with identifying information, which may include first and last name, date of birth, the last four digits of his or her social security number, email address, and residential address. Enrollment representatives will be assigned a unique identifier, which must be used for:

(i) Accessing the National Lifeline Accountability Database;

(ii) Accessing the National Verifier;

(iii) Accessing any Lifeline eligibility database; and

(iv) Completing any Lifeline enrollment or recertification forms.

(2) Eligible telecommunications carriers must ensure that enrollment representatives shall not use another person's unique identifier to enroll Lifeline subscribers, recertify Lifeline subscribers, or access the National Lifeline Accountability Database or National Verifier.

(3) Eligible telecommunications carriers must ensure that enrollment representatives shall regularly recertify their status with the Universal Service Administrative Company to maintain their unique identifier and maintain access to the systems that rely on a valid unique identifier. Eligible telecommunications carriers must also ensure that enrollment representatives shall update their registration information within 30 days of any change in such information.

(4) Enrollment representatives are not required to register with the Universal Service Administrative Company if the enrollment representative operates solely in a state that has been approved by the Commission to administer the Lifeline program without reliance on the Universal Service Administrative Company's systems. The exemption in this paragraph (a)(4) will not apply to any part of a state's administration of the Lifeline program that relies on the Universal Service Administrative Company's systems.

* * * * *

■ 9. Effective January 27, 2020, amend § 54.407 by revising paragraph (a) to read as follows:

§ 54.407 Reimbursement for offering Lifeline.

(a) Universal Service support for providing Lifeline shall be provided directly to an eligible telecommunications carrier based on the number of actual qualifying low-income customers listed in the National Lifeline Accountability Database that the eligible telecommunications carrier serves directly as of the first of the month. Eligible telecommunications carriers operating in a state that has provided the Commission with an approved valid certification pursuant to § 54.404(a) must comply with that state administrator's process for determining the number of subscribers to be claimed for each month, and in those states Universal Service support for providing Lifeline shall be provided directly to the eligible telecommunications carrier based on that number of actual qualifying low-income customers, according to the state administrator or other state agency's process.

* * * * *

■ 10. Effective January 27, 2020, amend § 54.410 by revising paragraph (g) to read as follows:

§ 54.410 Subscriber eligibility determination and certification.

* * * * *

(g) *One-Per-Household Worksheet.* If the prospective subscriber shares an address with one or more existing Lifeline subscribers according to the National Lifeline Accountability Database or National Verifier, the prospective subscriber must complete a form certifying compliance with the one-per-household rule upon initial enrollment. Eligible telecommunications carriers must fulfill the requirement in this paragraph (g) by using the Household Worksheet, as provided by the Wireline Competition Bureau. Where state law, state regulation, a state Lifeline administrator, or a state agency requires eligible telecommunications carriers to use state-specific Lifeline enrollment forms, eligible telecommunications carriers may use those forms in place of the Commission's Household Worksheet. At re-certification, if there are changes to the subscriber's household that would prevent the subscriber from accurately certifying to paragraph (d)(3)(vi) of this section, then the subscriber must complete a new Household Worksheet. Eligible telecommunications carriers must mark subscribers as having completed a

Household Worksheet in the National Lifeline Accountability Database if and only if the subscriber shares an address with an existing Lifeline subscriber, as reported by the National Lifeline Accountability Database.

* * * * *

■ 11. Effective upon publication of a rule document in the **Federal Register** announcing the effective date, § 54.410 is further amended by revising paragraphs (f)(1), (f)(2)(iii), and (f)(3)(iii) to read as follows:

§ 54.410 Subscriber eligibility determination and certification.

* * * * *

(f) * * *

(1) All eligible telecommunications carriers must annually re-certify all subscribers, except for subscribers in states where the National Verifier, state Lifeline administrator, or other state agency is responsible for the annual re-certification of subscribers' Lifeline eligibility.

(2) * * *

(iii) If the subscriber's program-based or income-based eligibility for Lifeline cannot be determined by accessing one or more eligibility databases, then the eligible telecommunications carrier must obtain a signed certification from the subscriber confirming the subscriber's continued eligibility. If the subscriber's eligibility was previously confirmed through an eligibility database during enrollment or a prior recertification and the subscriber is no longer included in any eligibility database, the eligible telecommunications carrier must obtain both an Annual Recertification Form and documentation meeting the requirements of paragraph (b)(1)(i)(B) or (c)(1)(i)(B) from that subscriber to complete the process. Eligible telecommunications carriers must use the Wireline Competition Bureau-approved universal Annual Recertification Form, except where state law, state regulation, a state Lifeline administrator, or a state agency requires eligible telecommunications carriers to use state-specific Lifeline recertification forms.

* * * * *

(3) * * *

(iii) If the subscriber's program-based or income-based eligibility for Lifeline cannot be determined by accessing one or more eligibility databases, then the National Verifier, state Lifeline administrator, or state agency must obtain a signed certification from the subscriber confirming the subscriber's continued eligibility. If the subscriber's eligibility was previously confirmed through an eligibility database during enrollment or a prior recertification and the subscriber is no longer included in any eligibility database, the National Verifier, state Lifeline administrator, or state agency must obtain both an approved Annual Recertification Form and documentation meeting the requirements of paragraph (b)(1)(i)(B) or (c)(1)(i)(B) from that subscriber to complete the certification process. Entities responsible for re-certification under this section must use the Wireline Competition Bureau-approved universal Annual Recertification Form, except where state law, state regulation, a state Lifeline administrator, or a state agency requires eligible telecommunications carriers to use state-specific Lifeline recertification forms, or where the National Verifier Recertification Form is required.

* * * * *

■ 12. Effective January 27, 2020, amend § 54.420 by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 54.420 Low income program audits.

(a) *Independent audit requirements for eligible telecommunications carriers.* Eligible telecommunications carriers identified by USAC must obtain a third-party biennial audit of their compliance with the rules in this subpart. Such engagements shall be agreed upon performance attestations to assess the company's overall compliance with the rules in this subpart and the company's internal controls regarding the regulatory requirements in this subpart.

(1) Eligible telecommunications carriers will be selected for audit based on risk-based criteria developed by USAC and approved by the Office of Managing Director and the Wireline Competition Bureau.

* * * * *

[FR Doc. 2019–27220 Filed 12–26–19; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

RIN 0648–XV136

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Atlantic Menhaden Fishery

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

ACTION: Notification of determination of non-compliance; declaration of a moratorium.

SUMMARY: In accordance with the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), the Secretary of Commerce (Secretary) has determined that the Commonwealth of Virginia has failed to carry out its responsibilities under the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for Atlantic Menhaden and that the measure Virginia has failed to implement and enforce is necessary for the conservation of the Atlantic menhaden resource. This determination is consistent with the findings of the Commission on October 31, 2019. Pursuant to the Atlantic Coastal Act, a Federal moratorium on fishing for Atlantic menhaden in Virginia state waters and possession and landing of Atlantic menhaden harvested in Virginia State waters is hereby declared and will be effective on June 17, 2020. The moratorium will be terminated when the Commission notifies the Secretary that Virginia is found to have come back into compliance with the Commission's ISFMP for Atlantic menhaden.

DATES: June 17, 2020.

FOR FURTHER INFORMATION CONTACT: Derek Orner, Fishery Management Specialist, (301) 427–8567, *derek.orner@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Non-Compliance Statutory Background

The Atlantic Coastal Act, 16 U.S.C. 5101 *et seq.,* sets forth a non-compliance review and determination process that is triggered when the Commission finds that a State has not implemented measures specified in an ISFMP and refers that determination to the Secretary for review and potential concurrence.

The Atlantic Coastal Act's non-compliance process involves two stages of decision-making. In the first stage, the Secretary must make two findings: (1) Whether the State in question has failed to carry out its responsibility under the Commission ISFMP; and if so (2) whether the measures that the State failed to implement and enforce are necessary for the conservation of the fishery in question. These initial findings must be made within 30 days after receipt of the Commission's non-compliance referral and consequently, this first stage of decision-making is referred to as the 30-Day Determination.

A positive 30-Day Determination triggers the second stage of Atlantic

Coastal Act non-compliance decision-making, which occurs contemporaneous with the first decision. That is, if the Secretary determines non-compliance in the first stage, the Atlantic Coastal Act mandates that a moratorium on fishing in State waters in the fishery in question occur. The timing of the moratorium, however, is at the discretion of the Secretary, so long as it is implemented within six (6) months of the 30-Day Determination. In other words, although the implementation of the moratorium is non-discretionary, the Secretary has the discretion to decide when the moratorium will be implemented subject to the Atlantic Coastal Act's six (6) month deadline.

Commission Referral of Non-Compliance

On October 31, 2019, the Commission found that the Commonwealth of Virginia is out of compliance with the Commission's ISFMP for Atlantic menhaden. Specifically, the Commission required Virginia to implement a total allowable harvest from the Chesapeake Bay Reduction Fishery that would not exceed 51,000 mt. Amendment 3 was approved in the fall 2017, and was to be fully implemented by the Commonwealth of Virginia for the 2018 fishing season. Virginia, however, did not implement the Commission's recommended 51,000 mt cap and instead maintained its pre-existing 87,216 mt cap and in 2019, the Reduction Fishery exceeded the Commission's Bay cap by approximately 15,000 mt (or about 30 percent). The Virginia delegation to the Commission agreed it was out of compliance and voted for a non-compliance finding at the Commission's Atlantic Menhaden and Policy Boards as well as the Commission's Business Section. On October 31, 2019, the Commission found the Commonwealth of Virginia out of compliance for not fully and effectively implementing and enforcing the Amendment 3 measures.

Agency Action in Response to Commission Non-Compliance Referral

The Commission forwarded its finding of their October 31st vote in a formal non-compliance referral letter that the Secretary received November 15, 2019. In response to receipt of this letter, the Secretary began the Atlantic Coastal Act's 30-day determination clock. On November 19, 2019, NMFS sent letters to the Commonwealth of Virginia, the New England Fishery Management Council, Mid-Atlantic Fishery Management Council, South Atlantic Fishery Management Council, the U.S. Fish and Wildlife Service, and to the Commission, advising them of the Atlantic Coastal Act's non-compliance process, inviting them to provide commentary on the issues, and in the case of Virginia, inviting the Commonwealth to meet with the agency to present its position in person or provide written comments on the Comission's findings. NMFS also advised the public of the referral in a **Federal Register** notice dated November 29, 2019 (84 FR 65787).

On November 22, 2019, Matthew Strickler, Secretary Virginia Natural Resources, other Virginia staff, and NMFS staff met via a conference call. During this meeting, the Commonwealth of Virginia agreed that Virginia was out of compliance and that it did not contest the conservation necessity of the Commission's Atlantic menhaden measures. Virginia described its legal and regulatory framework for its menhaden fishery and confirmed its intent to pursue legislation to comply with the measures identified in Amendment 3 as soon as feasible. Specifically, Virginia representatives stated that the Atlantic menhaden fishery is managed through the Virginia legislature, which does not provide the Virginia Marine Resources Commission (VMRC) the regulatory authority to manage menhaden fisheries.

The Secretary received numerous comments in response to the referral of non-compliance. Omega Protein along with 6 members of the Virginia legislature and one Congressman, and several others oppose the non-compliance finding. Other stakeholders, including the Commission, the Fishery Management Councils, Atlantic Coastal states, nine East Coast Governors, recreational fishing groups, Non-Governmental Organizations and numerous members of the public (~12,000 signatures), strongly support a non-compliance finding due to the scientific research supporting the importance of menhaden to the Bay ecosystem.

Agency's Findings

The Secretary's finding in this matter supports a positive 30-Day Determination of non-compliance. Specifically, the facts and best available science suggest both that Virginia did not fulfill its responsibilities under the Commission's ISFMP and that the measures that Virginia failed to implement are necessary to the conservation of Atlantic menhaden. Virginia concurs that the involved measures are necessary for conservation. Specifically, in voting itself out of compliance three separate times at the Commission in October 2019, Virginia admitted that failure to implement the measures would jeopardize the conservation of Atlantic menhaden. Virginia also admitted to such in its November 20, 2019 letter and during its November 22, 2019 hearing with NMFS. NMFS' analysis also supports such a finding.

Single Species: Recent studies investigating the contribution of various nursery grounds along the Atlantic coast and their impacts to the coastwide population structure of Atlantic menhaden have indicated that the Chesapeake Bay is considered one of the most important nursery areas for menhaden and contributes approximately 30 percent of new recruits (age 1) to the coastal stock. The implementation of the Chesapeake Bay cap does not limit the coastwide total allowable catch of menhaden for the reduction fishery, but rather attempts to distribute the reduction fishery's catch in order to protect the important Bay nursery area. The science suggests that overharvesting within Chesapeake Bay leads to the removal of smaller, younger age-classes of menhaden that eventually migrate into the older, coastwide population.

In addition, based on the current Commission-adopted benchmarks, the Atlantic menhaden stock status is not overfished and overfishing is not occurring. The stock is currently below the current fishing mortality target and above the current fecundity (measure of productivity) target. The stock is considered a unit stock for management purposes and from this single-species perspective, there is no major concern with total removals and the total Virginia or coastwide quotas have not been exceeded.

Ecosystem Function: The Atlantic Coastal Act requires the Secretary to consider whether the measures that the State failed to implement and enforce are necessary for the conservation of the fishery in question. The fishery in question is the Atlantic menhaden fishery. The statute defines conservation as restoring, rebuilding, and maintaining of any coastal fishery resource and the marine environment, in order to assure the availability of coastal fishery resources on a long-term basis (16 U.S.C. 5102(4)). Thus, in considering whether the measure is necessary for the ''conservation of the fishery in question,'' the Secretary is not limited solely to looking at whether the measure preserves the biomass of menhaden but also whether the measure maintains the role of menhaden in the marine environment. Menhaden play an important role as a forage base for a number of other stocks, like striped

bass. Those other stocks are part of the marine environment for which menhaden conservation, including the Bay cap, is directed.

In short, the Commission, its member states including Virginia, found that the involved measure is necessary for the conservation of Atlantic menhaden. The Secretary sees the measures Virginia has failed to implement as necessary for the conservation of the menhaden resource. The best available information shows that menhaden in the Chesapeake Bay are an important component of the overall health of the stock, and further that their role as forage for predator species in the Chesapeake Bay is critical to the marine environment. Further, the Secretary notes the degraded status of the Chesapeake Bay and the Commission's efforts to do its part under its authority to ensure the sustainability of the fisheries in the Chesapeake Bay, specifically by conserving menhaden. Accordingly, the Commission is thus attempting to maintain the menhaden forage base while its scientists study menhaden's role in the degraded Bay ecosystem and develop ecological reference points. The Secretary agrees with its logic in doing so.

The Atlantic Coastal Act requires that the Secretary declare a moratorium when it finds that a state has failed to carry out its responsibilities and that the measures it failed to implement are necessary for conservation. The Secretary determines that the required moratirum should begin on June 17, 2020. This moratorium would prohibit fishing for Atlantic menhaden in Virginia State waters, and possession of and landing of Atlantic menhaden harvested in Virginia state waters. A June 17, 2020 implementation date represents the maximum allowed time period to begin a moratorium under the Atlantic Coastal Act. The Secretary analyzed the timing of potential moratoria and believes the June 17, 2020 date is appropriate for two principal reasons. First, although the involved measure is necessary for conservation, the immediacy of that need is less critical given the 2020 fishing season will not begin until spring 2020 and the 51,000 mt Bay cap has never been reached, or even come close to being reached by mid-June. Second, a June closure date will give Virginia the time necessary for its legislature to bring these regulations back into compliance.

Moratorium Prohibitions

The Secretary declares that the moratorium shall be in effect commencing June 17, 2020 and will be based upon the Atlantic Coastal Act's moratorium prohibitions, 16 U.S.C. 5106(e). The moratorium shall make it unlawful to do the following:

(1) Engage in fishing for menhaden within the waters of Virginia (*Note:* under the Atlantic Coastal Act, the definition of ''fishing'' includes catching, taking or harvesting of fish);

(2) Land, attempt to land, or possess fish that are caught, taken, or harvested in violation of the moratorium;

(3) Fail to return to the water immediately, with a minimum of injury, any fish to which the moratorium applies that are taken incidental to fishing for species other than those to which the moratorium applies;

(4) Refuse to permit any officer authorized to enforce the provisions of this moratorium to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this moratorium;

(5) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection under this moratorium;

(6) Resist a lawful arrest for any act prohibited by this moratorium;

(7) Ship, transport, offer for sale, sell, purchase, import, or have custody, control, or possession of, any fish taken or retained in violation of this moratorium; or

(8) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this moratorium.

This moratorium will apply to Atlantic menhaden as identified in the Commission's ISFMP and would start June 17, 2020. When the Commission notifies the Secretary that Virginia has come into compliance, the Secretary shall immediately determine whether the State is in compliance, and if so, shall terminate the moratorium.

Classification

This declaration of a moratorium is consistent with the Atlantic Coastal Act at 16 U.S.C. 5106 insofar as Virginia has been found to have failed to carry out its responsibilities under the Commission's Atlantic Menhaden ISFMP and the measures that Virginia has failed to implement and enforce are necessary for the conservation of the Atlantic menhaden fishery. Further, the moratorium prohibits fishing in Virginia State waters and processing and/or landing Atlantic menhaden if harvested in Virginia State waters and is being implemented within six months of the agency findings. The Secretary conducted the Atlantic Coastal Act's non-compliance process by informal adjudication as set forth in the Administrative Procedure Act (APA) at 5 U.S.C. 555. More specifically, the agency gave Virginia prompt notice of the proceeding and an opportunity to meet in person to discuss the matter. Matthew Strickler, Secretary of Virginia's Natural Resources, and other Virginia staff met with NMFS and NOAA staff on November 22, 2019. Virginia Governor Ralph Northam also provided a letter dated November 20, 2019, to the Secretary stating the management measures as outlined in Amendment 3 are necessary to conserve menhaden and other fisheries that depend on them for survival and that a moratorium is the most appropriate way to bring about a shift to responsible management of Atlantic menhaden in Virginia. Notice and an opportunity for comment were also provided to the New England Fishery Management Council, Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Commission, the U.S. Fish and Wildlife Service, and the Commonwealth of Virginia. NMFS also promptly notified the public of this proceeding in a **Federal Register** notice (84 FR 65787; November 29, 2019). Further, the Secretary is providing Virginia with immediate notice of his findings, which the State will receive prior to actual closure of the fishery, and notifies the public of the Secretary's decision in this **Federal Register** document prior to closure.

Public comment is not required under the Act because the rigid timeline can make it impracticable and would potentially delay mandatory agency action, and also because the issue has been considerably vetted in public forums, such as before the Commission in the months prior to the referral through development of Amendment 3 to the Atlantic menhaden ISFMP. Nevertheless, NMFS did notify the public of this action in its **Federal Register** notice dated November 29, 2019. The agency received approximately 40 comment letters. Four opposed a moratorium while the remaining letters (including more than 12,000 signatures) supported a moratorium.

The declaration of a moratorium does not trigger the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because the action was not the result of notice and comment rulemaking under Section 553 of the APA.

The declaration of a moratorium does not fall under review under Executive Order 12866 insofar as the moratorium is not a regulatory action of the agency but is an action mandated by Congress upon the findings of certain conditions precedent set forth in the Atlantic Coastal Act, which also prescribes the nature and extent of the moratorium. This action is required by 16 U.S.C. 5101 and is exempt from review under Executive Order 12866.

The moratorium is not the result of a policy formulated or implemented by the agency, but instead is the result of the application of found facts to the Congressional standards set forth in the Atlantic Coastal Act and as such, the declaration does not implicate federalism in the manner contemplated by Executive Order 13132. The agency, however, has nevertheless consulted, to the extent practicable, with appropriate state and local administrative and law enforcement officials to address the principles, criteria, and requirements of E.O. 13132.

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

Dated: December 19, 2019.

Christopher Wayne Oliver,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–27834 Filed 12–19–19; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 248
Friday, December 27, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–1060; Product Identifier 2018–CE–020–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Gulfstream Aerospace Corporation (Gulfstream) Model G–IV airplanes. This proposed AD was prompted by reports of un-commanded nose wheel steering turns. This proposed AD would require replacing the nose wheel steering servo valve manifold, incorporating revised operating procedures into the airplane flight manual (AFM), doing a records inspection for any incidents of un-commanded nose wheel steering turns, and reporting the results to the FAA. 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 10, 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 service information identified in this NPRM, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, Georgia 31402–2206; telephone: (800) 810–4853; fax 912–965–3520; email: *pubs@gulfstream.com;* internet: *https://www.gulfstream.com/customer-support.* You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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–2019–1060; 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: Alex Armas, Aerospace Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5538; fax: (404) 474–5605; email: *alex.armas@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–1060; Product Identifier 2018–CE–020–AD'' at the beginning of your comments. The FAA specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

The FAA received reports of numerous incidents of un-commanded nose wheel steering turns on Gulfstream Model G–IV airplanes. An investigation revealed the supplier compromised the seals during assembly of the electro-hydraulic servo valves, which allows moisture to enter the valve. During cold soak conditions, the moisture forms ice crystals in the servo valve armature air gaps, which may cause the valve armature to displace to a non-neutral position. This condition, if not addressed, could result in an un-commanded nose wheel position once power is applied to the nose wheel servo and subsequent lateral runway departure.

To address this condition, the supplier improved their production quality control process to reduce the risk of compromised seals in the nose wheel steering servo valve. Gulfstream also revised the normal, abnormal, and emergency procedures in the AFMs related to nose wheel steering un-commanded turns.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Gulfstream IV Customer Bulletin Number 244, dated March 12, 2018; Gulfstream G300 Customer Bulletin 244, dated March 12, 2018; and Gulfstream G400 Customer Bulletin 244, dated March 12, 2018. For the applicable airplane configuration, each customer bulletin describes procedures for replacing the nose wheel steering servo valve manifold assembly.

The FAA also reviewed Gulfstream IV Airplane Flight Manual, Gulfstream Aerospace Document Number GAC–AC–GIV–OPS–0001, Revision 52, dated October 30, 2017; Gulfstream G300 Airplane Flight Manual, Gulfstream Aerospace Document Number GAC–AC–G300–OPS–0001, Revision 20, dated October 30, 2017; and Gulfstream G400 Airplane Flight Manual, Gulfstream Aerospace Document Number GAC–AC–G400–OPS–0001, Revision 20, dated October 30, 2017. For the applicable airplane configuration, each AFM document provides revisions to the AFM with instructions for flight crew to follow if un-commanded nose wheel steering turns occur.

This service information is reasonably available because the interested parties have access to it through their normal

course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

The FAA is proposing this AD because it 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 revising the AFM and replacing the nose wheel steering servo valve manifold. This proposed AD would also require a records inspection for any incidents of un-commanded nose wheel steering turns and reporting the results to the FAA.

Differences Between This Proposed AD and the Service Information

The Gulfstream customer bulletins require reporting compliance with the bulletins to Gulfstream. This proposed AD does not contain that requirement; however, this proposed AD would require reporting any known occurrences of un-commanded nose wheel steering turns to the FAA.

The Gulfstream customer bulletins include a compliance time of 48 months beginning on March 12, 2018. The compliance time for this proposed AD is 36 months after the effective date of the AD.

Costs of Compliance

The FAA estimates that this proposed AD would affect 425 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Incorporate AFM revisions	1 work-hour × $85 per hour = $85	Not applicable	$85	$36,125
Replace nose wheel steering servo valve	7 work-hours × $85 per hour = $595	$63,624	64,219	27,293,075
Records review and reporting of the review results.	2 work-hours × $85 per hour = $170	Not applicable	170	72,250

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

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. All responses to this collection of information are mandatory as required by this AD; the nature and extent of confidentiality to be provided, if any. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

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 small airplanes, gliders, balloons, airships, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation 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):

Gulfstream Aerospace Corporation: Docket No. FAA–2019–1060; Product Identifier 2018–CE–020–AD.

(a) Comments Due Date

The FAA must receive comments by February 10, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Gulfstream Aerospace Corporation Model G–IV airplanes, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Unsafe Condition

This AD was prompted by reports of un-commanded nose wheel steering turns. The FAA is issuing this AD to prevent moisture from entering the nose steering wheel servo valve, which could freeze and cause an un-commanded nose wheel steering position during touchdown. The unsafe condition, if not addressed, could result in a lateral runway departure.

(f) Compliance

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

(g) Airplane Flight Manual Revisions

Within 30 days after the effective date of this AD, revise your airplane flight manual (AFM) by incorporating the revision applicable to your airplane configuration as listed in paragraphs (g)(1) through (3) of this AD:

(1) Gulfstream IV Airplane Flight Manual, Gulfstream Aerospace Document Number GAC–AC–GIV–OPS–0001, Revision 52, dated October 30, 2017;

(2) Gulfstream G300 Airplane Flight Manual, Gulfstream Aerospace Document Number GAC–AC–G300–OPS–0001, Revision 20, dated October 30, 2017; or

(3) Gulfstream G400 Airplane Flight Manual, Gulfstream Aerospace Document Number FAC–AC–G400–OPS–0001, Revision 20, dated October 30, 2017.

(h) Replace the Nose Wheel Steering Servo Valve Manifold

Within 36 months after the effective date of this AD, replace the nose wheel steering servo valve manifold with nose wheel steering servo valve manifold part number 5100–11 or 5105–5 in accordance with the Accomplishment Instructions of the customer bulletin that applies to your airplane configuration as listed in paragraphs (h)(1) through (3) of this AD, except you are not required to comply with step H:

(1) Gulfstream IV Customer Bulletin Number 244, dated March 12, 2018;

(2) Gulfstream G300 Customer Bulletin 244, dated March 12, 2018; or

(3) Gulfstream G400 Customer Bulletin 244, dated March 12, 2018.

(i) Records Inspection and Report of Results

(1) Between 12 months and 24 months after the replacement of the nose wheel steering valve manifold assembly required in paragraph (h) of this AD, inspect all aircraft records for entries of an un-commanded nose wheel steering turn.

(2) Within 10 days after the records inspection required in paragraph (i)(1) of this AD, report the results of the inspection, regardless of whether the inspection found any entries, to the FAA by either email: *9-ASO-ATLCOS-Reporting@faa.gov;* or by mail: Attn: Continued Operational Safety, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, Georgia 30337. The report must include as much of the information listed in paragraphs (i)(2)(i) through (vii) of this AD as is known about the event:

(i) Date of records inspection;

(ii) Date and time of all un-commanded occurrences (if any);

(iii) Airplane serial number;

(iv) Weather and runway conditions at the time of each occurrence;

(v) Copy of the pilot's report of the occurrence (if available);

(vi) Maintenance entry of the root cause of the un-commanded deflection (if available); and

(vii) Any other information pertinent to the occurrence.

(j) Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. All responses to this collection of information are mandatory as required by this AD; the nature and extent of confidentiality to be provided, if any. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (l)(1) of this AD.

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

(l) Related Information

(1) For more information about this AD, contact Alex Armas, Aerospace Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5538; fax: (404) 474–5605; email: *alex.armas@faa.gov.*

(2) For service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, Georgia 31402–2206; telephone: (800) 810–4853; fax 912–965–3520; email: *pubs@gulfstream.com;* internet: *https://www.gulfstream.com/customer-support.* You may view this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued on December 18, 2019.

Patrick R. Mullen,

Aircraft Certification Service Manager, Small Airplane Standards Branch, AIR–690.

[FR Doc. 2019–27716 Filed 12–26–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0987; Product Identifier 2019–NM–144–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., 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 Bombardier, Inc., Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This proposed AD was prompted by reports that during airplane wing fatigue testing, fatigue cracks were found on the lower right-hand-side wing plank at the end of the integrally machined stringers, which led to a determination that new or more restrictive airworthiness limitations are necessary. This proposed AD would require, for certain airplanes, revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. 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 10, 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 service information identified in this NPRM, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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–2019–0987; 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: Aziz Ahmed, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7329; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0987; Product Identifier 2019–NM–144–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

The FAA will post all comments, 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

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2019–21, dated May 15, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0987.

This proposed AD was prompted by reports that during airplane wing fatigue testing, fatigue cracks were found on the lower right-hand-side wing plank at the end of the integrally machined stringers, which led to a determination that new or more restrictive airworthiness limitations are necessary. The FAA is proposing this AD to address undetected cracks on the lower wing plank at the stringer run-out, which could affect the structural integrity of the wing. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Nondestructive Testing Manual, CSP A–010, Revision 40, dated November 10, 2018. This service information describes airworthiness limitations for doing a special detailed inspection of the lower wing skin splice joints at buttock line (BL) 45.00, wing station (WS) 65.75, and WS148.00. Bombardier has also issued Temporary Revision 2B–2273, dated October 31, 2019, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier CL–600–2B19 Maintenance Requirements Manual. This service information describes airworthiness limitations for doing an inspection for cracking on the lower wing plank at the stringer run-out. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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 and service information 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 on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j)(1) of this proposed AD.

Differences Between This Proposed AD and the MCAI

Paragraph (h) of this proposed AD would require revising the maintenance/inspection program to incorporate Airworthiness Limitations (AWL) Task 57–21–169 for certain airplanes. The corresponding MCAI requirement specifies incorporating this task using Bombardier Temporary Revision 2B–2269, dated July 18, 2018, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier CL–600–2B19 Maintenance Requirements Manual. However, since the MCAI was issued, that service information has been revised to Temporary Revision 2B–2273, dated October 31, 2019 (''Temporary Revision 2B–2273''). Temporary Revision 2B–2273 defines the compliance time threshold, which begins from the time the airplane entered into service. This

proposed AD would require incorporating Temporary Revision 2B–2273.

Costs of Compliance

The FAA estimates that this proposed AD affects 464 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the FAA recognizes that this number may vary from operator to operator. In the past, the FAA has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

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

Authority for This Rulemaking

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

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

This 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):

Bombardier, Inc.: Docket No. FAA–2019–0987; Product Identifier 2019–NM–144–AD.

(a) Comments Due Date

The FAA must receive comments by February 10, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, serial number 7003 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by reports that during airplane wing fatigue testing, fatigue cracks were found on the lower right-hand-side wing plank at the end of the integrally machined stringers, which led to a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address undetected cracks on the lower wing plank at the stringer run-out, which could affect the structural integrity of the wing.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision for Task 57–21–112

For airplanes on which Bombardier Service Bulletin 601R–57–044 has not been done: Within 30 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate airworthiness limitations (AWL) task 57–21–112, as specified in Bombardier Nondestructive Testing Manual, CSP A–010, Revision 40, dated November 10, 2018. The initial compliance time for doing the task is at the time specified in Bombardier Nondestructive Testing Manual, CSP A–010, Revision 40, dated November 10, 2018, or within 30 days after the effective date of this AD, whichever occurs later.

(h) Maintenance or Inspection Program Revision for Task 57–21–169

For airplanes on which Bombardier Service Bulletin 601R–57–044 has been done: Within 30 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate AWL task 57–21–169, as specified in Bombardier Temporary Revision 2B–2273, dated October 31, 2019, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier CL–600–2B19 Maintenance Requirements Manual. The initial compliance time for doing the task is at the time specified in Bombardier Temporary Revision 2B–2273, dated October 31, 2019, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier CL–600–2B19 Maintenance Requirements Manual, or within 30 days after the effective date of this AD, whichever occurs later.

(i) No Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraphs (g) and (h) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the

procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2019–21, dated May 15, 2019, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0987.

(2) For more information about this AD, contact Aziz Ahmed, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7329; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* Internet *https://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on December 17, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–27768 Filed 12–26–19; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 17–287, 11–42 and 09–197; FCC 19–111; FRS 16301]

Bridging the Digital Divide for Low-Income Consumers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on adding a goal of broadband adoption to the Lifeline program, making additional program integrity improvements to the program, and establishing privacy training requirements for entities accessing Lifeline subscribers' personal information.

DATES: Comments are due on or before January 27, 2020 and reply comments are due on or before February 25, 2020. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed as soon as possible.

ADDRESSES: Interested parties may file comments and reply comments, identified by WC Docket Nos. 17–287, 11–42 and 09–197, by any of the following methods:

• *Electronic Filers:* Comments may be filed electronically using the internet by accessing the Commission's Electronic Comment Filing System ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

• *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 Street 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.

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CYA257 at FCC Headquarters, 445 12th Street SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

FOR FURTHER INFORMATION CONTACT: Jodie Griffin, Wireline Competition Bureau, 202–418–7550 or TTY: 202–418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) of the Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking in WC Docket Nos. 17–287, 11–42 and 09–197; FCC 19–111 adopted October 30, 2019 and released November 14, 2019. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW, Washington, DC 20554 or at the following internet address: *https://docs.fcc.gov/public/attachments/FCC-19-111A1.pdf.*

Synopsis

I. Introduction

1. For years, the Commission has been taking steps to address waste, fraud, and abuse in the program, including through the establishment of a National Lifeline Eligibility Verifier. The Commission continues that work to strengthen the Lifeline program. Specifically, seeking comments on appropriate program goals and metrics for a modernized Lifeline

program and additional improvements to program integrity.

II. Discussion

2. The Commission seeks comments on continuing to improve the operation and oversight of the Lifeline program; seeks comments on adding the goal of increasing broadband adoption for consumers who would not otherwise subscribe to broadband as one of the Lifeline program's goals and also seeks comments on making additional program integrity improvements to the program and establishing privacy training requirements for entities accessing personal information in the NLAD.

3. *Program Goals and Metrics.* In the *2017 Lifeline Order* (FCC 17–155), the Commission concurred with the Government Accountability Office (GAO) and past Commissions that outcome-based performance goals and measures would help to achieve Congress's universal service goals. The Commission now seeks comments on whether the Lifeline program's current goals adequately reflect the importance of measuring the program's impact on adoption and continued connectivity, and how the program's goals can be improved.

4. *Increasing Broadband Adoption Among Consumers.* The Commission seeks comments on adding a new goal to the program: increased broadband adoption for consumers who, without a Lifeline benefit, would not subscribe to broadband. Believing that broadband adoption, and the impact it will have on closing the digital divide, should be a focus of the Lifeline program. Increasing broadband adoption as a goal will help to ensure that Lifeline funds are appropriately targeted toward bridging the digital divide. To achieve this goal, requires the Commission to accurately evaluate the impact of Lifeline funds on broadband adoption.

5. The Commission first seeks comments on our authority to adopt as a goal of the Lifeline program increasing broadband adoption for consumers who otherwise would not subscribe to broadband. Is such a goal a component of preserving and advancing universal service, as directed by section 254(b) of the Act? How would this goal relate to the principles of promoting the availability of quality services at just, reasonable, and affordable rates and promoting access to reasonably comparable telecommunications and information services for low-income consumers?

6. The Commission next seeks comments on the appropriate method of measuring broadband adoption by low-income consumers. As GAO noted in its report, the current structure of the Lifeline program ''ma[kes] it difficult for the [C]ommission to determine causal connections between the program and the number of individuals with telephone access.'' The Commission seeks to alter that structure as it relates to broadband, to ensure that Lifeline funds are being used effectively to help close the digital divide by encouraging broadband adoption by households that otherwise would not subscribe to the supported service, and seeking comment on the best way to accomplish this.

7. The Commission seeks comments on the best data sources to help measure adoption progress. The Commission proposes to ask Lifeline applicants questions in the enrollment process regarding how the program has impacted their broadband adoption, and to seek comments on what those specific questions should be. For example, should the Commission ask Lifeline applicants whether they already subscribe to voice or broadband service, and whether they would be able to afford their Lifeline-supported service without the Lifeline discount? Also, should the Commission add questions to determine whether the Lifeline program is effectively reaching specific demographics, like veterans or households with children?

8. Instead of or in addition to seeking information directly from Lifeline applicants, what other methods and data can be explored to determine the impact of the Lifeline benefit on broadband adoption? Should the Commission rely on other Commission reports or data sources? For purposes of this goal, how should the Commission identify low-income consumers or areas if other Commission reports or data sources are used? The Commission also seeks comments on how best to measure the impact of Lifeline on broadband adoption for groups of consumers.

9. When determining whether the program's goals are being met, should the evaluation consider fixed and mobile broadband services differently? In the annual report required by section 706 of the Act, the Commission reports data on fixed and mobile broadband separately and recognizes variations in speed and other characteristics. How should consideration of these goals for the Lifeline program be impacted by the similarities and differences between fixed and mobile broadband?

10. When measuring broadband adoption, the Commission proposes examining the effectiveness of the Lifeline program by recognizing that Lifeline-supported broadband internet access service and some other forms of broadband internet access service are, to various extents, substitutable. For example, some Lifeline consumers may value broadband access so highly that they would purchase some level of broadband service even in the absence of a Lifeline benefit. Other consumers who currently use a Lifeline-supported broadband internet access service would prefer to not purchase broadband internet access service (or purchase broadband access intermittently) without Lifeline support. Finally, some consumers currently do not subscribe to any broadband internet access service at all. In this context, how can the Commission identify, measure, and analyze the effect of the Lifeline program on increasing broadband adoption? Is the degree of substitution between Lifeline-supported and unsupported broadband internet access service affected by the characteristics of Lifeline service (such as download speeds, data caps, etc.) of the Lifeline-supported broadband internet access service? The Commission also seeks comments on additional criteria to consider during evaluating the program's impact on broadband adoption.

11. *Additional Program Integrity Recommendations.* In the *2017 Lifeline Order,* the Commission sought comment on potential changes that would help eliminate waste, fraud, and abuse within the Lifeline program. The Commission also proposes additional requirements that will help the Commission, and ETCs, achieve that goal. First, the Commission proposes requiring ETCs to upload their internal customer account numbers into the NLAD in order to help USAC match its records with those of the ETC. Second, the Commission proposes requiring ETCs and the National Verifier to record and retain a Lifeline applicant's eligibility proof number and the type of proof the applicant used to qualify for the program. Lastly, the Commission proposes requiring ETCs to provide the NLAD or National Verifier with access to the same data maintained by the ETC, including non-usage data and the time the customer enrolled. The Commission also seeks comments on the best ways to ensure that consumer usage is accurately measured and defined.

12. *Internal Customer Account Numbers.* When examining data to determine if improper payments were made, USAC often needs to examine an ETC's data. However, the internal number that an ETC uses to identify a subscriber in its own service and billing records is currently not entered into the NLAD. As a result, it may be difficult for

USAC or enforcement authorities, such as the Commission, the U.S. Department of Justice, or state public service commissions, to compare an ETC's records with USAC's NLAD or reimbursement records because it can be difficult to locate an individual subscriber's records. Accordingly, the Commission proposes amending § 54.404(b) of the Commission's rules to require ETCs to submit their internal customer account numbers into the NLAD when enrolling or recertifying subscribers. Concluding that this will facilitate examination of relevant data, and therefore help to eliminate waste, fraud, and abuse. The Commission seeks comments on this proposal including its costs and benefits.

13. *Eligibility Proof Number and Type.* The Commission also seeks comments on improving the information collected during the process of manually reviewing eligibility documentation for those applicants whose eligibility cannot be confirmed by an automated data source. In 2016, the Commission determined that a provider had been using ''temporary SNAP cards to enroll consumers because these cards did not include the actual benefit recipient's name,'' and repeatedly used the same program eligibility card to enroll multiple applicants. The Commission believes that requiring ETCs and the National Verifier to track both the eligibility proof number and the type of eligibility proof will enable both ETCs and the National Verifier to quickly determine if improper enrollment techniques are being used. Therefore, the Commission proposes amending §§ 54.404(b) and 54.410(d) of the Commission's rules to require that where the applicant provides eligibility documentation, ETCs and the National Verifier shall collect and record the identification number or card number indicated on the eligibility documentation (*e.g.,* the SNAP card number or Medicaid card number) and the type of eligibility proof used by an applicant to demonstrate eligibility for the Lifeline program. The proposal would not apply where an applicant's eligibility is verified through an automated database. The Commission seeks comments on the proposed requirement, including its costs and benefits.

14. *Demonstrating Compliance with Usage Requirements.* The Commission seeks comments on ways to ensure the accuracy of ETCs' claims that subscribers are actually using their broadband internet access service on an ongoing basis. The current usage rules require subscribers receiving a free-to-the-end-user Lifeline service to use the service every 30 days by, among other ways, using broadband data. Given this requirement, would it be possible for an ETC to evade our 30-day usage requirement by installing an application (''app'') on a user's phone that would ''use'' data without any action by the user? Even if such data usage would not meet the requirement that qualifying usage be ''undertaken by the subscriber,'' there is concern that it would be difficult to differentiate legitimate subscriber usage from ETC-arranged data usage that happens without the knowledge or direction of the subscriber in an audit or enforcement investigation. Could an ETC thus fabricate usage data to continue claiming support for a Lifeline subscriber who is no longer using the service?

15. The Commission seeks comments on how to amend its rules to address this vulnerability. Would requiring subscribers to periodically contact USAC remedy this issue? Would requiring subscribers to use an app to confirm continued usage be a sufficient and user-friendly solution? What would such an app look like, and how could the Commission ensure that such an app would not ''use'' data without any activity from the user? The other types of ''usage'' under the Commission's rules all require an affirmative act by the user, and the Commission seeks comments on what other options would guarantee that ''usage of data'' is understood to mean ''usage of data initiated by the Lifeline subscriber.'' Does the Commission have the authority to prohibit ETCs from installing an app that ''uses'' data without direction from the subscriber? The Commission also seek comments on any potential privacy implications of modifying the usage requirement or requiring the installation of a specific app or method of usage. Finally, the Commission seeks comments on the costs of these proposals and on how to minimize the burden on consumers and ETCs of verifying legitimate monthly usage.

16. The Commission also seeks comments on amending § 54.417 of the Commission's rules to clarify an ETC's obligation to maintain records that document compliance with the usage requirement. The current rule requires ETCs to ''maintain records to document compliance with all Commission and state requirements governing the Lifeline and Tribal Link Up program for three full preceding calendar years and provide that documentation to the Commission or Administrator upon request.'' While the rule already applies to the usage requirement in §§ 54.405(e)(3) and 54.407(c) of the Commission's rules, comments are sought on whether a more detailed explanation of what documentation ETCs must maintain in the context of the non-usage requirement would provide certainty to ETCs. If the Commission amended § 54.417 to give more specific guidance on document retention in the context of the usage requirement, what documentation should ETCs be required to maintain to show that data usage is ''undertaken by the subscriber,'' and not by the ETC, as the Commission's rules require? What are the costs and benefits of specifically requiring ETCs to maintain detailed data usage records, which could be examined to reveal any trends that reveal indications of potential usage fabrication (for example, an account that only uses data once every 30 days, at 2:00 a.m.)? Should such usage data be maintained for the same general timeframe as other compliance documentation under § 54.417 of the Commission's rules? In adopting such a requirement, how can the Commission best safeguard Lifeline subscribers' privacy? For example, should the Commission require certain security practices for the collection, retention, and management of this information, or are existing ETC security and privacy practices sufficient in this regard?

17. *De-enrollment Process.* The Commission seeks comments on amending § 54.405(e)(1) of the Commission's rules to clarify ETCs' obligation to act promptly to notify subscribers when the ETC has reason to believe that the subscriber is not eligible for the Lifeline program. Currently, the rule provides the subscriber 30 days to demonstrate continued eligibility and a five-business-day de-enrollment period if the subscriber fails to demonstrate her eligibility. However, the rule does not specify how quickly the ETC must act to send the subscriber the written notice that begins the 30-day period once it has reason to believe the subscriber is not eligible for the Lifeline benefit. The Commission seeks comments on implementing a firm deadline to ensure that ETCs do not unreasonably delay in sending the 30-day notice. Should the Commission amend § 54.405(e)(1) of the rules to require ETCs to send written notice to the subscriber no later than five business days after the ETC has a reasonable basis to believe the subscriber is no longer eligible for Lifeline service? Would amending the rule to allow the ETC five business days to send the 30-day de-enrollment notice be sufficient? The Commission also seeks comments on how the rule should apply to states in which the National

Verifier has launched. In those states, should the ETC instead be required to notify the National Verifier of its reason to believe that the subscriber is not eligible, upon which notice the National Verifier can conduct any necessary outreach and de-enrollments?

18. The Commission also seeks comments on amending § 54.405 of the Commission's rules to codify the de-enrollment process when the de-enrollment is conducted by USAC under its authority as administrator of the Fund. Should the de-enrollment procedures operate differently when USAC de-enrolls a subscriber from the NLAD, pursuant to an ETC's request or a program integrity review, under its authority as administrator or the Fund? Should USAC continue to rely on the ETC to conduct subscriber outreach for program integrity reviews, and if so, should the Commission's rules specifically direct USAC to de-enroll or deny reimbursement for those subscribers if the ETC is nonresponsive or delayed in its response? How should the Commission ensure that subscribers are given an opportunity to demonstrate continued eligibility before being de-enrolled? Are there any other clarifications the Commission should make to its de-enrollment rules?

19. *Distribution of Free Handsets.* Lifeline providers often offer a free handset with the activation of Lifeline service. Many of the ETCs offering free handsets also provide Lifeline service that is free to the subscriber where there is no regular billing relationship between the subscriber and the ETC. Often the device is handed directly to the consumer at enrollment without requiring any payment by the consumer, and this practice has been the subject of reports that focus on ineligible consumers enrolling in Lifeline. For example, undercover local news teams have reported that they were able to obtain a free cell phone even when the undercover reporter was not eligible for the Lifeline service. In the *2017 Lifeline Order and Notice* and in response to Lifeline stakeholder suggestions, the Commission asked whether it should prohibit Lifeline providers from distributing handsets in person. The Commission now asks for further focused comments on the practice of in-person distribution of free handsets and its possible role in encouraging ineligible Lifeline customers to attempt to enroll in the program.

20. In response to the *2017 Lifeline Order and Notice,* some commenters argue that in-person distribution of free handsets benefits low-income and vulnerable Lifeline customers, such as those that are homeless or otherwise displaced. Others note that banning in-person free handset distribution ''would be well worth the program's substantial gain in controls and, in turn, credibility that would result from implementation of this measure . . .'' While the Commission does not suggest that every ETC that distributes free handsets in this manner is engaging in or encouraging fraudulent behavior, our oversight experience suggests that the practice encourages ineligible consumers to attempt to enroll in Lifeline. The Commission seeks comments on ways to minimize the risk of waste, fraud, and abuse stemming from the in-person distribution of free handsets upon enrollment in the Lifeline program.

21. The Commission seeks comments on requiring ETCs to charge Lifeline subscribers a fee in exchange for receiving a handset or device in-person at enrollment. How prevalent is the in-person distribution of free handsets today? Is this practice primarily associated with free-to-the-end-user Lifeline plans? Would such a restriction eliminate incentives for ineligible consumers to attempt to enroll in Lifeline? Does the promise of an immediate free phone along with a free service provide improper incentives to potential subscribers? The Lifeline program currently does not provide support for equipment used with the supported service. Does the Commission have the statutory authority to prohibit ETCs from distributing free handsets to Lifeline subscribers or otherwise regulate the distribution of handsets to ETCs?

22. Does the long-standing restriction on using the Lifeline subsidy for equipment support a new requirement that all Lifeline subscribers must pay a fee for the cost of the handsets used to provide the supported service? What are the costs and benefits of such a requirement? Would delaying the distribution of free handsets, or allowing the in-person distribution of handsets only to Lifeline subscribers who, either up front or through a payment plan, have paid an end-user fee, help eliminate fraud within the program? Would such requirements discourage participation in the program by eligible subscribers? What would be the impact on broadband adoption if Lifeline subscribers had to pay a fee in exchange for a handset? What sources of data or industry studies could be helpful to estimate the magnitude of these effects? How should the Commission evaluate the savings to the Universal Service Fund from reduced waste, fraud, and abuse against the lower consumer benefits to Lifeline subscribers who would no longer subscribe because of an increased cost to the customer? Would a charge for the handset ensure that the carriers are providing handsets that customers value? Would the potential program integrity and consumer benefits of requiring ETCs to charge Lifeline subscribers for handsets distributed in person outweigh any potential burdens to ETCs and Lifeline subscribers?

23. The Commission recognizes that many other activities, such as in-person training on how to use the handset, occur between the ETC and the subscriber at enrollment. How would limitations on the distribution of free handsets impact these other activities? Are there other changes that could be made to this practice that would eliminate opportunities for fraud while ensuring that customers have access to affordable handsets?

24. The Commission and USAC have made a number of important changes to the Lifeline program and its administrative systems to reduce waste, fraud, and abuse, including a duplicate check with the NLAD and implementation of the National Verifier to make eligibility determinations. Has the implementation of the NLAD and recent changes to the Lifeline rules (including the requirement to retain eligibility documents) reduced the opportunities for fraud that were associated with the distribution of free handsets? Will the National Verifier further reduce the opportunities for fraud associated with this practice? Do any of these program or system changes reduce the risk of problems associated with in-person distribution of free handsets and obviate any need to require ETCs to charge a fee for receiving a handset at an in-person enrollment or for the Commission to place other restrictions on this practice?

25. In 2012, the Commission eliminated a rule requiring that ETCs charge Tribal Lifeline customers a minimum of $1 per month. The Commission acknowledged that while the rule had specified the minimum charge, carriers were not required to collect the amount from customers, and some did not. What lessons should the Commission learn from the now eliminated $1 minimum service charge for Tribal Lifeline customers? If the Commission were to require ETCs to charge Lifeline subscribers a nominal fee for handsets distributed in person, is there a significant risk that ETCs would not actually collect that fee from Lifeline subscribers? How would the requirements be designed to address that risk?

26. The Commission further notes that, in the *2017 Lifeline Order and Notice,* comments were sought on whether it should impose a maximum discount level for Lifeline services, which would require customers to pay a portion of the costs of the supported service. There, the Commission proposed to adopt a maximum discount level as a way to further reduce waste, fraud, and abuse in the program. The Commission reasoned that under the current model where providers offer ''free-to-the-end-user'' Lifeline service, ''service providers may engage in fraud or abuse by using no-cost Lifeline offerings to increase their Lifeline customer numbers when the customers do not value or may not even realize they are purportedly receiving a Lifeline-supported service.'' Would requiring that ETCs charge Lifeline customers a fee in exchange for a handset constitute a minimum charge for Lifeline service? Alternatively, would requiring ETCs to assess a regular fee on subscribers for the Lifeline supported service mitigate any problems associated with providing in-person free handsets?

27. *Certifying Privacy Protection Efforts.* The Commission seeks comments on two issues that are expected to address open recommendations made by the Commission's Office of Inspector General (OIG) following its review of USAC's NLAD implementation in 2018. The first is a recommendation to require ETCs and state agencies with access to the USAC NLAD and National Verifier systems to certify that they have given their employees and enrollment representatives appropriate privacy training before those individuals may access the NLAD or National Verifier systems. The Commission believes that such a training and certification requirement would reduce the possibility that Lifeline subscribers' personal information would be accessed, used, or disclosed inappropriately. In response to a second recommendation from the Commission's OIG, the Commission seeks comments on whether state commissions and ETCs conduct background investigations of their staff that access USAC's systems, the nature of those investigations, and whether the Commission should require that state commissions and ETCs certify that they complete such investigations.

28. In an effort to ensure that Lifeline subscribers' personal information is kept private and secure, the Commission has repeatedly directed USAC to implement strict standards regarding how it handles and gives external access to the Lifeline subscriber data that it receives as the administrator of the Lifeline program. The Commission has not, however, specifically required ETCs and state agencies to train their personnel regarding appropriate privacy precautions for accessing and handling personal information. A lack of such a training requirement could result in employees and enrollment representatives of ETCs or state agencies accessing highly sensitive information about Lifeline applicants or subscribers without having received sufficient instruction in the appropriate use and disposal of those data. The Commission therefore proposes and seeks comments on requiring ETCs and state agencies with access to the USAC NLAD and National Verifier systems to certify that they have given their employees and enrollment representatives appropriate privacy training.

29. Outside of the Lifeline context, Commission rules governing customer proprietary network information (CPNI) already require telecommunications carriers to ''train their personnel as to when they are and are not authorized to use CPNI, and carriers must have an express disciplinary process in place.'' Additionally, telecommunications carriers must have an officer annually certify a carrier's compliance with the Commission's CPNI rules. In considering a training and certification requirement for entities with NLAD and National Verifier access, the Commission seeks comments on the sufficiency of an ETC's CPNI certification to cover the effective training of their staff accessing these systems. The Commission also seeks comments on the scope and focus of existing ETC training programs and whether they address any unique personal information issues that arise when submitting Lifeline information to USAC that are not adequately addressed by the CPNI rules. Is there a need for a Lifeline-specific rule mandating training beyond what is put forward in the Commission's CPNI rules? Further, the Commission seeks comments on the scope of ETCs' existing training programs and whether they include contractors, sub-contractors, enrollment representatives, and other individuals that might interact with personal information being used in NLAD or the National Verifier.

30. The Commission also seeks comments on the availability of existing privacy training resources for state agencies that have access to personal data in the NLAD or National Verifier. Are there existing state agency privacy training programs that would satisfy the same purposes of a Lifeline-specific privacy training? Should state agencies' privacy training cover the same type of data protection standards as would be required by telecommunications carriers under the Commission's CPNI rules? If not, how should the training differ?

31. The Commission also seeks comments on how a privacy training and certification requirement, if any, should be implemented. Should USAC conduct the training directly, or make a training available if an ETC or state agency does not conduct its own? The Commission proposes requiring ETCs and state agencies to certify in their NLAD and National Verifier access agreements that they have implemented compliant training programs or require their relevant employees and enrollment representatives to complete USAC's training prior to using USAC's system to access Lifeline applicant or subscriber personal information, and the Commission seeks comments on this approach.

32. Finally, to further confirm that Lifeline subscriber's personal information is appropriately protected, the Commission seeks comments on a proposal to require state commissions and ETCs to provide written confirmation that they have conducted background investigations of their staff with access to the NLAD or National Verifier systems. Do state commissions and ETCs already complete background investigations for staff members with access to NLAD or the National Verifier? Do state commissions and ETCs conduct similar investigations for agents, contractors, and other non-employees that might handle Lifeline subscriber data and interact with NLAD or the National Verifier? How are these investigations documented, and would providing written confirmation to USAC of these investigations be feasible and reliable? The Commission also seeks comments on the burdens of such a requirement beyond the steps that state commissions and ETCs may already be taking. Would those burdens be outweighed by reduced waste, fraud, and abuse in the Lifeline program?

III. Procedural Matters

A. Initial Paperwork Reduction Act Analysis

33. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition,

pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comments on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

34. *Ex Parte Rules—Permit-But-Disclose.* The proceeding the FNPRM initiates shall be treated 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.

B. Initial Regulatory Flexibility Analysis

35. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities from the policies and rules proposed in this Further Notice of Proposed Rulemaking (FNPRM). The Commission requests written public comment on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the comments deadline dates. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

36. *Need for, and Objective of, the Proposed Rules.* The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254. The Lifeline program was implemented in 1985 in the wake of the 1984 divestiture of AT&T. On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. The Lifeline program is administered by the Universal Service Administrative Company (USAC), the Administrator of the universal service support programs, under Commission direction, although many key attributes of the Lifeline program are currently implemented at the state level, including consumer eligibility, eligible telecommunication carrier (ETC) designations, outreach, and verification. Lifeline support is passed on to the subscriber by the ETC, which provides discounts to eligible households and receives reimbursement from the universal service fund (USF or Fund) for the provision of such discounts.

37. In the *2017 Lifeline Order and Notice,* the Commission sought comment on a number of proposals that were intended to improve the integrity of the program. Many of those proposals were adopted in the *Fifth Report and Order.* Building on those efforts, in the FNPRM, the Commission seeks comment on revising the goals of the Lifeline program and how to measure the program's achievements with respect to broadband adoption. The Commission also seeks comment on its proposal to require ETCs, USAC, and the National Verifier, as appropriate, to recertify each Lifeline subscriber's eligibility once every 12 months, as measured from the subscriber's service initiation date. The Commission also proposes a number of changes designed to improve integrity of the Lifeline program.

38. *Legal Basis.* The legal basis for the Further Notice of Proposed Rulemaking is contained in sections 1 through 4, 201–205, 254, and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151 through 154, 201 through 205, 254, and 403.

39. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA. A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''

40. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commissions actions, over time, may affect small entities that are not easily categorized at present. Therefore described, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 29.6 million businesses.

41. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

42. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships,

villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.'' The small entities that may be affected include Wireline Providers, Wireless Carriers and Service Providers, and Interment Service Providers.

43. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* In the FNPRM, the Commission seeks comments on modifying its goals for the Lifeline and on proposed reforms of the program that are intended to improve the integrity of the program by further eliminating waste, fraud, and abuse in the program.

44. *Increased Broadband Adoption as a New Program Goal.* In the FNPRM, the Commission seeks comments on adding a new goal to the program: Increased broadband adoption among consumers who otherwise, without a Lifeline benefit, would not subscribe to broadband. The Commission seeks comments on its authority to adopt as a goal of the Lifeline program increasing broadband adoption for consumers who otherwise would not subscribe to broadband. The Commission also seeks comments on the appropriate method for measuring broadband adoption among consumers who otherwise would not subscribe to broadband. The Commission asks which data sources could help inform the Commission's measurement of the goals and asks whether there are additional questions that can be asked of Lifeline applicants during the enrollment process regarding how the program has impacted their broadband adoption. Should the Commission also add questions to determine whether Lifeline is effectively reaching specific demographics, like veterans or households with children? The Commission seeks comments on what other methods can be used to determine the impact of the Lifeline benefit on broadband adoption, and whether the Commission should reply on Commission reports or other data sources. Furthermore, for the purposes of this goal, the Commission asks how it should identify low-income consumers or areas if other Commission reports or data sources are used. The Commission also asks how it should define broadband and whether its evaluation of this goal consider fixed and mobile broadband differently. The Commission also asks whether this goal should also measure adoption of voice service from consumers who would not otherwise have it. The Commission also proposes to examine Lifeline's impact across several categories of consumers, from those that value broadband so highly that they would purchase it even without a Lifeline benefit, to those that may currently use a Lifeline-supported broadband internet access service but would lose access to that serve or only purchase broadband intermittently without Lifeline support. The Commission also wishes to examine those that do not subscribe to any broadband internet access service at all. The Commission asks how to identify, measure, and analyze adoption among each of these groups, and how would it inform whether the Lifeline program is meeting the goal of increasing broadband adoption? The Commission seeks comments on any additional criteria to consider when evaluating the program's impact on broadband adoption among consumers.

45. *Upload Internal Customer Accounts and Eligibility Proof Number and Type.* The Commission proposes to amend § 54.404(b) of the rules to require ETCs to upload their internal customer account numbers into the NLAD when enrolling or rectifying subscribers in order to help facilitate the examination of internal data to determine if improper payments were made. The Commission also proposes amending §§ 54.404(b) and 54.410(d) of the rules to require ETCs and the National Verifier to collect and record the identification number or card number indicated on the eligibility documentation (*e.g.,* the SNAP card number or Medicaid card number) and the type of eligibility proof used by a subscriber to demonstrate eligibility for the Lifeline program. The proposal would not apply where a subscriber's eligibility is verified through an automated database. The Commission seeks comments on the proposal.

46. *Demonstrating Compliance with Usage Requirements.* The Commission also seeks comments on ways to ensure the accuracy of ETCs' claims that subscribers are using their broadband internet access service under the non-usage rule. The Commission asks whether it would be possible for an ETC to pre-install an app on a subscriber's phone that would ''use'' data without any action by the user? Could an ETC fabricate usage in order to continue claiming support for a Lifeline subscriber who is no longer using the service? The Commission invites comments on whether it could require subscribers to use an app to confirm usage. The Commission also seeks comments on any potential privacy implications of modifying the usage requirement or requiring the installation of a specific app or method of usage.

47. The Commission also seeks comments on amending § 54.417 of the Commission's rules to clarify an ETC's obligation to maintain records that document compliance with the usage requirement. The current rule requires ETCs to ''maintain records to document compliance with all Commission and state requirements governing the Lifeline and Tribal Link Up program for three full preceding calendar years and provide that documentation to the Commission or Administrator upon request. While the rule already applies to the usage requirement in §§ 54.405(e)(3) and 4.407(c) of the Commission's rules, the Commission seeks comments on whether a more detailed explanation of what documentation ETCs must maintain in the context of the non-usage requirement would provide certainty to ETCs. If the Commission amended § 54.417 rule to give more specific guidance on document retention in the context of the usage requirement, what documentation should ETCs be required to maintain to show that data usage is ''undertaken by the subscriber,'' and not by the ETC, as the Commission's rules require? What are the costs and benefits of specially requiring ETCs to maintain detailed usage records, which could be examined to show any trends that reveal indications of potential usage fabrication (for example, an account that only used data once every 30 days, at 2:00 a.m.)? Should such usage data be maintained for the same general timeframe as other compliance documentation under § 54.417 of the rules?

48. *De-enrollment Process.* The Commission seeks comments on amending § 54.405(e)(1) of the rules to clarify ETCs' obligations to act promptly to notify subscribers when the ETC has reason to believe that the subscriber is not eligible for the Lifeline program. Currently, the rule provides the

subscriber 30 days to demonstrate continued eligibility and a five-business-day de-enrollment period if the subscriber fails to demonstrate his or her eligibility. However, the rule does not specify how quickly the ETC must act to send the subscriber the written notice that begins the 30-day period. An ETC that unreasonably delays sending the 30-day notice would violate the existing rule, but the Commission also seeks comments on implementing a firm deadline to avoid future confusion. The Commission seeks comments on whether it should amend § 54.405(e)(1) of the rules to require ETCs to send written notice to the subscriber no later than five business days after the ETC has a reasonable basis to believe that the subscriber is no longer eligible for Lifeline service? Would amending the rule to allow the ETC five business days to send the 30-day-de-enrollment notice be sufficient? The Commission also seeks comments on amending § 54.405 of its rules to codify the de-enrollment process when the de-enrollment is conducted by USAC under its authority as administrator of the Universal Service Fund. Should the de-enrollment procedures operate differently when USAC de-enrolls a subscriber from NLAD pursuant to an ETC's request or a program integrity review, under its authority as administrator of the Fund? Should USAC continue to rely on the ETC to conduct subscriber outreach for program integrity reviews or other situations, and if so, should the Commission's rules specifically direct USAC to de-enroll or deny reimbursement for those subscribers if the ETC is nonresponsive or delayed in its response? How should the Commission ensure that subscribers are given an opportunity to demonstrate continued eligibility before being de-enrolled? Are there any other clarifications the Commission should make to its de-enrollment rules?

49. *Distribution of Free Handsets.* The Commission also seeks further comments on the practice of in-person distribution of free handsets. Specifically, the Commission seeks comment on ways to minimize the risk of waste, fraud, and abuse stemming from the in-person distribution of free handsets upon enrollment in the Lifeline program. The Commission seeks comments on requiring ETCs to charge Lifeline subscribers a fee in exchange for receiving a handset or device in person at enrollment. How prevalent is the in-person distribution of free handsets today and is this practice primarily associated with free-to-the-end-user Lifeline plans? Would the restriction eliminate incentives for ineligible consumers to attempt to enroll in Lifeline and does the promise of an immediate free phone along with a free service provide improper incentives to potential subscribers? The Commission asks whether it has the statutory authority to prohibit ETCs from distributing free handsets to Lifeline subscribers or otherwise regulate the distribution of handsets to ETCs. Does the longstanding program restriction on support for equipment used for the supported service justify a new requirement that all Lifeline subscribers must pay a fee for the handsets used to provide the supported service? The Commission seeks comments on whether important changes to NLAD and the roll-out of National Verifier have reduced the opportunities for fraud that were associated with the distribution of free handsets. The Commission seeks comments on other alternatives, such as delaying the distribution of free handsets or allowing the in-person distribution of handsets only to Lifeline subscribers who, either up front or through a payment plan, have paid an end-user fee. Would those alternatives help eliminate fraud within the program? What would be the impact on program participation if Lifeline subscribers had to pay a fee in exchange for a handset? Would a fee create significant barriers to participating in the Lifeline program? If the Commission were to implement this requirement, how much should the fee be for a handset? The Commission seeks comment on the impact of limiting distribution of handsets would have on other activities, such as in-person training on handset use. The Commission also asks if it were to require ETCs to charge Lifeline subscribers a nominal fee for handsets distributed in person, is there a significant risk that ETCs would not actually collect that fee from Lifeline subscribers, and how could the Commission monitor and enforce an ETC's compliance with that requirement. The Commission also notes that it recently sought comment on whether it should impose a maximum discount level for Lifeline services, which would require customers to pay a portion of the costs of the supported service. Would requiring that carriers charge Lifeline customers a fee in exchange for a handset constitute a minimum charge for Lifeline service? Would requiring ETCs to assess a regular fee on subscribers for the Lifeline supported service mitigate any problems associated with providing in-person free handsets?

50. *Certifying Privacy Protection Training Efforts.* The Commission seeks comment on requiring ETCs and state agencies with access to the USAC NLAD and National Verifier systems to certify that they have given their employees, agents, and representatives appropriate privacy training before those individuals may access the NLAD or National Verifier systems. In an effort to ensure that Lifeline subscribers' personal information is kept private and secure, the Commission has repeatedly directed USAC to implement strict standards in how it handles and gives external access to the Lifeline subscriber data that it receives as the administrator of the Lifeline program. The Commission has not, however, specifically required ETCs and state agencies to train their personnel in appropriate privacy precautions for accessing and handling personal information. A lack of such a training requirement could result in employees, agents, and representatives of ETCs or state agencies accessing highly sensitive information about Lifeline applicants or subscribers without having received sufficient instruction in the appropriate use and disposal of that data. In implementing a certification requirement for entities with NLAD and National Verifier access, the Commission seeks comments on the sufficiency of an ETC's customer proprietary network information (CPNI) certification to certify the effective training of their staff accessing these systems. The Commission also seeks comment on the scope and focus of existing ETC training programs and whether they address any unique personal information issues that arise when submitting Lifeline information to USAC that are not adequately addressed by the CPNI rules. Is there a need for a Lifeline-specific rule mandating training beyond what is put forward in the Commission's CPNI rules? The NPRM also seeks comments on the scope of ETCs' existing training programs and whether they include contractors, sub-contractors, agents, representatives, and other individuals that might interact with personal information being used in NLAD or the National Verifier. The Commission also seeks comments on the availability of existing privacy training resources for state agencies that have access to personal data in NLAD or National Verifier. Are there existing state agency privacy training programs that would satisfy the same purposes of a Lifeline-specific privacy training? Should state agencies' privacy training

cover the same type of data protection standards as would be required by telecommunications carriers under the Commission's CPNI rules? If not, how should the training differ? The Commission also seeks comments on how a privacy training and certification requirement should be implemented. Should USAC conduct the training directly, or make a training available if an ETC or state agency does not conduct their own? The Commission proposes requiring ETCs and state agencies to certify in their NLAD and National Verifier access agreements that they have implemented compliant training programs or require their relevant employees, agents, and representatives to complete USAC's training prior to using USAC's system to access Lifeline applicant or subscriber personal information, and we seek comments on the approach. Finally, to further confirm that Lifeline subscriber's personal information is appropriately protected, the Commission seeks comments on a proposal to require state commissions and ETCs to provide written confirmation that they have conducted background investigations of their staff with access to the NLAD or National Verifier systems. The Commission seeks comments on existing practices regarding employee background investigations and the burdens associated with a requirement to regularly provide such information to USAC.

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

52. The FNPRM seeks comments on several policies that would revise the program's goals and promote the availability of modern services for low-income families, and also reduce waste, fraud, and abuse in the program. Several of the policies would increase the economic burdens on small entities, and certain changes would lessen the economic impact on small entities. Requiring ETCs to upload its internal customer account numbers and to provide a subscriber's eligibility proof number and type are some of the measures proposed that are intended to help eliminate waste, fraud, and abuse in the Lifeline program. Moreover, the proposal to codify the de-enrollment obligations help ensure that ETCs do not unreasonably delay in sending out 30-day notices to subscribers that may no longer be eligible for Lifeline. In those instances in which a policy would increase burdens on small entities, it is determined that the benefits from such changes outweigh the increased burdens on small entities because those proposed changes would facilitate the Lifeline program's goal of supporting affordable, high-speed internet access for low-income Americans or would minimize waste, fraud, and abuse in the program. The Commission invites comments on ways in which the Commission can achieve its goals, but at the same time further reduce the burdens on small entities. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the FNPRM and this IRFA, in reaching its final conclusions and taking action in the proceeding.

IV. Ordering Clauses

53. *Accordingly, it is ordered,* that pursuant to the authority contained in sections 1–4, 201, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201, 214, 254, and 403, and § 1.2 of the Commission's rules, 47 CFR 1.2, the Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, is adopted.

54. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, Further and Notice of Proposed Rulemaking including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Communications Common Carriers, internet, Reporting and Recordkeeping Requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302, unless otherwise noted.

■ 2. Amend § 54.404 by revising paragraph (b)(6) to read as follows:

§ 54.404 The National Lifeline Accountability Database.

* * * * *

(b) * * *

(6) Eligible telecommunications carriers must transmit to the Database in a format prescribed by the Administrator each new and existing Lifeline subscriber's full name; full residential address; date of birth and the last four digits of the subscriber's Social Security number or Tribal Identification number, if the subscriber is a member of a Tribal nation and does not have a Social Security number; the type of documentation and associated identification number used to demonstrate eligibility, if applicable; the telephone number associated with the Lifeline service; the ETC's internal account number or identification number associated with that subscriber; subscriber non-usage information; identity of the enrollment representative; time the subscriber was enrolled; the date on which the Lifeline service was initiated; the date on which the Lifeline service was terminated, if it has been terminated; the amount of support being sought for that subscriber; and the means through which the subscriber qualified for Lifeline.

* * * * *

■ 3. Amend § 54.405 by revising paragraph (e)(1) to read as follows:

§ 54.405 Carrier obligation to offer Lifeline.

* * * * *

(e) * * *

(1) *De-enrollment generally.* If an eligible telecommunications carrier has a reasonable basis to believe that a Lifeline subscriber no longer meets the criteria to be considered a qualifying low-income consumer under § 54.409, within five business days the carrier must notify the subscriber of impending termination of his or her Lifeline service. Notification of impending

termination must be sent in writing separate from the subscriber's monthly bill, if one is provided, and must be written in clear, easily understood language. A carrier providing Lifeline service in a state that has dispute resolution procedures applicable to Lifeline termination that requires, at a minimum, written notification of impending termination, must comply with the applicable state requirements. The carrier must allow a subscriber 30 days following the date of the impending termination letter required to demonstrate continued eligibility. A subscriber making such a demonstration must present proof of continued eligibility to the carrier consistent with applicable annual re-certification requirements, as described in § 54.410(f). An eligible telecommunications carrier must de-enroll any subscriber who fails to demonstrate eligibility within five business days after the expiration of the subscriber's time to respond. A carrier providing Lifeline service in a state that has dispute resolution procedures applicable to Lifeline termination must comply with the applicable state requirements.

* * * * *

■ 4. Amend § 54.410 by revising paragraph (d)(2)(vii) to read as follows:

§ 54.410 Subscriber eligibility determination and certification.

* * * * *

(d) * * *

(2) * * *

(vii) If the subscriber is seeking to qualify for Lifeline under the program-based criteria, as set forth in § 54.409, the name of the qualifying assistance program from which the subscriber, his or her dependents, or his or her household receives benefits, the subscriber's associated identification number, and the type of documentation the subscriber is submitting to demonstrate participation in that program, if necessary; and

* * * * *

[FR Doc. 2019–27221 Filed 12–26–19; 8:45 am]

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Notices

Federal Register

Vol. 84, No. 248

Friday, December 27, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Adoption of Recommendations

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: The Administrative Conference of the United States adopted five recommendations at its Seventy-second Plenary Session. The appended recommendations address: Agency Economists; Independent Research by Agency Adjudicators in the internet Age; Acting Agency Officials and Delegations of Authority; Public Identification of Agency Officials; and Recruiting and Hiring Agency Attorneys.

FOR FURTHER INFORMATION CONTACT: For Recommendation 2019–5, Keith Holman; for Recommendation 2019–6, Jeremy Graboyes; for Recommendations 2019–7 and 2019–8, Bobby Ochoa; and for Recommendation 2019–9, Todd Rubin. For each of these actions the address and telephone number are: Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW, Washington, DC 20036; Telephone 202–480–2080.

SUPPLEMENTARY INFORMATION: The Administrative Conference Act, 5 U.S.C. 591–596, established the Administrative Conference of the United States. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies and makes recommendations to agencies, the President, Congress, and the Judicial Conference of the United States for procedural improvements (5 U.S.C. 594(1)). For further information about the Conference and its activities, see *www.acus.gov.* At its Seventy-second Plenary Session, held on December 12, 2019, the Assembly of the Conference adopted five recommendations.

Recommendation 2019–5, *Agency Economists,* addresses the placement of economists within rule-writing agencies (*e.g.,* centralized versus dispersed throughout the agency) and describes methods for promoting high-quality economic analysis within each of the potential organizational structures. Each potential structure has strengths and weaknesses that can affect the flow of information between economists and decision-makers. The recommendation does not endorse any one organizational structure over another, but rather identifies steps agencies can take to remove structural barriers that can impede the communication of objective, consistent, and high-quality economic analysis to decision-makers during the rulemaking process.

Recommendation 2019–6, *Independent Research by Agency Adjudicators in the internet Age,* addresses agency adjudicators' increasing reliance on their own factual research—especially internet research—when conducting hearings and deciding cases. Though such independent research can be an efficient means to acquire facts, it can also raise concerns regarding the accuracy of information uncovered and fairness to the litigants. The recommendation encourages agencies to develop publicly available policies on independent research that identify sources of information that are reliable in all cases, set forth standards for adjudicators to apply when assessing the reliability of other sources, and ensure that litigants have ready access to all sources.

Recommendation 2019–7, *Acting Agency Officials and Delegations of Authority,* offers agencies best practices for promoting greater transparency and compliance with the Federal Vacancies Reform Act of 1998 when a Senate-confirmed position sits vacant. It also addresses the use of delegations of authority in response to staffing vacancies. It urges agencies to determine whether they are subject to the Vacancies Act and, if so, establish compliance processes; improve transparency by disclosing on their websites information about acting officials and delegations of authority; and provide additional support and training to agency officials responsible for Vacancies Act compliance.

Recommendation 2019–8, *Public Identification of Agency Officials,* promotes the public availability of real-time information about high-level officials leading federal agencies. It encourages agencies to publish on their websites basic information about high-level agency leaders and identify vacant leadership positions and acting officials. It also recommends that the Office of Personnel Management regularly publish on its website a list of high-level agency leaders, as well as an archival list of former Senate-confirmed presidential appointees.

Recommendation 2019–9, *Recruiting and Hiring Agency Attorneys,* urges agencies to avail themselves of the flexibilities available to them when hiring attorneys and offers best practices for structuring their hiring processes. First, it suggests that the Office of Personnel Management offer training for agencies on the alternative processes and flexibilities available to them when they hire attorneys. Then, among other suggestions, it advises agencies to post and disseminate vacancy announcements widely when seeking broad applicant pools; draft announcements clearly and concisely; communicate to applicants any limitations on the number of applicants they will consider; and establish policies for reviewing applications and interviewing candidates.

The Appendix below sets forth the full texts of these five recommendations. The Conference will transmit the recommendations to affected agencies, Congress, and the Judicial Conference of the United States, as appropriate. The recommendations are not binding, so the entities to which they are addressed will make decisions on their implementation.

The Conference based these recommendations on research reports that are posted at: *https://www.acus.gov/meetings-and-events/plenary-meeting/72nd-plenary-session.*

Dated: December 20, 2019.

Shawne C. McGibbon,

General Counsel.

APPENDIX—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Administrative Conference Recommendation 2019–5

Agency Economists

Adopted December 12, 2019

Federal regulatory agencies are subject to various requirements to conduct economic analysis when they prepare new regulations. Executive Order 12866 [1] requires that agencies (other than what it designates as ''independent regulatory agencies'') [2] conduct a ''regulatory impact analysis'' (RIA) for their ''significant regulatory actions,'' which include regulations likely to have an annual economic impact exceeding $100 million.[3] The RIAs that accompany these regulations explain the potential benefits and costs of the planned regulation.[4] Many of these agencies, along with several independent regulatory agencies, are likewise required by statutes and other executive orders [5] to conduct some form of economic analysis. The analysis requirements imposed by these statutes and executive orders are cross-cutting in certain cases (*e.g.,* under the Regulatory Flexibility Act [6] and the Unfunded Mandates Reform Act [7]), and agency- or program-specific in other cases.[8]

The regulatory economic analysis agencies produce can be an extremely valuable tool for anticipating and evaluating the likely consequences of proposed and final regulations and informing agency decisions.[9] Several Conference recommendations have sought to improve the quality and transparency of agency regulatory economic analysis.[10] The Conference has not, however, addressed the organizational structure [11] of the economic analysis function.[12]

At present, some agencies [13] task a centralized unit of economists with conducting all regulatory economic analyses (''functional'' organization). Examples include the Federal Communications Commission's Office of Economics and Analytics and the Federal Trade Commission's Bureau of Economics.[14] Both units are independent of the offices that write regulations, but they conduct economic analyses to inform decisions about regulations. At other agencies, economists are distributed amongst an agency's program divisions, working alongside other rule development staff (''divisional'' organization). At the Department of Energy, for example, the economists who produce RIAs that accompany regulations work under the supervision of the program offices that write the regulations. Still other agencies have economists distributed through various program divisions, as in the divisional mode of organization, but also have economists in a central office that reviews draft regulations and the accompanying economic analyses (''hybrid'' organization). Examples of hybrid organizations include the National Center for Environmental Economics at the Environmental Protection Agency, the Office of the Chief Economist in the Department of Agriculture, and the Director of Regulatory Analysis in the Office of the General Counsel at the Department of Transportation.[15] Of course, an agency may have multiple distinct entities tasked with performing economic analysis, and each such entity may fall under a different organizational heading. This is especially true with large or geographically widespread agencies.

Each of these structures has inherent strengths and weaknesses. For instance, a functional organization may limit the number of day-to-day interactions that economists have with rule-writers, lawyers, and other non-economists within the agency, whereas a divisional organization may impair the objectivity of economic analysis if the economists seek to avoid conflict with their non-economist supervisors. Decision-making authorities, practices, and procedures can be crafted to support the strengths and mitigate the weaknesses of the chosen organizational structure. The challenge for each agency is to find the blend of organizational structure, practices, and procedures that will enable the agency to successfully fulfill its economic analysis objectives.

This Recommendation offers factors for agencies to consider in designing their economic analysis programs. It does not recommend that agencies should afford greater or lesser prominence to economics as compared to any other discipline in the rule development process. It also does not address whether agencies should adopt any form of organization over another and recognizes that each agency will want to tailor its economic analysis program to fit its individual needs. Rather, it focuses on ways to ensure that structure, practices, and procedures complement each other, forming a coherent system for producing high-quality economic analysis that informs regulatory decisions

[1] Exec. Order No. 12866, *Regulatory Planning and Review,* 58 FR 51735 (Oct. 4, 1993).

[2] It excludes ''independent regulatory agencies''—those listed in 44 U.S.C. 3502(5)—from the requirement to prepare an RIA for their rulemakings. *See* Exec. Order No. 12866, *supra* note 1 § 3(b). These independent agencies include most regulatory boards and commissions (*e.g.,* the National Labor Relations Board, the Federal Energy Regulatory Commission, and the Consumer Product Safety Commission).

[3] *Id.* § 3(f)(1). ''Significant regulatory action'' also includes any regulatory action that will (a) adversely affect the economy or segments of the economy, (b) interfere with another agency's actions, (c) materially alter the budget or affect required transfer payments, or (d) raise novel legal or policy issues arising out of legal mandates. *Id.* §§ 3(f)(2)–(4).

[4] *Id.* § 6(a)(3)(B).

[5] *See, e.g.,* Exec. Order No. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,* 59 FR 7629 (Feb. 11, 1994), Exec. Order No. 13132, *Federalism,* 64 FR 43255 (Aug. 10, 1999), Exec. Order No. 13272, *Proper Consideration of Small Entities in Agency Rulemakings,* 67 FR 53461 (Aug. 13, 2002).

[6] 5 U.S.C. 601–612.

[7] 2 U.S.C. 1501 *et seq.*

[8] *See e.g.,* 7 U.S.C. 19(a) (Commodity Futures Trading Commission), 15 U.S.C. 77b(b) (Securities Exchange Commission), 15 U.S.C. 2058(f) (Consumer Product Safety Commission); *see also* Curtis Copeland, Regulatory Analysis Requirements: A Review and Recommendations for Reform (Mar. 3, 2012) (report to the Admin. Conf. of the U.S.), *https://www.acus.gov/report/curtis-copelands-report-regulatory-analysis-requirements.* All federal agencies, moreover, must participate in a regulatory planning process that requires a preliminary impact analysis developed at least in part by agency economists. *See* Exec. Order No. 12866, *supra* note 1, § 4(c).

[9] The basic elements of this analysis include (1) an assessment of the need for the proposed action, (2) an examination of alternative approaches, and (3) an evaluation of the benefits and costs—quantitative and qualitative—of the proposed action and the main alternatives. *See* Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular A–4, Regulatory Analysis (2003). An agency's economic analysis sometimes assesses other potential results of a regulation, such as cost-effectiveness, economic feasibility, or distributional consequences.

[10] *See, e.g.,* Admin Conf. of the U.S., Recommendation 2018–7, *Public Engagement in Rulemaking,* 84 FR 2139 (Feb. 6, 2019); Admin Conf. of the U.S., Recommendation 2013–2, *Benefit-Cost Analysis at Independent Regulatory Agencies,* 78 FR 41352 (July 10, 2013); Admin Conf. of the U.S., Recommendation 2012–1, *Regulatory Analysis Requirements,* 77 FR 47801 (Aug. 10, 2012); Admin. Conf. of the U.S., Recommendation 88–7, *Valuation of Human Life in Regulatory Decisionmaking,* 53 FR 39586 (Oct. 11, 1988); Admin. Conf. of the U.S., Recommendation 85–2, *Agency Procedures for Performing Regulatory Analysis of Rules,* 50 FR 28364 (July 12, 1985).

[11] The way agencies structure their economic impact analyses can, for example, be influenced by executive orders. Executive Order 12866 requires that agencies designate a Regulatory Policy Officer who ''shall be involved at each stage of the regulatory process to foster the development of effective, innovative, and least burdensome regulations and to further the principles set forth in this Executive Order.'' Exec. Order No. 12866, *supra* note 1, § 6(a)(2); *see also* Exec. Order No. 13777, *Enforcing the Regulatory Reform Agenda,* 82 FR 12285 2(a) (Mar. 1, 2017) (requiring agencies to designate a Regulatory Reform Officer and a Regulatory Reform Task Force to ''oversee the implementation of regulatory reform initiatives and policies'').

[12] An early Conference study by then-Professor Stephen Breyer advocated for a more prominent role for economists in agencies and erecting a centralized apparatus for review of economic analysis (a proposal that came to fruition with the creation of the Office of Information and Regulatory Affairs (OIRA). Stephen G. Breyer, Role of Economic Analysis in the Regulatory Agencies 126, 129 (Oct. 12, 1973) (report to the Admin. Conf. of the U.S.).

[13] As used in this Recommendation, the term ''agency'' refers to the specific governmental unit that conducts the regulatory analysis, rather than to a parent agency (*e.g.,* the Occupational Safety and Health Administration rather than the Department of Labor). Of course, when the parent agency is itself issuing a regulation, the term ''agency'' is intended to encompass it.

[14] Jerry Ellig, Agency Economists 13, 21 (Sept. 3, 2019) (report to the Admin. Conf. of the U.S.) *https://www.acus.gov/report/final-report-agency-economists.*

[15] *Id.* at 30.

and is consistent with the elements set forth in relevant executive orders, Office of Management and Budget guidance (*e.g.,* Executive Order 12866 and OMB Circular A–4), and both agency-specific and cross-cutting statutes that require economic analysis.

Recommendation

Agency Consideration of Structure and Function of Economists

1. Agencies that conduct regulatory impact analysis or another form of economic analysis should consider whether their existing organizational structure for economists allows the agency to produce objective, consistent, and high-quality economic analysis. Regulatory Policy Officers (or analogous agency officials) should meet with relevant decision makers to assess the organizational structure's contribution to the quality and use of economic analysis.

2. In reviewing their organizational structures, agencies should consider how best to allow and encourage their economists to develop objective analysis consistent with best professional practice to ensure compliance with all analytic requirements (such as those contained in Executive Order 12866 and Office of Management and Budget Circular A–4). The organizational structure should also promote the flow of information among decision makers, rule-writers, economists, and other rule development staff as early in the decision-making process as feasible. Relevant organizational structures that agencies may wish to consider include the following.

a. Functional organizations, which have a centralized economics unit and tend to have the following strengths and weaknesses:

(1) This structure may enable economists to produce more objective, consistent, and high-quality analysis due to greater independence, collaboration with peers, economies of scale, ongoing professional development, and recruiting advantages; and

(2) This structure may result in economists being physically separated from day-to-day events in the program offices, thereby causing them to be less informed about critical details of pending regulatory issues. The physical separation may also create impediments to collaboration.

b. Divisional organizations, which locate economists in program offices and tend to have the following strengths and weaknesses:

(1) This structure can allow economists to produce analysis that is closely focused on program-specific regulatory issues and can facilitate earlier involvement in the development of regulations; and

(2) Economists working within this structure may feel pressure to produce less objective analysis in order to support program office decisions, and they may have fewer opportunities to develop professional skills through interaction with economists located in other offices.

c. Hybrid organizations, which locate economists in program offices but also have a centralized economic review function and tend to have the following strengths and weaknesses:

(1) This structure may combine the benefits of divisional organization with a centralized quality control function and expanded opportunities for skill development; and

(2) Economists working in program offices may still be marginalized by other rule development staff and face career disincentives to informing the central economics office when they disagree with the quality or objectivity of a regulatory analysis.

3. Agencies that are standing up a new economic analysis unit or that are considering restructuring an existing economic analysis unit may wish to evaluate these potential strengths and weaknesses in deciding what type of structure to adopt. Agencies should further consider taking specific steps to promote high-quality, objective economic analysis. Although these steps may be associated with specific organizational structures, they may also generally apply to the development of economic analyses across all organizational structures.

4. The following steps can be taken to minimize the risks associated with walling off economists in an independent unit, which are especially likely to emerge when an agency has adopted a functional structure.

a. The agency should consider including economists on multidisciplinary regulatory development teams, along with other rule development staff, from the outset;

b. The agency should provide economists with a process to ensure their analysis is provided to higher-level decision makers; and

c. The agency should provide an avenue for the head of the economics office to express concerns about the quality of economic analysis to the agency head.

5. The following steps can be taken to minimize the risks associated with diluting economists' influence by dispersing them through the agency, which are especially likely to emerge when an agency has adopted a divisional structure.

a. The agency should ensure that the supervisory structure does not create disincentives for economists to offer objective economic analysis;

b. The agency, to the extent feasible, should empower a central economics office at the agency level to:

(1) Serve as a quality check on economic analyses developed by the program offices;

(2) In coordination with agency Regulatory Policy Officers (or analogous agency officials), standardize and disseminate high-quality analytical methods; and

(3) Conduct longer-term research and development to inform future regulatory proceedings.

c. The agency should provide an avenue for the head of the economics office to express concerns about the quality of economic analysis to the agency head.

Recommendations Applicable to All Organizational Forms

6. To promote meaningful consideration of economic analysis early in the decision-making process, agencies should consider developing guidance clarifying that economists will be involved in regulatory development before significant decisions about the regulation are made. Agencies should make this guidance publicly available by posting it on their websites.

7. Agencies seeking to apply economic analysis in the rulemaking process should involve their relevant economic units in the process of developing agency regulatory plans and budgets under applicable executive orders in order to promote meaningful consideration of economic analysis while a rule is being shaped.

8. Agency Regulatory Policy Officers or other analogous agency officials seeking to apply economic analysis in the rulemaking process should collaborate with agency economists to articulate relevant analytical methods and offer training, workshops, and assistance in economic analysis to others within the agency.

Administrative Conference Recommendation 2019–6

Independent Research by Agency Adjudicators in the Internet Age

Adopted December 12, 2019

A fundamental characteristic of agency adjudications that incorporate a legally required evidentiary hearing is the existence of an exclusive record for decision making.[1] The exclusive record in adjudications regulated by the formal-hearing provisions of the Administrative Procedure Act (APA) consists of the ''transcript of testimony and exhibits, together with all papers and requests filed in the proceeding.''[2] Many other adjudications in which an evidentiary hearing is required by statute, regulation, or executive order, though not governed by those provisions of the APA, also rely on an exclusive record similarly constituted.[3] The exclusive record principle seeks to ensure that parties know and can meet the evidence against them; promotes accurate, evidence-based decision making; and facilitates administrative and judicial review.

Although an exclusive record consists primarily of materials submitted by the parties to a proceeding, it may be appropriate or beneficial in certain circumstances for adjudicators to use information obtained through their own and their staffs' independent research. An ''adjudicator,'' as used in this Recommendation, means any agency official or employee, acting either individually or collectively, who presides over a legally required evidentiary hearing or provides administrative review following an evidentiary hearing.

[1] *See* Michael Asimow, Evidentiary Hearings Outside the Administrative Procedure Act 20–21 (Nov. 10, 2016) (report to the Admin. Conf. of the U.S.), *available at https://www.acus.gov/report/evidentiary-hearings-outside-administrative-procedure-act-final-report.*

[2] 5 U.S.C. 556(e).

[3] Admin. Conf. of the U.S., Recommendation 2016–4, *Evidentiary Hearings Not Required by the Administrative Procedure Act,* ¶ 1, 81 FR 94314, 94315 (Dec. 23, 2016). The Conference's recent recommendations divided adjudications into three categories: Those governed by the APA's formal-hearing provisions (referred to as Type A in the report accompanying Recommendation 2016–4); those that incorporate a legally required evidentiary hearing not regulated by the APA's formal-hearing provisions (referred to as Type B); and those not subject to a legally required evidentiary hearing (referred to as Type C). This Recommendation addresses only the first two categories.

''Independent research,'' as used in this Recommendation, refers to an adjudicator's search for, consideration of, or reliance on factual materials, on his or her own initiative, for purposes of resolving a proceeding pending before the agency.[4]

This definition encompasses a diverse range of practices. Official notice offers the most familiar use of independent research practice. Official notice, which is the administrative corollary of judicial notice, permits an adjudicator to accept a fact as true without requiring a party to prove the fact through the introduction of evidence.[5] In appropriate circumstances, an adjudicator may do so on his or her own motion based on information identified through independent research.[6]

In addition, independent research is sometimes used, for example, to learn background information in preparation for a hearing, define terms, assess a party's or witness's credibility, determine an expert's qualifications, assess the reliability of an expert's opinion, or interpret or evaluate existing evidence. The facts identified through independent research may be adjudicative (*i.e.,* ''the facts of the particular case'') or legislative (*i.e.,* ''those which have relevance to legal reasoning and the lawmaking process'').[7]

Congress, courts, agencies, and scholars have long debated the extent to which agency adjudicators may and should conduct independent research.[8] While some forms of independent research are firmly rooted in longstanding agency practices, others have proven more controversial in certain circumstances. The growth of the internet has amplified this debate in recent years as adjudicators now have quicker and easier access to vastly greater amounts of information.[9] Information that is now available to adjudicators includes online versions of print publications and public records, as well as newer forms of information such as openly editable encyclopedias, blogs, social media, and personal and professional websites.

Although information available on the internet can be just as reliable as information available in print publications, the nature of internet publication can make it more difficult for adjudicators to determine the authenticity and reliability of certain internet information. Moreover, the impermanence of web publication may affect the compilation of an exclusive record for administrative and judicial review.

Various sources of law may govern independent research by agency adjudicators. Perhaps the most important is constitutional due process. With regard to official notice, in particular, the Supreme Court has held that an agency must offer parties a reasonable opportunity to rebut an officially noticed fact.[10] Constitutional due process also generally requires that an adjudicator be impartial.[11] Whether an act of independent research will affect an adjudicator's impartiality or raise doubts about the integrity of a proceeding may depend on the specific features of an agency's adjudicatory program.[12]

The APA also governs some aspects of independent research in adjudications conducted according to its formal-hearing provisions. For example, with respect to official notice, the APA provides that ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence of record, a party is entitled, on timely request, to an opportunity to show the contrary.'' [13] The APA specifies that a party is entitled to ''conduct such cross-examination as may be required for a full and true disclosure of the facts.'' [14] The APA generally prohibits an employee who presides at the reception of evidence from ''consult[ing] a person or party on a fact in issue, unless on notice and opportunity for all parties to participate.'' [15] Unless an exception applies, the APA also generally prohibits an employee who participates or advises in the decision or review of a decision from performing an investigative or prosecutorial function in the same or a factually related case.[16]

Additional legal requirements may derive from agency-specific statutes; agency rules of procedure, practice, and evidence; and agency precedential decisions. Even when independent research would be legally acceptable, policy considerations—such as the need for accuracy, consistency, and administrative efficiency in agency decision making—may counsel in favor of or against its exercise.

Because adjudications vary widely in their purpose, scope, complexity, and effects, a categorical approach to independent research across federal adjudications is neither practicable nor desirable. Some adjudications are adversarial; others are non-adversarial. In some contexts, the government brings an action against a private party; in others, a private party petitions the government, or the government resolves a dispute between private or public parties. A few agencies apply the *Federal Rules of Evidence,* others use it as a guide, and others have developed evidentiary rules to suit their specific need.[17] Adjudicators in some contexts have an affirmative duty to develop the record or assist unrepresented parties; adjudicators in other contexts have no such obligation. Some adjudicators play an active role questioning parties and witnesses and calling experts; others do not. Adjudicators vary in the degree to which they are viewed as subject-matter experts and the extent to which they have access to the expertise of agency policymakers.

This Recommendation encourages agencies to develop appropriate policies to address independent research conducted by adjudicators. The policies could take different forms depending on the circumstances. In some circumstances, an agency may consider publishing a legislative rule.[18] In other circumstances, an agency guidance document, including an interpretive rule or general statement of policy within the meaning of the APA, may be suitable.[19] An agency may intend for its policy to confer an important procedural right on private parties and bind the agency. Alternatively, it may intend for its policy only to facilitate internal agency processes and not bind the agency except, perhaps, in cases in which noncompliance results in substantial prejudice to a private party.[20] The appropriate form of an agency's policy on independent research will depend on its substance and intended effect and on the unique circumstances of the agency's adjudicatory program.

Although the emphasis of this Recommendation is the particular phenomenon of independent internet research, its recommended best practices apply equally to independent research by other means.

[4] This definition does not include an adjudicator's search for, consideration of, or reliance on materials submitted by a party or an interested member of the public or adduced with a party's participation. Nor does it include the use of legal research materials traditionally consulted by an agency's adjudicators, such as statutes; agency rules, orders, and notices; and decisions of courts and administrative agencies.

[5] 5 U.S.C. 556(e); 2 Kristin E. Hickman & Richard J. Pierce, Jr., Administrative Law Treatise § 9.6 (6th ed. 2019).

[6] *See* Ohio Bell Tel. Co. v. Pub. Utilities Comm'n, 301 U.S. 292, 300–06 (1937).

[7] Fed. R. Evid. 201(a) advisory committee's note.

[8] *See* Final Report of the Attorney General's Committee on Administrative Procedure 71–73 (1941); Kenneth Culp Davis, *Official Notice,* 62 Harv. L. Rev. 537 (1949).

[9] *See generally* Jeremy Graboyes, Independent Research by Agency Adjudicators in the internet Age 8–11 (Oct. 31, 2019) (report to the Admin. Conf. of the U.S.), *available at https://www.acus.gov/report/final-report-independent-research-agency-adjudicators-internet-age.*

[10] Ohio Bell Tel. Co., 301 U.S. at 300–06.

[11] Admin. Conf. of the U.S., Recommendation 2018–4, *Recusal Rules for Administrative Adjudicators,* 84 FR 2139 (Feb. 6, 2019); Louis J. Virelli III, Recusal Rules for Administrative Adjudicators 7–8 (Nov. 30, 2018) (report to the Admin. Conf. of the U.S.), *available at https://www.acus.gov/report/final-report-recusal-rules-administrative-adjudicators.*

[12] *See* Recommendation 2018–4, *supra* note 11, ¶ 3.

[13] 5 U.S.C. 556(e).

[14] *Id.* § 556(d).

[15] *Id.* § 554(d).

[16] *Id.*

[17] Admin. Conf. of the U.S., Recommendation 86–2, *Use of Federal Rules of Evidence in Federal Agency Adjudications,* 51 FR 25642 (July 16, 1986). The APA provides only that ''the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.'' 5 U.S.C. 556(d).

[18] Legislative rules dealing with agency organization, procedure, or practice are exempt from notice-and-comment requirements. 5 U.S.C. 553(b)(A). *See generally* Admin. Conf. of the U.S., Recommendation 92–1, *The Procedural and Practice Rule Exemption from the APA Notice-and-Comment Rulemaking Requirements,* 57 FR 30102 (July 8, 1992).

[19] 5 U.S.C. 553(a); *see generally* Admin. Conf. of the U.S., Recommendation 2019–3, *Public Availability of Agency Guidance Documents,* 84 FR 38931 (Aug. 8, 2019); Admin. Conf. of the U.S., Recommendation 2019–1, *Agency Guidance Through Interpretive Rules,* 84 FR 38927 (Aug. 8, 2019); Admin. Conf. of the U.S., Recommendation 2018–5, *Public Availability of Adjudication Rules,* 84 FR 2142 (Feb. 6, 2019); Admin. Conf. of the U.S., Recommendation 2017–5, *Agency Guidance Through Policy Statements,* 82 FR 61734 (Dec. 29, 2017).

[20] *See Am. Farm Lines* v. *Black Ball Freight Serv.,* 397 U.S. 532, 539 (1970).

Recommendation

Independent research by adjudicators, especially that conducted on the internet, could have unintended results, such as actual or perceived bias, factual errors or misunderstandings, or inefficiencies. Therefore, agencies, to the extent permitted by law, should consider implementing the following best practices in consultation with adjudicators.

1. If agencies identify reliable sources or categories of sources that they determine would be generally appropriate for adjudicators to independently consult, they should publicly designate those sources or categories of sources.

2. When agencies designate sources that are appropriate for independent research, they should consider clearly identifying and, when possible, providing access to the source on their websites.[21] Agencies should ensure that they maintain the most current version of all sources that they host on their websites. If agencies provide hyperlinks to sources that are hosted on websites not maintained by the agency, they should ensure that the hyperlinks remain current and accurate.

3. If agencies permit adjudicators to independently consult sources that are not specifically designated, they should establish publicly available policies to help adjudicators assess the authenticity and reliability of information. Agencies should include indicia of authenticity and reliability, particularly with respect to internet information, that adjudicators may consider if they choose to consult outside sources. Examples of such indicia include:

a. Whether the information was authored by an identifiable and easily authenticated institutional or individual author who is considered an expert or reputable authority on the subject;

b. Whether the information references other authorities that help to corroborate its accuracy;

c. Whether the meaning and significance of the information is clear;

d. Whether the information is published in a final format rather than as a draft or in a publicly editable format;

e. Whether the information is current or bears a date as of which the information was accurate;

f. Whether the owner or administrator of the website on which the information appears is easily authenticated and is a recognized authority or resource;

g. Whether information that appears on the website undergoes editorial or peer review;

h. Whether other reliable resources contain the same information or cite the original information as reliable or authoritative; and

i. Whether the information is thorough, materially supported, internally consistent, and analytically persuasive.

If agencies have identified sources or categories of sources that they determine are not appropriate for adjudicators to independently consult, they should publicly designate those sources or categories of sources.

4. Agencies should promulgate rules on official notice that specify the procedures that adjudicators must follow when an agency decision rests on official notice of a material fact. The rules should ensure that parties, upon timely request, are provided a reasonable opportunity to rebut the fact; rebut an inference drawn from the fact; and supplement, explain, or give different perspective to the fact. The precise nature and timing of an opportunity for rebuttal may depend on factors such as whether a fact is general or specific to the parties, whether a factual finding or an inference drawn from a fact is subject to reasonable dispute, whether a fact is central or peripheral to the adjudication, and whether a fact is noticed for the first time before or at a hearing or in an initial or appellate decision.

5. If agencies intend that specific procedures will apply when adjudicators use independently obtained information for purposes other than official notice of a material fact, such as for background purposes, they should clarify the distinction between official notice and other uses of information independently obtained by an adjudicator and describe the applicable procedures, if any. In particular, agencies should consider distinguishing use of traditional legal research materials from factual research; and material facts from facts that are not material, such as background facts.

6. Agency policies should specify when adjudicators must physically or electronically put independently obtained materials, especially internet materials, in an administrative record and explain what procedures adjudicators should follow to do so to ensure they preserve materials in a stable, permanent form. Agencies should ensure that such policies are consistent with other agency rules of procedure.

7. Agencies should identify those policies that are intended to confer an important procedural right on private parties, noncompliance with which may give rise to grounds for administrative or judicial review, and those that do not and are intended only to facilitate internal agency processes.

8. When adjudicators conduct independent research using sources that are not available to parties on or through an agency website, they should make those sources available to the parties by alternative means.

9. Agencies or agency adjudicators, as appropriate, should take steps to ensure that adjudicative staff are aware of agency policies on independent research, particularly with respect to independent internet research.

Administrative Conference Recommendation 2019–7

Acting Agency Officials and Delegations of Authority

Adopted December 12, 2019

The federal government relies on both political appointees and career civil servants to operate effectively. Federal law provides for over 1,200 agency positions whose occupants must be appointed by the President with the advice and consent of the Senate (PAS positions).[1] But there are often numerous vacancies in these positions—not only at the start of every administration, but also at other times, including after initial appointees leave and particularly during the final months of a President's tenure.[2] Government officials routinely vacate offices before a successor has been chosen. Research has shown that PAS positions in executive departments and agencies are not staffed with Senate-confirmed or recess appointees one-fifth of the time.[3] These pervasive vacancies exist for several reasons, including increasing delays related to the presidential-nomination and Senate-confirmation process.

Vacancies in PAS and other high-level positions may lead to agency inaction, generate confusion among nonpolitical personnel, and lessen public accountability.[4] At many agencies, acting officials can temporarily fill the positions. Indeed, between January 20, 1981, and July 19, 2019, there were 168 confirmed cabinet secretaries, 3 recess-appointed cabinet secretaries, and 145 acting cabinet secretaries. In other words, acting officials constituted 46% of all the top leaders in this period, though many of these interim officials served for short periods. Acting officials are also prevalent in lower-level positions throughout the federal government. Similarly, in response to vacancies, agency leadership often can lawfully delegate certain duties that would otherwise be done by a PAS or other high-ranking official to other officials within the agency.

The Federal Vacancies Reform Act of 1998 (Vacancies Act)[5] provides for temporary leadership primarily in single-headed executive departments and agencies. When it applies, the Vacancies Act specifies who can serve in an acting capacity, for how long, and in what positions. Congress has also enacted other agency-specific statutes to address vacancies, which sometimes provide the exclusive succession process. Unfortunately, navigating these statutes can be challenging because their requirements are often complex, and it can be technologically difficult to provide required reports. Currently, the government offers no formal training programs to agencies on the Vacancies Act, other vacancy-related statutes,

[21] Agencies should be mindful of copyright protections when they provide access to sources on their websites. *See, e.g., Am. Soc'y for Testing & Materials* v. *Public.Resource.Org,* 896 F.3d 437 (D.C. Cir. 2018). There may be steps agencies can take to ensure copyrighted materials will be reasonably available to interested members of the public. *Cf.* Admin. Conf. of the U.S., Recommendation 2011–5, *Incorporation by Reference,* ¶ 3, 77 FR 2257, 2258 (Jan. 17, 2012).

[1] Sen. Comm. on Homeland Sec. & Gov't Affairs, 114th Cong., United States Government Policy and Supporting Positions 216 (The Plum Book) (Comm. Print 2016), *available at https://www.govinfo.gov/content/pkg/GPO-PLUMBOOK-2016/pdf/GPO-PLUMBOOK-2016.pdf.*

[2] Anne Joseph O'Connell, Acting Agency Officials and Delegations of Authority 1 (Dec. 1, 2019) (report to the Admin. Conf. of the U.S.), *https://www.acus.gov/report/final-report-acting-agency-officials.*

[3] *Id.* at 16 (citing Anne Joseph O'Connell, Brookings Inst., Staffing Federal Agencies: Lessons from 1981–2016 (2017)).

[4] Anne Joseph O'Connell, *Vacant Offices: Delays in Staffing Top Agency Positions,* 82 S. Cal. L. Rev. 913, 920–21 (2008).

[5] 5 U.S.C. 3341–3349d.

or delegations of authority in response to staffing vacancies.[6]

The stakes for compliance, however, can be high. Under the Vacancies Act, for instance, certain actions taken by an acting official not serving under its terms ''shall have no force or effect'' and may be susceptible to legal challenge.[7] Even if the agency does not face legal challenge, moreover, it could receive a formal violation letter from the Government Accountability Office (GAO). The Vacancies Act requires agencies to report vacancies, nominations, and acting officials in covered positions to the Comptroller General; the Comptroller General is charged with reporting violations of the time limits to various House and Senate Committees, the President, and the Office of Personnel Management.[8]

The Vacancies Act

Under the Vacancies Act, acting officials generally may come from three categories of government officials: (1) First assistants to the vacant positions; (2) Senate-confirmed officials designated by the President; and (3) certain senior agency officials designated by the President.[9] The ''first assistant'' to the vacant job is the default acting official.[10] The Vacancies Act provides two main alternatives to the first assistant for acting service, but the President must actively select them. First, ''the President (and only the President) may direct'' another Senate-confirmed official—within the agency or outside it—to serve as the acting official.[11] Second, ''the President (and only the President)'' may select ''an officer or employee'' who has not been Senate-confirmed to serve in an acting capacity, but only if that person has worked in the agency for at least 90 days during the year-long period before the vacancy arose and earns a salary at the GS–15 level or higher.[12]

Acting officials can typically serve and use the title ''acting'' for 210 days from the vacancy's start.[13] If the vacancy exists when a new President enters office, or occurs within the next 60 days, the limit extends to 300 days. Nominations also extend these limits: An acting official can continue serving through two pending nominations to the vacant job. If the nomination is rejected or returned to the President under Senate rules, a new 210-day period of permitted tenure begins from the date of rejection or return. In other words, an acting official could conceivably serve for 210 (or 300) days before there is a nomination, during the pendency of a first nomination, for 210 days after that nomination is returned, during the pendency of a second nomination, and for a final 210 days if the second nomination is returned as well.[14] These extensions require careful tracking of nominations and Senate actions.

After the time limits established by the Vacancies Act have passed, agencies have continued to perform the functions of the vacant offices through delegations of authority, often by the agency head.[15] If the duties of the Senate-confirmed position are not exclusive to a job—by statute or regulation—they can typically be delegated to a lower-level official. Even if some duties are exclusive to a position, its other duties have been reassigned, leaving the delegate with nearly the same power as an acting official.

The Vacancies Act requires the head of each executive agency to report certain information about vacancies in covered offices and notify the Comptroller General of the United States and each House of Congress.[16] The GAO, headed by the Comptroller General, currently receives this information in hard copy. The GAO maintains these reports in an online searchable database.[17]

Agency-Specific Statutes

In addition to the Vacancies Act, Congress has also enacted various agency-specific statutes that, when applicable, may provide for temporary leadership, including for chairpersons at some independent regulatory commissions.[18] Some statutes may provide the exclusive mechanism for agency succession, whereas other statutes may provide a non-exclusive mechanism.[19] Because these agency-specific statutes vary, it is difficult to draw cross-cutting conclusions about them. Their existence, however, further complicates the use of acting officials and delegations.

The Need for Increased Transparency and Training on Vacancies Act Requirements

As the foregoing description shows, how and when agencies can use acting officials or delegated authority can be complicated. There is often confusion about which positions and agencies the Vacancies Act applies to and how the Act interacts with other agency-specific statutes. Technological shortcomings also make compliance with agency reporting obligations difficult. Some agencies have raised concerns that ''[a]lthough the forms are online, the agency must download them, fill them out, and send them in hard copy to the GAO (and to Congress).''[20] Agencies also vary in how transparent they are about their use of acting officials and delegations of authority. Some agencies do not disclose publicly acting titles and delegations of authority,[21] and there is currently no good source for comprehensive information about acting officials.

The goals of this Recommendation are to promote compliance with the Vacancies Act and agency-specific succession statutes and, consistent with the Conference's recent efforts to promote access to agency information,[22] to improve transparency regarding the use of acting officials and agency delegations of authority in response to staffing vacancies. This Recommendation does not purport to address any legal questions that may arise in the application of the Vacancies Act.

This Recommendation is a companion to Recommendation 2019–8, *Public Identification of Agency Officials,* which encourages federal agencies and the Office of Personnel Management to publish and maintain on their websites real-time

[6] The Department of Justice's Office of Legal Counsel provided substantial guidance on the Act in 1999, on which agencies continue to rely. *See Guidance on Application of Federal Vacancies Reform Act of 1998,* 23 Op. O.L.C. 60 (1999); *see also* O'Connell, Acting Agency Officials, *supra* note 2, at 38, 41 (describing interviews with agency officials and noting agencies' continued reliance on OLC guidance from 1999). Certain portions of the 1999 Guidance have been superseded. *See, e.g., Designation of Acting Associate Attorney General,* 25 Op. O.L.C. 177, 179 (2001) (concluding that question 13 of the 1999 Guidance was incorrect in concluding that a first assistant could only serve as an acting officer under section 3345(a)(1) if he or she had served as first assistant before the vacancy arose); *NLRB* v. *SW Gen., Inc.,* 137 S. Ct. 929 (2017) (holding that the prohibition in section 3345(b) on acting service during a nomination is not limited to first assistants, contrary to OLC's conclusion in question 15 of the 1999 Guidance).

[7] 5 U.S.C. 3348(d)(1); O'Connell, Acting Agency Officials, *supra* note 2, at 3 n.8. Some positions are excluded from this provision. *See* 5 U.S.C. 3348(e).

[8] 5 U.S.C. 3349(b).

[9] Id. § 3345(a); see also *NLRB* v. *SW Gen., Inc.,* 137 S. Ct. 929, 936 (2017); O'Connell, Acting Agency Officials, *supra* note 2, at 5. There is a fourth category of allowed acting officials involving holdover appointees: An official serving a fixed term in a covered agency, who may stay in that position in an acting capacity after the term expires if the President has nominated her or him to an additional term. 5 U.S.C. 3345(c)(1); *see also* O'Connell, Acting Agency Officials, *supra* note 2, at 5 n.24.

[10] 5 U.S.C. 3345(a)(1).

[11] *Id.* § 3345(a)(2).

[12] *Id.* § 3345(a)(3).

[13] *Id.* § 3346(a)(1).

[14] O'Connell, Acting Agency Officials, *supra* note 2, at 7. The time limits do not apply when the vacancy has been ''caused by sickness.'' 5 U.S.C. 3346(a); *see also Guidance on Application of Federal Vacancies Reform Act of 1998,* 23 Op. O.L.C. 60, 66–67 (1999) (noting that an ''acting officer may continue to serve until the sick PAS officer recovers'' and is able to resume performing the office's functions and duties).

[15] O'Connell, Acting Agency Officials, *supra* note 2, at 11–12; *see also id.* at 13–15 (identifying several constitutional and statutory issues concerning delegation beyond the scope of this Recommendation).

[16] 5 U.S.C. 3349(a).

[17] O'Connell, Acting Agency Officials, *supra* note 2, at 51–59.

[18] *Id.* at 9–10; *see also id.* at 13–14 (identifying the legal issue of the applicability of the Vacancies Act in many of these circumstances where an agency-specific succession statute exists, which is beyond the scope of this Recommendation).

[19] *Id.* at 9.

[20] *Id.* at 59.

[21] *Id.* at 44–46, 64–66. Although some agencies lack disclosure policies, some agencies have a practice of publishing permanent or standing delegations in the **Federal Register** or on the agency's website. *Id.* at 65; *see also* Jennifer Nou, *Subdelegating Powers,* 117 Colum. L. Rev. 473, 502–03 (2017) (contrasting agency practices at SEC and EPA).

[22] *See, e.g.,* Admin. Conf. of the U.S., Recommendation 2019–3, *Public Availability of Agency Guidance Documents,* 84 FR 38931 (Aug. 8, 2019); Admin. Conf. of the U.S., Recommendation 2018–6, *Improving Access to Regulations.gov's Rulemaking Dockets,* 84 FR 2139 (Feb. 6, 2019); Admin. Conf. of the U.S., Recommendation 2018–5, *Public Availability of Adjudication Rules,* 84 FR 2142 (Feb. 6, 2019); Admin. Conf. of the U.S., Recommendation 2017–1, *Adjudication Materials on Agency websites,* 82 FR 31039 (July 5, 2017). Earlier Conference recommendations in accord include Admin. Conf. of the U.S., Recommendation 89–8, *Agency Practices and Procedures for the Indexing and Public Availability of Adjudicatory Decisions,* 54 FR 53495 (Dec. 29, 1989).

information about a broad range of high-level agency officials.[23]

Recommendation

Acting Officials Under the Vacancies Act

1. Agencies should determine if they are subject to the Federal Vacancies Reform Act (Vacancies Act).

2. Agencies with at least one presidentially appointed, Senate-confirmed (PAS) position covered by the Vacancies Act should establish processes and procedures to comply with the Act. Agencies should consider assigning responsibility for compliance with the Vacancies Act to a position within the agency, rather than a particular person, and identify that position on its website.

3. Agencies with at least one PAS position covered by the Vacancies Act should ensure that officials responsible for compliance with the Vacancies Act have adequate training.

a. Officials assigned to track time limits should understand the Senate confirmation process (including the likelihood of multiple returns) and how to access important dates (official submission dates of nomination, returns, etc.).

b. Agencies should, when needed, coordinate with the Government Accountability Office (GAO) on their reporting requirements.

c. A government agency (such as the Office of Government Ethics, the Department of Justice's Office of Legal Counsel, the GAO, or the Office of Personnel Management) or other organization should provide government-wide training on these issues. Agencies should avail themselves of this training.

4. For PAS positions covered by the Vacancies Act but not addressed in a presidential order of succession, agencies should formally name and disclose a first assistant position.

a. If there are multiple deputy positions to a covered position, agencies should specify which deputy position is the first assistant position.

b. In the description of each first assistant position, agencies should explain that the first assistant is the default acting official under the Vacancies Act.

5. Agencies with at least one vacant PAS position covered by the Vacancies Act should communicate the requirements of the Act to the relevant acting official(s).

6. Agencies with at least one vacant PAS position covered by the Vacancies Act should disclose on their websites the names of acting officials and the officials' start dates, and the legal provision under which the appointment was made. If a vacancy is not filled by an acting officer and the agency has identified an official to perform the delegable functions of the office, the agency should disclose that official on its website.

Acting Officials Outside the Vacancies Act

7. Agencies that have PAS positions that are not covered by the Vacancies Act and for which Congress has provided some alternative mechanism for designating acting officials (*e.g.,* acting chairperson) should, to the extent applicable, apply the foregoing recommendations 2 through 6.

Succession Planning

8. Agencies should consider having clear and easily accessible orders of succession on their websites for PAS positions.

Delegations of Authority Related to Staffing Vacancies

9. Agencies should determine which functions and duties, if any, are exclusive to each PAS position and which of the nonexclusive functions and duties, if any, should be delegated in response to staffing vacancies.

10. To the extent reasonably possible, agencies should make their delegations of authority in response to staffing vacancies in PAS positions easily accessible to the public.

GAO's Role Under the Vacancies Act

11. The GAO should consider changing its reporting system so that agencies can report information online for vacancies, acting officials (including start and end dates), and nominations.

Administrative Conference Recommendation 2019–8

Public Identification of Agency Officials

Adopted December 12, 2019

Presidential appointees and the members of the Senior Executive Service (SES) who perform significant leadership responsibilities sit at the highest levels of federal agencies.[1] In December 2016, the federal government included 1,242 Senate-confirmed, presidentially appointed positions (PAS positions) and 472 other presidentially appointed positions (PA positions).[2] The SES included 8,156 individuals in 2016 (7,321 career SES, 737 noncareer SES, and 96 limited-term/limited-emergency SES), many of whom act as agency leaders.[3] This group of agency officials helps direct a federal workforce of more than two million employees.[4]

PAS officials often lead federal agencies, and they are often the most visible political appointees.[5] These officials are nominated by the President and confirmed by the Senate. PAS positions are part of the Executive Schedule, which prescribes the basic pay schedule and salaries of most presidential appointees.[6] These officials are among the highest-paid civilian government officials,[7] and a number of statutes and regulations establish special rules, obligations, and restrictions on their activities.[8]

The President directly appoints PA officials. These positions are typically located within the Executive Office of the President, advisory committees, and certain agencies.[9] PA positions are not part of the General Schedule pay system, and they may fall within the scope of several other pay systems, including the Executive Schedule.[10] Similar to Senate-confirmed officials, PA officials may also be subject to special rules, obligations, and restrictions on their activities, and they also typically resign during a presidential transition.[11]

The SES is a government-wide personnel system covering senior management, supervisory, and top-level policy positions in most federal agencies, and these positions are not part of the General Schedule pay system.[12] These SES officials often direct and monitor the activities of agencies; supervise the work of federal employees; exercise ''important policy-making, policy-determining, or other executive functions[;]'' and are held accountable for the success of programs and projects.[13] Approximately half

[23] Admin. Conf. of the U.S., Recommendation 2019–8, *Public Identification of Agency Officials,* __ FR _____ (____).

[1] This Recommendation uses the Administrative Procedure Act's definition of ''agency.'' 5 U.S.C. 551(1).

[2] Sen. Comm. on Homeland Sec. & Gov't Affairs, 114th Cong., United States Government Policy and Supporting Positions 216 (The Plum Book) (Comm. Print 2016), *available at https://www.govinfo.gov/content/pkg/GPO-PLUMBOOK-2016/pdf/GPO-PLUMBOOK-2016.pdf.*

[3] Off. of Personnel Mgmt., 2016 Senior Executive Service Report 3 (2017), *available at https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/reports-publications/ses-summary-2016.pdf.*

[4] Bobby Ochoa, Listing Agency Officials 1, 6–8, 48 (Nov. 13, 2019) (report to the Admin. Conf. of the U.S.), *https://www.acus.gov/report/final-report-listing-agency-officials.*

[5] Ochoa, *supra* note 4, at 7–8.

[6] 5 U.S.C. 5311 *et seq.; see also* Off. of Personnel Mgmt., Presidential Transition Guide to Federal Human Resources Management Matters 19 (2016), *available at https://www.opm.gov/about-us/our-people-organization/office-of-the-director/executive-secretariat/presidential-transition-guide-2016.pdf.*

[7] *See* 2019 Executive & Senior Level Employee Pay Tables, Off. Of Personnel Mgmt., *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2019/executive-senior-level/* (last visited Nov. 22, 2019) (Salary Table No. 2019–EX, listing salaries ranging from Level V at $156,000 to Level I at $213,600).

[8] *See, e.g.,* 18 U.S.C. 207 (establishing various communications restrictions on former government officials, including additional restrictions on certain ''very senior personnel'' and certain restrictions relating to foreign entities); the Hatch Act, 5 U.S.C. 7321 *et seq.* (prescribing rules regulating political activities of federal employees and establishing special provisions and exemptions applicable to PAS officials); 5 CFR 2634.202 (describing persons required to file public financial disclosure reports); 5 CFR 2636.303 (describing noncareer officials subject to fifteen-percent limitation on outside earned income); 5 CFR 2638.305 (describing additional ethics briefing required for PAS appointees within 15 days of appointment).

[9] The Plum Book, *supra* note 2, at 213–16. Those PA officials within the Executive Office of the President are outside the scope of this Recommendation.

[10] Ochoa, *supra* note 4, at 8, 11.

[11] OPM, Presidential Transition Guide, *supra* note 6, at 7.

[12] The Plum Book, *supra* note 2, at 217–18; 5 U.S.C. 3131 *et seq.; Jennifer L. Selin & David E. Lewis, Admin. Conf. of the U.S., Sourcebook of United States Executive Agencies* 64, 67–68 (2d ed. 2018), *available at https://www.acus.gov/publication/sourcebook-united-states-executive-agencies-second-edition.* There are other, also significant government officials that do not fall within the PAS, PA, or SES. *See* Ochoa, *supra* note 4, at 4–14. For purposes of this Recommendation, we have focused on PAS, PA, and SES officials because the PAS and PA are presidential appointments and the SES is the government-wide personnel system for leadership positions. This Recommendation does not address other executive personnel systems. *See, e.g.,* 5 U.S.C. 3132 (listing exclusions).

[13] 5 U.S.C. 3132(a)(2).

of SES positions are reserved for career employees, and the other half are classified as general SES positions, which may be filled by a career appointee, a political appointee, a limited-emergency appointee, or a limited-term appointee.[14] The Office of Personnel Management (OPM) allots and closely regulates the total number of SES positions for each agency.[15] By law, the number of political appointees may not exceed ten percent of government-wide SES positions and may not exceed twenty-five percent of a single agency's total SES positions.[16]

The public often learns the identities of cabinet secretaries, heads of other agencies, and a handful of other very high-ranking officials, if only through news coverage of the individuals. But the public knows far less about the next layers of the executive branch, in part because information can be difficult to locate in a centralized, updated, and comprehensive format.[17] A recent report by the U.S. Government Accountability Office concluded that ''there is no single source of data on political appointees serving in the executive branch that is publicly available, comprehensive, and timely.'' [18] Much of this information is available in private-sector publications, but they are expensive and not readily available to the public.

To be sure, various resources, including *United States Government Policy and Supporting Positions* (the so-called ''Plum Book''),[19] the *Official Congressional Directory,*[20] and the *United States Government Manual,*[21] provide periodic snapshots of the occupants of certain high-level agency positions. But these publications serve distinct purposes and objectives and, in all events, given turnover, can quickly become out-of-date.[22] Likewise, although OPM maintains extensive lists of federal employees, those lists are not readily available to the public.[23] Finally, although some agencies provide current information about high-ranking officials on their websites, practices vary significantly.[24] Detailed information about appointment terms, vacant offices, acting officials, and delegated authority is often even more difficult to find.[25]

Knowing the identities of those who help lead federal agencies is important for promoting transparency and facilitating public participation in the work of government.[26] For instance, members of the public (including reporters and academic researchers), congressional members and staff, White House officials, and officials at other federal and state agencies all sometimes have reasons to know this information.[27]

One of this Recommendation's purposes is to advance the Conference's recent efforts to promote greater access to relevant agency information.[28] This Recommendation is a companion to Recommendation 2019–7, *Acting Agency Officials and Delegations of Authority,* which promotes compliance with the Federal Vacancies Reform Act of 1998 and other agency-specific succession statutes and encourages federal agencies to improve transparency regarding the use of acting officials and agency delegations of authority in response to staffing vacancies.[29]

Recommendation

Recommendations Applicable to Agencies Generally

1. Agencies should display on their websites updated information about each PAS and PA position, and any SES position that is assigned significant leadership responsibilities, including the name and contact information of the current or acting official, as well as whether it is a PAS, PA, or SES position (and, if SES, whether it is a career or noncareer position). Vacancies for such positions should also be displayed.

Recommendations Applicable to the Office of Personnel Management

2. The Office of Personnel Management (OPM) should regularly publish data about PAS, PA, and SES officials (preferably on a monthly basis) on a public website and ensure the information is easily accessible. This data should include the following fields, if applicable, for each listed PAS, PA, and SES official: Name (first and last); Agency; Job Title; Start Date; and Type of Appointment.

3. OPM should create a separate list of former PAS officials to the extent feasible.

Administrative Conference Recommendation 2019–9

Recruiting and Hiring Agency Attorneys

Adopted December 12, 2019

Attorneys serve crucial roles within federal agencies. They defend agencies in litigation, draft regulations, investigate complaints, and resolve legal issues surrounding information disclosure, among their many functions. Attorneys support nearly all the operations of agencies, helping to ensure their fair and lawful functioning. Therefore, it is critical that agencies hire a corps of highly qualified attorneys.[1]

This Recommendation offers best practices for the recruitment and hiring of federal agency attorneys in the excepted service (explained below), who comprise the majority of attorneys in the federal government.[2] The laws applicable to excepted service hiring of attorneys are more flexible than those applicable to hiring other federal employees. This Recommendation suggests ways agencies can structure their recruitment and hiring to use these flexibilities to attract highly qualified attorneys.

Background on Federal Personnel Law

Title 5 of the U.S. Code creates three categories of civil service positions: (1)

[14] The Plum Book, *supra* note 2, at 217; Ochoa, *supra* note 4, at 6–7.

[15] The Plum Book, *supra* note 2, at 217–18; 5 U.S.C. 3132 *et seq.; Selin & Lewis, supra* note 12, at 67.

[16] 5 U.S.C. 3134.

[17] U.S. Gov't Accountability Office, GAO–19–249, Government-Wide Political Appointee Data and Some Ethics Oversight Procedures at Interior and SBA Could Be Improved 10–14 (2019), *available at https://www.gao.gov/assets/700/697593.pdf;* Ochoa, *supra* note 4, at 1, 40–42, 50–51.

[18] GAO, Government-Wide Political Appointee Data, *supra* note 17 (summarizing ''What GAO Found'').

[19] The Plum Book, *supra* note 2.

[20] United States Congress, Joint Commission on Printing, Official Congressional Directory: 115th Congress (2017).

[21] Nat'l Archives & Rec. Admin., The United States Government Manual (2016).

[22] *See* GAO, Government-Wide Political Appointee Data, supra note 17, at 13 (''Until the names of political appointees and their position, position type, agency or department name, start and end dates are publicly available at least quarterly, it will be difficult for the public to access comprehensive and reliable information.''); Ochoa, *supra* note 4, at 19–39.

[23] *See* Ochoa, *supra* note 4, at 46–49. OPM's data from agencies is based on the person, rather than based on the specific position or job. As a result, the agency stops sending information about a person and their position when they separate from an agency. With respect to PAS, PA, and SES officials, OPM's data includes information about the name, agency, job title, start date, and type of appointment (PAS, PA, career SES, noncareer SES, limited-term SES, and limited-emergency SES). For these data-related reasons—and because agencies are best positioned to make determinations about which SES officials perform significant leadership responsibilities—the Recommendation to OPM includes all SES officials. OPM's workforce information-reporting function under Civil Service Rule 9 excludes certain agencies and positions. 5 CFR 9.1, 9.2.

[24] Ochoa, *supra* note 4, at 40–42.

[25] *See, e.g.,* Anne Joseph O'Connell, Acting Agency Officials and Delegations of Authority 16–18 (Dec. 1, 2019) (report to the Admin. Conf. of the U.S.), *https://www.acus.gov/report/final-report-acting-agency-officials* (describing significant data-quality issues).

[26] *See* GAO, Government-Wide Political Appointee Data, supra note 17, at 13; Ochoa, *supra* note 4, at 3.

[27] *See* GAO, Government-Wide Political Appointee Data, supra note 17, at 13. The Conference has previously addressed related issues. In 1968, the Conference recommended changes to the *U.S. Government Organization Manual,* specifically pointing out deficiencies with the ''narrative text submitted'' by agencies and encouraging agencies to improve these entries. Admin. Conf. of the U.S., Recommendation 68–2, *U.S. Government Organization Manual* (Dec. 11, 1968). This Recommendation goes much further, offering specific recommendations for making agency information publicly available.

[28] *See, e.g.,* Admin. Conf. of the U.S., Recommendation 2019–3, *Public Availability of Agency Guidance Documents,* 84 FR 38931 (Aug. 8, 2019); Admin. Conf. of the U.S., Recommendation 2018–6, *Improving Access to Regulations.gov's Rulemaking Dockets,* 84 FR 2139 (Feb. 6, 2019); Admin. Conf. of the U.S., Recommendation 2018–5, *Public Availability of Adjudication Rules,* 84 FR 2142 (Feb. 6, 2019); Admin. Conf. of the U.S., Recommendation 2017–1, *Adjudication Materials on Agency websites,* 82 FR 31039 (July 5, 2017). Earlier Conference recommendations in accord include Admin. Conf. of the U.S., Recommendation 89–8, *Agency Practices and Procedures for the Indexing and Public Availability of Adjudicatory Decisions,* 54 FR 53495 (Dec. 29, 1989).

[29] Admin. Conf. of the U.S., Recommendation 2019–7, *Acting Agency Officials and Delegations of Authority,* __ FR _____ (_____).

[1] The Administrative Conference addressed hiring practices with respect to administrative law judges (ALJs) in Recommendation 2019–2, *Agency Recruitment and Selection of Administrative Law Judges,* 84 FR 38930 (Aug. 8, 2019).

[2] U.S. Gov't Accountability Office, GAO–16–521, Federal Hiring: OPM Needs to Improve Management and Oversight of Hiring Authorities (2016).

Competitive service, (2) excepted service, and (3) senior executive service. Most civil service positions are in the competitive service. The attorney positions addressed in this Recommendation[3] are in the excepted service. As explained below, however, they are not subject to most of the rules governing the hiring of excepted service positions.

Agencies that wish to fill a position in the competitive service must generally offer all U.S. citizens and nationals the opportunity to compete in a public and open examination.[4] The procedures that agencies must follow include (1) posting a vacancy announcement on *USAJobs.gov*, the federal jobs portal (hereinafter ''USAJobs''); (2) using minimum qualifications to determine who is qualified and eligible to be rated for an agency assessment; (3) formally assigning numerical ratings to qualified applicants and selecting among the top three candidates;[5] (4) adhering to detailed procedures for giving veterans and certain family members of veterans priority consideration; and (5) hiring only from lists of candidates prepared by OPM or, if OPM has delegated this function to an agency, by the agency's own human resources (HR) office (formally called a ''delegated examining unit''). For most excepted service appointments, the rules are generally the same as the above except that agencies need not post an announcement on USAJobs or use OPM-generated minimum qualifications.[6]

Although attorney positions are placed in the excepted service, OPM regulations further exempt agencies from having to formally rank applicants, use detailed procedures for giving preference to veterans and eligible family members, and hire from lists of candidates prepared by the agency.[7] The result is that the laws governing the hiring process for attorney positions are generally much less restrictive than those governing the hiring process for competitive and other excepted service positions.

There are, however, some legal requirements to which agencies must adhere when hiring attorneys. Agencies may not, among other things, make hiring decisions based on protected characteristics (*e.g.,* race, sex, or national origin), nepotism, political affiliation, whistleblower activities, or other factors unrelated to the candidate's ability to perform the work.[8] Agencies also must ''follow the [statutory] principle of veteran preference as far as administratively feasible and, on the request of a qualified and available [veteran or eligible family member of a veteran who is not selected] . . . furnish him/her with the reasons for his/her nonselection.''[9]

Practices in Hiring Attorneys

Distinguishing Between Optional and Mandatory Hiring Practices

Many agencies adopt additional hiring practices that are not legally required. They include involving HR officials in screening out applicants based on substantive criteria (*e.g.,* nature of legal experience) and posting announcements exclusively on USAJobs without further disseminating them.[10] Although some agencies undertake these practices knowing they are optional, other agencies adopt them because HR and hiring officials mistakenly believe they are legally required.[11] A possible reason is that, in 1993, OPM stopped publishing the *Federal Personnel Manual,* a compendium of guidance that served as a reference guide for agencies. Successor publications have taken the form of discrete handbooks and operating manuals that are not updated frequently.

Considering Whether To Attract Broad or Discrete Applicant Pools

Agencies may benefit from availing themselves of the flexibility the law affords them in hiring attorneys by using different practices in different situations. Sometimes agencies may wish to attract broad applicant pools, in which case they will typically benefit from posting an announcement in locations likely to reach a large number of qualified potential candidates. Agencies that wish to do so may decide to post the position on USAJobs. There is, however, a monetary cost to posting on USAJobs, and posting an announcement solely on USAJobs without further dissemination may not produce the optimal applicant pool. At other times, agencies might wish to attract discrete candidate pools, consisting of, for example, attorneys who previously worked for the agency, former legal interns, presidential management fellows, or highly recommended candidates. This might be the case when, for example, an agency requires a unique set of skills. In such cases, agencies may not want to post or broadcast an announcement (which the law generally permits).[12]

Drafting Announcements

Whatever approach agencies take, it is important that their job announcements are written clearly and in a way designed to attract qualified applicants. Too often, however, attorney vacancy announcements contain dense language and descriptions of job responsibilities that are difficult to decipher.[13] This problem can arise when hiring officials send announcements to HR after they draft the position's description. Once HR employees receive the announcements, they sometimes insert language that does not apply to hiring attorneys (*e.g.,* language applicable only to competitive service hiring). In addition, when HR employees post the announcement through a talent acquisition system (*i.e.,* a system that allows government officials to post vacancy announcements and track applicants on USAJobs), the HR officials may select generic agency-developed job vacancy announcement templates, which populate language that may be incorrect or inapplicable to the hiring of attorneys. If HR officials do not remove or correct that language, the announcements can be confusing or incorrect for specialized positions such as attorneys. Hiring officials might not realize that inapplicable language has been inserted until after the announcements have been posted.

Resources exist to help agencies draft position announcements in plain language, including Administrative Conference Recommendation 2017–3, *Plain Language in Regulatory Drafting,*[14] and the *Federal Plain Language Guidelines.*[15]

Recruiting Interns and Using Honors Programs

Agencies' recruitment efforts might include recruiting former interns to work as attorneys. Hiring these candidates allows agencies to employ those who have previously worked in the agency and have proved that they can successfully carry out the agency's work. Such hiring is akin to summer associate programs at some law firms, in which firms hire students to work for the summer after their second year of law school and then, after observing the students' work, may offer them permanent employment upon graduation.

Agencies, however, cannot extend an offer of employment as an attorney to an applicant until after he or she has been admitted to a bar, which can take nearly a year or longer after graduation from law school. If an agency wishes to hire an applicant for an attorney position before he or she has been admitted to a bar, the agency must hire him or her as a ''law clerk trainee.'' The law clerk trainee position is a temporary excepted service appointment in which a candidate for an attorney position could serve while waiting

[3] Those holding these positions are often referred to as ''0905 attorneys'' in reference to the occupational series that the Office of Personnel Management assigns to those attorneys who are in the General Schedule pay system. Many agencies use ''0905'' to refer to attorneys performing equivalent functions in other statutory pay systems. All such attorneys are within the scope of this Recommendation. This Recommendation does not apply, however, to (a) attorney positions provided for in titles of the U.S. Code other than Title 5, (b) attorney positions in the senior executive service, and (c) licensed attorneys who serve in non-attorney positions.

[4] 5 U.S.C. 3304–3319; Civil Service Rule II, VII (5 CFR 2.1, 7.3).

[5] Alternatively, agencies may adopt a system in which they establish two or more rating categories (*e.g.,* ''unqualified,'' ''qualified,'' and ''highly qualified'') and place each applicant into one of the categories. Agencies may not offer employment to any candidate in a lower category before they offer it to a candidate in a higher category. *See* 5 U.S.C. 3319.

[6] *See* 5 U.S.C. 3320; 5 CFR 302.103 *et seq.*

[7] *See* 5 CFR 302.101(c).

[8] *See* 5 U.S.C. 2302. Among other restrictions on agencies' hiring practices, agencies must not recruit in a way that results in an unlawful disparate impact based on race, sex, or certain other protected characteristics under federal law. *See* 42 U.S.C. 2000e–2(k)(1)(A).

[9] 5 CFR 302.101(c).

[10] *See* Todd Phillips & Todd Rubin, Recruiting and Hiring Agency Attorneys 18 (report to the Admin. Conf. of the U.S.), *www.acus.gov/report/recruiting-and-hiring-agency-attorneys-final-report* (Dec. 4, 2019).

[11] *Id.*

[12] Recruitment ''should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society.'' 5 U.S.C. 2301(b)(1).

[13] For examples of such announcements, see Phillips & Rubin, *supra* note 10, at 28–30.

[14] Admin. Conf. of the U.S., Recommendation 2017–3, *Plain Language in Regulatory Drafting,* 82 FR 61728 (Dec. 29, 2017).

[15] Plain Language Action & Information Network, Federal Plain Language Guidelines (Rev. ed. 2011), *http://www.plainlanguage.gov/guidelines/.*

to be admitted to a bar. The appointment can last no more than 14 months.[16]

Some agencies regularly use the law clerk trainee hiring authority by hiring through honors programs, which are generally two-year employment and training programs for recent law school graduates. Applicants generally apply to an honors program in their final year of law school or during a clerkship and, if they are accepted, may join the agency as a ''law clerk trainee'' if they are not yet admitted to a bar. Licensed attorneys supervise law clerk trainees in honors programs until they are admitted to a bar, at which time they may be appointed to attorney positions.

Accruing Merit Systems Protection Board (MSPB) Rights

Once an attorney is hired, he or she must, in general, continuously serve for two years (or one year, if the person is a veteran or an eligible family member of a veteran) before accruing the right to challenge a removal before the MSPB.[17] Supervisors may evaluate the appointee's performance during this period and decide whether to retain the appointee.

Hiring Procedures for Non-ALJ Adjudicators

The Administrative Conference recognizes that specific attorney positions may require additional procedures to screen for certain attributes. One important example arises when an agency hires an adjudicator other than an administrative law judge (ALJ). Non-ALJ adjudicators, like ALJs, must demonstrate an ability to discharge the duties of an adjudicator with impartiality.[18] There may be additional procedures agencies need to adopt to screen for this attribute and others specific to attorneys hired as non-ALJ adjudicators.

Recommendation

Ensuring Agencies Know Which Procedures Are Required and Which Are Optional

1. The Office of Personnel Management (OPM), in conjunction with the Merit Systems Protection Board (MSPB) and the Office of Special Counsel as necessary, should offer, and agencies should request, training on the minimum procedural requirements in statutes, regulations, and executive orders for hiring attorneys. That training should, in particular, clarify the distinction between hiring attorneys and hiring other kinds of employees and explain the alternative processes and flexibilities available for hiring attorneys. Such training could take any number of forms, including providing written materials and in-person presentations and webinars.

Helping Agencies Recruit Qualified Applicants

2. When hiring attorneys, agencies should recognize that they have flexibility in recruiting. They should recognize that, among other things, they can employ recruitment strategies designed to reach either a broad or narrow pool of applicants as they deem appropriate.

3. When seeking broad applicant pools for attorney positions, agencies should post vacancy announcements in multiple locations where they are likely to reach qualified applicants. Options for posting include agencies' own websites, job recruiting websites, or *USAJobs.gov,* the federal hiring portal. In addition to posting announcements, agencies should widely disseminate such announcements to a variety of sources, such as bar associations, other professional legal associations, law school career offices, professional listservs, former and current agency employees and interns, other agencies, and other professional networks.

4. When seeking narrower applicant pools, agencies should consider limiting the posting of vacancy announcements to the agencies' websites and specialized forums.

Drafting Vacancy Announcements

5. Agencies should ensure that hiring officials take the lead in drafting and reviewing final vacancy announcements for agency attorney positions.

6. Attorney vacancy announcements should be written in plain language, adhering closely to the principles in Administrative Conference Recommendation 2017–3, *Plain Language in Regulatory Drafting,* and the *Federal Plain Writing Guidelines.*

7. Announcements should specify exactly and clearly which documents are required to constitute a complete application; distinguish between mandatory and desirable criteria; and include under mandatory criteria only essential elements, such as bar membership and citizenship status.

8. Announcements should not include language that is applicable only to competitive service positions or that is otherwise inapplicable to attorney positions.

9. If agencies intend not to consider additional applications after receiving a certain number, the announcement should so indicate and specify the limit.

10. Agencies should recognize that they have the option of requiring a conventional résumé from applicants instead of requiring applicants to create a USAJobs résumé. Agencies that require a conventional résumé should so state in the vacancy announcement.

11. If, after drafting a vacancy announcement, hiring officials send the announcement to human resources (HR) officials to be posted on USAJobs or elsewhere, hiring officials should collaborate with HR officials to review and approve the final version of the announcement exactly as it will appear to the public. Hiring officials should review the announcement to ensure that it is consistent with Paragraphs 6 through 10 before it is posted.

12. Hiring officials should continue to review open-ended or long-term vacancy announcements to ensure they do not become outdated.

Improving OPM's Talent Acquisition System

13. OPM should instruct agencies that HR users developing job vacancy announcement templates in the talent acquisition system used to post announcements on USAJobs and to track applications must specify exactly and clearly which documents are required to constitute a complete application; distinguish between mandatory and desirable criteria; and include under mandatory criteria only essential elements, such as bar membership and citizenship status, as specified in Paragraph 7.

14. OPM should clearly inform agencies to exclude from their vacancy announcement templates any language inapplicable to attorney hiring.

15. OPM should include a link on its talent acquisition system to the *Plain Language Guidelines* and to Administrative Conference Recommendation 2017–3, *Plain Language in Regulatory Drafting,* and encourage agencies to apply all relevant provisions to their drafting of vacancy announcements, as specified in Paragraph 6.

16. OPM should make clear in the instructions for its talent acquisition system that agencies have the option of requiring applicants to submit a conventional résumé instead of a résumé generated by USAJobs.

Evaluating Applicants for Attorney Positions

17. Agencies should develop policies or processes governing how attorney applications will be reviewed and assessed. These policies or processes may include creating teams to select applicants for interviews or recommend applicants for appointment.

18. Agency leadership should decide which responsibilities HR officials should have in evaluating applications. If HR officials will screen applicants, hiring officials should determine the screening criteria and clearly communicate them to the screeners.

19. If feasible, agencies should ensure applicants are notified when their applications have been received and when the agency has made a hiring decision.

20. Supervisors should be aware that most newly hired attorneys accrue the right to challenge removal before the MSPB after two years (or one year, if the person is a veteran or an eligible family member of a veteran). HR officials should send reminders to supervisors approximately three to six months before such rights accrue for any given attorney.

Using Law Clerk Trainee Positions and Honors Programs To Hire Attorneys

21. Agencies with honors programs should encourage successful interns to apply to them. Agencies without honors programs should consider hiring high-performing legal interns after graduation but before they have been admitted to a bar, using the authority to hire a law clerk trainee who can be appointed to an attorney position upon admission to a bar.

[16] 5 CFR 213.3102(d).

[17] *See* 5 U.S.C. 7511. In the competitive service, adverse action rights accrue at the end of a probationary or trial period, or after completion of one year of current continuous service under other than a temporary appointment limited to one year or less. 5 CFR 315.803.

[18] *See* Admin. Conf. of the U.S., Recommendation 2018–4, *Recusal Rules for Administrative Adjudicators,* 84 FR 2139 (Feb. 6, 2019).

Ensuring Impartiality of Attorneys Hired as Non-Administrative Law Judge (ALJ) Adjudicators

22. Agencies' guidelines and procedures for hiring attorneys who will act as non-ALJ adjudicators should be designed and administered to ensure that those hired will act impartially and maintain the appearance of impartiality, as suggested in Recommendation 2018–4, *Recusal Rules for Administrative Adjudicators.*

[FR Doc. 2019–27930 Filed 12–26–19; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2019–0066]

Addition of Burma (Myanmar) to the List of Regions Affected With African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have added Burma (Myanmar) to the list of regions that the Animal and Plant Health Inspection Service considers to be affected with African swine fever (ASF). We have taken this action because of confirmation of ASF in Burma (Myanmar).

DATES: Burma (Myanmar) was added to the APHIS list of regions considered affected with ASF on August 19, 2019.

FOR FURTHER INFORMATION CONTACT: Dr. Ingrid Kotowski, Regionalization Evaluation Services, Veterinary Services, APHIS, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606; Phone: (919) 855–7732; email: *Ingrid.kotowski@usda.gov*.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including African swine fever (ASF). ASF is a highly contagious disease of wild and domestic swine that can spread rapidly in swine populations with extremely high rates of morbidity and mortality. A list of regions where ASF exists or is reasonably believed to exist is maintained on the Animal and Plant Health Inspection Service (APHIS) website at *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions/*. This list is referenced in § 94.8(a)(2) of the regulations.

Section 94.8(a)(3) of the regulations states that APHIS will add a region to the list referenced in § 94.8(a)(2) upon determining ASF exists in the region, based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable, or upon determining that there is reason to believe the disease exists in the region. Section 94.8(a)(1) of the regulations specifies the criteria on which the Administrator bases the reason to believe ASF exists in a region. Section 94.8(b) prohibits the importation of pork and pork products from regions listed in accordance with § 94.8 except if processed and treated in accordance with the provisions specified in that section or consigned to an APHIS-approved establishment for further processing. Section 96.2 restricts the importation of swine casings that originated in or were processed in a region where ASF exists, as listed under § 94.8(a).

On August 14, 2019, the veterinary authorities of Burma (Myanmar) reported to the OIE the occurrence of ASF in that country. Therefore, in response to this outbreak, on August 19, 2019, APHIS added Burma (Myanmar) to the list of regions where ASF exists or is reasonably believed to exist. This notice serves as an official record and public notifications of that action.

As a result, pork and pork products from Burma (Myanmar), including casings, are subject to APHIS import restrictions designed to mitigate the risk of ASF introduction into the United States.

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

Authority: 7 U.S.C. 1633, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 20th day of December 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–27910 Filed 12–26–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2019–0065]

Addition of Serbia to the List of Regions Affected With African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have added Serbia to the list of regions that the Animal and Plant Health Inspection Service considers to be affected with African swine fever (ASF). We have taken this action because of confirmation of ASF in Serbia.

DATES: Serbia was added to the APHIS list of regions considered affected with ASF on August 14, 2019.

FOR FURTHER INFORMATION CONTACT: Dr. Ingrid Kotowski, Regionalization Evaluation Services, Veterinary Services, APHIS, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606; Phone: (919) 855–7732; email: *Ingrid.kotowski@usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including African swine fever (ASF). ASF is a highly contagious disease of wild and domestic swine that can spread rapidly in swine populations with extremely high rates of morbidity and mortality. A list of regions where ASF exists or is reasonably believed to exist is maintained on the Animal and Plant Health Inspection Service (APHIS) website at *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions/*. This list is referenced in § 94.8(a)(2) of the regulations.

Section 94.8(a)(3) of the regulations states that APHIS will add a region to the list referenced in § 94.8(a)(2) upon determining ASF exists in the region, based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable, or upon determining that there is reason to believe the disease exists in the region. Section 94.8(a)(1) of the regulations specifies the criteria on

which the Administrator bases the reason to believe ASF exists in a region. Section 94.8(b) prohibits the importation of pork and pork products from regions listed in accordance with § 94.8 except if processed and treated in accordance with the provisions specified in that section or consigned to an APHIS-approved establishment for further processing. Section 96.2 restricts the importation of swine casings that originated in or were processed in a region where ASF exists, as listed under § 94.8(a).

On August 13, 2019, the veterinary authorities of Serbia reported to the OIE the occurrence of ASF in that country. Therefore, in response to this outbreak, on August 14, 2019, APHIS added Serbia to the list of regions where ASF exists or is reasonably believed to exist. This notice serves as an official record and public notification of that action.

As a result, pork and pork products from Serbia, including casings, are subject to APHIS import restrictions designed to mitigate the risk of ASF introduction into the United States.

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

Authority: 7 U.S.C. 1633, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 20th day of December 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–27908 Filed 12–26–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2016–0021]

Food Safety and Inspection Service Labeling Guideline on Documentation Needed To Substantiate Animal Raising Claims for Label Submission

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability and response to comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of an updated version of its guideline on documentation needed to support animal-raising claims made on meat or poultry product labeling. Official establishments submit this documentation to the Agency when they apply for approval of labels with animal raising claims. The updated guideline includes changes made in response to comments on the guideline posted in October 2016. This **Federal Register** notice also summarizes and responds to issues raised in petitions submitted to the Agency by animal welfare advocacy organizations.

DATES: Submit comments on or before February 25, 2020.

ADDRESSES: A downloadable version of the compliance guideline is available to view and print at *http://www.fsis.usda.gov/Regulations_&_Policies/Compliance_Guides_Index/index.asp.* No hard copies of the compliance guideline have been published.

FSIS invites interested persons to submit comments relevant to clarification provided in this notice on the label claim ''free range'' for poultry products. Only comments addressing this specific issue will be considered at this time. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Room 6065, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2016–0021. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, call (202) 720–5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Terri Nintemann, Assistant Administrator, Office of Policy and Program Development by telephone at (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

Under the Federal Meat Inspection Act and Poultry Products Inspection Act (21 U.S.C. 601–695, at 601(n), 607; 21 U.S.C 451–470, at 453(h), 457) (the Acts), FSIS develops and implements regulations to require that the labels of meat and poultry products are truthful and not misleading. Under the Acts, the Secretary of Agriculture, who has delegated this authority to FSIS, must approve the labels of meat and poultry products before the products can enter commerce (21 U.S.C. 601(d); 21 U.S.C. 457(c)).[1]

FSIS allows certain labels that bear only mandatory labeling features and that comply with the Agency's labeling regulations to be generically approved (9 CFR 412.2(a)(1)). Generically approved labels do not need to be submitted to FSIS for approval before they can be used on product in commerce. However, a label with a special statement or claim (9 CFR 412.1(c)(3) and 412.1(e)), including an animal-raising claim, must be submitted to FSIS for approval before it may be used on a product distributed in commerce. A label bearing an animal-raising claim must be submitted to the Office of Policy and Program Development, Labeling and Program Delivery Staff (LPDS), in FSIS, with necessary documentation to support the special statement or claim. Examples of animal-raising claims include but are not limited to: ''Vegetarian-fed,'' ''Grass-fed,'' and ''Raised without the use of antibiotics.''

On October 5, 2016, FSIS announced the availability of and requested comments on its *Labeling Guideline on Documentation Needed to Substantiate Animal Raising Claims for Label Submission* (81 FR 68993). FSIS published the guideline to advise establishments of the type of documentation that they should submit in support of animal-raising claims on meat or poultry product labels. FSIS needs this documentation to determine whether these claims are truthful and not misleading.

After reviewing the comments received, the Agency has revised the guideline. A summarized list of major changes to the guideline follows. The revised guideline is posted at: *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/compliance-guides-index.* The information in this guideline is provided as guidance to assist meat and poultry establishments and is not legally

[1] FSIS has similar authority over egg products under the Egg Products Inspection Act, 21 U.S.C. 1036(b).

binding from a regulatory perspective. FSIS will update this document, as necessary.

Summarized List of Major Changes to the Guideline

- *Product Labeling:* Use of Animal-Raising Claims on the Labels of Meat or Poultry Products
  - ○ Added information about labeling needed for products bearing claims certified by third-party organization, including when products certified as ''organic'' need to disclose the certifying entity's website address on the product label.
  - ○ Added information about carrying claims forward on additional products.
- Removed age claims section because establishments are not using these claims.
- *Animal Welfare and Environmental Stewardship Claims:*
  - ○ Added descriptive language or information (terminology) that should accompany these claims to explain the meaning of the claim to consumers, including the type of information that needs to appear on the label when the product is certified by a third-party organization.
- *Breed claims:*
  - ○ Added information about carrying these claims forward to other products.
- *Living- or Raising-Condition Claims:*
  - ○ Reorganized section for clarity regarding labeling terminology and recommended documentation for approval.
  - ○ Added information about additional terminology that typically should accompany these claims to explain the meaning of the claim to consumers, including where the information must appear on the label.
  - ○ Added information on the use of ''Free Range'' and synonymous claims (''Free Roaming,'' ''Pasture Fed,'' ''Pasture Grown,'' ''Pasture Raised,'' and ''Meadow Raised'') on labels of poultry products and the documentation needed to substantiate these claims.
- *Raised Without Antibiotics—Livestock/Red Meat or Poultry:*
  - ○ Added ''Raised Antibiotic Free'' and ''No added antibiotics'' as examples of claims that may be used to disclose the fact that animals were not administered antibiotics at any point in the animal production process.
  - ○ Added information on claims that include the term ''sub-therapeutic antibiotics'' to ensure that consumers understand that the claim means that antibiotics may be administered only in the event of an illness and includes the circumstances for which FSIS will approve labels bearing these claims.
- *Raised Without Hormones (No Hormones Administered or No Steroids Administered):*
  - ○ Updated information to clarify that a qualifying statement is no longer required on pork products labeled as having been raised without hormones because Federal law permits the use of certain hormones in swine, *e.g.,* for gestation.
  - ○ Added new examples of this type of claim.
- Added information to clarify why a qualifying statement is necessary for products made from a kind or species for which Federal law prohibits hormone use and to emphasize that this statement must be prominently- and conspicuously-displayed on the label, as verified by FSIS.
- *Third-Party Certification:*
  - ○ Added information about documentation needed to support labels bearing animal raising claims that have been ''Verified'' or ''Certified'' by third party organizations.
  - ○ Added information about ''organic'' claims, including other claims that could be substantiated with an organic certificate.
- Added a section on procedures for adding an additional supplier for a label with animal-raising claims that was previously approved by FSIS.

Comments and FSIS Responses

FSIS received over 4,600 comments on the *Labeling Guideline on Documentation Needed to Substantiate Animal Raising Claims for Label Submission.* The majority are similar comments or groups of comments from individuals who made them as part of what appears to be organized write-in campaigns. FSIS received thirty individual comment letters from animal-welfare advocacy organizations, consumer advocacy organizations, trade associations representing the poultry, poultry and meat, egg, or organic industry, beef marketing companies, organizations that provide third-party certification services, agriculture-specific coalitions/cooperatives, producers, and an environmental advocacy organization.

Comments from two animal welfare advocacy organizations also included over 87,000 and 35,000 signatures, respectively. FSIS also received a spreadsheet with similar comments opposing the guidance from 15,477 members of an animal welfare advocacy organization.

Comments from trade associations representing the poultry and meat industry generally found the information in the guideline to be helpful to establishments. Other comments, including those participating in the various write-in campaigns, strongly opposed parts of the guideline, as well as FSIS's general label approval procedures for animal-raising claims.

FSIS also received petitions from animal welfare organizations that raise issues associated with animal-raising claims similar to the issues raised by many of the comments. Therefore, the comment summaries and FSIS's responses address the issues raised in the petitions.

Following is a summary of the issues raised in the comments and petitions and FSIS's responses.

Regulatory Guidance and Administrative Procedure Act

Comment: Animal-welfare and consumer advocacy organizations asserted the Agency is violating the Administrative Procedure Act (APA) by effectively promulgating ''requirements'' for establishments without following due notice-and-comment procedure. They said that FSIS should follow the APA procedures because the guideline ''grants rights, imposes obligations, and produces significant effects on private interests.''

Response: The guideline does not promulgate new requirements subject to notice-and-comment requirements under the APA. As noted above, under 9 CFR 412.1(c) and (e), labels bearing animal-raising claims are required to be submitted to FSIS for prior approval. FSIS published the guideline to assist establishments that manufacture meat and poultry products labeled with animal-raising claims to prepare their label approval applications and to facilitate FSIS's review of labels bearing animal-raising claims. Animal raising claims are voluntary marketing claims, and establishments are not required to use any of the claims listed in the guideline. However, if they do, establishments may refer to the guideline to help them provide the documentation that FSIS needs to evaluate labels bearing animal raising claims and to determine whether such claims are truthful and not misleading.

Notably, FSIS has sought to engage the public in the consideration and revision of the guideline and has provided extensive opportunity for public comment. We have made many substantive changes based on the comments we have received. We also note that this is not a novel approach. FSIS routinely publishes guidance on how FSIS interprets labels to be truthful or not misleading, with examples of acceptable supporting documentation.

Defining Animal-Raising Claims

Comment: Animal-welfare advocacy organizations, consumer-advocacy organizations, petitioners, and individuals, said that FSIS must define animal-raising claims in the regulations and not allow the use of animal-raising claims that are not defined in the regulations.

Response: FSIS disagrees that it needs to establish codified definitions for animal raising claims to prevent product misbranding. Animal production practices vary and are continuously developing; maintaining a current list of codified allowable claims would be impractical. Further, FSIS does not have the authority to regulate on-farm animal production and thus its codification of animal raising claims could inappropriately restrict developments in animal production practices by operations that would benefit from the use of a truthful claim.

The Acts and implementing regulations prohibit the sale and distribution of ''misbranded'' meat and poultry products, *i.e.,* meat and poultry products bearing labels that are misleading or untrue (21 U.S.C. 453(h)(1); 21 U.S.C. 601(n)(1), implemented at 9 CFR parts 381.129 and 317.8, respectively). Accordingly, FSIS is responsible for ensuring that the labeling of meat, poultry, and egg products is truthful and not misleading. To prevent labeling claims that are false and misleading, any label with a special statement or claim, including an animal-raising claim, not defined in FSIS regulations or the *Food Standards and Labeling Policy Book* must be submitted to FSIS for prior-approval (9 CFR 412.1(c)(3) and 412.1(e)). As part of the label approval process, FSIS verifies the accuracy of the special statement or claim by reviewing supporting documentation submitted with the label approval application.

Consistent with this approach, FSIS evaluates labels bearing animal-raising claims on a case-by-case basis by reviewing the animal production protocol submitted with the label approval application. FSIS approves the label if the documentation supports the claim made, if the claim is truthful and not misleading, and if the claim (including any qualifying information) is prominently- and conspicuously-displayed on the label. At establishments that label product with animal raising claims, FSIS inspectors verify that establishments have FSIS label approval on file. In addition, they are to take the appropriate regulatory control action, such as retention of product, when they determine that misbranded product would otherwise enter commerce (*i.e.,* it is shipped from the establishment). FSIS could also rescind approval of false or misleading labels per 9 CFR 500.8. Under this approach, FSIS is able to prevent the sale of misbranded meat and poultry products by ensuring that labels bearing animal-raising claims accurately reflect the conditions under which the source animal was raised.

Consistency With Other Federal Agency Standards

Comment: An animal-welfare advocacy organization argued that FSIS's labeling standards must be in harmony with Federal Trade Commission (FTC) and Securities and Exchange (SEC) standards, and that the Agency should consult with the FTC and SEC in the rulemaking that it ought to be carrying out following APA procedures. Several advocacy organizations asserted that inconsistently defined claims are inherently ''false and misleading in any particular,'' and therefore misbranded under the Acts.

Response: The labeling requirements for meat and poultry products in the Acts and implementing regulations are aimed at preventing product misbranding. For the reasons given previously, FSIS considers its review and approval of labels bearing animal-raising claims, under the conditions described in the guideline, to provide sufficient assurance that product labeling bearing claims is not be false or misleading in any particular. As a result, the products will not be misbranded.

FSIS is aware of the statutory authorities under which the FTC and SEC operate to require substantiation of claims companies make about their products. For example, Section 12 of the Federal Trade Commission Act (15 U.S.C. 52) prohibits false advertisement of foods, drugs, and cosmetics. FSIS generally coordinates its activities with the FTC and other agencies to avoid duplication of effort and advises companies to consult FSIS labeling regulations, rules, and policies when developing advertising for meat and poultry products. (On coordination with the FTC, See *A Guide to Federal Food Labeling Requirements for Meat, Poultry, and Egg Products* (FSIS/USDA, Washington, DC 2007)).

Third-Party Certification

Comment: Comments from animal welfare advocacy organizations, consumer advocacy organizations, individuals, organizations that provide third-party certification, and producers argued that, because FSIS does not conduct on-farm verifications, the Agency should require animal-raising claims to be verified by a third-party certifying organization. These commenters stated that the required certification would constitute evidence that the claim is truthful and meets consumer expectations for the claim. Several commenters included their recommendations for third-party certification programs that they believe reflect consumer expectations for these claims.

Response: FSIS believes it would not be economically feasible for many small and very small establishments to incur the additional costs of independent third-party certification because of their low sales volumes. FSIS also believes that requiring third-party certification could reduce the variety of products labeled with animal-raising claims these establishments would have to offer. Reductions in purchase options could also result in a cost to consumers. FSIS believes that its current procedure, which provides for case-by-case review of the producer's animal-raising protocol, is effective in ensuring that labels bearing animal-raising claims are truthful and not misleading. While the Agency has determined that it will not require independent third-party certification for all animal-raising claims, this determination should not in any way diminish the utility of third-party certifying organizations. Establishments can choose to use third-party certification programs to support animal raising claims on labels.

Font Size for Claim Statements

Comment: Animal-welfare and consumer-advocacy organizations urged FSIS to set minimum type sizes for animal-raising claims and any additional text or qualifying information on the label that explains the claims. They said this information is often so small that it goes unnoticed.

Response: When the disclosure of qualifying information is necessary to prevent a claim from being false and misleading, FSIS agrees the information must be presented truthfully on the label. FSIS also agrees such information must be prominently- and conspicuously-displayed on the label and in terms likely to be read and understood by the ordinary individual (21 U.S.C. 601(n)(6); 21 U.S.C. 453(h)(6), implemented at 9 CFR 317.2(b) and 381.116(b), respectively). To that end, through its label prior-approval program, FSIS confirms that any qualifying information consists of clear language, that its type is prominent and conspicuous (as compared to with other

words, statements, or designs on the label), and that it is placed on the same panel of the package as the claim being qualified.

As discussed below, several comments expressed concern that claims associated with hormone use during animal production may be particularly misleading to consumers, particularly when hormones are not allowed during the production of certain species. To address these concerns, FSIS has updated the guideline to clarify why qualifying information is necessary on certain products and to emphasize that this information must be prominently- and conspicuously-displayed on the label for FSIS to approve the claim. This specific issue is discussed in more detail below.

Posting of Company-Specific Information

Comment: Commenters urged FSIS to make establishments' supporting documentation public, preferably in an open, online format.

Response: Developing and maintaining a public database of supporting documentation for establishments' claims would be overly cumbersome for FSIS. However, interested persons can submit a request for copies of any records not normally prepared for public distribution in accordance with the Freedom of Information Act (FOIA)(5 U.S.C. 552). Please note that certain records may be withheld in whole or in part from the requestor if they fall within one of nine FOIA exemptions. For example, Exemption 4 protects trade secrets and confidential commercial or financial information.

Organic Certification

Comment: Producers, a coalition that promotes sustainable agriculture, a trade association representing organic producers, and a foreign beef marketing agency urged FSIS to consider organic certificates to be sufficient support for other animal-raising claims, such as ''no antibiotics administered.'' The comments said additional documentation, *e.g.,* a segregation protocol, is unnecessary for certain claims and is an undue burden on certified-organic producers. Similarly, a trade association representing the poultry industry asked FSIS to state whether third-party program certificates, other than organic certificates, may be used in place of the documentation listed in the guideline.

Response: Any agricultural product that is sold, labeled, or represented as ''organic'' must be produced in accordance with the Agricultural Marketing Service's (AMS) National Organic Program (NOP) regulations in 7 CFR 205, as verified by a NOP-accredited third-party certifier. Therefore, if an establishment produces meat or poultry products that qualify for an organic claim under the NOP regulations, the establishment may not need to provide FSIS with additional documentation to support a separate animal-raising claim if the standards for the animal-raising claim are supported by the organic claim, *i.e.,* the standard for the animal-raising claim is explicitly addressed in the NOP regulations. For example, the organic certificate would be sufficient support for the claim ''no antibiotics administered'' on certified organic livestock products, because 7 CFR 205.238(c)(1) explicitly prohibits antibiotics for this purpose. Furthermore, a written description of the product tracing and segregation mechanism would not be needed as support for certified organic products because these activities are a condition of NOP certification.

For meat and poultry products certified under non-NOP third-party organization programs involving separate animal-raising claims, such as Global Animal Partnership's 5-Step Certification Program, FSIS would likewise accept their certificate as support for separate animal-raising claims or in place of the documentation listed in the guideline.

FSIS has updated the guideline by indicating the circumstances for which an organic certificate could also be used to support a specific animal-raising claim or in place of the documentation listed in the guideline. We would again note, however, that establishments are not required to use any animal-raising claim, including those listed in the guideline.

Support for Claims; Company Information

Comment: Animal welfare advocacy organizations and individuals opposed FSIS's approving animal-raising claims based on what the commenters consider to be ''minimal support,'' *e.g.,* a brief affidavit from the entity making the claim. Instead, they urged FSIS to stipulate, at a minimum, detailed animal-care protocols and photographic evidence when making any label approval determination.

Response: For FSIS to approve an animal-raising claim, an establishment must submit to FSIS documentation that supports the claim. The kind and amount of supporting documentation depends on the claim and could vary according to circumstances. FSIS comprehensively evaluates these label applications on a case-by-case basis. Further, FSIS often consults with its Federal partners, *e.g.,* the USDA's AMS, to decide whether the documentation submitted in support of an animal-raising claim provides the level of detail needed to ensure that the claim is truthful and not misleading. The type and amount of supporting documentation needed to adequately support an animal-raising claim varies with the type of claim being made. There are a few claims, such as ''made from Angus beef,'' that could be supported with a brief affidavit, *e.g.,* a certificate from a breed organization, when the establishment produces only those products. However, that is not necessarily the case for all animal-raising claims.

Animal Welfare and Environmental Stewardship

Comment: FSIS received several comments from animal welfare advocacy organizations, consumer advocacy organizations, and individuals on the Agency's guidance on animal welfare and environmental stewardship claims. Additionally, in May 2014, before FSIS published the 2016 guidance, the Animal Welfare Institute (AWI) petitioned the Agency to amend its regulations to require third-party certification for the approval of animal welfare and environmental stewardship claims in the labeling of meat and poultry products.[2] Both the comments and petition asserted that FSIS does not have the expertise or resources to adequately approve animal welfare and environmental stewardship claims. According to the comments and petition, the Agency currently approves claims based on standards that do not meet consumer expectations. To address these concerns, the comments and the petition stated that FSIS should only approve animal welfare and environmental stewardship claims that have been certified by an independent third-party certifying organization that has established standards that exceed the conventional industry standards defined by meat and poultry trade associations.

Response: FSIS disagrees. As noted in the guideline, animal welfare and environmental stewardship claims describe how animals are raised based on the care they receive by the producer or how the producer maintains the land and replenishes the environment. The

[2] FSIS denied the petition on February 22, 2019. The petition and FSIS's response are available on the FSIS petitions web page at: *https://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/petitions.*

issues raised in the comments and petition show that consumers, producers, and certifying entities have different views on the specific animal production practices that should be associated with certain animal welfare or environmental stewardship claims. Thus, because animal welfare or environmental stewardship claims mean different things to different people, a claim that is defined by a specific third-party certifying organization's animal-raising standards cannot reflect the diverse views associated with these types of claims.

To ensure that animal welfare and environmental stewardship claims continue to accurately reflect the animal production practices that define a specific claim, FSIS has updated its guidance with additional information on, as well as examples of, animal welfare and environmental stewardship claims for which the Agency is likely to find their use to be truthful and not misleading. Specifically, the guideline provides for the approval of animal welfare and environmental stewardship claims if the product label also describes the animal-raising standards that define the claim and identifies the entity that established the standards, *e.g.,* ''Raised with Care: TMB Ranch Defines Raised with Care as [explain the meaning of the claim on the label].'' If the entity has a website that describes the standards used to define the claim, the label may provide the website address instead of explaining what the claim means on the product label, *e.g.* ''Raised with Care as defined by TMB Ranch at [website address].

As an alternative to the additional terminology, animal welfare and environmental stewardship claims can be certified by a third-party certifying organization that posts the standards used to define the claim on its website. If the claim is certified by a third-party certifying organization, FSIS will approve the label bearing the claim if it includes the certifying entity's name, website address,[3] and logo, when the organization has a logo, as described in the guideline. Under this approach, the labeling of a meat or poultry product that bears an animal welfare or environmental stewardship claim includes the information that consumers need to determine whether the animal-raising practices used to define a particular animal claim meets their expectations for the claim.

Comment: Comments from animal welfare advocacy organizations and consumer advocacy organizations stated that although FSIS will only approve animal welfare or environmental stewardship claims if the claim is defined on the labeling, companies have different standards for defining animal welfare and environmental stewardship, and they use different types of documentation to support these claims. The comments stated that because of these differences, the same claim may reflect different practices depending on the producer's standards for the claim, which, according to the comments, results in claims that are misleading and confusing to consumers. The comments also asserted that it is unlikely that a producer's ''humane'' or ''sustainable'' practices can be adequately described in the limited space provided on a product label.

Response: As discussed above, FSIS recognizes that the same animal welfare or environmental stewardship claim may reflect different animal production practices depending on the producer's or certifying entity's standards for the claim. However, FSIS disagrees that these differences result in claims that are misleading or confusing to consumers. As noted above, FSIS has updated the guideline with additional information on and examples of claims the Agency will likely find to be truthful and not misleading if accompanied by the appropriate documentation. The labels of products bearing animal welfare and environmental stewardship claims need to include information that consumers can use to determine whether the animal-raising practices used to define a particular claim meet their expectations for the claim, *i.e.,* the name of the entity that established the standard with a statement explaining the meaning of the claim as applied to that particular product or a website address that provides the entity's standards for defining the claim. If a third-party certifying organization established the claim, the website address would need to provide the certifying organization's standards for defining the claim. FSIS will not approve an animal welfare or environmental stewardship claim if the product label does not include complete information on the animal-raising standards that define the claim or identify the entity that established the standards. Or, if the claim was certified by a third-party certifying organization, FSIS will not approve the label bearing the claim if it does not include the certifying entities name, website address, and logo, when the organization has a logo.

Comment: The above comments and the 2014 AWI petition stated that many animal welfare and environmental stewardship claims are misleading because they reflect conventional industry standards defined by meat and poultry trade associations. The comments and petition both referenced surveys that, according to the comments and petition, show that consumers believe animal welfare claims, such as ''humanely raised,'' represent a standard of care higher than that of the conventional animal agriculture industry. Specifically, they stated that surveys show that a majority of consumers believe that products that bear ''humanely raised'' claims in their labeling should be derived from animals that have access to the outdoors and adequate space to move about freely. They asserted that FSIS should only approve third-party certified claims if the party employs standards that align with these consumer expectations for the claim in question. The comments and petition included examples of certification programs that they believe meet consumer expectations for animal welfare claims.

Response: As noted above, FSIS will only approve labels of products bearing animal welfare and environmental stewardship claims that include information that consumers need to determine whether the animal-raising practices used to define a particular claim meet their expectations for the claim. Thus, consumers who have specific expectations for the standard of care used to define a claim may identify meat and poultry products that meet their expectations from the information included in the product's labeling.

Comments: The 2014 AWI petition and comments from animal welfare advocacy organizations stated that the current guideline places producers who choose to use third-party certification at an economic disadvantage. The comments noted that producers who choose to use a third-party certification typically incur costs associated with the certification and in maintaining systems that go beyond conventional production standards in terms of animal welfare and environmental stewardship. The comments and petition said that producers who make animal welfare or environmental claims that are not independently certified can make the same claims and charge a premium for their products while avoiding the cost of certification and production. They also asserted that requiring third-party certification will increase consumer confidence in animal welfare and environmental stewardship claims because third-party certification programs are independent of the

[3] Products certified as ''organic'' would not need to disclose a website address on the label, except when the address is required under 7 CFR part 205.

companies they are certifying and have expertise in establishing standards.

Response: FSIS disagrees that the guideline places companies that choose to use third-party certification for animal raising claims at an economic disadvantage. A producer's decision to use a third-party certifying organization's certification program is a voluntary business decision. Producers that use certifying entities do so because they have determined that the benefits of labeling a meat or poultry product with a certified animal welfare or environmental stewardship claim outweigh the cost associated with the certification program. Consumers who have more confidence in claims that have been certified by a third-party organization can identify products that meet a certifying entity's standards from the information included in the product's labeling.

However, as noted above, FSIS disagrees that third-party certification be required because the Agency believes it would not be economically feasible for many small and very small establishments to incur the additional costs of independent third-party certification because of their low sales volumes. In addition, because FSIS reviews all animal raising claims on a case-by-case basis, the Agency does not believe that it is necessary to require third party certification to ensure that labels bearing animal welfare and environmental stewardship claims are truthful and not misleading.

Diet

Comment: A producer urged FSIS to only accept the term ''grassfed'' and not the terms ''Grass Fed'' or ''grass-fed.''

Response: FSIS considers all three terms synonymous and will continue to approve them when adequate documentation is provided to substantiate the claim.

Comment: A producer urged FSIS to require that official establishments submit to FSIS annual monitoring and reporting of soil health as a condition for approval of ''grass-fed'' claims. The commenter argued that requiring the data will promote better land management practices and healthy grasslands.

Response: FSIS believes that information about land management practices is not necessary for the Agency to evaluate ''grass-fed'' claims in the labeling of meat and poultry products because land management practices are not part of the animal's diet. However, land management practices information may be included as a part of the supporting documentation if the claim includes information about soil health or other land management practices.

Comment: An environmental advocacy organization urged FSIS to establish a standard for ''grass-fed'' based on four conditions: (1) No confinement; (2) no routine antibiotics; (3) no added hormones; and (4) a forage-based diet throughout the lifetime of the animal after weaning. Likewise, comments from consumers, animal advocacy organizations, and consumer advocacy groups requested that FSIS establish a standard for ''grass-fed'' that is applicable from weaning to slaughter, prohibits the use of feedlots, and for which animals have 100 percent access to a forage-based diet. In addition, an animal welfare advocacy organization asked that FSIS clarify whether products made from animals with less than 100 percent access to grass or forage can bear ''grass-fed'' label claims, such as 85 percent grass-fed.

Response: In response to these comments, FSIS has updated the guideline to clarify that ''100% grass-fed'' claims are not permitted for animals raised on feedlots. FSIS has also added that when animals have less than 100 percent access to grass or forage, any ''grass-fed'' claim must accurately reflect the circumstances of raising (*e.g.,* ''Made from cows that are fed 85% grass and 15% corn''). Similar to other dietary claims, FSIS will verify these claims by reviewing records that describe the animal's diet from birth to harvest or the period of raising being referenced by the claims. With these changes, FSIS believes the information in the guideline is adequate as it relates to use of ''grass-fed'' and ''100% grass-fed'' label claims. As outlined in the guideline, for FSIS to approve these particular claims, animals must be fed only grass or forage, with the exception of milk consumed before weaning. In addition, these animals cannot be fed grain or grain byproducts and must have continuous access to pasture during the growing season until slaughter.

Living/Raising/Raising Conditions

Comment: Comments from animal welfare advocacy organizations, consumer advocacy organizations, and individuals stated that FSIS should update the guideline on claims related to living/raising conditions by defining separate ''range'' and ''pasture'' claims for meat and poultry products, by defining ''crate free,'' and other similar claims. The comments noted that under the guideline, certain claims, such as ''Free Range'' and ''Pasture Raised'' require the producer to define the claim on the product label, while other claims, such as ''Free Roaming'' and ''Pasture Grown,'' are acceptable without a definition when the animal from which the products are derived has continuous access to the outdoors for a minimum of 120 days per year. The comments stated that FSIS should set minimum standards that reflect consumer expectations for these claims and clarify whether certain claims may only be used for products derived from livestock or birds. The comments included recommendations on how to define ''range'' or ''pasture'' claims for birds and separate recommendations on how to define ''range'' or ''pasture'' claims for livestock. According to the comments, the recommended standards included in the comments reflect consumer expectations for these claims, which include some degree of vegetative cover, a minimum amount of space per animal, and protection from risks to animal welfare.

Response: As explained above, FSIS does not believe that the Agency should define specific living/raising conditions claims in the regulations or in guideline because our current procedure, which provides for case-by-case review of the producer's animal-raising protocol, is effective in ensuring that labels bearing these claims are truthful and not misleading. However, these comments showed confusion regarding the labeling of products with living/raising conditions claims. To ensure that living/raising conditions claims continue to accurately reflect the animal production practices that define a specific claim, FSIS updated the guideline by reorganizing the living/raising conditions section to make clear which claims do not require additional terminology and the documentation that is needed to substantiate these claims.

In addition, FSIS added information to clarify that nearly all living/raising conditions claims require additional terminology explaining the meaning of the claim, *e.g.,* ''Cage free. Chickens were never confined to cages during raising.'' FSIS also clarified that, as an alternative to the additional terminology, living/raising claims can be certified by a third-party certifying organization that posts its standards for defining the claim on its website. If the claim is certified by a third-party certifying organization, FSIS will only approve the label bearing the claim if it includes the certifying entity's name, website address, and logo, when the organization has a logo, as described in the guideline.

Based on consultations with AMS in the 1990s, FSIS determined that additional terminology is not needed on the label for the claim ''Free Range'' and synonymous claims (''Free Roaming,''

''Pasture Fed,'' Pasture Grown,'' ''Pasture Raised,'' and ''Meadow Raised'') on poultry products. However, for FSIS to approve these claims, additional information must be submitted to substantiate the claim. Specific details about what additional information is needed have been added to the guideline. Although FSIS believes its current approach is adequate because it can accommodate various production situations while still providing for an animal-raising environment that allows birds to express natural behaviors, FSIS requests comments on this approach.

Comment: In January 2016, AWI submitted a different petition [4] requesting that FSIS initiate rulemaking to define ''free range'' and equivalent claims for poultry and to establish substantiation requirements for the approval of these claims. As an alternative, the petition requested that FSIS update its guidance on ''free range'' claims to incorporate the changes requested in the petition.

The petition asserted that outdoor access should not be the sole defining factor of the ''free range'' claim. According to the petition, in order for a producer to properly illustrate that their birds are free range, they should be required to address several living conditions in addition to outdoor access. The petition stated that producers should be required to provide evidence that birds have easy, continuous access to vegetation, shade, and soil; protection against predators and adverse weather; and an outdoor space that is at least as large as the indoor space. According to the petition, only when producers are required to provide this information does this claim become valuable for consumers.

The petition and other commenters stated that the current guideline does not reflect consumer expectation because, under the guideline, poultry labeled as ''free range'' may come from birds raised indoors under crowded conditions, as long as the birds have access to the outside. The comments and petition stated that the current guideline and approval process for ''free range'' poultry claims results in claims that are inconsistent and misleading to consumers.

Response: As noted above, FSIS has updated the guideline by adding information on the type of documentation typically needed to substantiate a ''free range'' claim on poultry products. The update reflects FSIS's longstanding policy for approving these claims. For FSIS to approve this specific claim, the establishment must include a description of the housing conditions of the birds, as well as demonstrate the birds have continuous, free access to the outside.

Comment: Comments from animal welfare advocacy organizations stated that ''cage free'' claims should not be allowed on chicken and turkey products because birds raised for food are not typically kept in cages before being transported to slaughter. The comments asserted that ''cage free'' claims on poultry products are misleading because they give consumers the false impression that there are poultry products in the market that came from caged birds.

Response: When supported by documentation, the claim that birds were ''raised cage free'' is a true and accurate statement about a producer's raising practices that the establishment has chosen to communicate to consumers on the product label. If the claim is factually accurate and supported by documentation, FSIS will approve a ''cage free'' claim in the labeling of poultry products if it is part of a complete claim that is truthful and not misleading, *e.g.,* ''Cage free. Chickens were never confined to cages during raising.'' Any producer that raises poultry without cages may label their poultry products as ''cage free'' if the claim is substantiated by documentation. Even if raising birds as cage free is a common practice, that fact does not make the claim false or misleading.

Raised Without Antibiotics

Comment: A group of animal welfare advocacy organizations noted that the guideline allows producers to make a number of voluntary claims with respect to antibiotic use during animal production but does not require that producers disclose antibiotic use. The comments asserted that FSIS must require that antibiotic use during animal production be disclosed in the labeling of meat and poultry products to prevent product misbranding and foster informed consumer decision making.

In addition, in June 2013, before FSIS published the initial guideline, the Animal Legal Defense Fund (ALDF) petitioned FSIS to initiate rulemaking to require mandatory labeling to disclose routine antibiotic use in animals used to produce meat and poultry products.[5] The petition requested that FSIS require that the labels of all meat and poultry products disclose whether the source animals were administered antibiotics. The petition included a study that suggests that bacteria found in meat from animals raised with antibiotics may be more likely to be resistant to antibiotics than bacteria in meat from animals raised without antibiotics. The petition also referenced surveys that showed that consumers are concerned about issues related to the use of antibiotics in animal production and the development of antibiotic resistant strains of bacteria.

The petition and the comments asserted that the current regulatory scheme, which allows producers that do not use antibiotics to voluntarily disclose this fact on the product labeling, fails to provide uniform, meaningful disclosure of antibiotic use on the farm. Both the petition and comments stated that the failure to disclose material facts about antibiotic use prevents consumers from making informed purchasing choices with respect to an animal production practice that many consumers believe presents a threat to public health.

Response: FSIS does not require that the labeling of meat and poultry products disclose the fact that antibiotics were administered to animals as part of the production process because the Agency does not consider animal production practices to be material facts that must be disclosed in the product label. Animal-raising claims, including claims about antibiotic use, are voluntary marketing claims that highlight certain aspects about the way source animals used to produce meat and poultry product were raised. These claims do not provide information on the characteristics or components of the meat or poultry products themselves.

FSIS conducts testing for residues in meat and poultry to verify that product does not include any prohibited chemical, including antibiotics. As discussed above, FSIS regulates the marking, labeling, and packaging of meat and poultry products to ensure that these products are not misbranded. Under the Acts, a product is misbranded, among other circumstances, if its labeling if ''false and misleading in any particular'' (21 U.S.C. 601(n)(1), 21 U.S.C. 453(h)(1)). FSIS has historically interpreted ''false or misleading in any particular'' to be a material misrepresentation directly related to the inherent characteristics of

[4] The petition is available at *https://www.fsis.usda.gov/wps/wcm/connect/368eba0b-4195-4641-91d7-7f772ead9a3e/16-01-AWI-Petition-012016.pdf?MOD=AJPERES.*

[5] The petition is available at *https://www.fsis.usda.gov/wps/wcm/connect/12aeca93-4d3e-4ac7-b624-d5fc0b0dbae0/Petition_Animal_Legal_Defense_Fund_060313.pdf?MOD=AJPERES.*

the food itself.[6] In other words, the elements required to appear on the label must inform the consumer of the constituents of the product. Information that may be of interest to certain consumers, such as the use of antibiotics in animal production, but that does not pertain to the product's nutritional, organoleptic, or functional characteristics, or any other essential attributes of the food, is not considered a ''material fact'' that must be disclosed in the product's labeling. Although the 2013 petition submitted by ALDF includes information to demonstrate that the administration of antibiotics as part of the animal production may lead to the development of antibiotic resistant strains of bacteria, the supporting data do not demonstrate that the proper use of antibiotics in animal production affects the attributes of the meat or poultry product itself.

As noted in the petition, most major grocery stores carry meat and poultry products labeled as ''antibiotic-free.'' Thus, consumers who want to avoid purchasing meat and poultry products from animals that may have received antibiotics during the production process can identify these products from current voluntary animal production claims. FSIS is currently testing certain products with ''raised without antibiotics'' claims to verify that those products are not misbranded. This effort will help ensure that such label claims are accurate and not misleading.

Comment: The 2013 ALDF petition and consumer advocacy organizations stated that FSIS must adopt a uniform labeling standard for all meat and poultry products to disclose whether animals were fed antibiotics. The comments stated that the guideline provides for producers to make a number of voluntary claims, such as ''No Antibiotics Administered,'' ''No Antibiotics Ever,'' ''Raised without Sub-therapeutic Antibiotics,'' and ''No Antibiotics Administered the last 150 days,'' which the comments believe make it difficult for consumers to make informed decisions on what they consider to be public health issues. The petition recommended that FSIS prescribe standard terminology and definitions for the claims ''Raised with Antibiotics,'' ''Raised without Antibiotics,'' and ''Given Antibiotics for Therapeutic Antibiotic Use Only.'' Finally, according to the commenters and the petition, antibiotic claims need to be set apart from other animal-raising claims on the label because the use of antibiotics in animal agriculture has potential human health consequences that make labeling clarity particularly important.

Response: FSIS believes that its current case-by-case approach for the approval of labels bearing claims on the use of antibiotics during animal production is effective in ensuring that these types of claims are truthful and not misleading. Therefore, the Agency is not establishing standard definitions for these types of claims as recommended by the comments and petition.

FSIS will approve a label bearing an animal-raising claim related to antibiotic use if the claim is supported by documentation and the claim accurately reflects the conditions under which the source animal was raised. As noted by the comments, FSIS approves claims that reflect variations in the use of antibiotics during animal production, such as ''raised without antibiotics'' and ''no antibiotics administered for growth promotion, antibiotics administered in the event of illness.'' The variations in claims reflect differences in the use of antibiotics during animal production. FSIS disagrees that these claims are misleading or confusing to consumers because FSIS will only approve a claim associated with antibiotic use that accurately reflects the conditions under which the source animal was raised.

Comment: Several comments from consumer advocacy organizations and individuals said FSIS should prohibit the claim ''raised without sub-therapeutic antibiotics'' because the term ''sub-therapeutic'' has no commonly recognized meaning.

Response: FSIS will only approve claims that animals have not been administered sub-therapeutic antibiotics if such claims are part of a complete claim that is truthful and not misleading, *e.g.,* ''No sub-therapeutic antibiotics. Animals do not receive antibiotics on a daily basis; animals only receive antibiotics in the case of illness.'' However, to avoid related confusion, FSIS updated the guideline to include additional examples of claims where the Agency is likely to find the use of the term ''sub-therapeutic'' to be truthful and not misleading.

Raised Without Added Hormones

Comment: Several comments from consumers, animal advocacy organizations, consumer advocacy organizations, and an environmental advocacy organization urged FSIS to establish standards in the guideline for the claim ''raised without growth promotants (stimulants).'' According to the comments, FSIS should approve the claim only if the source animals were not treated with or fed any chemical compound used for growth promotion and feed efficiency, including, but not limited to, hormones, beta-agonists, and antibiotics.

Response: FSIS agrees that documentation for the claim ''raised without growth promotants (stimulants)'' would need to demonstrate that the animals were not treated with or fed any chemical compound used by producers for growth promotion and feed efficiency throughout the life of the animal. However, in FSIS's experience, use of this specific claim is rare. Therefore, FSIS has not made any changes related to its expectations for growth promotant claims but has updated the examples in the guideline with more commonly used negative hormone claims, like ''Raised without Added Hormones'' and ''No added Hormones Administered.''

Comment: A consumer advocacy organization said FSIS should no longer stipulate the qualifying statement ''Federal regulations prohibit the use of hormones in (species)'' on pork products labeled with a negative hormone claim. ''The organization argued the statement is misleading on these products because several hormones, *e.g.,* Altrenogest, a synthetic progestin, and Oxytocin, have been approved for use in swine by the Food and Drug Administration.

Response: FSIS agrees with the comment and has updated the guideline to clarify that the qualifying statement is no longer applicable to pork products. To be clear, a qualifying statement will still be required on products made from poultry, veal, calf, goat, mature sheep, or exotic (non-amenable) species bearing a negative hormone claim, such as ''raised without added hormones.''

Establishments do not need to resubmit their labels for approval to remove the qualifying statement from pork product labels. Establishments can remove the qualifying statement generically under 9 CFR 412.1, *e.g.,* at next printing, to be consistent with FSIS's updated guideline.

Comment: Several comments from animal advocacy organizations and an environmental advocacy organization urged FSIS to prohibit negative hormone claims on products made from species for which Federal law prohibits hormone use. They argued that allowing such claims may mislead consumers who may be unaware that hormones are not to be used even in animals whose products do not bear the claim.

Response: If the claim is factually accurate and supported by

[6] See FSIS's final response to petition #12–02 submitted by SOIA available at: *https://www.fsis.usda.gov/wps/wcm/connect/dcda4cb4-2612-4283-a9a7-0f97d976e022/12-02-FSIS-Final-Response-090916.pdf?MOD=AJPERES.*

documentation, the guideline explains FSIS will approve a negative hormone claim on products made from poultry, veal, goats, mature sheep, and exotic species (such as buffalo and elk) when accompanied with the following qualifying statement on the label: ''Federal regulations do not permit the use of hormones in [name the species or kind].'' As explained above, this information must be prominently- and conspicuously-displayed on the label in accordance with the regulations.

However, FSIS acknowledges consumers who are unaware that hormones are prohibited for use in certain livestock and poultry species could potentially be misled by a negative hormone claim due to its unique nature. To address this concern, FSIS has updated the guideline to clarify why the qualifying information is necessary on certain products. The guideline was also updated to emphasize that FSIS only approves these claims when the necessary qualifying information is prominently and clearly displayed on the label, *e.g.,* it appears directly adjacent to the claim or is in type at least one-third the height.

Congressional Review Act

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

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication online through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to it through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Constituent Update is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Non-Discrimination Statement

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Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC.

Carmen M. Rottenberg,

Administrator.

[FR Doc. 2019–27845 Filed 12–26–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–814]

Certain Circular Welded Non-Alloy Steel Pipe From Taiwan: Preliminary Determination of No Shipments; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that there were no shipments of subject merchandise during the period of review (POR) November 1, 2017 through October 31, 2018. We invite interested parties to comment on these preliminary results.

DATES: Applicable December 27, 2019.

FOR FURTHER INFORMATION CONTACT: Chelsey Simonovich, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1979.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2018, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the order on certain circular welded non-alloy steel pipe (circular welded pipe) from Taiwan for the POR.[1] On November 30, 2018, Commerce received a request for administrative review covering imports of circular welded pipe from Taiwan, which was filed in proper form by Independence Tube Corporation and Southland Tube (collectively, the petitioners).[2] Commerce published the notice of initiation of this administrative review on February 6, 2019, covering the two companies for which we received a request for review.[3]

On December 26, 2018, Commerce received a notification of no shipments from Founder Land.[4] On March 4, 2019, Commerce received notifications of no shipments from Shin Yang Steel Co., Ltd. (Shin Yang), Tension Steel Enterprise Co., Ltd. (Tension Steel), Yieh Hsing Enterprise Co., Ltd. (Yieh Hsing), and Yieh Phui Enterprise Co., Ltd. (Yieh Phui).[5] On August 5, 2019, Commerce made inquiries to U.S. Customs and Border Protection (CBP) informing CBP that Commerce's records indicated no shipments from Founder

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 83 FR 54912 (November 1, 2018).

[2] *See* Petitioners' Letter, ''Certain Circular Welded Non-Alloy Steel Pipe from Taiwan: Request for Administrative Review,'' dated November 30, 2018.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 2160 (February 6, 2019).

[4] *See* Founder Land's Letter, ''Certain Circular Welded Non-Alloy Steel Pipe from Taiwan: Request for Administrative Review,'' dated December 26, 2018.

[5] *See* Shin Yang's Letter, ''Certain Circular Welded Non-Alloy Steel Pipe from Taiwan; No Shipment Certification,'' dated March 4, 2019; Tension Steel's Letter, ''Certain Circular Welded Non-Alloy Steel Pipe from Taiwan; No Shipment Certification,'' dated March 4, 2019; Yieh Hsing's Letter, ''Certain Circular Welded Non-Alloy Steel Pipe from Taiwan; No Shipment Certification,'' dated March 4, 2019; and Yieh Phui's Letter, ''Certain Circular Welded Non-Alloy Steel Pipe from Taiwan; No Shipment Certification,'' dated March 4, 2019.

Land, Shin Yang, Tension Steel, Yieh Hsing, or Yieh Phui and requested that any CBP import officers aware of entries inform Commerce within ten days.[6] We received no notifications from CBP. On August 30, 2019, Commerce published memoranda informing interested parties that we had made an inquiry to CBP with regard to entries of subject merchandise for the purposes of potential respondent selection. The results indicated that there were no shipments of subject merchandise from Taiwan as country of origin or country of export by Founder Land, Shin Yang, Tension Steel, Yieh Hsing, or Yieh Phui into the United States during the POR.[7]

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.[8] On September 10, 2019, Commerce postponed the preliminary determination of this administrative review, and the revised deadline is now December 10, 2019. This preliminary determination is made in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the order are circular welded pipe from Taiwan. For a complete description of the scope of the order, *see* the appendix to this notice.

Preliminary Determination of No Shipments

Based on record evidence, we preliminarily determine that Founder Land, Shin Yang, Tension, Yieh Hsing, Yieh Phui had no shipments of subject merchandise during the POR. With respect to Founder Land, Shin Yang, Tension Steel, Yieh Hsing, and Yieh Phui, CBP stated that it did not find any shipments of subject merchandise from these companies during the POR.[9]

Consistent with our practice, we find that it is not appropriate to rescind the review with respect to these five companies, but rather to complete the review and issue appropriate instructions to CBP based on the final results of this review.[10]

Public Comment

Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[11] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[12] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), 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.

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) and must also be served on interested parties.[13] ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. An electronically filed document must be received successfully in its entirety by 5:00 p.m. Eastern Time on the date that the document is due.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via Commerce's electronic records system, ACCESS. An electronically filed request must be received successfully in its entirety by 5:00 p.m. Eastern Time within 30 days of the date of publication of this notice.[14] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a date and time to be determined.[15] Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any case or rebuttal briefs, no later than 120 days after the date of publication of this notice, unless extended.[16]

Assessment Rates

If we continue to find in the final results that Founder Land, Shun Yang, Tension Steel, Yieh Hsing, and Yieh Phui had no shipments of subject merchandise, for entries of subject merchandise during the POR produced by Founder Land, Shun Yang, Tension Steel, Yieh Hsing, and Yieh Phui for which these companies did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate these entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[17]

Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The

[6] *See* CBP Message 9241301, ''No shipments inquiry for certain circular welded non-alloy steel pipe from Taiwan exported by Founder Land Co., Ltd. (A–583–814),'' CBP Message 9214307, ''No shipments inquiry for certain circular welded non-alloy steel pipe from Taiwan exported by Shin Yang Steel Co., Ltd. (A–583–814),'' CBP Message 9214306, ''No shipments inquiry for certain circular welded non-alloy steel pipe from Taiwan exported by Tension Steel Enterprise Co., Ltd. (A–583–814),'' CBP Message 9213304, ''No shipments inquiry for certain circular welded non-alloy steel pipe from Taiwan exported by Yieh Hsing Enterprise Co., Ltd. (A–583–814),'' CBP Message 9213307, ''No shipments inquiry for certain circular welded non-alloy steel pipe from Taiwan exported by Yieh Phui Enterprise Co., Ltd. (A–583–814),'' all dated March 20, 2019.

[7] *See* Memoranda, ''No shipment inquiry with respect to the company below during the period 11/01/2017 through 10/31/2018,'' dated August 301, 2019.

[8] *See* Memorandum, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day.

[9] *See* Founder Land's Letter, ''Certain Circular Welded Non-Alloy Steel Pipe from Taiwan: Request for Administrative Review,'' dated December 25, 2018; *see also* Shin Yang's Letter, ''Certain Circular Welded Non-Alloy Steel Pipe from Taiwan; No Shipment Certification,'' dated March 4, 2019, Tension Steel's Letter, ''Certain Circular Welded Non-Alloy Steel Pipe from Taiwan; No Shipment Certification,'' dated March 4, 2019, Yieh Hsing's Letter, ''Certain Circular Welded Non-Alloy Steel Pipe from Taiwan; No Shipment Certification,'' dated March 4, 2019, and Yieh Phui's Letter, ''Certain Circular Welded Non-Alloy Steel Pipe from Taiwan; No Shipment Certification,'' dated March 4, 2019.

[10] *See, e.g., Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[11] *See* 19 CFR 351.309(c)(1)(ii).

[12] *See* 19 CFR 351.309(d).

[13] *See* 19 CFR 351.303(f).

[14] *See* 19 CFR 351.310(c).

[15] *See* 19 CFR 351.310(d).

[16] *See* section 751(a)(3)(A) of the Act; and 19 CFR 351.213(h).

[17] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

cash deposit rates for Founder Land, Shun Yang, Tension Steel, Yieh Hsing, and Yieh Phui will remain unchanged from the rate assigned to them in the most recently completed review of those companies; (2) for merchandise exported by manufacturers or exporters not covered in this 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; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 23.56 percent, the all-others rate established in the less-than-fair-value investigation.[18] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice 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 may result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: December 10, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The products covered by this order are (1) circular welded non-alloy steel pipes and tubes, of circular cross section over 114.3 millimeters (4.5 inches), but not over 406.4 millimeters (16 inches) in outside diameter, with a wall thickness of 1.65 millimeters (0.065 inches) or more, regardless of surface finish (black, galvanized, or painted), or end-finish (plain end, beveled end, threaded, or threaded and coupled); and (2) circular welded non-alloy steel pipes and tubes, of circular cross-section less than 406.4 millimeters (16 inches), with a wall thickness of less than 1.65 millimeters (0.065 inches), regardless of surface finish (black, galvanized, or painted) or end-finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkling systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence-tubing and as structural pipe tubing used for framing and support members for construction, or load-bearing purposes in the construction, shipbuilding, trucking, farm-equipment, and related industries. Unfinished conduit pipe is also included in this order.

All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this order, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind or used for oil and gas pipelines is also not included in this investigation.

Imports of the products covered by this order are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings, 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

[FR Doc. 2019–27937 Filed 12–26–19; 8:45 am]

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[18] *See Notice of Antidumping Duty Order: Circular Welded Non-Alloy Steel Pipe from Taiwan,* 57 FR 49454 (November 2, 1992).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–904]

Certain Activated Carbon From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results

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

SUMMARY: On December 17, 2019, the Court of International Trade (the Court) issued a final judgment in *Jacobi Carbons AB* v. *United* States, Consol. Court No. 15–00286; Slip Op. 19–159 (CIT December 17, 2019) (*Jacobi AR7 IV*), sustaining the Department of Commerce's (Commerce's) third remand results pertaining to the seventh administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China (China) covering the period of April 1, 2013 through March 31, 2014. Commerce is notifying the public that the final judgment in this case is not in harmony with the final results of the administrative review, and that Commerce is amending the final results with respect to certain producers and/or exporters identified herein.

DATES: Applicable December 27, 2019.

FOR FURTHER INFORMATION CONTACT: Robert Palmer, AD/CVD Operations Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–9068.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 2015, Commerce issued the *AR7 Final Results.*[1] Jacobi Carbons AB (Jacobi), a mandatory respondent, and Jacobi Carbons, Inc., its affiliated U.S. importer of subject merchandise,[2] challenged certain aspects of the *AR7 Final Results.* Jacobi challenged Commerce's final results regarding: (1) The selection of Thailand as the primary surrogate country for the mandatory respondents,[3] (2) the selection of Thai surrogate values (SV) used to value financial ratios and carbonized material, and (3) the reduction of Jacobi's constructed export price (CEP) by an amount for irrecoverable value added tax (VAT). On April 7, 2017, the Court in *Jacobi AR7 I* remanded Commerce's *AR7 Final Results* with respect to

[1] *See Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014,* 80 FR 61172 (October 9, 2015) (*AR7 Final Results*) and accompanying Issues and Decisions Memorandum (IDM).

[2] In the third administrative review of the *Order,* Commerce found that Jacobi, Tianjin Jacobi International Trading Co. Ltd., and Jacobi Carbons Industry (Tianjin) are a single entity and, because there were no changes to the facts which supported that decision since that determination was made, we continued to find these companies part of a single entity for this administrative review. *See Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Third Antidumping Duty Administrative Review,* 76 FR 67142 (October 31, 2011) (*AR3 Final Results*); *Certain Activated Carbon from the People's Republic of China; 2010–2011; Final Results of Antidumping Duty Administrative Review,* 77 FR 67337 (November 9, 2012) (*AR4 Final Results*); *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012,* 78 FR 70533 (November 26, 2013) (*AR5 Final Results*); and *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 70163 (November 25, 2014) (*AR6 Final Results*).

[3] The mandatory respondents are Jacobi and Datong Juqiang Activated Carbon Co., Ltd. (Juqiang).

Commerce's surrogate country selection (specifically, its determinations regarding economic comparability generally and significant production of comparable merchandise by Thailand in particular). The Court also sustained Commerce's authority to deduct irrecoverable VAT from CEP, while ruling that Commerce's calculation methodology lacked substantial evidence and remanding to Commerce on that issue. The Court deferred resolving Jacobi's arguments regarding Thai SVs pending the results of Commerce's remand redetermination.[4]

Jacobi AR7 I ordered Commerce: (1) To provide a reasoned explanation as to why the range of gross national income (GNI) reflected on the Surrogate Country Memorandum [5] demonstrates economic comparability to China, including why the Philippines's GNI did not, (2) reconsider and further explain Commerce's determination that Thailand is a significant producer of activated carbon, including the significance of Thailand's ranking as the sixth largest exporter in terms of its effect on global trade, and (3) further explain and reconsider Commerce's VAT calculation with respect to Jacobi in the *AR6 Final Results.*

On August 10, 2017, Commerce filed Remand I with the Court.[6] Commerce addressed and clarified these issues without making any changes to the margin calculations for Jacobi.[7]

On April 19, 2018, the Court in *Jacobi AR7 II* sustained Commerce's economic comparability determination but again remanded Commerce's determination that Thailand is a significant producer of comparable merchandise and its determination on the irrecoverable VAT adjustment, as well as its SV selections for financial ratios and carbonized material.[8] Although the Court in *Jacobi AR7 II* held that Commerce ''provided a reasoned explanation of how it generated the surrogate country list, including why it considers those countries on the list to be at the same level of economic development'' as China, which is supported by substantial evidence,[9] the Court ultimately found that the current record did not support Commerce's significant producer determination on the basis of net exports. As a result, the Court remanded the matter and ordered Commerce to further explain or reconsider its significant producer determination.[10] The Court also remanded the irrecoverable VAT adjustment for Commerce to address whether it is using gross or net prices to calculate the adjustment, and requested Commerce address and clarify the issues arising from the selection of the Carbokarn 2011 financial statements for the calculation of financial ratios and address the carbonized material SV.[11]

On October 24, 2018, Commerce filed Remand II with the Court.[12] Commerce affirmed its determination that Thailand is a significant producer of comparable merchandise and its selection of Thai import data as the SV for carbonized material.[13] Commerce selected a different Thai source to value financial ratios and reconsidered the basis for its VAT adjustment while continuing to adjust Jacobi's CEP for VAT.[14] As a result, Commerce revised its surrogate financial ratios and revised the VAT calculation formula using only entered value. Consequently, Jacobi's final margin was revised to $1.76/kg. The separate rate was revised to $1.76/kg for: (1) Beijing Pacific Activated Carbon Products Co., Ltd. (Beijing Pacific); (2) Carbon Activated Tianjin Co., Ltd. (CA Tianjin); (3) Datong Municipal Yunguang Activated Carbon Co., Ltd. (Yunguang); (4) Jilin Bright Future Chemicals Co., Ltd. (Jilin Bright); (5) Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. (Cherishmet); (6) Ningxia Huahui Activated Carbon Co., Ltd. (Huahui); (7) Ningxia Mineral and Chemical Ltd. (Ningxia Mineral); (8) Shanxi DMD Corp. (Shanxi DMD); (9) Shanxi Industry Technology Trading Co., Ltd. (Shanxi Technology); (10) Shanxi Sincere Industrial Co., Ltd. (Sincere); (11) Tancarb Activated Carbon Co., Ltd. (Tancarb); and (12) Tianjin Maijin Industries Co., Ltd. (Maijin). Commerce used the same methodology for calculating the separate rate that was used in the *AR7 Final Results.*[15]

On March 4, 2019, the Court in *Jacobi AR7 III* sustained Commerce's VAT adjustment but again remanded Commerce's determination that Thailand is a significant producer of comparable merchandise and directed Commerce to reconsider its selection of a primary surrogate country, and remanded Commerce's SV selection for carbonized material and financial ratios on the basis that they were from Thailand.[16] The Court in *Jacobi AR7 III* held that Commerce's determination that Thailand is a significant producer of activated carbon was not sufficiently supported by substantial evidence, and further held that the record does not support the selection of Thailand as a surrogate country.[17]

On October 24, 2018, Commerce filed Remand III with the Court.[18] Commerce selected, under protest, Indonesia as the primary surrogate country and revisited the selected SV for carbonized materials, while calculating the financial ratios using the viable Philippine financial statements on the record, in addition to selecting new SVs for other relevant factors of production.[19] As a result, Commerce revised its SV for financial ratios and carbonized materials.[20] Consequently, Jacobi's final margin was revised to $0.12/kg.[21] The separate rate was revised to $0.12/kg for: (1) Beijing Pacific; (2) CA Tianjin; (3) Yunguang; (4) Jilin Bright; (5) Cherishmet; (6) Huahui; (7) Ningxia Mineral; (8) Shanxi DMD; (9) Shanxi Technology; (10) Sincere; (11) Tancarb; and (12) Maijin.[22] Commerce used the same methodology for calculating the separate rate that was used in *AR7 Final Results* and Remand II, discussed above. On December 17, 2019, the Court sustained Remand III in *Jacobi AR7 IV.*[23]

Timken Notice

In its decision in *Timken,*[24] as clarified by *Diamond Sawblades,*[25] the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not ''in

[4] *See Jacobi Carbons AB* v. *United States,* 222 F. Supp. 3d 1159 (CIT 2017) (*Jacobi AR7 I*).

[5] *See* Memorandum, ''Certain Activated Carbon from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information,'' dated July 25, 2014 (Surrogate Country Memorandum).

[6] *See Jacobi Carbons AB et al.* v. *United States,* Consol. Court No. 15–00286, Slip Op. 17–39, Final Results of Redetermination Pursuant to Court Remand, dated August 7, 2017 (Remand I).

[7] *See* Remand I at 1–2, 42.

[8] *See Jacobi Carbons AB.* v. *United States,* 313 F. Supp. 3d 1308 (CIT 2018) (*Jacobi AR7 II*).

[9] *Id.* at 11.

[10] *Id.* at 14.

[11] *Id.* at 14–23.

[12] *See Jacobi Carbons AB et al.* v. *United States,* Consol. Court No. 15–00286, Slip Op. 18–46, Final Results of Redetermination Pursuant to Court Remand, dated October 23, 2018 (Remand II).

[13] *Id.* at 3–8, 15–20.

[14] *Id.* at 9–15, 20–32.

[15] *See* Remand II at 54.

[16] *See Jacobi Carbons AB* v. *United States,* 365 F. Supp. 3d 1323 (CIT 2019) (*Jacobi AR7 III*).

[17] *Id.* at 12–17.

[18] *See Jacobi Carbons AB et al.* v. *United States,* Consol. Court No. 15–00286, Slip Op. 19–27, Final Results of Redetermination Pursuant to Court Remand, dated June 17, 2019 (Remand III).

[19] *Id.* at 5–12.

[20] *Id.*

[21] *See* Remand III at 25.

[22] *Id.* at 26.

[23] *See Jacobi AR7 IV,* Consol. Court No. 15–00286, Slip Op. 19–159 (CIT 2019).

[24] *See Timken Co.* v. *United States,* 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

[25] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The Court's December 17, 2019, judgment sustaining Remand III in *Jacobi AR7 IV* constitutes a final decision of the Court that is not in harmony with Commerce's *AR7 Final Results.* This notice is published in fulfillment of the publication requirement of *Timken.* Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise at issue pending expiration of the period to appeal or, if appealed, a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision, Commerce amends the *AR7 Final Results* with respect to the companies identified below. Based on Remand III, as sustained by the Court in *Jacobi AR7 IV,* the revised weighted-average dumping margins for the companies listed below during the period April 1, 2013 through March 31, 2014, are as follows:

Exporter	Margin (dollars per kilogram) [26]
Jacobi Carbons AB	0.12
Beijing Pacific Activated Carbon Products Co., Ltd	0.12
Carbon Activated Tianjin Co., Ltd	0.12
Datong Municipal Yunguang Activated Carbon Co., Ltd	0.12
Jilin Bright Future Chemicals Company, Ltd	0.12
Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd	0.12
Ningxia Huahui Activated Carbon Co., Ltd	0.12
Ningxia Mineral and Chemical Limited	0.12
Shanxi DMD Corporation	0.12
Shanxi Industry Technology Trading Co., Ltd	0.12
Shanxi Sincere Industrial Co., Ltd	0.12
Tancarb Activated Carbon Co., Ltd	0.12
Tianjin Maijin Industries Co., Ltd	0.12

In the event that the CIT's ruling is not appealed or, if appealed, is upheld by a final and conclusive court decision, Commerce will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise produced and/or exported by the companies identified above using the assessment rates calculated by Commerce in the remand redeterminations, as listed above.

Cash Deposit Requirements

Because there have been subsequent administrative reviews for the companies identified above, the cash deposit rates will remain the rates established in the most recently-completed *AR11 Final Results,* which is $0.89/kg for Jacobi, $1.02/kg for CA Tianjin, and $0.89/kg for Beijing Pacific, Yunguang, Jilin Bright, Cherishmet, Huahui, Ningxia Mineral, Shanxi DMD, Shanxi Technology, Sincere, Tancarb, and Maijin.[27]

[26] In the second administrative review, Commerce determined that it would calculate per-unit assessment and cash deposit rates for all future reviews. *See Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review,* 75 FR 70208, 70211 (November 17, 2010); *see also AR7 Final Results,* 80 FR at 61174 n.21.

[27] *See Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 68881 (December 17, 2019) (*AR11 Final Results*).

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: December 20, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–28127 Filed 12–26–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta from Italy; Rescission of Countervailing Duty Administrative Review; 2018

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

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the countervailing duty (CVD) order on certain pasta from Italy for the period of review (POR) January 1, 2018 through December 31, 2018, based on the timely withdrawal of the requests for review.

DATES: Applicable December 27, 2019.

FOR FURTHER INFORMATION CONTACT: Theodore Pearson, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2631.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2019, Commerce published a notice of opportunity to request an administrative review of the CVD order on certain pasta from Italy for the POR January 1, 2018 through December 31, 2018.[1] On July 30 and 31, 2019, Commerce received timely-filed requests from Pastificio Fratelli DeLuca S.r.l. (DeLuca),[2] Tesa S.r.l. (Tesa),[3] and Industria Alimentare Colavita, S.p.A. (Indalco),[4] for administrative reviews of themselves, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b). Commerce received no other requests for administrative review.

On September 9, 2019, pursuant to these requests and in accordance with 19 CFR 351.221(c)(1)(i), Commerce published a notice initiating an administrative review of the CVD order

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 31295 (July 1, 2019).

[2] *See* DeLuca's Letter, ''Certain Dry Pasta from Italy; C–475–819; Request for Administrative Review (Revised),'' dated July 30, 2019.

[3] *See* Tesa's Letter, ''Pasta from Italy; Request for Administrative Review,'' dated July 31, 2019.

[4] *See* Indalco's Letter, ''Certain Pasta from Italy: Request for Administrative Review on Behalf of Industria Alimentare Colavita, S.p.A.,'' dated July 31, 2019.

on pasta from Italy.[5] On November 15, 2019, Indalco withdrew its request for an administrative review.[6] On November 18, 2019, DeLuca and Tesa withdrew their requests for administrative reviews.[7]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. DeLuca, Indalco and Tesa withdrew their requests within 90 days of the publication date of the notice of initiation. No other parties requested an administrative review of the order. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review in its entirety.

Assessment

Commerce intends to instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries of pasta from Italy. Countervailing duties shall be assessed at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification Regarding Administrative Protective Orders

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

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: December 19, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–27936 Filed 12–26–19; 8:45 am]

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[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 47242 (September 9, 2019).

[6] *See* Indalco's Letter, ''Certain Pasta From Italy: Withdrawal of Request for CVD Administrative Review of Indalco S.p.A.,'' dated November 15, 2019.

[7] *See* DeLuca's Letter, ''Certain Dry Pasta from Italy; C–475–819; Withdrawal of Request for Review,'' dated November 18, 2019; *see also* Tesa's Letter, ''Pasta from Italy: Withdrawal of Request for Administrative Review,'' dated November 18, 2019.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–523–808]

Certain Steel Nails from the Sultanate of Oman: Final Results of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) determines that Oman Fasteners LLC (Oman Fasteners) did not sell certain steel nails (steel nails) from the Sultanate of Oman (Oman) at less than normal value during the period of review (POR), July 1, 2017 through June 30, 2018.

DATES: Applicable December 27, 2019.

FOR FURTHER INFORMATION CONTACT: Thomas Martin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3936.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2019, Commerce published the *Preliminary Results* of the 2017–2018 antidumping duty administrative review of steel nails from Oman.[1] On September 3, 2019, Oman Fasteners and Mid Continent Steel & Wire, Inc. (the petitioner) submitted case briefs.[2] On September 9, 2019, Oman Fasteners and the petitioner submitted rebuttal briefs.[3] In its case brief, the petitioner requested that Commerce conduct a hearing in this proceeding. On November 4, 2019, the petitioner withdrew its request for a hearing.[4]

Scope of the Order

The merchandise covered by this order are steel nails from Oman. For a complete description of the scope of the order, *see* the Issues and Decision Memorandum.[5]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as an appendix. 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 directly 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 our review of the record and comments received from interested parties, we made no revisions to the preliminary margin calculation for the sole mandatory respondent.[6]

Final Results of the Administrative Review

We have determined the following weighted-average dumping margin applies to the firm listed below for the period July 1, 2017 through June 30, 2018:

[1] *See Certain Steel Nails from the Sultanate of Oman: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 37620 (August 1, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Oman Fastener's Letter, ''Certain Steel Nails from Oman; 3rd Administrative Review Case Brief,'' dated September 3, 2019; *see also* Petitioner's Letter, ''Certain Steel Nails from Oman: Case Brief and Request for Hearing,'' dated September 3, 2019.

[3] *See* Oman Fastener's Letter, ''Certain Steel Nails from Oman; 3rd Administrative Review Oman Fasteners' Rebuttal Brief,'' dated September 9, 2019; *see also* Petitioner's Letter, ''Certain Steel Nails from Oman: Rebuttal Brief,'' dated September 9, 2019.

[4] *See* Petitioner's Letter, ''Certain Steel Nails from Oman: Withdrawal of Hearing Request,'' dated November 4, 2019.

[5] *See* Memorandum, ''Issues and Decision Memorandum for Final Results of the 2017–2018 Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the Sultanate of Oman,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[6] *See* Memorandum, ''Analysis Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Certain Steel Nails from the Sultanate of Oman: Oman Fasteners, LLC,'' dated July 24, 2019.

Exporter/Producer	Weighted-average dumping margin (percent)
Oman Fasteners LLC	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. We will calculate importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).

For entries of subject merchandise during the POR produced by the sole respondent, for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed 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 this notice.

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 the respondent noted above will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers 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; (3) if the exporter is not a firm covered in this review, a prior review, or the original 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 9.10 percent, the all-others rate established in the investigation.[7] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and 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 18, 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. Changes Since the *Preliminary Results*
V. Discussion of the Issues
Comment 1: Which Financial Statement is the Appropriate Source for the Calculation of Constructed Value Profit and Indirect Selling Expenses
Comment 2: Whether Oman Fasteners is Affiliated with a Customer by Virtue of a Close Supplier Relationship
Comment 3: Whether Commerce Should Adjust the Per-Unit Zinc Cost
Comment 4: Whether Commerce Should Allow a Scrap Offset
Comment 5: Whether to Include Excluded Bad Debt Expenses Either in the General and Administrative (G&A) Expenses or in Indirect Selling Expenses
Comment 6: Whether Commerce's Differential Pricing Methodology is Unlawful
VI. Recommendation

[7] *See Certain Steel Nails from the Sultanate of Oman: Final Determination of Sales at Less Than Fair Value,* 80 FR 28972 (May 20, 2015).

[FR Doc. 2019–27933 Filed 12–26–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–978]

High Pressure Steel Cylinders From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2017

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

SUMMARY: The Department of Commerce (Commerce) determines that Beijing Tianhai Industry Co., Ltd. (BTIC), a producer/exporter of high pressure steel cylinders from the People's Republic of China (China), received countervailable subsidies during the period of review (POR), January 1, 2017 through December 31, 2017.

DATES: Applicable December 27, 2019.

FOR FURTHER INFORMATION CONTACT: Mary Kolberg, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1785.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 2019, Commerce published the *Preliminary Results* of the CVD administrative review in the **Federal Register**.[1] We invited interested parties to comment on the *Preliminary Results.* On September 20, 2019, we received timely filed case briefs from BTIC and the Government of China (GOC).[2] We received a rebuttal brief from Norris Cylinder Company (the petitioner) on September 25, 2019.[3] Based on an analysis of the comments received, Commerce has made certain

[1] *See High Pressure Steel Cylinders from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2017,* 84 FR 40393 (August 14, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* BTIC's Letter, ''BTIC Administrative Case Brief: Sixth Administrative Review of the Countervailing Duty Order on High Pressure Steel Cylinders from the People's Republic of China (C–570–978),'' dated September 20, 2019; *see also* GOC's Letter, ''GOC Administrative Case Brief: Sixth Administrative Review of the Countervailing Duty Order on High Pressure Steel Cylinders from the People's Republic of China (C–570–978),'' dated September 20, 2019.

[3] *See* Petitioner's Letter, ''High Pressure Steel Cylinders from the People's Republic of China—Rebuttal Brief of Norris Cylinder Company,'' dated September 25, 2019.

changes to the subsidy rate that was preliminarily determined for BTIC. The final subsidy rate is listed in the ''Final Results of Administrative Review'' section below.

Scope of the Order

The merchandise covered by the order is seamless steel cylinders designed for storage or transport of compressed or liquefied gas (high pressure steel cylinders). For a complete description of the scope of the order, *see* the Issues and Decision Memorandum.[4]

Analysis of Comments Received

All issues raised by the GOC, BTIC, and the petitioner are addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov;* and in the Central Records Unit, Room B8024 of the main Commerce building. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Methodology

We conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable during the POR, we find that there is a subsidy, *i.e.,* a financial contribution by an authority that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] For a full description of the methodology underlying our conclusions, *see* the Issues and Decision Memorandum.

Changes Since the Preliminary Results

Based on comments submitted in the case and rebuttal briefs, we have made revisions to some of our subsidy rate calculations for BTIC. For a discussion of these issues, *see* the Issues and Decision Memorandum.

Final Results of the Review

In accordance with 19 CFR 351.221(b)(5), we determine the following net countervailable subsidy rate for BTIC, for the period January 1, 2017 through December 31, 2017:

Company	Subsidy rate (percent *ad valorem*)
Beijing Tianhai Industry Co., Ltd. (BTIC)[6]	28.54

Disclosure

We will disclose to the parties in this proceeding the calculations performed for these final results within five days of the date of publication of this notice in the **Federal Register**.[7]

Assessment Rates

In accordance with 19 CFR 351.212(b)(2), Commerce intends to issue appropriate assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after publication of these final results of review. We will instruct CBP to liquidate shipments of subject merchandise produced by and/or exported by BTIC entered, or withdrawn from warehouse, for consumption on or after January 1, 2017 through December 31, 2017, at the *ad valorem* rate listed above.

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, we intend to instruct CBP to collect cash deposits of estimated countervailing duties in the amount shown above for BTIC, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, Commerce will instruct CBP to continue to collect cash deposits at the most recent company-specific or all-others rate applicable to the company, as appropriate. Accordingly, the cash deposit requirements that will be applied to companies covered by this order, but not examined in this administrative review, are those established in the most recently completed segment of the proceeding for each company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

These final results are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: December 17, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Use of Facts Otherwise Available and Adverse Inferences
V. Subsidies Valuation Information
VI. Benchmarks and Discount Rates
VII. Analysis of Programs
VIII. Analysis of Comments
- Comment 1: How to Use the Available Price Data to Calculate the Benchmark for Seamless Tube Steel
- Comment 2: Whether to Recalculate the Ocean Freight Benchmark to Include BTIC's Descartes Ocean Freight Data
- Comment 3: Whether Commerce Should Use BTIC's Consolidated Sales in Attributing Subsidies Received by Tianjin Tianhai and Langfang Tianhai
- Comment 4: Whether Commerce Should Modify its Calculation of the Loan Benchmark
- Comment 5: Whether Commerce Used the Appropriate Benchmark for the Calculation of Benefits under the Provision of Electricity for LTAR Program
- Comment 6: Whether Commerce Should Modify its Calculation of the Grant for Production Base Construction for Gas Storage and Transportation Equipment
- Comment 7: Whether Commerce Improperly Rejected BTIC's Customer Declarations as Untimely New Factual Information
- Comment 8: Whether Commerce Should Change Its Determination with Regard to the Export Buyer's Credit Program

IX. Recommendation

[FR Doc. 2019–27938 Filed 12–26–19; 8:45 am]

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[4] *See* Memorandum, ''Decision Memorandum for the Final Results of 2017 Countervailing Duty Administrative Review of High Pressure Steel Cylinders from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[6] As discussed in the Issues and Decision Memorandum, Commerce has found the following companies to be cross-owned with BTIC: Tianjin Tianhai High Pressure Container Co., Ltd.; Langfang Tianhai High Pressure Container Co., Ltd.; Beijing Jingcheng Machinery Electric Holding Co., Ltd.; and Beijing Jingcheng Machinery Electric Co., Ltd.

[7] *See* 19 CFR 351.224(b).

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 99–13A05]

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review to California Almond Export Association, LLC (CAEA), Application No. 99–13A05.

SUMMARY: The Secretary of Commerce, through the Office of Trade and Economic Analysis (OTEA), issued an amended Export Trade Certificate of Review to CAEA on December 19, 2019.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, OTEA, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) (the Act) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325. OTEA is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

CAEA's Export Trade Certificate of Review has been amended as follows: Pearl Crop, Inc., was added as a Member of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)).

CAEA's Export Trade Certificate of Review Membership, as amended, is below:

Almonds California Pride, Inc., Caruthers, CA
Baldwin-Minkler Farms, Orland, CA
Blue Diamond Growers, Sacramento, CA
Campos Brothers, Caruthers, CA
Chico Nut Company, Chico, CA
Del Rio Nut Company, Livingston, CA
Fair Trade Corner, Inc., Chico, CA
Fisher Nut Company, Modesto, CA
Hilltop Ranch, Inc., Ballico, CA
Hughson Nut, Inc., Hughson, CA
Mariani Nut Company, Winters, CA
Nutco, LLC d.b.a. Spycher Brothers, Turlock, CA
Pearl Crop, Inc., Stockton, CA
P–R Farms, Inc., Clovis, CA
Roche Brothers International Family Nut Co., Escalon, CA
RPAC, LLC, Los Banos, CA
South Valley Almond Company, LLC, Wasco, CA
Stewart & Jasper Marketing, Inc., Newman, CA
SunnyGem, LLC, Wasco, CA
Western Nut Company, Chico, CA
Wonderful Pistachios & Almonds, LLC, Los Angeles, CA

The effective date of the amended certificate is August 29, 2019, the date on which CAEA's application to amend was deemed submitted.

Dated: December 19, 2019.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2019–27869 Filed 12–26–19; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 18–1A002]

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review to Alaska Groundfish Commission (''AGC''), Application Number 18–1A002.

SUMMARY: The Secretary of Commerce, through the Office of Trade and Economic Analysis (''OTEA''), issued an Export Trade Certificate of Review to AGC on December 19, 2019.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, OTEA, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) (''the Act'') authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325. OTEA is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

AGC's Export Trade Certificate of Review has been amended as follows:

- The following entities were added as Members of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)).
  - America's Finest Fishing, LLC, Kirkland, WA
  - Arica Vessel, LLC, Seattle, WA
  - Cape Horn Vessel, LLC, Seattle, WA
  - Fisherman's Finest International, Inc., Kirkland, WA
  - Fishermen's Finest, Inc., Kirkland, WA
  - Fishermen's Finest Holdings, LLC, Kirkland, WA
  - Glacier Fish Company LLC, Seattle, WA
  - Golden-Tech International, LLC, Bellevue, WA
  - Iquique Disc, Inc., Seattle, WA
  - North Pacific Fishing, LLC, Kirkland, WA
  - North Star Fishing Company LLC, Seattle, WA
  - North Star Vessel, LLC, Seattle, WA
  - Rebecca Irene Vessel, LLC, Seattle, WA
  - Unimak Vessel, LLC, Seattle, WA
  - United States Seafoods, LLC, Seattle, WA
  - US Fishing, LLC, Kirkland, WA
  - USS International, Inc., Seattle, WA

AGC's Export Trade Certificate of Review Membership, as amended, is below:

1. AK Victory, Inc., Seattle, WA
2. Alaska Warrior, Inc., Seattle, WA
3. America's Finest Fishing, LLC, Kirkland, WA
4. Arica Vessel, LLC, Seattle, WA
5. Cape Horn Vessel, LLC, Seattle, WA
6. Fisherman's Finest International, Inc., Kirkland, WA
7. Fishermen's Finest, Inc., Kirkland, WA
8. Fishermen's Finest Holdings, LLC, Kirkland, WA
9. Glacier Fish Company LLC, Seattle, WA
10. Golden-Tech International, LLC, Bellevue, WA

11. Iquique Disc, Inc., Seattle, WA
12. M/V Savage, Inc., Seattle, WA
13. North Pacific Fishing, LLC, Kirkland, WA
14. North Star Fishing Company LLC, Seattle, WA
15. North Star Vessel, LLC, Seattle, WA
16. O'Hara Corporation, Rockland, ME
17. O'Hara DISC, Inc., Rockland, ME
18. Ocean Peace, Inc., Seattle, WA
19. Rebecca Irene Vessel, LLC, Seattle, WA
20. The Fishing Company of Alaska, Inc., Seattle, WA
21. Unimak Vessel, LLC, Seattle, WA
22. United States Seafoods, LLC, Seattle, WA
23. US Fishing, LLC, Kirkland, WA
24. USS International, Inc., Seattle, WA

The effective date of the Certificate is September 24, 2019, the date on which AGC's application was deemed submitted.

Dated: December 19, 2019.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2019–27867 Filed 12–26–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–471–807]

Certain Uncoated Paper From Portugal: Amended Final Results of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) is amending the final results of the administrative review of the antidumping duty (AD) order on certain uncoated paper (uncoated paper) from Portugal to correct a ministerial error.

DATES: Applicable December 27, 2019.

FOR FURTHER INFORMATION CONTACT: Rachel Greenberg, or Robert Scully, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0652 or (202) 482–0572, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 20, 2019, Commerce published in *Final Results* of the second administrative review of the AD order on uncoated paper from Portugal and completed the disclosure of all calculation materials to interested parties.[1] On November 19, 2019, The Navigator Company S.A. (Navigator), the mandatory respondent in this administrative review, timely filed a ministerial error allegation regarding the *Final Results.*[2]

Legal Framework

A ministerial error, as defined in section 751(h) of the Tariff Act of 1930, as amended (the Act), includes ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.'' [3] With respect to final results of administrative reviews, 19 CFR 351.224(e) provides that Commerce ''will analyze any comments received and, if appropriate, correct any ministerial error by amending . . . the final results of review. . . .''

Ministerial Error

Commerce committed an inadvertent error within the meaning of section 751(h) of the Act and 19 CFR 351.224(f), by failing to use the most current databases to calculate the margin, which incorporated ''minor corrections'' accepted by Commerce during verification.[4] Accordingly, we have determined, in accordance with section 751(h) of the Act and 19 CFR 351.224(f), that an unintentional ministerial error was made in the *Final Results.* Pursuant to 19 CFR 351.224(e), Commerce is amending the *Final Results* to reflect the correction of this ministerial error. Specifically, we have now revised the calculation to include the latest version of Navigator's databases. This correction results in a change to Navigator's weighted-average dumping margin. For a detailed discussion of this ministerial error, as well as Commerce's analysis, *see* Ministerial Error Memorandum.[5]

Amended Final Results of the Review

As a result of correcting the ministerial error described above, we determine that the weighted-average dumping margin for Navigator exists for the period March 1, 2017 through February 28, 2018:

Exporter/producer	Weighted-average dumping margin (percent)
The Navigator Company, S.A	4.37

Disclosure

We intend to disclose the calculation performed for these amended final results in accordance with 19 CFR 351.224(b).

Antidumping Duty Assessment

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the amended final results of this review.

Pursuant to 19 CFR351.212(b)(1), we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for each importer's examined sales and the total entered value of the sales. For entries of subject merchandise during the period of review [6] produced by the respondent for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed 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 this notice.

Cash Deposit Requirements

The following cash deposit requirements will be effective retroactively for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after November 20, 2019, the date of the publication of the *Final Results,* as provided by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the amended final results; (2) for previously reviewed or investigated companies, including those for which

[1] *See Certain Uncoated Paper From Portugal: Final Results of the Antidumping Duty Administrative Review; 2017–2018,* 84 FR 64040 (November 20, 2019) (*Final Results*).

[2] *See* Navigator's Letter, ''Certain Uncoated Paper from Portugal: Ministerial Error Allegation,'' dated November 19, 2019.

[3] *See* 19 CFR 351.224(f).

[4] *See* Memorandum, ''Verification of the Sales Response of The Navigator Company, S.A. in the Antidumping Duty Administrative Review of Certain Uncoated Paper From Portugal,'' dated August 21, 2019, at 1–2 and VE–1.

[5] *See* Memorandum, ''Amended Final Results of the 2017–2018 Administrative Review of the Antidumping Duty Order of Certain Uncoated Paper from Portugal: Allegations of Ministerial Error'' (Ministerial Error Memorandum) (December 17, 2019).

[6] The period of review is March 1, 2018 through February 28, 2019.

Commerce may have determined had no shipments during the period of review, the cash deposit will continue to be the company-specific rate published for the most recent completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this or an earlier review, or the original-less-than-fair-value (LTFV) investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previously completed segment of this proceeding, then the cash deposit rate will be the all-others rate of 7.80 percent established in the LTFV investigation.[7] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 251.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice serves as a reminder to parties subject to administrative protective order (APO) to their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

These amended final results and notice are issued and published in accordance with Sections 751(h) and 777(i) of the Act and 19 CFR 351.224(e).

[7] *See Certain Uncoated Paper From Portugal: Final Determination of Sales at Less than Fair Value and Final Negative Determination of Critical Circumstances,* 81 FR 3105 (January 20, 2016).

Dated: December 17, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–27935 Filed 12–26–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–045]

1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination and Notice of Amended Final Determination of Antidumping Duty Investigation

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

SUMMARY: On December 10, 2019, the United States Court of International Trade (the Court) sustained the final results of redetermination pertaining to the antidumping duty (AD) investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from the People's Republic of China (China) covering the period July 1, 2015 through December 31, 2015. The Department of Commerce (Commerce) is notifying the public that the final judgment in this case is not in harmony with the results of the final determination and subsequent amended final determination, and that Commerce is amending the final determination with respect to the margin assigned to Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory and Nantong Uniphos Chemicals Co., Ltd. (collectively, WW Group).

DATES: Applicable December 20, 2019.

FOR FURTHER INFORMATION CONTACT: Raymond Lowman, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7459.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 2017, Commerce published its *Final Determination* in the investigation of HEDP from China.[1] On May 18, 2017, Commerce amended the *Final Determination* to correct ministerial errors.[2] On May 10, 2018, at the request of Commerce, the Court remanded the *Final Determination* to Commerce to reconsider two issues: (1) Commerce's use of the financial statement from CYDSA S.A.B. de C.V. (CYDSA) for purposes of calculating surrogate financial ratios, and (2) Commerce's calculation of the surrogate value for ocean freight.[3] On remand, Commerce found that reliance on CYDSA's financial statement was appropriate, and revised its ocean freight calculation to ensure that it did not double count certain fees.[4] On December 10, 2019, the Court sustained Commerce's determination, finding that Commerce's decision that CYDSA's financial statement was the best available information to calculate surrogate financial ratios and Commerce's determination of a surrogate value for ocean freight are supported by substantial evidence and in accordance with the law.[5]

Timken Notice

In its decision in *Timken,*[6] as clarified by *Diamond Sawblades,*[7] the Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The Court's December 10, 2019 judgment sustaining the Final Remand Redetermination constitutes a final decision of the Court that is not in harmony with Commerce's *Final Determination.* This notice is published in fulfillment of the publication requirements of *Timken.*

[1] *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the Peoples Republic of China: Final Determination of Sales at Less Than Fair Value,* 82 FR 14876 (March 23, 2017) (*Final Determination*), and accompanying Issues and Decision Memorandum.

[2] *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the Peoples Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 82 FR 22807 (May 18, 2017).

[3] *See Nantong Uniphos Chemicals Co., Ltd., et al.* v. *United States,* CIT Court No. 17–00151, Slip Op. 19–156 (December 10, 2019), at 2 n.2.

[4] *See* Final Results of Voluntary Redetermination Pursuant to Remand *Nantong Uniphos Chemicals Co., Ltd., et al.* v. *United States,* Consol. Court No. 17–00151 (July 2018) (Final Remand Redetermination).

[5] *See Nantong Uniphos Chemicals Co., Ltd., et al.* v. *United States,* CIT Court No. 17–00151, Slip Op. 19–156 (December 10, 2019).

[6] *See Timken Co.,* v. *United States,* 893 F. 2d 337 (Fed. Cir. 1990) (*Timken*).

[7] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F. 3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Amended Final Determination

Because there is now a final court decision, Commerce is amending its *Final Determination* with respect to the WW Group. Commerce finds that for the period July 1, 2015 through December 31, 2015, the following dumping margin exists:

Producer	Exporter	Weighted-average dumping margin (Percent)
WW Group	WW Group	67.66

Cash Deposit Requirements

Because the WW Group does not have a superseding cash deposit rate, *i.e.,* there have been no final results published in a subsequent administrative review for the WW Group, Commerce will issue revised cash deposit instructions to U.S. Customs and Border Protection. Effective December 20, 2019, the cash deposit rate applicable to entries of subject merchandise produced and exported by the WW Group is 67.66 percent.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: December 18, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–27934 Filed 12–26–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Reporting Requirements for Sea Otter Interactions with the Pacific Sardine Fishery; Coastal Pelagic Species (CPS) Fishery Management Plan (FMP).

OMB Control Number: 0648–0566

Form Number(s): None.

Type of Request: Regular submission (Extension of a currently approved collection).

Number of Respondents: 2

Average Hours per Response: 15 minutes.

Burden Hours: 1.

Needs and Uses: Example: On May 30, 2007, the National Marine Fisheries Service (NMFS) published a final rule (72 FR 29891) implementing a requirement under the CPS FMP to report any interactions that may occur between a CPS vessel and/or fishing gear and sea otters.

Specifically, these reporting requirements are:

1. If a southern sea otter is entangled in a net, regardless of whether the animal is injured or killed, such an occurrence must be reported within 24 hours to the Regional Administrator, NMFS West Coast Region.

2. While fishing for CPS, vessel operators must record all observations of otter interactions (defined as otters within encircled nets or coming into contact with nets or vessels, including but not limited to entanglement) with their purse seine net(s) or vessel(s). With the exception of an entanglement, which will be initially reported as described above, all other observations must be reported within 20 days to the Regional Administrator.

When contacting NMFS after an interaction, fishermen are required to provide information regarding the location, specifically latitude and longitude, of the interaction and a description of the interaction itself. Descriptive information of the interaction should include: Whether or not the otters were seen inside or outside the net; if inside the net, had the net been completely encircled; did contact occur with net or vessel; the number of otters present; duration of interaction; otter's behavior during interaction; and measures taken to avoid interaction.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–27894 Filed 12–26–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Basic Requirements for Special Exception Permits and Authorizations to Take, Import, and Export Marine Mammals, Threatened and Endangered Species, and for Maintaining a Captive Marine Mammal Inventory Under the Marine Mammal Protection Act, the Fur Seal Act, and/or the Endangered Species Act.

OMB Control Number: 0648–0084.

Form Number(s): 89–880, 89–881, 89–882.

Type of Request: Regular (revision of a currently approved collection).

Number of Respondents: 963.

Average Hours per Response: The estimated average amount of time it takes to complete each information collection instrument is as follows. Scientific research permit applications, 50 hours; public display permit applications, 50 hours; photography permit applications, 10 hours; General Authorization Letters of Intent, 10 hours; major permit modification requests, 35 hours; minor permit modification requests, 3 hours; scientific research permit reports, 12 hours; scientific research parts only permit reports, 8 hours; General Authorization reports, 8 hours; public display permit reports, 2 hours; photography permit reports, 2 hours; public display inventory reporting, 2 hours; and general record keeping, 2 hours per each type.

Burden Hours: 6,771.

Needs and Uses: The Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.;* MMPA), Fur Seal Act (16 U.S.C. 1151 *et seq.;* FSA), and Endangered Species Act (16 U.S.C. 1531 *et seq.;* ESA) prohibit certain activities affecting marine mammals and endangered and threatened species, with exceptions. Pursuant to Section 104 of the MMPA and Section 10(a)(1)(A) of the ESA, special exception permits may be obtained for scientific research and enhancing the survival or recovery of a species or stock of marine mammals or endangered or threatened species.

Section 104 of the MMPA also provides for Letters of Confirmation under a General Authorization for scientific research and permits for commercial and educational photography of marine mammals that involve only Level B harassment of marine mammals; permits for capture and/or import of marine mammals for public display; and inventory reporting pertaining to marine mammals in public display facilities.

The regulations pertaining to permits and associated reporting requirements under the MMPA and FSA are at 50 CFR part 216; the regulations for permit requirements under the ESA are at 50 CFR part 222. The required information in this collection is used to make the determinations required by the MMPA, FSA, ESA and their implementing regulations prior to issuing a permit; to establish appropriate permit conditions; to evaluate the impacts of the proposed activity on protected species; and, to ensure compliance with the Acts. The marine mammal inventory forms ensure compliance with MMPA reporting requirements and allow NMFS to maintain the National Inventory of Marine Mammals (NIMM), as required by the MMPA.

This information collection applies to certain protected species for which NMFS is responsible: Cetaceans (whales, dolphins and porpoises) and pinnipeds (seals and sea lions); and, for ESA scientific research and enhancement permits: Sawfish (largetooth and smalltooth), sea turtles (in water), sturgeon (Atlantic and shortnose), and certain foreign ESA-listed species. This information collection may be used for future ESA-listed species.

Affected Public: Individuals; Business or other for-profit organizations; Not-for-profit institutions; State, Local, or Tribal government; Federal government.

Frequency: Permit applications, once every five or ten years; permit reports, annually or more frequently if incidents occur; amendments and modifications to permits, as frequently as requested by permit holders; public display inventory reporting, 15 days prior to transporting or transferring marine mammals and 30 days after the date of birth or death of a marine mammal.

Respondent's Obligation: $986.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–27890 Filed 12–26–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XG573]

Endangered and Threatened Species; Recovery Plans

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

ACTION: Notice of availability.

SUMMARY: NMFS announces the adoption of a Final Endangered Species Act (ESA) recovery plan for the threatened Puget Sound steelhead Distinct Population Segment (DPS) (herein referred to as steelhead). The Final Recovery Plan for this species (Final Recovery Plan) is now available.

ADDRESSES: Electronic copies of the Final Recovery Plan are available online at: *https://www.fisheries.noaa.gov/resource/document/esa-recovery-plan-puget-sound-steelhead-distinct-population-segment-oncorhynchus*

FOR FURTHER INFORMATION CONTACT: David Price, (360) 753–9598, *david.price@noaa.gov;* or Elizabeth Babcock, (206) 526–4505, *elizabeth.babcock@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*) requires that we develop and implement recovery plans for the conservation and survival of threatened and endangered species under our jurisdiction, unless it is determined that such plans would not result in the conservation of the species. The Puget Sound steelhead (*Oncorhynchus mykiss*) DPS was listed as a threatened species under the ESA in May 11, 2007 (72 FR 26722). We published a Notice of Availability of the Draft Recovery Plan in the **Federal Register** on December 13, 2018 (83 FR 64110) to obtain comments on the Draft Plan. The public comment period for this action was set to end on February 11, 2019; however, we extended the public comment period through March 28, 2019, to provide additional opportunity for public comment (84 FR 1707). We received extensive comments on the Draft Plan, summarized the comments and identified comments that prompted revisions for the Final Recovery Plan. We revised the Draft Plan based on comments received, and this final version now constitutes the Recovery Plan for the Puget Sound steelhead DPS.

The Final Plan

We are responsible for developing and implementing recovery plans for Pacific salmon and steelhead listed under the ESA. Section 4(f)(1) of the ESA requires that recovery plans include, to the extent practicable: (1) Objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the plan's goals; and (3) estimates of the time required and costs to achieve the recovery plan's goal. Our goal is to restore Puget Sound steelhead to the point where they are viable and no longer need the protections of the ESA. The ESA requires the development of recovery plans for each listed species unless such a plan would not promote its recovery.

We believe it is essential to have local support of recovery plans by those whose activities directly affect the listed species and whose continued commitment and leadership will be needed to implement the necessary recovery actions. We therefore support and participate in collaborative efforts to develop recovery plans that involve state, tribal, and federal entities, local communities, and other stakeholders. For this Final Recovery Plan for threatened Puget Sound steelhead, we worked collaboratively with local, state, tribal, and federal partners to produce a recovery plan that satisfies the ESA requirements. We have determined that this ESA recovery plan for Puget Sound steelhead meets the statutory requirements for a recovery plan and are adopting it as the Final Recovery Plan for this threatened species. This notice provides a notice of availability of the Plan.

The geographic area covered by the Final Recovery Plan is the Puget Sound basin, from the Elwha River (inclusive) eastward, including rivers in Hood Canal, South Sound, and North Sound, including steelhead from six artificial propagation programs: the Green River Natural Program; White River Winter Steelhead Supplementation Program; Hood Canal Steelhead Supplementation Off-station Projects in the Dewatto, Skokomish, and Duckabush Rivers; and

the Lower Elwha Fish Hatchery Wild Steelhead Recovery Program.

For the purpose of recovery planning for the ESA-listed species of Pacific salmon and steelhead in Idaho, Oregon, and Washington, NMFS designated five geographically based ''recovery domains.'' The Puget Sound Steelhead DPS spawning range is in the Puget Sound domain. For each domain, NMFS appointed a team of scientists, nominated for their geographic and species expertise, to provide a solid scientific foundation for recovery plans. The Puget Sound Steelhead Technical Recovery Team included biologists from NMFS, other federal agencies, state agencies, tribes, and academic institutions.

We also collaborated with the state of Washington, tribes, other federal agencies, local governments, representatives of industry and environmental groups, other stakeholders, and the public to develop the Plan. The Final Recovery Plan for the Puget Sound steelhead DPS was developed by NMFS in cooperation with a recovery team made up of experts from the Washington Department of Fish and Wildlife, Northwest Indian Fisheries Commission, Nooksack Tribe, Seattle Light, Long Live the Kings, Puget Sound Partnership, and NMFS' Northwest Fisheries Science Center. These groups provided vital input during the planning process, and their continued involvement during recovery plan implementation is critical to the success of our joint efforts to recover Puget Sound steelhead.

Contents of the Plan

The Final Recovery Plan contains biological background and contextual information that includes description of the DPS, the planning area, and the context of the plan's development. It presents relevant information on DPS structure and guidelines for assessing salmonid population and DPS status. It provides background on the natural history of steelhead, population status, and threats to their sustainability.

The Puget Sound steelhead DPS consists of three Major Population Groups (MPGs) and 32 Demographically Independent Populations (DIPs). Major risk factors facing Puget Sound steelhead are widespread declines in abundance and productivity for most natural steelhead populations in the DPS, including those in Skagit and Snohomish Rivers, previously considered strongholds for steelhead in the DPS; the low abundance of several summer-run populations; and the sharply diminishing abundance of some steelhead populations, especially in south Puget Sound, Hood Canal, and the Strait of Juan de Fuca. Continued releases of out-of-DPS hatchery fish from Skamania-derived summer run were a major concern for diversity in the DPS.

The most recent status assessment of the DPS found ''[t]he biological risks faced by the Puget Sound steelhead DPS have not substantively changed since the listing in 2007 (NMFS 2016; 81 FR 33468). The abundance of natural spawners is very low and productivity remains predominately negative. Degradation and fragmentation of freshwater habitat, with consequential effects on connectivity, remain the primary limiting factors and threats facing the Puget Sound steelhead DPS. The DPS is at very low viability, as are all three of its constituent MPGs, and many of its 32 DIPs.

The Final Recovery Plan presents NMFS' recovery goals and the viability and listing factor criteria for making a delisting decision. The viability criteria for the Puget Sound steelhead DPS are designed to improve the DPS so it ''has a negligible risk of extinction due to threats from demographic variation, local environmental variation, and genetic diversity changes over a 100-year time frame'' based on the status of the MPGs and DIPs, and supporting ecosystems (McElhany *et al.,* 2000). A self-sustaining viable population has a negligible risk of extinction due to reasonably foreseeable changes in circumstances affecting its abundance, productivity, spatial structure, and diversity characteristics and achieves these characteristics without dependence upon artificial propagation. The viability criteria for Puget Sound steelhead require that all three MPGs be viable because the three MPGs differ substantially in key biological and habitat characteristics that contribute in distinct ways to the overall viability, diversity, and spatial structure of the DPS.

The Final Recovery Plan lays out a recovery strategy to address the potential threats based on the best available science and includes goals that incorporate objective, measurable criteria which, when met, would result in a determination that the species be removed from the list. The Final Recovery Plan is not regulatory, but presents guidance for use by agencies and interested parties to assist in the recovery of steelhead. The Final Recovery Plan identifies substantive actions needed to achieve recovery by addressing the threats to the species. The strategy for recovery includes a linkage between management actions and an active research and monitoring program intended to fill data gaps and assess effectiveness. The Final Recovery Plan incorporates an adaptive management framework by which management actions and other elements will evolve and adapt as we gain information through research and monitoring. The Final Recovery Plan references many of the significant efforts already underway to allow steelhead in the Puget Sound to access a diversity of high quality habitats that have been lost or degraded due to human land use.

The Final Recovery Plan also describes specific information on the following: Current status of Puget Sound steelhead; pressures (limiting factors) and threats throughout the life cycle that have contributed to the species decline; recovery strategies to address the threats based on the best available science; site-specific actions with timelines; and an adaptive management framework for focusing needed research and evaluations and revising our recovery strategies and actions. The Final Recovery Plan also summarizes time and costs required to implement recovery actions.

How NMFS and Others Expect To Use the Plan

With this Final Recovery Plan, we commit to implementing the actions in the plan for which we have authority and funding; encourage other federal, state and local agencies and tribal governments to implement recovery actions for which they have responsibility, authority, and funding; and work cooperatively with the public and local stakeholders on implementation of other actions. We expect the recovery plan to guide us and other federal agencies in evaluating federal actions under ESA section 7, as well as in implementing other provisions of the ESA and other statutes. For example, the plan will provide greater biological context for evaluating the effects that a proposed action may have on a species by providing delisting criteria, information on priority areas for addressing specific limiting factors, and information on how the DPS can tolerate varying levels of risk.

When we are considering a species for delisting, the agency will examine whether the section 4(a)(1) listing factors have been addressed. To assist in this examination, we will use the delisting criteria described in Chapter 4 of the Plan, which include both viability criteria and listing factor criteria addressing each of the ESA section 4(a)(1) listing factors, as well as any other relevant data and policy considerations.

Conclusion

NMFS has reviewed the Plan for compliance with the requirements of the ESA section 4(f), determined that it does incorporate the required elements and is therefore adopting it as the Final Recovery Plan for the Puget Sound steelhead DPS.

Literature Cited

The complete citations for the references used in this document can be obtained by contacting NMFS (See **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: December 20, 2019.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–27913 Filed 12–26–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR060]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of availability; extension of public comment period.

SUMMARY: We, NMFS, announce the extension of the comment period for the receipt of 14 (Permit Numbers 23271, 23276, 23278, 23279, 23280, 23284, 23285, 23286, 23287, 23288, 23289, 23290, 23291, 23434) applications for enhancement of survival permits under the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), and proposed entry into an associated Template Safe Harbor Agreement (Agreement) between the applicants and NMFS. The notice of receipt for the 14 applications published on October 15, 2019. The proposed enhancement of survival permits and Agreement are intended to promote the survival and recovery of the Southern Oregon/Northern California Coast (SONCC) coho salmon (*Oncorhynchus kisutch*) Evolutionary Significant Unit (ESU), which is listed as threatened under the ESA. On November 4, 2019, we announced the extension of the comment period to December 31, 2019. We continue to solicit review and comment from the public and all interested parties on the applications and associated documents. The close of the comment period is being extended from December 31, 2019, to February 15, 2020 to provide additional opportunity for public comment.

DATES: Comments or requests for a public hearing on the actions proposed in the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on February 15, 2020.

ADDRESSES: Written comments on the applications should be submitted to the California Coastal Office, NMFS, 1655 Heindon Road, Arcata, CA 95521, 707–822–7201. Comments may also be submitted via fax to 707–822–4840, or by email to *Shasta.sha@noaa.gov* (include the permit numbers in the subject line of the fax or email).

FOR FURTHER INFORMATION CONTACT: Jim Simondet, Arcata, CA (ph.: 707–822–7201; Fax: 707–825–4840; email: *Shasta.sha@noaa.gov.* Permit application are available upon request through the contact information above, or online at *https://apps.nmfs.noaa.gov* and *https://www.fisheries.noaa.gov/resource/document/shasta-river-template-safe-harbor-agreements-and-site-plans-review.*

SUPPLEMENTARY INFORMATION:

Extension of Comment Period

On October 15, 2019 (84 FR 55145) we (NMFS) published in the **Federal Register** a request for public comment 14 applications for enhancement of survival permits. The public comment period for this action was set to end on November 15, 2019. On November 4, 2019, we extended the public comment period through December 31, 2019. The comment period is now being extended through February 15, 2020, to provide additional opportunity for public comment.

Species Covered in This Notice

The following ESA-listed species is covered in this notice:

- Threatened coho salmon (*Oncorhynchus kisutch*): Southern Oregon/Northern California Coast (SONCC) Evolutionary Significant Unit (ESU).

Authority

Enhancement permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1539(a)(1)(A)) and regulations governing listed fish and wildlife permits (50 CFR part 222, subpart C). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; (3) are consistent with the purposes and policies of Section 2 of the ESA; (4) would further a bona fide and necessary or desirable scientific purpose or enhance the propagation or survival of the endangered species, taking into account the benefits anticipated to be derived on behalf of the endangered species; and additional issuance criteria (as listed at 50 CFR 222.308(c)(5–12)). The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Permit Applications Received

Fourteen applicants are requesting individual enhancement of survival permits and entry of an associated Agreement that was developed by NMFS, California Department of Fish and Wildlife (CDFW), the Shasta Watershed Conservation Group (SWCG) and the Applicants. The 14 Applicants (Table 1) each developed site plans for their respective properties (*i.e.,* Enrolled Properties) that describe management activities that will be implemented, including beneficial activities for SONCC coho salmon (the covered species). The site plans, Agreement, and enhancement of survival permits are expected to promote the recovery of the covered species on non-federal property within the Shasta River in the Agreement Area (see Figure 1 in the Agreement). The Shasta River is a tributary to the Klamath River and is in Siskiyou County, California. The proposed duration of the Agreement and the associated enhancement of survival permits is 20 years. The proposed enhancement of survival permits would authorize the incidental taking of SONCC coho salmon that may be associated with covered activities, including beneficial management activities, routine ranch management activities, and the potential future return of the enrolled properties to baseline conditions at the end of the Agreement, as defined in the Agreement. The site plans and Agreement specify the beneficial management activities to be carried out on the enrolled properties and a schedule for implementing those activities. The site plan and Agreement are expected to promote the recovery of

SONCC coho salmon within the Shasta River within the Agreement Area.

TABLE 1—APPLICANTS AND ASSOCIATED PERMIT NUMBERS FOR THIS NOTICE

Applicant	Permit No.	Enrolled property
Outpost North Annex	23271	Belcampo-North Annex Property, 8030 Siskiyou Blvd., Grenada, CA 96038.
California Department of Fish and Wildlife	23276	Big Springs Ranch Wildlife Area, 41°35′44.76 N 122° 27′31.52 W.
Cardoza Ranch	23278	Cardoza Ranch, 3710 East Louie Road, Montague, CA 96064.
Edson Foulke Ditch Company	23279	Edson-Foulke Point of Diversion, 41°43′52.6 N 122° 47′46.8 W.
Grenada Irrigation District	23280	Grenada Irrigation District, Point of Diversion 41°38′11.56′ N 122°29′22.88 W.
2019 Lowell L. Novy Revocable Trust	23284	Grenada—Novy Ranch, Gazelle—19931 Old Hwy. 99 S, Gazelle, CA 96034; Grenada—2426 County Hwy. A–12, Grenada, CA 96034.
Hidden Valley Ranch	23285	Hidden Valley Ranch, 13521 Big Springs Road, Montague, CA 96064.
Emmerson Investments, Inc.	23286	Hole-in-the-Ground Ranch, 11825 Big Springs Road, Montague, CA 96064.
Montague Water Conservation District	23287	Montague Water Conservation District, N 52°, 43′ E, approximately 2601 feet from SW corner of Section 25, T43N, R5W, MDB&M, being within the NE¼ of SW¼ of said Section 25.
NB Ranches, Inc.	23434	Nicoletti Ranch, 1824 DeSouza Lane, Montague, CA and 2238 DeSouza Lane, Montague, CA.
Outpost Mole Richardson	23288	Parks Creek Ranch, 25801 Old Hwy. 99, Weed, CA 96094.
Rice Livestock Company	23289	Rice Livestock Company, 1730 County Highway A12, Montague, CA.
Emmerson Investments, Inc.	23290	Seldom Seen Ranch, 41°54′63.2 N 122°38′35.7 W.
Emmerson Investments, Inc.	23291	Shasta Springs Ranch, 21305 Slough Road, Weed, CA 96094.

Under U.S. Fish and Wildlife Service and NMFS' joint Safe Harbor Policy (64 FR 32717, June 17, 1999), Safe Harbor Agreements provide incentives to property owners to restore, enhance, or maintain habitats and/or populations of listed species that result in a net conservation benefit to these species. Under the policy, landowners are provided certainty relative to future property-use restrictions, even if their conservation efforts attract listed species onto enrolled properties or increase the numbers or distribution of listed species already present. Subject to specifications in the relevant documents, these regulatory assurances allow the landowners to alter or modify enrolled property, even if such alteration or modification results in the incidental take of a listed species to such an extent that it returns the species back to the originally agreed upon baseline conditions. NMFS reviewed each present baseline and elevated baseline determination in each site plan. The site plans and Agreement also contain a monitoring component that requires the Applicants to ensure compliance with the terms and conditions, and that the specified baseline levels of habitat for the covered species is maintained on the enrolled property. Results of the monitoring efforts will be provided to NMFS by the Applicants in an annual report for the duration of the 20-year permit term.

Upon approval of the Agreement and site plans, and consistent with the Safe Harbor Policy, NMFS will issue enhancement of survival permits to the Applicants. The enhancement of survival permits will authorize the Applicants to take SONCC coho salmon incidental to the implementation of the covered activities specified in the site plans and Agreement, incidental to other lawful uses of the enrolled property, and to return to present baseline and elevated baseline conditions, if desired, at the end of the site plans and Agreement. In addition to meeting other criteria, actions to be performed under the enhancement of survival permit must not jeopardize the existence of federally listed species.

National Environmental Policy Act

Issuing an ESA section 10(a)(1)(A) permit constitutes a Federal action requiring NMFS to comply with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) as implemented by 40 CFR parts 1500–1508 and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Policy Act (1999). NMFS will evaluate the application(s) and determine the level of NEPA analysis needed for this action.

Public Comments Solicited

NMFS invites the public to comment, including any written data, views, or arguments, on the permit applications during the public comment period, which ends on the date specified above. This notice is provided pursuant to section 10(c) of the ESA (16 U.S.C. 1539(c)), 50 CFR 222.303. All comments and materials received, including names and addresses, will become part of the administrative record and may be released to the public. We provide this notice in order to allow the public, agencies, or other organizations to review and comment on these documents.

Next Steps

NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of Section 10(a)(1)(A) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day public comment period and after NMFS has fully considered all relevant comments received. NMFS will also meet other legal requirements prior to taking final action, including preparation of a biological opinion. NMFS will publish notice of its final action in the **Federal Register**.

Dated: December 20, 2019.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–27983 Filed 12–26–19; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete products and services from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: January 26, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following products and services are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s): MR 332—Peeler, Corn
Mandatory Source of Supply: Cincinnati Association for the Blind, Cincinnati, OH
Contracting Activity: Defense Commissary Agency

NSN(s)—Product Name(s):
7530–00–926–2122—Folder, File
7530–00–926–2123—Folder, File
Mandatory Source of Supply: Clovernook Center for the Blind and Visually Impaired, Cincinnati, OH
Contracting Activity: STRATEGIC ACQUISITION CENTER, FREDERICKSBURG, VA

NSN(s)—Product Name(s): 6530–01–004–8969—Urinal, Incontinent
Mandatory Source of Supply: The Lighthouse for the Blind, St. Louis, MO
Contracting Activity: STRATEGIC ACQUISITION CENTER, FREDERICKSBURG, VA

NSN(s)—Product Name(s): MR 10694—Berry Box, Includes Shipper 20694
Mandatory Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: Defense Commissary Agency

NSN(s)—Product Name(s):
7930–00–NIB–0579—Disinfectant PD–128 Cleaner, Intermediate, Broad Spectrum, Concentrated
8125–00–NIB–0032—Spray Bottle, PD–128 Disinfectant Cleaner, 32 oz. Bottle
Mandatory Source of Supply: VisionCorps, Lancaster, PA
Contracting Activity: STRATEGIC ACQUISITION CENTER, FREDERICKSBURG, VA

Services

Service Type: Janitorial/Custodial
Mandatory for: VA Medical Center: Salem Primary Care Clinic, Salem, OR
Mandatory Source of Supply: Garten Services, Inc., Salem, OR
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, 260–NETWORK CONTRACT OFFICE 20

Service Type: Janitorial/Custodial
Mandatory for: Social Security Administration Complex: 5536 Caswell Road, Roth Building, Baltimore, MD
Mandatory Source of Supply: Sinai Hospital of Baltimore (Vocational Services Program), Baltimore, MD
Contracting Activity: SOCIAL SECURITY ADMINISTRATION, SOCIAL SECURITY ADMINISTRATION

Service Type: Duplicating/Copying of Court Documents
Mandatory for: Government Printing Office: 710 North Capitol & H Street, NW, Washington, DC
Mandatory Source of Supply: Alliance, Inc., Baltimore, MD
Contracting Activity: Government Printing Office

Service Type: Cutting and Assembly
Mandatory for: Robins Air Force Base, Robins AFB, GA
Mandatory Source of Supply: Middle Georgia Diversified Industries, Inc., Dublin, GA
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA AVIATION

Michael R. Jurkowski,
Deputy Director, Business & PL Operations.

[FR Doc. 2019–27911 Filed 12–26–19; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to and deletions from the Procurement List.

SUMMARY: This action adds a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes services from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* January 26, 2020

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On 10/11/2019, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type: Custodial Service
Mandatory for: US Air Force, Area B, Wright Patterson AFB, OH
Mandatory Source of Supply: CW Resources, Inc., New Britain, CT
Contracting Activity: DEPT OF THE AIR FORCE, FA8601 AFLCMC PZIO

Deletions

On 11/22/2019, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the services deleted from the Procurement List.

End of Certification

Accordingly, the following services are deleted from the Procurement List:

Services

Service Type: Grounds Maintenance Service
Mandatory for: U.S. Coast Guard Facility, 9640 Clinton Drive, Houston, TX
Mandatory Source of Supply: On Our Own Services, Inc., Houston, TX
Contracting Activity: U.S. COAST GUARD, BASE NEW ORLEANS
Service Type: Mailing Services
Mandatory for: Centers for Disease Control and Prevention, National Center for Infectious Diseases, Atlanta, GA
Mandatory Source of Supply: Nobis Enterprises, Inc., Marietta, GA
Contracting Activity: HEALTH AND HUMAN SERVICES, DEPARTMENT OF, DEPT OF HHS
Service Type: Janitorial/Custodial
Mandatory for: Fort McPherson, Fort McPherson, GA
Contracting Activity: DEPT OF THE ARMY, W6QM MICC–FDO FT SAM HOUSTON

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2019–27914 Filed 12–26–19; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 19–63]

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 19–63 with attached Policy Justification and Sensitivity of Technology.

Dated: December 19, 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, SUITE 101
ARLINGTON, VA 22202-5408

NOV 19 2019

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

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. 19-63 concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Morocco for defense articles and services estimated to cost $4.25 billion. 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. 19-63

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 * ..	$3.00 billion
Other	$1.25 billion
TOTAL	$4.25 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase*:

Major Defense Equipment (MDE):

Thirty-six (36) AH-64E Apache Attack Helicopters (24 new, 12 optional)

Seventy-nine (79) T700-GE-701 D Engines (72 installed, 6 spares)

Thirty-six (36) AN/ASQ-170 Modernized Target Acquisition and Designation Sight/AN/AAR-11 Modernized Pilot Night Vision Sensors (M-TADS/PNVS)

Eighteen (18) AN/APG-78 Fire Control Radars (FCR) with Radar Electronic Units (REU)
Eighteen (18) AN/APR-48B Modernized-Radar Frequency Interferometers (MRFI)
Five hundred fifty-one (551) AGM-114R Hellfire Missiles (441 new, 110 optional)
Sixty (60) AGM-114L Hellfire Missiles
Seventy-two (72) M36E9 Hellfire Captive Air Training Missiles (CATM)
Five hundred eighty-eight (588) Advanced Precision Kill Weapon System (APKWS) Kits (478 installed, 110 optional)
Seventy-eight (78) Embedded Global Positioning Systems with Inertial Navigation (EGIs) (72 installed, 6 spares)
Thirty-nine (39) AAR-57 Common Missile Warning Systems (CMWS) (36 installed, 3 spares)
Two hundred (200) AIM-92H Stinger Missiles

Non-MDE:

Also included are twenty-one (21) Manned-Unmanned Teaming-2 (MUMT-2) video receivers (18 installed, 3 spares); thirty-nine (39) Manned-Unmanned Teaming-2 (MUMT-2) air-air-ground kits (36 installed, 3 spares); thirty-nine (39) AN/APR-39D(V)2 radar signal detecting sets (36 installed, 3 spares); thirty-nine (39) AN/AVR-2B laser detecting sets (36 installed, 3 spares); thirty-nine (39) AN/APX-123 or AN/APX-123A common transponders (36 installed, 3 spares); thirty-nine (39) IDM-401 Improved Data Modems (36 new, 3 spares); six (6) Link-16 terminals; thirty-nine (39) Improved Countermeasure Dispensing System (ICMD) (36 installed, 3 spares); thirty-nine (39) AN/ARN-149 (V)3 automatic direction finders (36 installed, 3 spares); thirty-nine (39) Doppler ASN-157 Doppler radar velocity sensors (36 installed, 3 spares); thirty-nine (39) AN/APN-209 radar altimeters (36 installed, 3 spares); thirty-nine (39) AN/ARN-153 Tactical Air Navigation (TACAN) sets (36 installed, 3 spares); four (4) TACAN ground stations; thirty-six (36) Very High Frequency Omni-Directional Range/Instrument Landing Systems (VOR/ILS) (36 installed, 3 new); twelve (12) AN/PYQ-10(C) simple key loader (12 new); thirty-six (36) M230E1 + M139 AWS automatic gun (36 new); eighty-one (81) M261 rocket launchers (72 new, 9 spares); seventy-eight (78) M299 missile launchers (72 new, 6 spares); fifty-three (53) Stinger Air-to-Air launchers (53 new); twenty-nine (29) Stinger Captive Flight Trainers (CFT) (29 new); eight (8) Stinger Aerial Handling Trainers (AHT) (8 new); five thousand two hundred sixteen (5,216) 2.75-inch rockets (3,896 new, 1,320 optional); ninety-three thousand (93,000) 30mm rounds (65,500 new, 27,500 optional); secure voice radios; training devices; communication systems; helmets; simulators; generators; transportation and organization equipment; spare and repair parts; support equipment; tools and test equipment; technical data and publications; personnel training and training equipment; U.S. Government and contractor technical assistance, technical and logistics support services; and other related elements of logistics support.

(iv) *Military Department*: Army

(v) *Prior Related Cases, if any*: MO-B-UTN

(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*: November 19, 2019

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Morocco—AH-64E Helicopters

The Government of Morocco has requested a possible sale of thirty-six (36) AH-64E Apache attack helicopters (24 new, 12 optional); seventy-nine (79) T700-GE-701D engines (72 installed, 6 spares); thirty-six (36) AN/ASQ-170 Modernized Target Acquisition and Designation Sight/AN/AAR-11 Modernized Pilot Night Vision Sensors (M-TADS/PNVS); eighteen (18) AN/APG-78 Fire Control Radars (FCR) with Radar Electronic Units (REU); eighteen (18) AN/APR-48B Modernized - Radar Frequency Interferometers (MRFI); five hundred fifty-one (551) AGM-114R Hellfire missiles (441 new, 110 optional); sixty (60) AGM-114L Hellfire missiles; seventy-two (72) M36E9 Hellfire Captive Air Training Missiles (CATM); five hundred eighty-eight (588) Advanced Precision Kill Weapon System (APKWS) kits (478 installed, 110 optional); seventy-eight (78) Embedded Global Positioning Systems with Inertial Navigation (EGIs) (72 installed, 6 spares); thirty-nine (39) AAR-57 Common Missile Warning Systems (CMWS) (36 installed, 3 spares); and two hundred (200) AIM-92H Stinger missiles. Also included are twenty-one (21) Manned-Unmanned Teaming-2 (MUMT-2) video receivers (18 installed, 3 spares); thirty-nine (39) Manned-Unmanned Teaming-2 (MUMT-2) air-air-ground kits (36 installed, 3 spares); thirty-nine (39) AN/APR-39D(V)2 radar signal detecting sets (36 installed, 3 spares); thirty-nine (39) AN/AVR-2B laser detecting sets (36 installed, 3 spares); thirty-nine (39) AN/APX-123 or AN/APX-123A common transponders (36 installed, 3 spares); thirty-nine (39) IDM-401 Improved Data Modems (36 new, 3 spares); six (6) Link-16 terminals; thirty-nine (39) Improved Countermeasure Dispensing System (ICMD) (36 installed, 3 spares); thirty-nine (39) AN/ARN-149 (V)3 automatic direction finders (36 installed, 3 spares); thirty-nine (39) Doppler ASN-157 Doppler radar velocity sensors (36 installed, 3 spares); thirty-nine (39) AN/APN-209 radar altimeters (36 installed, 3 spares); thirty-nine (39) AN/ARN-153 Tactical Air Navigation (TACAN) sets (36 installed, 3 spares); four (4) TACAN ground stations; thirty-six (36) Very High Frequency Omni-Directional Range/Instrument Landing Systems (VOR/ILS) (36 installed, 3 new); twelve (12) AN/PYQ-10(C) simple key loader (12 new); thirty-six (36) M230E1 + M139 AWS automatic gun (36 new); eighty-one (81) M261 rocket launchers (72 new, 9 spares); seventy-eight (78) M299 missile launchers (72 new, 6 spares); fifty-three (53) Stinger Air-to-Air launchers (53 new); twenty-nine (29) Stinger Captive Flight Trainers (CFT) (29 new); eight (8) Stinger Aerial Handling Trainers (AHT) (8 new); five thousand two hundred sixteen (5,216) 2.75-inch rockets (3,896 new, 1,320 optional); ninety-three thousand (93,000) 30mm rounds (65,500 new, 27,500 optional); secure voice radios; training devices; communication systems; helmets; simulators; generators; transportation and organization equipment; spare and repair parts; support equipment; tools and test equipment; technical data and publications; personnel training and training equipment; U.S. Government and contractor technical assistance, technical and logistics support services; and other related elements of logistics support. The estimated cost is $4.25 billion.

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 is an important force for political stability and economic progress in North Africa.

The proposed sale will improve Morocco's capability to meet current and future threats, and will enhance interoperability with U.S. forces and other allied forces. Morocco will use the enhanced capability to strengthen its homeland defense and provide close air support to its forces. Morocco will have

no difficulty absorbing the Apache aircraft into its armed forces.

The proposed sale of this equipment and services will not alter the basic military balance in the region.

The prime contractors involved in this program will be Boeing Company, Mesa, AZ and Lockheed Martin, Orlando, FL. There are no known offset agreements proposed in connection with this potential sale. The purchaser typically requests offsets. Any offset agreement will be defined in negotiations between the purchaser and the contractor(s).

Implementation of this proposed sale will require the assignment of eleven U.S. Government personnel and three contractor representatives to Morocco as part of the Technical Assistance Fielding Team and Field Service Representatives.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 19-63

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 AH-64E Apache Attack Helicopter weapon system contains communications and target identification equipment, navigation equipment, aircraft survivability equipment, displays, and sensors. The airframe itself does not contain sensitive technology; however, the pertinent equipment listed below will be either installed on the aircraft or included in the sale. The highest classification of the AH-64E Apache Helicopter is CONFIDENTIAL, and the highest classification of data and information is SECRET.

a. The AN/ASQ-170 Modernized Target Acquisition and Designation Sight/ AN/AAQ-11 Pilot Night Vision Sensor (MTADS/PNVS) provides day, night, and limited adverse weather target information, as well as night navigation capabilities. The PNVS provides thermal imaging that permits nap-of-the-earth flight to, from, and within the battle area, while TADS provides the co-pilot gunner with search, detection, recognition, and designation by means of Direct View Optics (DVO), EI2 television, and Forward Looking Infrared (FLIR) sighting systems that may be used singularly or in combinations. Hardware is UNCLASSIFIED. Technical manuals for authorized maintenance levels are UNCLASSIFIED.

b. The AN/APG-78 Fire Control Radar (FCR) is an active, low-probability of intercept, millimeter-wave radar, combined with a passive AN/APR-48B Modernized Radar Frequency Interferometer (M-RFI) mounted on top of the helicopter mast. The FCR Ground Targeting Mode detects, locates, classifies and prioritizes stationary or moving armored vehicles, tanks and mobile air defense systems as well as hovering helicopters, and fixed wing aircraft in normal flight. If desired, the radar data can be used to refer targets to the regular electro-optical Modernized Target Acquisition and Designation Sight (MTADS). The content of these items is classified SECRET. User Data Module (UDM) on the RFI processor, contains the Radio Frequency threat library. The UDM, which is a hardware assemblage, is classified CONFIDENTIAL when programmed.

c. The AN/APR-48B Modernized Radar Frequency Interferometer (M-RFI) is an updated version of the passive radar detection and direction finding system. It utilizes a detachable UDM on the M-RFI processor, which contains the Radar Frequency (RF) threat library. The UDM, which is a hardware assemblage item is classified CONFIDENTIAL when programmed. Hardware becomes CLASSIFIED when populated with threat parametric data. Releasable technical manuals are UNCLASSIFIED/ Restricted distribution.

d. The AGM-114R is used against heavy and light armored targets, thin skinned vehicles, urban structures, bunkers, caves and personnel. The missile is Inertial Measurement Unit (IMU) based, with a variable delay fuse, improved safety and reliability. The highest level for release of the AGM-114R is SECRET. The highest level of classified information that could be disclosed by a proposed sale or by testing of the end item is up to and including SECRET. The highest level that must be disclosed for production, maintenance, or training is up to and including SECRET. Vulnerability data, countermeasures, vulnerability/ susceptibility analyses, and threat definitions are classified SECRET or CONFIDENTIAL. Reverse engineering could reveal SECRET information.

e. The Hellfire M36E9 CATM is a flight-training missile that consists of a functional guidance section coupled to an inert missile bus. The M36E9 CATM does not have a functional rocket motor or warhead, and cannot be launched. The missile has an operational semiactive laser seeker that can search for and lock-on to laser-designated targets. It functions like a tactical missile (without launch capability) during captive carry on the aircraft, making it suitable for training the aircrew in simulated Hellfire missile target acquisition and lock. The missile comes in a reusable aluminum container designed to protect the missile from shock, vibration, and other environmental conditions encountered during shipment, handling, and storage. The highest level for release of the CATM is SECRET, based upon the software. The highest level of classified information that could be disclosed by a proposed sale or by testing of the end item is SECRET; the highest level that must be disclosed for production, maintenance, or training is CONFIDENTIAL. Reverse engineering could reveal confidential information. Vulnerability data, countermeasures, vulnerability/ susceptibility analyses, and threat definitions are classified SECRET or CONFIDENTIAL.

f. The Embedded Global Positioning System/Inertial Navigation System plus Multi Mode Receiver (EGl+MMR). The aircraft has two EGIs which use internal accelerometers, rate gyro measurements, and external sensor measurements to estimate the aircraft state, provides aircraft flight and position data to aircraft systems. The EGI is a velocity-aided, strap down, ring laser gyro based inertial unit. The EGI unit houses a GPS receiver. The receiver is capable of operating in either non-encrypted or encrypted. When keyed, the GPS receiver will automatically use anti-spoof/jam capabilities when they are in use. The EGI will retain the key through power on/off/on cycles. Because of safeguards built into the EGI, it is not considered classified when keyed. Integrated within the EGI is an Inertial Measurement Unit (IMU) for processing functions. Each EGI also houses a Multi-Mode Receiver (MMR). The MMR is incorporated to provide for reception of ground based NAVAID signals for instrument aided flight. Provides IMC I IFR integration and certification of improved Embedded Global Positioning System and Inertial (EGI) unit, with attached MMR, with specific cockpit instrumentation allows Apaches to operate within the worldwide IFR route structure. Also includes integration of the Common Army Aviation Map (CAAM), Area Navigation (RNAV), Digital Aeronautical Flight Information File (DAFIF) and Global Air Traffic Management (GATM) compliance.

g. The AAR-57 Common Missile Warning System (CMWS) detects energy emitted by threat missiles in-flight, evaluates potential false alarm emitters in the environment, declares validity of threat and selects appropriate countermeasures. The CMWS consists

of an Electronic Control Unit (ECU), Electro-Optic Missile Sensors (EOMSs), and Sequencer and Improved Countermeasures Dispenser (ICMD). The ECU hardware is classified CONFIDENTIAL; releasable technical manuals for operation and maintenance are classified SECRET.

h. The AN/APR-39 Radar Signal Detecting Set is a system that provides warnings of radar-directed air defense threats and allows appropriate countermeasures. This is the 1553 databus compatible configuration. The hardware is classified CONFIDENTIAL when programmed with threat data; releasable technical manuals for operation and maintenance are classified CONFIDENTIAL; releasable technical data (technical performance) is classified SECRET. The system can be programmed with threat data provided by the purchasing country.

i. The Stinger RMP Block I Missile, hardware, embedded software object code and operating documentation contain sensitive technology and are classified CONFIDENTIAL. The highest classification of the Stinger 92H Reprogrammable Micro-Processor (RMP) Block I missile hardware is CONFIDENTIAL, and the highest classification of data and information is SECRET. The guidance section of the missile and tracking head trainer contain highly sensitive technology and are classified CONFIDENTIAL. Missile System hardware components contain sensitive critical technologies. Stinger Block I critical technology is primarily in the area of design and production know-how and not end-items. Information on countermeasures vulnerability to electronic countermeasures, system performance capabilities and effectiveness, simulation and test data and software source code are classified up to SECRET.

2. 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.

3. 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.

4. All defense articles and services listed in this transmittal are authorized for release and export to the Government of Morocco.

[FR Doc. 2019–27968 Filed 12–26–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 19–65]

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 19–65 with attached Policy Justification and Sensitivity of Technology.

Dated: December 19, 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, SUITE 101
ARLINGTON, VA 22202-5408

OCT 2 9 2019

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

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. 19-65 concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Japan for defense articles and services estimated to cost $4.5 billion. 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

BILLING CODE 5001–06–C

Transmittal No. 19-65

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*: Government of Japan

(ii) *Total Estimated Value*:

Major Defense Equipment * ..	$2.4 billion
Other	$2.1 billion
TOTAL	$4.5 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase*: The Government of Japan is requesting the upgrade of up to ninety-eight (98) F-15J aircraft to a Japanese Super Interceptor (JSI) configuration. The proposed sale will be a hybrid Foreign Military Sale (FMS) and Direct Commercial Sale (DCS). The first phase of this program will consist of upgrade design, development, modification, training, support, and testing of the first two (2) F-15J test aircraft resulting in an upgraded JSI configuration. The follow-on production phase will incorporate JSI upgrade kits to modernize up to ninety-six (96) additional F-15J aircraft.

Major Defense Equipment (MDE): One hundred three (103) APG-82(v)1 Active

Electronically Scanned Array (AESA) Radar (includes 5 spares)

One hundred sixteen (116) Advanced Display Core Processor II (ADCP II) Mission System Computer (includes 18 spares)

One hundred one (101) ALQ-239 Digital Electronic Warfare System (DEWS) (includes 3 spares)

Non-MDE: Also included are Joint Mission Planning System (JMPS) with software, training and support; Selective Availability Anti-spoofing Module (SAASM); ARC-210 Radio, aircraft and munition integration and test support; support and test equipment; software delivery and support; spare and repair parts; communications equipment; facilities and construction support; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering; technical and logistics support services; studies and surveys; and other related elements of logistical and program support.

(iv) *Military Department*: Air Force (JA-D-QES)

(v) *Prior Related Cases, if any*: None

(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*: October 29, 2019

*As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Japan—F-15J Modernization

The Government of Japan has requested the upgrade of up to ninety-eight (98) F-15J aircraft to a Japanese Super Interceptor (JSI) configuration consisting of up to one hundred three (103) APG-82(v)1 Active Electronically Scanned Array (AESA) Radar (includes 5 spares); one hundred sixteen (116) Advanced Display Core Processor II (ADCP II) Mission System Computer (includes 18 spares); and one hundred one (101) ALQ-239 Digital Electronic Warfare System (DEWS) (includes 3 spares). Also included are Joint Mission Planning System (JMPS) with software, training and support; Selective Availability Anti-spoofing Module (SAASM); ARC-210 radio, aircraft and munition integration and test support; ground training devices (including flight and maintenance simulators); support and test equipment; software delivery and support; spare and repair parts; communications equipment; facilities and construction support; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering; technical and logistics support services; studies and surveys; and other related elements of logistical and program support. The estimated total program cost is $4.5 billion.

This proposed sale will support the foreign policy goals and national security objectives of the United States by improving the security of a major ally that is a force for political stability, and economic progress in the Asia-Pacific region. It is vital to U.S. national interest to assist Japan in developing and maintaining a strong and effective self-defense capability.

This proposed sale will provide Japan a critical air defense capability to assist in defending the Japanese homeland and U.S. personnel stationed there. Modernized F-15J assets will better enable Japan to respond to airborne threats and defend its airspace. Japan will have no difficulty absorbing this equipment and support into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor for the FMS portion will be Boeing Aircraft Company, Everett, WA. The prime contractor for the DCS portion will be Mitsubishi Heavy Industries (MHI) with Boeing being a sub-contractor in supporting integration of the FMS and DCS elements. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will require the assignment of one U.S. Government representative in Japan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 19-65

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 proposed sale will be a hybrid Foreign Military Sales (FMS) and Direct Commercial Sales (DCS) case involving the release of sensitive technology to the Government of Japan related to modernizing its F-15J fleet. The F-15J aircraft is a twinengine all-weather air superiority fighter aircraft in service since 1980 and built under license in Japan by Mitsubishi Heavy Industries. Previous upgrades were carried out under the Multi-Stage Improvement Program (MSIP). The first phase of this program will consist of upgrade design, development, modification, training, support, and testing of the first two (2) F-15J test aircraft resulting in an upgraded Japanese Super Interceptor (JSI) configuration. The follow-on production phase will incorporate JSI upgrade kits to modernize up to ninety-six (96) additional F-15J aircraft.

2. The AN/APG-82(V)l is an Active Electronically Scanned Array (AESA) radar upgrade for the F-15. It includes higher processor power, higher transmission power, more sensitive receiver electronics, and Synthetic Aperture Radar (SAR), which creates higher-resolution ground maps from a greater distance than existing mechanically scanned array radars. The upgrade features an increase in detection range of air targets, increases in processing speed and memory, as well as significant improvements in all modes.

3. The AN/ALQ-239 Digital Electronic Warfare Suite (DEWS) provides passive radar warning, wide spectrum RF jamming, and control and management of the entire DEWS system. This system is designed as an internal suite largely comprised of commercial off-the-shelf (COTS) technology.

4. Advanced Display Core Processor II (ADCP II) is the mission processor for the F-15 managing the overall mission functions for the aircraft. The ADCP II controls the aircraft's avionics and provides data for the cockpit displays. It contains multiple core processors enabling rapid processing of data and is connected to aircraft systems by redundant MIL-STD-1553 buses and Ethernet interfaces.

5. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in the proposed sale, the information could be used to develop counter-measures, which might reduce weapons system effectiveness or be used in the development of a system with similar or advanced capabilities.

6. The sensitive technology being released under this notification is subject to the security criteria established in National Disclosure Policy (NDP-1) for the Government of Japan. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

7. All defense articles and services listed in this transmittal have been authorized for release and export to Japan.

[FR Doc. 2019–27977 Filed 12–26–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 19–0N]

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)(5)(C) 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 19–0N with attached Policy Justification and Sensitivity of Technology.

Dated: December 18, 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

OCT 3 0 2019

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 19-0N. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 17-66 of February 20, 2018.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal

BILLING CODE 5001–06–C

Transmittal No. 19-0N

REPORT OF ENHANCEMENT OR UPGRADE OF SENSITIVITY OF TECHONOLOGY OR CAPABILITY (SEC 36(B)(5)(C), AECA)

(i) *Prospective Purchaser*: Government of the Netherlands

(ii) *Sec 36(b)(1), AECA Transmittal No.*: 17-66

Date: February 20, 2018

Military Department: Army

(iii) *Description*: On February 20, 2018, Congress was notified by Congressional certification transmittal number 17-66 of the possible sale under Section 36(b)(1) of the Arms Export Control Act of items and services to support the upgrade/remanufacture of twenty-eight (28) AH-64D Block II Apache Attack Helicopters to the AH-64E configuration to include upgrading fifty-one (51) remaining T700-GE-701C Engines to T700-GE-701D (42 engines to be installed, 9 spares), seventeen (17) AN/APG-78 Fire Control Radar (FCR) and subcomponents, twenty-eight (28) AN/ASQ-170 Modernized Target Acquisition and Designation Sights (MTADS)/AN/AAR-11 Modernized Pilot Night Vision Sensors (PNVS), twenty-eight (28) AN/APR-48B Modernized Radar Frequency Interferometers (MRFI), and seventy (70) Embedded Global Positioning System/Inertial Navigation Systems (EGI) plus Multi-Mode Receiver. Non-MDE items and services to support the upgrade/remanufacturing of the existing AH-64D Block II Apache Attack Helicopters to AH-64E configuration, training devices, helmets, simulators, generators, transportation, wheeled vehicles and organization equipment, spare and repair parts, support equipment, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. Government and contractor engineering, technical, and logistics support services, and other related elements of logistics and program support. The estimated total cost was $1.191 billion. Major Defense Equipment (MDE) constituted $829 million of this total.

This transmittal reports the inclusion of the following MDE items not previously notified:

1) Seventeen (17) Radar Electronic Units (REUs) to replace two (2) legacy Line Replaceable Units (Programmable Signal Processor and Low Power Radio Frequency) as an upgrade to the AN/APG-78 Fire Control Radar (FCR). (The REU was designated as MDE subsequent to notification of the original CN.);

2) One (1) Longbow Crew Trainer (LCT) (in addition to the one previously notified); and

3) Fifty-eight (58) new aircraft engines.

The inclusion of these items will result in a net increase in MDE cost of $101 million and non-MDE cost of $68 million. The total case value will increase to $1.36 billion.

(iv) *Significance*: This equipment will support the capabilities of RNLAF's Apache fleet and enhance interoperability with the United States. Without the REU subcomponent, the Fire Control Radar (FCR) system will be nonoperational. Without the second LCT, the RNLAF will not be able to effectively train their pilots and maintainers, negatively impacting the RNLAF's operational ability.

(v) *Justification*: This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of a NATO ally which is an important force for political stability and economic progress in Northern Europe.

(vi) *Sensitivity of Technology*: The Radar Electronic Unit (REU) is a component upgrade to the AN/APG-78 Fire Control Radar (FCR). The REU replaces two legacy Line Replaceable Units (Programmable Signal Processor and Low Power Radio Frequency), achieving a weight reduction of approximately 85 pounds, with improved reliability, increased processing power, growth for new modes/capabilities and replacement of obsolete components.

The Longbow Crew Trainer (LCT) is designated as a high functional and high fidelity flight trainer, meeting required design requirements established and periodically updated under programmatic design review.

(vii) *Date Report Delivered to Congress*: October 30, 2019

[FR Doc. 2019–27957 Filed 12–26–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 19–61]

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 19–61 with attached Policy Justification.

Dated: December 19, 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, SUITE 101
ARLINGTON, VA 22202-5408

OCT 2 2 2019

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

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. 19-61 concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Bahrain for defense articles and services estimated to cost $150 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. Regional Balance (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 19-61

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*: Government of Bahrain

(ii) *Total Estimated Value*:

Major Defense Equipment * ..	$ 0 million
Other	$150 million
TOTAL	$150 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase*:

Major Defense Equipment (MDE): None

Non-MDE: Refurbishment of the Oliver Hazard Perry Class ship, ex ROBERT G. BRADLEY (FFG 49), spares, support, training, publications, and other related elements of logistics and program support.

(iv) *Military Department*: Navy (BA-P-SAT)

(v) *Prior Related Cases, if any*: BA-P-GAL and BA-P-GAV

(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: None

(viii) *Date Report Delivered to Congress*: October 22, 2019

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Bahrain—Refurbishment of the Oliver Hazard Perry Class Ship, Ex ROBERT G. BRADLEY (FFG 49)

The Government of Bahrain has requested refurbishment of the Oliver Hazard Perry Class ship, ex ROBERT G. BRADLEY (FFG 49), spares, support, training, publications, and other related elements of logistics and program support. The estimated cost is $150 million.

This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of an important ally which is a force for political stability and economic progress in the Middle East. This sale is consistent with U.S. initiatives to provide key allies in the region with systems that will enhance interoperability with U.S. forces and increase security.

The proposed sale will refurbish and support the grant transfer of the Oliver Hazard Perry Class ship, ex ROBERT G. BRADLEY (FFG 49), which was authorized for transfer under Public Law 115-232, Section 1020. Bahrain already operates another Oliver Hazard Perry Class ship. Bahrain will have no difficulty absorbing these defense articles and services into its armed forces.

The proposed sale will not alter the basic military balance in the region.

The principal contractor supporting the refurbishment has not yet been selected for this potential sale. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government or contractor representatives to Bahrain.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2019–27981 Filed 12–26–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Feasibility Report and Environmental Impact Statement for the Buffalo Bayou and Tributaries, Texas Resiliency Study

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, the U.S. Army Corps of Engineers, Galveston District (USACE) intends to prepare an Environmental Impact Statement (EIS) for the Buffalo Bayou and Tributaries, Texas Resiliency Study (BBTRS). The study will identify and evaluate the feasibility of reducing flood risks on Buffalo Bayou in Harris and Fort Bend Counties, Texas. The study will also complete a Dam Safety Modification Study (DSMS) on the Addicks and Barker Dams. This notice announces USACE's intent to determine the scope of the issues to be addressed and identify the significant issues related to a proposed action.

ADDRESSES: Pertinent information about the study can be found at: *https://www.swg.usace.army.mil/Missions/Projects/Buffalo-Bayou-and-Tributaries-Resiliency-Study/.*

Questions or comments about the proposed action or requests to be added to the project mailing list can be emailed to *BBTRS@usace.army.mil* or mailed to USACE, Galveston District, Attn: BBTRS, P.O. Box 1229, Galveston, TX 77553–1229.

FOR FURTHER INFORMATION CONTACT: Galveston District Public Affairs Office at 409–766–3004 or *swgpao@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Authority.* The Buffalo Bayou and Tributaries Resiliency Study (BBTRS) is authorized under Section 216 of the Flood Control Act of 1970 (Pub. L. 91–611) and existing project authority. Section 216 authorizes USACE to review a completed navigation, flood risk reduction, water supply, or related project due to significantly changed physical or economic conditions, and to report to Congress with recommendations regarding modification of the project's structures or operation, and for improving the quality of the environment in the overall public interest. The Bipartisan Budget Act of 2018 (Pub. L. 115–123) funded the study as a new start. The study phase is 100% federally funded.

2. *Background.* USACE, in partnership with the Harris County Flood Control District (HCFCD), as the non-Federal sponsor, is undertaking the study to evaluate the feasibility of reducing flood risks on Buffalo Bayou upstream and downstream of Addicks and Barker Reservoirs.

The Buffalo Bayou and Tributaries, Texas Project (Project) was authorized by Congress in the 1930s for the purpose of providing flood control for the city and port of Houston, Texas. In the 1940s, Addicks and Barker Dams were constructed and a portion of Buffalo Bayou was straightened as part of the completed Project. Since the 1940s, a number of physical improvements and operational changes to the Project have been implemented. However, the watershed continues to experience major flood events, with the most recent and most significant occurring during Hurricane Harvey in 2017. These recent flood events, coupled with projected increases in precipitation patterns and the potential for flooding events in the future, warrant investigation into whether the Project should be modified to address existing and future flooding concerns.

The first purpose of this study is to examine alternatives to reduce potential flooding in three watersheds (Addicks Reservoir, Barker Reservoir, and Buffalo Bayou Watersheds) and consider impacts to/from a portion of Cypress Creek, Brays Bayou and White Oak Bayou watersheds. The main flooding risks being evaluated are upstream and downstream of Addicks and Barker Reservoirs and along Buffalo Bayou. Buffalo Bayou flows 32 miles from Barker Reservoir in far west Harris County to the Turning Basin of the Houston Ship Channel. The bayou provides the main drainage conduit for central Houston as it winds through the heart of Houston, past neighborhoods, parks, office towers, and industrial areas, before it joins with White Oak Bayou just north of Houston's central business district.

The second purpose of this study is to evaluate dam safety concerns at Addicks and Barker Dams and examine alternatives to address the concerns. The dams have been previously evaluated through the Dam Safety Program and both dams have been assigned a Dam Safety Action Classification (DSAC) I rating. The DSAC I rating means the combination of life or economic consequences with probability of failure is extremely high. In response to this rating, a Dam Safety Modification Study (DSMS) was undertaken. Phase 1 of the DSMS, which addressed the highest risk

concerns, was analyzed in a report completed in 2013. Modifications recommended by that report are currently under construction with an anticipated completion date in February 2020. The BBTRS will complete Phase 2 of the DSMS, and address remaining concerns identified in Phase 1.

3. *Alternatives.* The study will evaluate alternatives that would modify the existing Project to more efficiently and effectively convey water throughout the system and reduce the flooding risk, as well as measures that would address the remaining dam safety concerns. A No Action Alternative is also being considered. A number of structural measures are being considered including but not limited to: Tunnels, bypass channels, new reservoirs, detention ponds, dredging of existing detention ponds and reservoirs, and spillway modifications. Non-structural measures, such as operational changes and property acquisition, are also being considered. The study will evaluate potential benefits and impacts of the reasonable array of alternatives including direct, indirect and cumulative effects to the human and natural environments that balance the interests of flood damage reduction and environmental impacts.

4. *Public Participation.* Scoping completed prior to and after publication of this NOI will be used to develop the EIS. The scoping comment period began on April 27, 2019, and will end 30 days after publication of this notice. All comments received during the scoping period are being used to identify additional measures and alternatives, significant resources, and impacts that should be considered in the EIS. Additional comments received outside the scoping period will be considered prior to the Draft EIS public review period, to the extent possible. For comments that cannot be addressed prior to the public review period, the comments will be included with the public review period comments and addressed at that time. No public meetings are scheduled.

Between April 30 and May 9, 2019, USACE and HCFCD hosted five Public Scoping Meetings—three meetings were held near Buffalo Bayou downstream of the reservoirs and two meetings were held upstream of the reservoirs. A Public Notice was published on the Galveston District website and in the Legal Notices section of the Houston Chronicle. Public news releases announcing the scoping period timeframe; public meeting dates, times, and locations; and where to send comments were published in the appropriate local newspapers, on the Galveston District and HCFCD websites, and were distributed to the local stakeholders and known interested parties.

5. *Coordination.* USACE will serve as the lead Federal agency in the preparation of the EIS. Other Federal and state agencies have been invited to participate throughout the study process as Coordinating or Participating Agencies. Further coordination with environmental agencies will be conducted under the NEPA, the Fish and Wildlife Coordination Act, the Endangered Species Act, the Clean Water Act, the Clean Air Act, the National Historic and Preservation Act, the Magnuson-Stevens Fishery Conservation and Management Act, and the Coastal Zone Management Act.

6. *Availability of Draft EIS.* USACE currently estimates that the Draft EIS will be available for public review and comment in or around late Spring or early Summer 2020. At that time, USACE will provide a 45-day public review period for individuals and agencies to review and comment. USACE will notify all interested agencies, organizations, and individuals of the availability of the draft document at that time.

Paul E. Owen,

Brigadier General, USA Commanding.

[FR Doc. 2019–27766 Filed 12–26–19; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Developing Hispanic-Serving Institutions Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications (NIA) for new awards for fiscal year (FY) 2020 for the Developing Hispanic-Serving Institutions (DHSI) Program, Catalog of Federal Domestic Assistance (CFDA) number 84.031S. This notice relates to the approved information collection under OMB control number 1840–0745.

DATES:

Applications Available: December 27, 2019.

Deadline for Transmittal of Applications: February 10, 2020.

Deadline for Intergovernmental Review: April 10, 2020.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Njeri Clark, U.S. Department of Education, 400 Maryland Avenue SW, Room 260–14, Washington, DC 20202–4260. Telephone: (202) 453–6224. Email: *Njeri.Clark@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The DHSI Program provides grants to assist Hispanic-Serving Institutions (HSIs) to expand educational opportunities for, and improve the academic attainment of, Hispanic students. DHSI Program grants enable HSIs to expand and enhance the academic offerings, program quality, faculty quality, and institutional stability of colleges and universities that are educating the majority of Hispanic college students and help large numbers of Hispanic students and other low-income individuals complete postsecondary degrees.

Background: Hispanic students are enrolling in postsecondary institutions at higher rates than ever before, yet their high enrollments are not translating to degree completion.[1] HSIs have an opportunity to both improve individual educational outcomes and support our Nation's economic growth and competitiveness by increasing the number of certificates and degrees attained by Hispanic and low-income students. HSIs' high enrollment of Hispanic and low-income students positions them to serve as models for how best to meet the needs of Hispanic and low-income students. The DHSI program supports HSIs that demonstrate a commitment to developing or enhancing a comprehensive plan that looks to identify and address the strengths and weaknesses of an institution's enrollment, retention, support, and graduation rates of Hispanic and low-income students.

HSIs interested in applying to this grant program can use the development of their comprehensive plan to examine

[1] Digest of Education Statistics 2017, January 2019, *https://nces.ed.gov/pubs2018/2018070.pdf.*

the alignment of their mission and current strategic plan with the needs of the target population and surrounding community to develop, enhance, and implement leadership, practice, and policies that best promote student success. Moreover, HSIs can use their plans as road maps to help all students, especially those with the highest needs, find exciting pathways to employment and career advancement.

To this end, this competition includes two competitive preference priorities that are designed to promote student success.

Priorities: This notice contains two competitive preference priorities from the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on March 2, 2018 (83 FR 9096) (Supplemental Priorities).

Competitive Preference Priorities: For FY 2020 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award an application up to 5 additional points, depending on how well the application meets one of these priorities. Applicants may respond to one or both priorities, for a total of up to 10 additional points.

These priorities are:

Competitive Preference Priority 1—Fostering Flexible and Affordable Paths To Obtaining Knowledge and Skills (Up to 5 Additional Points)

Projects that are designed to address at least one of the following priority areas:

(a) Improving collaboration between education providers and employers to ensure student learning objectives are aligned with the skills or knowledge required for employment in in-demand industry sectors or occupations (as defined in section 3(23) of the Workforce Innovation and Opportunity Act of 2014).

(b) Providing work-based learning experiences (such as internships, apprenticeships, and fellowships) that align with in-demand industry sectors or occupations (as defined in section 3(23) of the Workforce Innovation and Opportunity Act of 2014).

(c) Creating or expanding opportunities for students to obtain recognized postsecondary credentials in science, technology, engineering, mathematics, or computer science (as defined in this notice).

Competitive Preference Priority 2—Fostering Knowledge and Promoting the Development of Skills That Prepare Students To Be Informed, Thoughtful, and Productive Individuals and Citizens (Up to 5 Additional Points)

Projects that are designed to support instruction in personal financial literacy, knowledge of markets and economics, knowledge of higher education financing and repayment (*e.g.,* college savings and student loans), or other skills aimed at building personal financial understanding and responsibility.

Definitions: The following definitions are from 34 CFR 77.1 and the Supplemental Priorities and apply to the priorities and selection criteria in this notice:

Baseline means the starting point from which performance is measured and targets are set.

Budget period means an interval of time into which a project period is divided for budgetary purposes.

Computer science means the study of computers and algorithmic processes and includes the study of computing principles and theories, computational thinking, computer hardware, software design, coding, analytics, and computer applications.

Computer science often includes computer programming or coding as a tool to create software, including applications, games, websites, and tools to manage or manipulate data; or development and management of computer hardware and the other electronics related to sharing, securing, and using digital information.

In addition to coding, the expanding field of computer science emphasizes computational thinking and interdisciplinary problem-solving to equip students with the skills and abilities necessary to apply computation in our digital world.

Computer science does not include using a computer for everyday activities, such as browsing the internet; use of tools like word processing, spreadsheets, or presentation software; or using computers in the study and exploration of unrelated subjects.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Department means the U.S. Department of Education.

Evidence-based means the proposed project component is supported by promising evidence or evidence that demonstrates a rationale.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbook:

(i) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

Fiscal year means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30.

Grant period means the period for which funds have been awarded.

Grantee means the legal entity to which a grant is awarded and that is accountable to the Federal Government for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award notice (GAN). For example, a GAN may name as the grantee one school or campus of a university. In this case, the granting agency usually intends, or actually intends, that the named component assume primary or sole responsibility for administering the grant-assisted project or program. Nevertheless, the naming of a component of a legal entity as the grantee in a grant award document shall not be construed as relieving the whole legal entity from accountability to the Federal Government for the use of the

funds provided. (This definition is not intended to affect the eligibility provision of grant programs in which eligibility is limited to organizations that may be only components of a legal entity.) The term ''grantee'' does not include any secondary recipients, such as subgrantees and contractors, that may receive funds from a grantee pursuant to a subgrant or contract.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Note: In developing logic models, applicants may want to use resources such as the Pacific Education Laboratory's Logic Model Application (*www.ies.ed.gov/ncee/edlabs/regions/pacific/elm.asp*).

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance.

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Promising evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(i) A practice guide prepared by What Works Clearinghouse (WWC) reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single study assessed by the Department, as appropriate, that—

(A) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (*e.g.,* a study using regression methods to account for differences between a treatment group and a comparison group); and

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbook.

Relevant outcome means the student outcome(s) or other outcomes(s) the key project component is designed to improve, consistent with the specific goals of the program.

Subgrant means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual or any other form of legal agreement, but does not include procurement purchases, nor does it include any form of assistance that is excluded from the definition of ''grant or award'' in this part (See 2 CFR 200.92, ''Subaward'').

What Works Clearinghouse Handbook (WWC Handbook) means the standards and procedures set forth in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (incorporated by reference, see 34 CFR 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the Handbook documentation.

Program Authority: 20 U.S.C. 1101–1101d and 1103–1103g.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 606. (e) The Supplemental Priorities.

II. Award Information

Type of Award: Discretionary grants. Five-year Individual Development Grants only. Cooperative Arrangement Grants and Planning Grants will not be awarded in FY 2020.

Estimated Available Funds: The Department estimates that $124,415,000 will be available for the DHSI program in FY 2020, of which approximately $52,800,000 will be available for new awards. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process before the end of the current fiscal year, if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent fiscal years from the list of unfunded applications from this competition.

Estimated Range of Awards: $500,000-$600,000.

Maximum Awards: We will not make an award exceeding $600,000 for a single budget period of 12 months.

Estimated Number of Awards: 96.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information and Supplemental Requirements

1. *Eligible Applicants:* (a) Institutions of higher education (IHEs) that qualify as eligible HSIs are eligible to apply for new Individual Development Grants under the DHSI Program. To be an eligible HSI, an IHE must—

(i) Have an enrollment of needy students, as defined in section 502(b) of the HEA (section 502(a)(2)(A)(i) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(i));

(ii) Have, except as provided in section 522(b) of the HEA, average education and general expenditures that are low, per full-time equivalent (FTE) undergraduate student, in comparison with the average education and general expenditures per FTE undergraduate student of institutions that offer similar instruction (section 502(a)(2)(A)(ii) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(ii));

Note: To demonstrate an enrollment of needy students and low average education and general expenditures per FTE undergraduate student, an IHE must be designated as an ''eligible institution'' in accordance with 34 CFR 606.3 through 606.5 and the notice

inviting applications for designation as an eligible institution for the fiscal year for which the grant competition is being conducted.

Note: The notice announcing the FY 2020 process for designation of eligible institutions, and inviting applications for waiver of eligibility requirements, was published in the **Federal Register** on December 16, 2019 (84 FR 68434). Only institutions that the Department determines are eligible, or are granted a waiver, may apply for a grant in this program.

(iii) Be accredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered, or making reasonable progress toward accreditation, according to such an agency or association (section 502(a)(2)(A)(iv) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(iv));

(iv) Be legally authorized to provide, and provides within the State, an education program for which the institution awards a bachelor's degree (section 502(a)(2)(A)(iii) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(iii)), or be a junior or community college (section 502(a)(2)(A)(iii) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(iii));

(v) Have an enrollment of undergraduate FTE students that is at least 25 percent Hispanic students at the end of the award year immediately preceding the date of application (section 502(a)(5)(B) of the HEA; 20 U.S.C. 1101a(a)(5)(B)); and

(vi) Provide, as an attachment to the application, the documentation the IHE relied upon in determining that at least 25 percent of the IHE's undergraduate FTE students are Hispanic. The 25 percent requirement applies only to undergraduate Hispanic students and is calculated based upon FTE students as defined in section 502(a)(4) of the HEA. Instructions for formatting and submitting the verification documentation to *Grants.gov* are in the application package for this competition.

(b) For this program, the ''end of the award year immediately preceding the date of application'' refers to the end of the fiscal year prior to the application due date. For purposes of this competition, the data that we will use to determine percent enrollment is for academic year 2018–2019.

(c) In considering applications for grants under this program, the Department will compare the data and documentation the institution relied on in its application with data reported to the Department's Integrated Postsecondary Education Data System (IPEDS), the IHE's State-reported enrollment data, and the institutional annual report. If different percentages or data are reported in these various sources, the institution must, as part of the 25 percent assurance verification, explain the reason for the differences. If the IPEDS data show that less than 25 percent of the institution's undergraduate FTE students are Hispanic, the burden is on the institution to show that the IPEDS data are inaccurate. If the IPEDS data indicate that the institution has an undergraduate FTE less than 25 percent, and the institution fails to demonstrate that the IPEDS data are inaccurate, the institution will be considered ineligible.

(d) A grantee under the DHSI Program, which is authorized by title V of the HEA, may not receive a grant under any HEA, title III, part A or part B program (section 505 of the HEA; 20 U.S.C. 1101d). The title III, part A programs include: The Strengthening Institutions Program; the American Indian Tribally Controlled Colleges and Universities Program; the Alaska Native and Native Hawaiian-Serving Institutions Programs; the Asian American and Native American Pacific Islander-Serving Institutions Program; the Predominantly Black Institutions program; and the Native American-Serving Non-Tribal Institutions Program. Furthermore, a current DHSI Program grantee may not give up its HSI grant in order to receive a grant under any title III, part A program (34 CFR 606.2(c)(1)).

(e) An eligible HSI may only submit one Individual Development Grant application.

(f) Nothing in this notice alters a grantee's obligations to comply with nondiscrimination requirements in the U.S. Constitution and Federal civil rights laws, including on the basis of race or ethnicity, among others.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching unless the grantee uses a portion of its grant for establishing or improving an endowment fund. If a grantee uses a portion of its grant for endowment fund purposes, it must match or exceed those grant funds with non-Federal funds (section 503(c)(2) of the HEA; 20 U.S.C. 1101b(c)(2)).

3. *Supplement-Not Supplant:* This program involves supplement-not-supplant funding requirements. Grant funds shall be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds. (34 CFR 606.30(b)).

4. *Subgrantees:* Under 34 CFR 75.708(b) and (c), a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: Local educational agencies; State educational agencies; IHEs; nonprofit organizations. The grantee may award subgrants to entities it has identified in an approved application or that it selects through a competition under procedures established by the grantee.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the DHSI Program, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

An applicant may wish to request confidentiality of business information because successful applications may be made available to the public, if requested.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

4. *Funding Restrictions:* We specify unallowable costs in 34 CFR 606.10(c). We reference additional regulations

outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 55 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1'' margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit applies to the Project Narrative, which is your complete response to the selection criteria, and any response to the competitive preference priorities, if applicable. However, the page limit does not apply to the Application for Federal Assistance form (SF–424); the ED SF–424 Supplement form; the Budget Information—Non-Construction Programs form (ED 524); the assurances and certifications; or the one-page project abstract, the program profile form, and supporting budget narrative.

6. *Notice of Intent to Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. To do so, please email the program contact person listed under **FOR FURTHER INFORMATION CONTACT** with the subject line ''Intent to Apply,'' and include the applicant's name and a contact person's name and email address. Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210, 606.8, and 606.22 and are as follows:

(a) *Quality of the applicant's comprehensive development plan.* (up to 25 points)

The extent to which—

(1) The strengths, weaknesses, and significant problems of the institution's academic programs, institutional management, and fiscal stability are clearly and comprehensively analyzed and result from a process that involved major constituencies of the institution (up to 5 points);

(2) The goals for the institution's academic programs, institutional management, and fiscal stability are realistic and based on comprehensive analysis (up to 5 points);

(3) The objectives stated in the plan are measurable, related to institutional goals, and, if achieved, will contribute to the growth and self-sufficiency of the institution (up to 5 points);

(4) The plan clearly and comprehensively describes the methods and resources the institution will use to institutionalize practice and improvements developed under the proposed project, including, in particular, how operational costs for personnel, maintenance, and upgrades of equipment will be paid with institutional resources (up to 5 points); and

(5) The plan clearly and comprehensively describes the five-year plan to improve its services to Hispanic and other low-income students (up to 5 points).

Note: A comprehensive development plan is an institution's strategy for achieving growth and self-sufficiency by strengthening its—

(1) Academic programs;

(2) Institutional management; and

(3) Fiscal stability.

(b) *Quality of the project design.* (up to 15 points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following:

(1) The extent to which the proposed project demonstrates a rationale (as defined in this notice) (up to 10 points); and

(2) The extent to which the proposed project is supported by promising evidence (as defined in this notice) (up to 5 points).

Note: To establish that their projects ''demonstrate a rationale,'' applicants must use a logic model (as defined in this notice). To establish that their projects are supported by ''promising evidence,'' applicants should cite the supporting study or studies that meets the conditions in the definition of ''promising evidence'' and attach the studies as part of the application attachments. In addressing ''promising evidence,'' applicants are encouraged to align the direct student services proposed in this application to evidence-based practices identified in the selected studies.

(c) *Quality of activity objectives.* (up to 10 points)

The extent to which the objectives for each activity are—

(1) Realistic and defined in terms of measurable results (up to 5 points); and

(2) Directly related to the problems to be solved and to the goals of the comprehensive development plan (up to 5 points).

(d) *Quality of implementation strategy.* (up to 20 points)

The extent to which—

(1) The implementation strategy for each activity is comprehensive (up to 10 points);

(2) The rationale for the implementation strategy for each activity is clearly described and is supported by the results of relevant studies or projects (up to 5 points); and

(3) The timetable for each activity is realistic and likely to be attained (up to 5 points).

(e) *Quality of project management plan.* (up to 10 points)

The extent to which—

(1) Procedures for managing the project are likely to ensure efficient and effective project implementation (up to 5 points); and

(2) The project coordinator and activity directors have sufficient authority to conduct the project effectively, including access to the president or chief executive officer (up to 5 points).

(f) *Quality of key personnel.* (up to 5 points)

The extent to which—

(1) The past experience and training of key professional personnel are directly related to the stated activity objectives (up to 2 points); and

(2) The time commitment of key personnel is realistic (up to 3 points).

(g) *Quality of evaluation plan.* (up to 10 points)

The extent to which—

(1) The data elements and the data collection procedures are clearly described and appropriate to measure the attainment of activity objectives and to measure the success of the project in achieving the goals of the comprehensive development plan (up to 5 points); and

(2) The data analysis procedures are clearly described and are likely to produce formative and summative results on attaining activity objectives and measuring the success of the project on achieving the goals of the comprehensive development plan (up to 5 points).

(h) *Budget.* (up to 5 points)

The extent to which the proposed costs are necessary and reasonable in relation to the project's objectives and scope.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

A panel of three non-Federal reviewers will review and score each application in accordance with the selection criteria in this notice, as well as the competitive preference priorities. A rank order funding slate will be made from this review. Awards will be made in rank order according to the average score received from the peer review.

Tiebreaker: In tie-breaking situations for development grants described in 34 CFR 606.23(b), the DHSI Program regulations in 34 CFR part 606, subpart C require that we award additional points to an application from an IHE that—

(1) Has an endowment fund of which the current market value, per FTE enrolled student, is less than the average current market value of the endowment funds, per FTE enrolled student, at comparable institutions that offer similar instruction;

(2) Has expenditures for library materials per FTE enrolled student that are less than the average expenditures for library materials per FTE enrolled student at comparable institutions that offer similar instruction; or

(3) Proposes to carry out one or more of the following activities—

(i) Faculty development (1 point);

(ii) Funds and administrative management (1 point);

(iii) Development and improvement of academic programs (2 points);

(iv) Acquisition of equipment for use in strengthening management and academic programs (1 point);

(v) Joint use of facilities (2 points); or

(vi) Student services (2 points).

If a tie remains after applying the tiebreaker mechanism above, priority will be given to applicants that addressed the statutory priority found in section 521(d) of the HEA (20 U.S.C. 1071).

If a tie still remains after applying the additional point(s) and the relevant statutory priority, we will determine the ranking of applicants based on the applicant that scores the highest under the selection criteria, quality of the applicant's comprehensive development plan, followed by quality of implementation strategy.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program, the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a GAN; or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements, please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary

under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case, the Secretary establishes a data collection period.

5. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the DHSI Program:

(a) The annual rate of degree or certificate completion for all students, and specifically for Hispanic students, at DHSI grantee institutions.

(b) The annual persistence rate at DHSI grantee institutions for all students, and for Hispanic students in particular, from one year to the next.

(c) The percentage of all students, and of Hispanic students in particular, that transfer from a two-year HSI to a four-year institution.

(d) The number of all students, and the number of Hispanic students in particular, served by any direct student service supported by the grant.

(e) The Federal cost per undergraduate and graduate degree at institutions in the DHSI program.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Robert L. King,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2019–27984 Filed 12–26–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–60–000.
Applicants: Wilton Wind Energy I, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Wilton Wind Energy I, LLC.
Filed Date: 12/17/19.
Accession Number: 20191217–5205.
Comments Due: 5 p.m. ET 1/7/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–162–026; ER13–1266–027; ER11–2044–031; ER15–2211–024
Applicants: MidAmerican Energy Company, Bishop Hill Energy II LLC, CalEnergy, LLC, MidAmerican Energy Services, LLC.
Description: Notice of Non-Material Change in Status of the Berkshire Hathaway Central Parties, et al.
Filed Date: 12/18/19.
Accession Number: 20191218–5010.
Comments Due: 5 p.m. ET 1/8/20.

Docket Numbers: ER13–2409–008; ER11–4363–008; ER11–4498–012; ER11–4499–012; ER11–4501–014; ER12–2448–013; ER12–979–013; ER14–2858–007; ER15–2615–003 ER15–2620–003; ER16–2293–004; ER16–2577–003 ER16–2653–004; ER16–2687–002; ER17–2457–003 ER17–2470–003; ER17–790–001; ER18–2312–002 ER18–27–002.
Applicants: Buffalo Dunes Wind Project, LLC, Osage Wind, LLC, Smoky Hills Wind Farm, LLC, Smoky Hills Wind Project II, LLC, Caney River Wind Project, LLC, Chisholm View Wind Project, LLC, Chisholm View Wind Project II, LLC, Origin Wind Energy, LLC, Goodwell Wind Project, LLC, Little Elk Wind Project, LLC, Drift Sand Wind Project, LLC, Lindahl Wind Project, LLC, Cimarron Bend Wind Project I, LLC, Red Dirt Wind Project, LLC, Cimarron Bend Wind Project II, LLC, Enel Green Power Diamond Vista Wind Project, LLC, Rock Creek Wind Project, LLC, Rocky Ridge Wind Project, LLC, Thunder Ranch Wind Project, LLC.
Description: Supplement to January 22, 2019 Notice of Non-Material Change in Status of Buffalo Dunes Wind Project, LLC, et. al.
Filed Date: 12/17/19.
Accession Number: 20191217–5161
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: ER18–2399–002; ER19–1194–001; ER18–1990–002; ER15–1147–002.
Applicants: Canal Generating LLC, Canal 3 Generating LLC, Bucksport Generation LLC, Stonepeak Kestrel Energy Marketing LLC.
Description: Notice of Change in Status of Canal Generating LLC, et al.
Filed Date: 12/18/19.
Accession Number: 20191218–5012.
Comments Due: 5 p.m. ET 1/8/20.

Docket Numbers: ER19–2800–002.
Applicants: Russell City Energy Company, LLC.
Description: Compliance filing: Russell City Energy Company LLC. Docket No. ER19–2800 Compliance Filing to be effective 12/9/20.19.
Filed Date: 12/17/19.
Accession Number: 20191217–5197.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: ER20–623–000.
Applicants: Shell Energy North America (US), L.P.
Description: § 205(d) Rate Filing: Notice of Non-Material Change in Status & SE Change in Cat. Seller Status to be effective 12/18/20.19.
Filed Date: 12/17/19.
Accession Number: 20191217–5196.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: ER20–624–000.
Applicants: Wolverine Power Supply Cooperative, Inc.
Description: § 205(d) Rate Filing: Contribution in Aid Construction Agreement for Blendon Transmission Station to be effective 12/18/20.19.

Filed Date: 12/17/19.
Accession Number: 20191217–5204.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: ER20–625–000.
Applicants: Algonquin SKIC 10 Solar, LLC.
Description: § 205(d) Rate Filing: Certificate of Concurrence to be effective 12/18/20.19.
Filed Date: 12/17/19.
Accession Number: 20191217–5235.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: ER20–626–000.
Applicants: Indiana Michigan Power Company, AEP Indiana Michigan Transmission Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: AEP submits ILDSA, Service Agreement No. 5120 and 2 Facilities Agreements to be effective 2/16/2020.
Filed Date: 12/18/19.
Accession Number: 20191218–5027.
Comments Due: 5 p.m. ET 1/8/20.

Docket Numbers: ER20–627–000.
Applicants: Arizona Public Service Company.
Description: Tariff Cancellation: Service Agreement No. 314 Cancellation to be effective 2/18/2020.
Filed Date: 12/18/19.
Accession Number: 20191218–5065.
Comments Due: 5 p.m. ET 1/8/20.

Docket Numbers: ER20–628–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Orignal Service Agreement No. 5530; Queue No. AE2–065 to be effective 11/18/20.19.
Filed Date: 12/18/19.
Accession Number: 20191218–5112.
Comments Due: 5 p.m. ET 1/8/20.

Docket Numbers: ER20–630–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ICSA No. 5531; Queue No. AE2–065 to be effective 11/18/2019.
Filed Date: 12/18/19.
Accession Number: 20191218–5115.
Comments Due: 5 p.m. ET 1/8/20.

Docket Numbers: ER20–631–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Letter Agreement Sagebrush SA No. 241 to be effective 12/1/2019.
Filed Date: 12/18/19.
Accession Number: 20191218–5124.
Comments Due: 5 p.m. ET 1/8/20.

Docket Numbers: ER20–632–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: LGIA Mojave 16/17/18 LLC.—Mojave 89 SA No. 239 to be effective 12/1/2019.
Filed Date: 12/18/19.
Accession Number: 20191218–5127.
Comments Due: 5 p.m. ET 1/8/20.

Docket Numbers: ER20–633–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: LGIA Mojave 3/4/5 LLC.—Mojave 90 SA No. 240 to be effective 12/1/2019.
Filed Date: 12/18/19.
Accession Number: 20191218–5130.
Comments Due: 5 p.m. ET 1/8/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 18, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–27878 Filed 12–26–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2558–004; ER11–2557–004; ER11–2555–003; ER11–2556–004; ER11–2552–004; ER11–2554–004.
Applicants: Niagara Mohawk Power Corporation, New England Power Company, National Grid-Glenwood Energy Center, LLC, National Grid-Port Jefferson Energy Center, LLC, Massachusetts Electric Company, The Narragansett Electric Company.
Description: Updated Triennial Market Power Analysis of the National Grid USA Subsidiaries.
Filed Date: 12/19/19.
Accession Number: 20191219–5135.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER19–2476–002; ER19–119–002; ER19–8–002; ER17–318–002; ER16–2520–002.
Applicants: Techren Solar I LLC, Techren Solar II LLC, Sweetwater Solar, LLC, Three Peaks Power, LLC, Grand View PV Solar Two LLC.
Description: Triennial Compliance Filing for the Northwest Region of Techren Solar II LLC, et al.
Filed Date: 12/19/19.
Accession Number: 20191219–5136.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER20–629–000.
Applicants: NYC ENERGY LLC.
Description: Petition for Limited Waiver, et al. of NYC Energy LLC.
Filed Date: 12/18/19.
Accession Number: 20191218–5116.
Comments Due: 5 p.m. ET 1/8/20.

Docket Numbers: ER20–634–000.
Applicants: Arizona Public Service Company.
Description: Compliance filing: Settlement Offer Addressing Docket Nos. ER16–1342 and ER18–246 to be effective N/A.
Filed Date: 12/18/19.
Accession Number: 20191218–5178.
Comments Due: 5 p.m. ET 1/8/20.

Docket Numbers: ER20–635–000.
Applicants: Rodan Energy Solutions (USA) Inc.
Description: Baseline eTariff Filing: RODAN ENERGY SOLUTIONS (USA) INC INITIAL MBR Tariff to be effective 4/1/2020.
Filed Date: 12/19/19.
Accession Number: 20191219–5046.
Comments Due: 5 p.m. ET 1/9/20.

Docket Numbers: ER20–636–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA SA No. 5535; Queue No. AB2–179 to be effective 11/19/2019.
Filed Date: 12/19/19.
Accession Number: 20191219–5076.
Comments Due: 5 p.m. ET 1/9/20.

Docket Numbers: ER20–637–000.
Applicants: Wilton Wind Energy I, LLC.
Description: Baseline eTariff Filing: Wilton Wind Energy I, LLC Application for MBR Authority to be effective 2/18/2020.
Filed Date: 12/19/19.
Accession Number: 20191219–5079.
Comments Due: 5 p.m. ET 1/9/20.

Docket Numbers: ER20–638–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 205: Class Year Redesign to be effective 2/18/2020.
Filed Date: 12/19/19.
Accession Number: 20191219–5083.

Comments Due: 5 p.m. ET 1/9/20.

Docket Numbers: ER20–639–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: PSC–HLYCRS–Tran Plnnr & Plnng Coord–466–0.0.0 to be effective 12/20/2019.

Filed Date: 12/19/19.

Accession Number: 20191219–5096.

Comments Due: 5 p.m. ET 1/9/20.

Docket Numbers: ER20–640–000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: DEC–CEPCI NITSA (SA No. 447) Amendment to be effective 1/1/2020.

Filed Date: 12/19/19.

Accession Number: 20191219–5150.

Comments Due: 5 p.m. ET 1/9/20.

Docket Numbers: ER20–641–000.

Applicants: ReEnergy Black River LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 12/20/2019.

Filed Date: 12/19/19.

Accession Number: 20191219–5168.

Comments Due: 5 p.m. ET 1/9/20.

Docket Numbers: ER20–642–000.

Applicants: ReEnergy Livermore Falls LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 12/20/2019.

Filed Date: 12/19/19.

Accession Number: 20191219–5169.

Comments Due: 5 p.m. ET 1/9/20.

Docket Numbers: ER20–643–000.

Applicants: ReEnergy Stratton LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 12/20/2019.

Filed Date: 12/19/19.

Accession Number: 20191219–5171.

Comments Due: 5 p.m. ET 1/9/20.

Docket Numbers: ER20–644–000.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Fast-Start Compliance Filing in Response to Order Issued in EL18–35–000 to be effective 12/31/9998.

Filed Date: 12/19/19.

Accession Number: 20191219–5194.

Comments Due: 5 p.m. ET 1/9/20.

Docket Numbers: ER20–645–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: ISO–NE & NEPOOL; Sunset of Fuel Sec. Reliability Retention Mechanism for FCA 15 to be effective 2/17/2020.

Filed Date: 12/19/19.

Accession Number: 20191219–5195.

Comments Due: 5 p.m. ET 1/9/20.

Docket Numbers: ER20–646–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions to the Tariff, OA and RAA re Standard Formatting to be effective 2/18/2020.

Filed Date: 12/19/19.

Accession Number: 20191219–5204.

Comments Due: 5 p.m. ET 1/9/20.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES20–12–000.

Applicants: MidAmerican Energy Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of MidAmerican Energy Company.

Filed Date: 12/19/19.

Accession Number: 20191219–5138.

Comments Due: 5 p.m. ET 1/9/20.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH20–5–000.

Applicants: Hearthstone Utilities, Inc.

Description: Hearthstone Utilities, Inc. submits FERC 65–A Notice of Change in Fact of Exemption Notification.

Filed Date: 12/18/19.

Accession Number: 20191218–5192.

Comments Due: 5 p.m. ET 1/8/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 19, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–27918 Filed 12–26–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Number: PR20–15–000.

Applicants: Columbia Gas of Ohio, Inc.

Description: Tariff filing per 284.123(b),(e)/: COH Rates effective Nov 27 2019 to be effective 11/27/2019.

Filed Date: 12/11/19.

Accession Number: 20191211–5027.

Comments/Protests Due: 5 p.m. ET 1/2/20.

Docket Number: PR20–17–000.

Applicants: Bay Gas Storage Company, Ltd.

Description: Tariff filing per 284.123(b),(e)/: Bay Gas Storage Company Revised SOC to be effective 11/21/2019.

Filed Date: 12/13/19.

Accession Number: 20191213–5219.

Comments/Protests Due: 5 p.m. ET 1/3/20.

Docket Number: PR20–18–000.

Applicants: Columbia Gas of Ohio, Inc.

Description: Tariff filing per 284.123(b),(e)/: COH Change SOC effective 11–27–2019 under PR20–18.

Filed Date: 12/16/19.

Accession Number: 20191216–5096.

Comments/Protests Due: 5 p.m. ET 1/6/20.

Docket Number: PR20–5–001.

Applicants: Midcoast Pipelines (North Texas) L.P.

Description: Tariff filing per 284.123(b),(e)+(g): Amendment to Petition for Rate Approval to be effective 11/1/2019.

Filed Date: 12/16/19.

Accession Number: 20191216–5103.

Comments Due: 5 p.m. ET 1/6/20.

284.123(g) Protests Due: 5 p.m. ET 2/14/20.

Docket Number: PR20–4–001.

Applicants: Acacia Natural Gas, L.L.C.

Description: Tariff filing per 284.123(b),(e)+(g): Amendment to 1370 to be effective 10/30/2019.

Filed Date: 12/17/19.

Accession Number: 20191217–5153.

Comments Due: 5 p.m. ET 1/7/20.

284.123(g) Protests Due: 5 p.m. ET 1/7/20.

Docket Numbers: RP20–332–000.

Applicants: Gulf South Pipeline Company, LP.

Description: § 4(d) Rate Filing: Amendments to Neg Rate Agmts

(Uniper 46406, 46409) to be effective 1/1/2020.

Filed Date: 12/17/19.

Accession Number: 20191217–5001.

Comments Due: 5 p.m. ET 12/30/19.

Docket Numbers: RP20–333–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Dec 2019 Cleanup Filing—Terminations and Name Changes to be effective 1/17/2020.

Filed Date: 12/17/19.

Accession Number: 20191217–5067.

Comments Due: 5 p.m. ET 12/30/19.

Docket Numbers: RP20–334–000.

Applicants: Gulfstream Natural Gas System, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate—Duke Energy Florida 912401 eff 12–1–19 contract ext to be effective 1/1/2020.

Filed Date: 12/17/19.

Accession Number: 20191217–5096.

Comments Due: 5 p.m. ET 12/30/19.

Docket Numbers: RP20–335–000.

Applicants: Ruby Pipeline, L.L.C.

Description: § 4(d) Rate Filing: Removal of Non-Conforming FTSA (El Paso Marketing) to be effective 1/17/2020.

Filed Date: 12/17/19.

Accession Number: 20191217–5104.

Comments Due: 5 p.m. ET 12/30/19.

Docket Numbers: RP20–336–000.

Applicants: Boardwalk Storage Company, LLC.

Description: § 4(d) Rate Filing: Clean ups and Clarifications related to new Gas Management System to be effective 1/18/2020.

Filed Date: 12/18/19.

Accession Number: 20191218–5001.

Comments Due: 5 p.m. ET 12/30/19.

Docket Numbers: RP20–337–000.

Applicants: Sea Robin Pipeline Company, LLC.

Description: Compliance filing Annual Flowthrough Crediting Mechanism filing on 12/18/19 to be effective.

Filed Date: 12/18/19.

Accession Number: 20191218–5002.

Comments Due: 5 p.m. ET 12/30/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

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Dated: December 18, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2019–27877 Filed 12–26–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14513–002]

Idaho Irrigation District, New Sweden Irrigation District; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 14513–002.

c. *Date Filed:* December 18, 2019.

d. *Applicant:* Idaho Irrigation District, New Sweden Irrigation District (the Districts).

e. *Name of Project:* County Line Road Hydroelectric Project.

f. *Location:* The proposed project would be located on the Snake River in Jefferson and Bonneville Counties, Idaho. The project would not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Nicholas Josten, 2742 Saint Charles Ave., Idaho Falls, Idaho 83404; (208) 528–6152.

i. *FERC Contact:* Matt Cutlip, (503) 552–2762 or *matt.cutlip@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *Project Description:* The proposed project would utilize water diverted from the Snake River at an existing diversion dam located 10 miles upstream of Idaho Falls. Currently the diversion dam diverts irrigation water for agricultural purposes into the existing Idaho Canal on the east side of the river and Great Western Canal on the west side of the river. Under the proposed project, the Districts would enlarge the canals by raising the banks of each by an additional 1 to 3 feet to increase their capacity and then divert up to 1,000 cubic feet per second (cfs) of additional flow into each canal for power generation. On the east side of the Snake River, flows for power generation would be diverted into the Idaho Canal and conveyed about 3.1 miles to a new East Side Powerhouse and then discharged back to the Snake River. On the west side of the Snake River, flows for power generation would be diverted into the Great Western Canal and conveyed about 3.5 miles to a new West Side Powerhouse and then discharged back to the Snake River. The Districts propose to maintain a 1,000-cfs minimum flow in the 3.5-mile-long segment of the Snake River bypassed by the project whenever the project is operating. The total capacity of both powerhouses would be 2.5 megawatts (MW), with a 1.2–MW capacity for the single Kaplan turbine in the East Side Powerhouse and a 1.3–MW capacity for the single Kaplan turbine in the West Side Powerhouse. The average annual generation is expected to be 18.3 gigawatt-hours. The project would also include two new 12.5-kilovolt transmission lines, extending 2,500 feet and 400 feet from the East Side and West Side Powerhouses, respectively, to the interconnection points with the existing electrical distribution system.

l. *Locations of the Application:* 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

m. 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.

n. *Procedural Schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis	February 2020.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	April 2020.
Commission issues Draft Environmental Assessment (EA)	October 2020.
Comments on Draft EA	November 2020.
Modified terms and conditions	January 2021.
Commission issues Final EA	April 2021.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: December 19, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–27921 Filed 12–26–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: CP20–24–000.
Applicants: Sabine Pipe Line.
Description: Joint Application for Certificate of Public Convenience and Necessary for Application/Petition Request/Certificate of Public Convenience and Necessary.
Filed Date: 12/11/2019.
Accession Number: 20191211–5125.
Comments Due: 5 p.m. ET 1/2/20.

Docket Numbers: CP20–25–000.
Applicants: Bridgeline Holdings.
Description: Sabine Pipe Line LLC and for a Limited Jurisdiction Certificate of Bridgeline Holdings L/P under CP20–24.
Filed Date: 12/11/2019.
Accession Number: 20191211–5125.
Comments Due: 5 p.m. ET 1/2/20.

Docket Numbers: RP19–1353–003.
Applicants: Northern Natural Gas Company.
Description: Compliance filing 20191218 Motion Adjusted Base Case Rates to be effective 1/1/2020.
Filed Date: 12/18/19.
Accession Number: 20191218–5032.
Comments Due: 5 p.m. ET 12/30/19.

Docket Numbers: RP19–1353–004.
Applicants: Northern Natural Gas Company.
Description: Compliance filing 20191218 Interim Rates to be effective 1/1/2020.
Filed Date: 12/18/19.
Accession Number: 20191218–5138.
Comments Due: 5 p.m. ET 12/30/19.

Docket Numbers: RP20–338–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: § 4(d) Rate Filing: Removal of Expiring Chesapeake and Total Agreements to be effective 2/1/2020.
Filed Date: 12/18/19.
Accession Number: 20191218–5004.
Comments Due: 5 p.m. ET 12/30/19.

Docket Numbers: RP20–339–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Changes to Rate Schedule NNS–A to be effective 1/18/2020.
Filed Date: 12/18/19.
Accession Number: 20191218–5007.
Comments Due: 5 p.m. ET 12/30/19.

Docket Numbers: RP20–340–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: Neg Rate 2019–12–18 Amend DTE E2W to be effective 12/19/2019.
Filed Date: 12/18/19.
Accession Number: 20191218–5117.
Comments Due: 5 p.m. ET 12/30/19.

Docket Numbers: RP20–341–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Salt Creek) to be effective 1/1/2020.
Filed Date: 12/18/19.
Accession Number: 20191218–5140.
Comments Due: 5 p.m. ET 12/30/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 19, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–27919 Filed 12–26–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2004–307]

Holyoke Gas & Electric Department; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment.
b. *Project No:* 2004–307.
c. *Date Filed:* December 4, 2019.
d. *Applicant:* Holyoke Gas & Electric Department (HG&E).
e. *Name of Project:* Holyoke Hydroelectric Project.
f. *Location:* The project is located on the Holyoke Canal System, off of the Connecticut River in Hampden, Massachusetts.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.
h. *Applicant Contact:* Paul S. Ducheney, Superintendent—Electric Production, 99 Holyoke Gas and Electric Department, 99 Suffolk Street, Holyoke, MA 01040, (413) 536–9340, *ducheney@hged.com.*
i. *FERC Contact:* Kim Nguyen, (202) 502–6015, *kim.nguyen@ferc.gov.*
j. *Deadline for filing comments, motions to intervene, and protests:* January 21, 2020.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/*

ecomment.asp. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2004–307. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears 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. *Description of Request:* HG&E proposes to remove the E–F wheel and decommission the 266-kilowatt Beebe-Holbrook Station, one of six stations within the Holyoke Project. The Beebe-Holbrook Station has not operated since March 2019 due to the deterioration of the penstock under a main thoroughfare in the city's downtown area.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: December 19, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–27920 Filed 12–26–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ20–6–000]

Western Area Power Administration; Notice of Filing

Take notice that on December 13, 2019, the Western Area Power Administration submitted its tariff filing per 35.28(e): Open Access Transmission Tariff to be effective 2/11/2020.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on January 3, 2020.

Dated: December 18, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–27879 Filed 12–26–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–8826–000]

Walsh, William V.; Notice of Filing

Take notice that on December 17, 2019, William V. Walsh, submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d (b), Part 45 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR part 45.8 (2019).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or

protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on December 7, 2019.

Dated: December 18, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–27880 Filed 12–26–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC20–3–000]

Commission Information Collection Activities; Request for Emergency Extension for FERC–574

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of request for emergency extension.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on FERC–574 (Gas Pipeline Certificates: Hinshaw Exemption). FERC submitted a request to the Office of Management and Budget (OMB) for short term emergency extension for FERC–574 to ensure it remains active while FERC completes the pending PRA renewal process. No changes are being made to the reporting and recordkeeping requirements.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The PRA renewal process for FERC–574 is ongoing. To ensure that OMB approval of the current information collection remains active during the PRA renewal process, FERC has submitted a request to the OMB for short term emergency extension.

Title: FERC–574 (Gas Pipeline Certificates: Hinshaw Exemption).

OMB Control No.: 1902–0116.

Docket No. for Ongoing PRA Renewal: IC20–3–000.

FERC submitted written [1] and electronic formal requests to OMB on December 16, 2019, for an emergency three-month extension (to March 31, 2020). The request is pending at OMB.

Dated: December 18, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–27876 Filed 12–26–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10003–72–OA]

Notice of Meeting of the EPA Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public federal advisory committee teleconference.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that the Children's Health Protection Advisory Committee (CHPAC) will hold a public teleconference on January 15th, 2020 from 10:30 a.m. to 12:00 p.m. EST. The Children's Health Protection Advisory Committee is a federal advisory committee which advises EPA on science, regulations and other issues relating to children's environmental health.

DATES: January 15, 2020 from 10:30 a.m. to 12:00 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Nica Louie, Office of Children's Health Protection, U.S. EPA, MC 1107T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 564–7633 or *louie.nica@epa.gov.*

SUPPLEMENTARY INFORMATION: The meetings of the CHPAC are open to the public. An agenda will be posted to *https://www.epa.gov/children/childrens-health-protection-advisory-committee-chpac.*

Purpose of Meeting: The purpose of this teleconference is to discuss and finalize CHPAC's risk communication comment letter to the EPA Administrator.

Access and Accommodations: For information on access or services for individuals with disabilities, please contact Nica Louie at 202–564–7633 or *louie.nica@epa.gov.*

Dated: December 12, 2019.

Nica Louie,

Environmental Health Scientist.

[FR Doc. 2019–28011 Filed 12–26–19; 8:45 am]

BILLING CODE 6560–50–P

[1] The FERC letter is dated December 12, 2019.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2019–0685; FRL–10003–78–OGC]

Proposed Settlement Agreements, Clean Water Act Claims

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Environmental Protection Agency (EPA) Administrator's October 16, 2017 Directive Promoting Transparency and Public Participation in Consent Decrees and Settlement Agreements, notice is hereby given of three proposed settlement agreements to address petitions for review of EPA's final National Pollutant Discharge Elimination System (NPDES) general permits for discharges of stormwater from Small Municipal Separate Storm Sewer System (MS4) in Massachusetts and New Hampshire under Clean Water Act (CWA). The proposed settlements represent the results of mediation supervised by the U.S. Court of Appeals for the District of Columbia Circuit Mediation Program between EPA and petitioners the National Association of Homebuilders (NAHB), the Home Builders and Remodelers Association of Massachusetts, Inc. (HBRAMA), the New Hampshire Home Builders Association (NHHBA), the Center for Regulatory Reasonableness (CRR), the Massachusetts Coalition for Water Resources Stewardship (MCWRS), the Town of Franklin, Massachusetts, (Franklin), the City of Lowell, Massachusetts (Lowell), the Conservation Law Foundation (CLF), and the Charles River Watershed

Association (CRWA). Two of the proposed settlement agreements include commitments for EPA to propose certain modifications to the 2016 Massachusetts Small MS4 General Permit and the 2017 New Hampshire Small MS4 General Permit, and then to take final action on each proposal. The third settlement agreement commits EPA to process an individual small MS4 permit application from the City of Lowell, Massachusetts.

DATES: Written comments on the proposed settlement agreements must be received by January 27, 2020.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2019–0685, online at *www.regulations.gov* (EPA's preferred method). For comments submitted at *www.regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA generally will not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the persons identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Peter Z. Ford, Water Law Office, Office of General Counsel, (2355A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone: (202) 564–5593; email address: *ford.peter@epa.gov;* or Erin Flannery-Keith, Office of Regional Counsel, Region 1, Environmental Protection Agency, 5 Post Office Square, Boston, MA 02109; telephone: (617) 918–1096; email address: *flannery-keith.erin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreements

On April 4, 2016, EPA issued a final NPDES general permit for discharges of stormwater from small MS4s in Massachusetts (the MA MS4 Permit) under Clean Water Act (CWA) section 402(p). 33 U.S.C. 1342(p). On July 18, 2016, the Center for Regulatory Reasonableness (CRR) filed a petition for review of the permit in the U.S. Court of Appeals for the D.C. Circuit. CLF, CRWA, MCWRS, Franklin, NAHB, HBRAMA, and the City of Lowell also filed petitions for review of the permit, all of which were consolidated with CRR's petition in the D.C. Circuit. *Center for Regulatory Reasonableness, et al.* v. *EPA,* No. 16–1246 (D.C. Cir.) (2016 Massachusetts Small MS4 General Permit consolidated cases). On January 18, 2017, EPA issued a final NPDES general permit for discharges of stormwater from small MS4s in New Hampshire (the NH MS4 Permit). On February 1, 2017, CLF filed a petition for review of the permit in the U.S. Court of Appeals for the First Circuit. CRR, NAHB, and NHHBA later filed petitions for review in the D.C. Circuit. The First Circuit then transferred the CLF petition to the D.C. Circuit, where the D.C. Circuit consolidated it with the CRR, NAHB, and NHHBA petitions. *Center for Regulatory Reasonableness et. al* v. *EPA, Conservation Law Foundation, Intervenor* No. 17–1060 (D.C. Cir.) (2017 New Hampshire Small MS4 General Permit consolidated cases). The parties to both cases entered into mediation in 2017, and the D.C. Circuit has held the cases in abeyance during that time. The first two proposed settlement agreements describe the modifications that EPA would propose to the MA MS4 Permit and NH MS4 Permit. The proposed permit modifications would reflect the substantive agreements that parties reached during mediation. The agreements also specify that EPA would take final action on each proposed modification within nine months of the Agency's posting of the notice of availability (NOA) of the Draft Permit Modifications on its website and in the **Federal Register**; that petitioners would then dismiss their current petitions for review with prejudice; and that petitioners would agree not to challenge EPA's respective final actions if they modify the permits in a manner substantially similar to the proposed modifications (with one exception, discussed in the New Hampshire settlement agreement). The third settlement agreement commits Lowell, Massachusetts to voluntarily dismiss its petition without prejudice and commits EPA to process Lowell's individual permit application and then to take final action on Lowell's individual permit application, taking into consideration Lowell's application materials, public comments, and any additional information obtained in the course of the permit proceeding, in accordance with 40 CFR part 124.

For a period of thirty (30) days following the date of publication of this action, the Agency will accept written comments on the proposed settlement agreements from persons who are not named as parties or intervenors to the litigation in question. If so requested, EPA will also consider holding a public hearing on whether to enter into the proposed settlement agreements. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreements if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to these proposed settlement agreements should be withdrawn, EPA will agree to the terms of the proposed settlement agreements and so inform the Court.

In this action, EPA is soliciting comment only as to whether to enter the settlement agreements. EPA's planned proposed permit modifications to the Massachusetts and New Hampshire permits and statements of basis describing those proposed modifications are attached as Exhibits A and B to the Massachusetts and New Hampshire settlement agreements. EPA will subsequently offer the public the opportunity to comment on those proposed permit modifications pursuant to the regular permitting process as specified in 40 CFR part 124. The parties may execute the settlement agreements after this 30-day public notice period concludes. Following any Office of Management and Budget (OMB) review of the proposed Massachusetts and New Hampshire permit modifications, EPA will promptly transmit for publication in the **Federal Register** notices of availability (NOAs) of the proposed modifications to the two permits that are the same as the documents marked Exhibit A to both the Massachusetts and New Hampshire proposed settlement agreements, excepting non-substantive or typographical corrections. EPA will post the Draft Permit Modifications and accompanying fact sheets, *see* 40 CFR 124.8, that include the language attached as Exhibit B to both the Massachusetts and New Hampshire

proposed settlement agreements, on EPA Region 1's website. The NOAs will explain that EPA is reopening and reexamining specific parts of the permits. EPA will email notifications of the Draft Permit Modifications to regulated parties, the parties to this mediation, and the other interested parties on EPA Region 1's NPDES permit mailing list. The NOAs will provide for at least a 30-day public comment period that may, in EPA's discretion, be extended. Pursuant to 40 CFR 124.12(a), if EPA determines that there is a significant degree of public interest in the Draft Permit Modifications, EPA may schedule a public hearing and publish a notice of hearing on the same web page as the NOAs. In addition, at the time EPA submits the NOAs for publication, EPA will ask Massachusetts and New Hampshire to provide a water quality certification pursuant to Section 401 of the Clean Water Act, 33 U.S.C. 1341. After considering any public comments, EPA will take final action on the Draft Permit Modifications (''Final Agency Action'') within nine months of the Agency's posting of the NOAs of the Draft Permit Modifications on its website.

Regarding the proposed settlement agreement between EPA and the City of Lowell, Massachusetts, EPA similarly requests only comments on the settlement agreement. The proposed settlement agreement would commit EPA to take final action on Lowell's individual permit application in accordance with 40 CFR part 124, including providing public notice of any draft permit and offering opportunities for public comments and, if requested, public hearings on the permit's substantive requirements.

II. Additional Information About Commenting on the Proposed Settlement Agreements

A. How can I get a copy of the proposed settlement agreements?

The official public docket for this action (identified by EPA–HQ–OGC–2019–0685) contains copies of the proposed settlement agreements. The official public docket is available for public viewing at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. 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, and the telephone number for the Docket Center is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.'' It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket.

EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. 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.

Use of the *www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: December 18, 2019.

Steven M. Neugeboren,

Associate General Counsel.

[FR Doc. 2019–28014 Filed 12–26–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9048–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed December 16, 2019, 10 a.m. EST, through December 20, 2019 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20190296, Final, USFS, CA, Omya Sentinel & Butterfield Quarries Expansion, Review Period Ends: 01/27/2020, Contact: Scott Eliason 909–382–2830

EIS No. 20190302, Final, BLM, NV, Gemini Solar Final Resource Plan Amendment and Final EIS, Review Period Ends: 01/27/2020, Contact: Herman Pinales 702–515–5284

EIS No. 20190303, Draft Supplement, USACE, CA, Lower Cache Creek, Yolo County, CA, City of Woodland and Vicinity, Draft Supplemental Environmental Impact Statement for the Potential Flood Risk Reduction Project, Comment Period Ends: 02/10/2020, Contact: Keleigh Duey 916–557–5131

EIS No. 20190304, Final, USACE, CA, Amoruso Ranch, Review Period Ends: 01/27/2020, Contact: Leah M. Fisher 916–557–6639

EIS No. 20190305, Draft Supplement, USFS, MT, Greater Red Lodge Vegetation and Habitat Management Project., Comment Period Ends: 02/10/2020, Contact: Victoria Regula 406–848–7375

Amended Notice:

EIS No. 20190272, Draft Supplement, USACE, AL, Allatoona Lake Water Supply Storage Reallocation Study and Updates to Weiss and Logan Martin Reservoirs Project Water Control Manuals, Comment Period Ends: 01/29/2020, Contact: Jennifer Jacobson 251–690–2724

Revision to FR Notice Published 11/15/2019; Extending the Comment Period from 12/30/2019 to 1/29/2020.

Dated: December 20, 2019.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2019–27932 Filed 12–26–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1222; FRS 16292]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before January 27, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection.

Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–1222.

Title: Inmate Calling Services Annual Reporting, Certification, and Consumer Disclosure Requirements.

Form Number(s): FCC Form 2301(a) and FCC Form 2301(b).

Type of Review: Revision of a currently-approved collection.

Respondents: Business or other for profit.

Number of Respondents and Responses: 20 respondents; 20 responses.

Estimated Time per Response: 5 hours–80 hours.

Frequency of Response: Annual reporting and certification requirements; third party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 1, 4(i), 4(j), 201, 225, 276, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 201, 225, 276, and 303(r).

Total Annual Burden: 2,000 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission anticipates treating as presumptively confidential any particular information identified as proprietary by providers of inmate calling services (ICS).

Needs and Uses: Section 201 of the Communications Act of 1934 Act, as amended (Act), 47 U.S.C. 201, requires that ICS providers' interstate and international rates and practices be just and reasonable. Section 276 of the Act, 47 U.S.C. 276, requires that payphone service providers (including ICS providers) be fairly compensated for completed calls.

In the Second Report and Order and Third Further Notice of Proposed Rulemaking (*Second Report and Order*), WC Docket No. 12–375, FCC 15–136, the Commission undertook comprehensive reform of the ICS rules. The Commission, among other things, established new rate caps for interstate and intrastate ICS calls and limited and capped ancillary service charges. To enable the Commission to ensure compliance with the rules adopted in the *Second Report and Order* and

monitor the effectiveness of the ICS reforms, the Commission required all ICS providers to file annual reports providing data and other information on their ICS operations.

In particular, the Commission required each ICS provider to file a report annually specifying, for the prior calendar year: Interstate, international, and intrastate minutes of use by facility; and the name, size, and type of facility being served; fees for any ancillary services, the amount of these fees, and the number of times each fee was imposed; monthly site commission payments; rates and minutes of use for video calling services by facility, as well as ancillary fee charges for such services; the number of disability-related calls, problems associated with such calls, and ancillary fees charged in connection with such calls; and the number of complaints received related to, for example, dropped calls and poor call quality and the number of instances of each by TTY and TRS users. The annual reports ensure that the Commission has access to the information it needs to fulfill its regulatory duties, while minimizing the burden on ICS providers.

The Commission required that an ICS provider certify annually the accuracy of the data and other information submitted in the provider's annual report and the provider's compliance with the Commission's ICS rates. Pursuant to the authority delegated to it by the Commission in the *Second Report and Order,* the Commission's Wireline Competition Bureau (Bureau) created standardized templates for the annual reports (FCC Form 2301(a)) and certifications (FCC Form 2301(b)). The Bureau provided instructions that explain the reporting and certification requirements and reduce the burden of the data collection. The Commission also required ICS providers to disclose to consumers their interstate, intrastate, and international rates and ancillary service charges.

On June 13, 2017, the D.C. Circuit vacated the video visitation requirements in the annual report. Pursuant to the D.C. Circuit's mandate, the Commission has removed the video visitation reporting requirements in the annual report and amended the instructions to reflect the removal of this requirement. As part of the Commission's continued administration of the ICS data collection, the Commission has modified the instructions for FCC Form 2301(a) and FCC Form 2301(b) in several additional respects. These changes make the instructions clearer and will make the annual reports easier to understand and analyze. The amended instructions require ICS providers to: Submit all reports using the electronic Excel template provided by the Commission, and to provide the data in a machine-readable, manipulatable format; provide city and state information for each facility served; group the facilities served by underlying contracts in the section for ICS Rates; separately report and explain their rates for debit/prepaid calls and collect calls; report fixed site commission payments by facility as well as by contract; and explain certain entries, including any entry that omits requested information. These changes will impose only a minimal additional burden on providers because they address only information that providers usually and customarily compile in the normal course of their business activities. The information will help the Commission continue to analyze changes in the ICS industry, to monitor compliance with the ICS rules, and to enforce these rules.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2019–27925 Filed 12–26–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 19–1215]

Filing Window for New Rural Digital Low Power Television and TV Translator Applicants Displaced by Incentive Auction and Station Repack December 2, 2019 to January 31, 2020

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Media Bureau of the Federal Communications Commission announces a window filing opportunity for pending new digital low power and TV translator stations (LPTV/translator stations) displaced by the Incentive Auction and station repack to amend their applications to specify a new channel between 2 to 36 (in core channels).

DATES: The window will open December 2, 2019 and close on January 31, 2020 at 11:59 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Video Division, Media Bureau, Federal Communications Commission, *Shaun.Maher@fcc.gov,* (202) 418–2324.

SUPPLEMENTARY INFORMATION: In 2009, the Media Bureau began accepting applications for new rural digital LPTV/translator stations on a limited basis and then later froze those filings. The Media Bureau suspended processing of these applications due to the possibility that they could be displaced by the forthcoming Incentive Auction and repacking process. With the completion of the Incentive Auction and the progress made in the post-Incentive Auction transition, it is appropriate to give these applicants an opportunity to amend their applications to specify a new digital in core channel.

To be eligible to file in this window, the applicant must have a pending application for new digital LPTV/translator station that was displaced by the Incentive Auction and repacking process. In order to be considered ''displaced'' for purposes of filing in this window, an LPTV/translator applicant must: (1) Be subject to displacement by a full power or Class A television station on the repacked television band (channels 2–36) as a result of the Incentive Auction and repacking process, (2) have proposed a frequency repurposed for new, flexible use by a 600 MHz Band wireless licensee, or (3) have proposed a frequency that will serve as part of the 600 MHz Band guard bands (which includes the duplex gap).

In addition to specifying a new in core digital channel, applicants may modify their technical specifications provided such changes do not result in a change in transmitter site of more than 48 kilometers from the reference coordinates specified in their original application. To preserve the ''rural'' filing restriction in the original 2009 window, amended facilities must specify transmitting antenna site coordinates (geographic latitude and longitude) located more than 121 kilometers (75 miles) from the reference coordinates of the cities listed in Appendix A of the Public Notice. The proposed facilities may not cause interference to the predicted service of licenses and valid construction permits for full power television, Class A television and LPTV/translator stations nor the predicted service of any previously-filed application for any of these services. Eligible applicants may file an amendment to their pending application and such filing will be treated as a minor amendment provided it complies with these restrictions. There is no fee for filing this amendment.

All amendments submitted during the window will be considered filed on the last day of the window. Mutually exclusive (MX) applicants will be given an opportunity to resolve their MX through settlement or engineering

amendment that may be submitted during a settlement window to be announced by the Media Bureau by separate public notice. If two or more applications remain MX with one another after the close of the settlement window, the applications will be subject to the Commission's competitive bidding rules.

Applications that are not amended to specify an in core channel during this window will be subsequently dismissed.

For additional information or questions, please contact Mark Colombo (technical), *Mark.Colombo@fcc.gov,* (202) 418–7611 or Shaun Maher (legal), *Shaun.Maher@fcc.gov,* (202) 418–2324 of the Video Division, Media Bureau.

Barbara Kreisman,

Chief, Video Division, Media Bureau.

APPENDIX A

Amendments filed during the window to allow applicants for new digital low power television and television translator stations on channels 37 to 51 (out of core channels) to specify a channel between 2 and 36 (in core channels) may not propose facilities located within 121 kilometers (75 miles) of the reference coordinates listed below for the following cities. Source of cities: January 1, 2008 Nielsen Media Research Estimates. Source of coordinates: Section 76.53 of the Commission's Rules.

DMA Ranking Market	North latitude	West longitude
1. New York City, New York	40–45–06	073–59–39
2. Los Angeles, California	34–03–15	118–14–28
3. Chicago, Illinois	41–52–28	87–38–22
4. Philadelphia, Pennsylvania	39–56–58	75–9–21
5. Dallas/Fort Worth, Texas	32–47–09	096–47–37
6. San Francisco, California	37–46–39	122–24–40
7. Boston, Massachusetts	42–21–24	71–3–25
8. Atlanta, Georgia	33–45–10	84–23–37
9. Washington, District of Columbia	38–53–51	77–0–33
10. Houston, Texas	29–45–26	95–21–37
11. Detroit, Michigan	42–19–48	83–2–57
12. Phoenix, Arizona	33–27–12	112–4–28
13. Tampa, Florida	27–56–58	82–27–26
14. Seattle, Washington	47–36–32	122–20–12
15. Minneapolis, Minnesota	44–58–57	93–15–43
16. Miami, Florida	25–46–37	80–11–32
17. Cleveland, Ohio	41–29–51	81–41–50
18. Denver, Colorado	39–44–58	104–59–22
19. Orlando, Florida	28–32–42	81–22–38
20. Sacramento, California	38–34–57	122–23–34
21. St. Louis, Missouri	38–37–45	90–12–22
22. Pittsburgh, Pennsylvania	40–26–19	80–0–0
23. Portland, Oregon	45–31–6	122–40–35
24. Baltimore, Maryland	39–17–26	76–36–45
25. Charlotte, North Carolina	35–13–44	80–50–45
26. Indianapolis, Indiana	39–46–7	86–9–46
27. San Diego, California	32–42–53	117–9–21
28. Raleigh, North Carolina	35–46–38	78–38–21
29. Hartford, Connecticut	41–46–12	72–40–49
30. Nashville, Tennessee	36–9–33	86–46–55
31. Kansas City, Missouri	39–4–56	94–35–20
32. Columbus, Ohio	39–57–47	83–0–17
33. Cincinnati, Ohio	39–6–7	84–30–35
34. Milwaukee, Wisconsin	43–2–19	87–54–15
35. Salt Lake City, Utah	40–45–23	111–51–26
36. Greenville, South Carolina	34–50–50	82–24–1
37. San Antonio, Texas	29–25–37	98–29–6
38. West Palm Beach, Florida	26–42–36	80–3–5
39. Grand Rapids, Michigan	42–58–3	85–40–13
40. Birmingham, Alabama	33–31–1	86–48–36
41. Harrisburg, Pennsylvania	40–15–43	76–52–59
42. Norfolk, Virginia	36–51–10	76–17–21
43. Las Vegas, Nevada	36–10–20	115–8–37
44. Albuquerque, New Mexico	35–5–1	106–39–5
45. Oklahoma City, Oklahoma	35–28–26	97–31–4
46. Greensboro, North Carolina	36–4–17	79–47–25
47. Memphis, Tennessee	35–8–46	90–3–13
48. Louisville, Kentucky	38–14–47	85–45–49
49. Jacksonville, Florida	30–19–44	81–39–42
50. Buffalo, New York	42–52–52	78–52–21
51. Austin, Texas	30–16–9	97–44–37
52. Providence, Rhode Island	41–49–32	71–24–41
53. New Orleans, Louisiana	29–56–53	90–4–10
54. Scranton, Pennsylvania	41–24–32	75–39–46
55. Fresno, California	36–44–12	119–47–11
56. Albany, New York	42–39–1	73–45–1
57. Little Rock, Arkansas	34–44–52	92–16–37
58. Knoxville, Tennessee	35–57–39	83–55–7
59. Richmond, Virginia	37–32–15	77–26–9

DMA Ranking Market	North latitude	West longitude
60. Tulsa, Oklahoma	36–9–12	95–59–34
61. Mobile, Alabama	30–41–36	88–2–33
62. Dayton, Ohio	39–45–32	84–11–43
63. Fort Myers, Florida	26–38–42	81–52–6
64. Lexington, Kentucky	38–2–50	84–29–46
65. Huntington, West Virginia	38–25–12	82–26–33
66. Flint, Michigan	43–0–50	83–41–33
67. Roanoke, Virginia	37–16–13	79–56–44
68. Tucson, Arizona	32–13–15	110–58–8
69. Wichita, Kansas	37–41–30	97–20–16
70. Green Bay, Wisconsin	44–30–48	88–0–50
71. Des Moines, Iowa	41–35–14	93–37–0
72. Toledo, Ohio	41–39–14	83–32–39
73. Honolulu, Hawaii	21–18–36	157–51–48
74. Springfield, Missouri	37–13–3	93–17–32
75. Omaha, Nebraska	41–15–42	95–56–14
76. Portland, Maine	43–39–33	70–15–19
77. Spokane, Washington	47–39–32	117–25–33
78. Rochester, New York	43–9–41	77–36–21
79. Paducah, Kentucky	37–5–13	88–35–56
80. Syracuse, New York	43–3–4	76–9–14
81. Columbia, South Carolina	34–0–2	81–2–0
82. Shreveport, Louisiana	32–30–46	93–44–58
83. Huntsville, Alabama	34–44–18	86–35–19
84. Champaign, Illinois	40–7–5	88–14–48
85. Madison, Wisconsin	43–4–23	89–22–55
86. Chattanooga, Tennessee	35–2–41	85–18–32
87. Cedar Rapids, Iowa	41–58–48	91–39–48
88. Harlingen, Texas	26–11–29	97–41–35
89. South Bend, Indiana	43–40–33	86–15–1
90. Jackson, Mississippi	32–17–56	90–11–6
91. Johnson City, Tennessee	36–19–4	82–20–56
92. Burlington, Vermont/Plattsburgh, New York	44–28–34	73–12–46
93. Colorado Springs, Colorado	38–50–7	104–49–16
94. Baton Rouge, Louisiana	30–26–58	91–11–0
95. Waco, Texas	31–33–12	97–8–0
96. Davenport, Iowa	41–31–24	90–34–21
97. Savannah, Georgia	32–4–42	81–5–37
98. El Paso, Texas	31–45–36	106–29–21
99. Johnstown, Pennsylvania	40–19–35	78–55–3
100. Charleston, South Carolina	32–46–35	79–55–53

[FR Doc. 2019–27941 Filed 12–26–19; 8:45 am]

BILLING CODE 6712–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Docket No. OP–1681]

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA08

Extension of Comment Period; Request for Information on Application of the Uniform Financial Institutions Rating System

AGENCY: The Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation.

ACTION: Notice and request for information; extension of comment period.

SUMMARY: On October 31, 2019, the Board of Governors of the Federal Reserve System (Board) and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) published in the **Federal Register** a request for information (RFI) seeking information and comments from interested parties regarding the consistency of ratings assigned by the agencies under the Uniform Financial Institutions Rating System (UFIRS). The agencies have determined that an extension of the comment period until February 28, 2020, is appropriate.

DATES: The comment period for the notice published on October 31, 2019 (84 FR 58383), regarding the RFI on application of UFIRS, is extended from December 30, 2019, to February 28, 2020.

ADDRESSES: You may submit comments by any of the methods identified in the proposal.

FOR FURTHER INFORMATION CONTACT:

Board: Alex Kobulsky, Senior Financial Institution Policy Analyst II, (202) 452–2031, and Anna Lee Hewko, Associate Director, (202) 530–6260, Division of Supervision and Regulation; or Patricia Yeh, Senior Counsel, (202) 452–3089, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Rae-Ann Miller, Associate Director, Risk Management Policy; Samuel B. Lutz, Counsel, Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On October 31, 2019, the agencies published in the **Federal Register** a RFI seeking information and comments from interested parties regarding the consistency of ratings assigned by the agencies under UFIRS. The assigned ratings are commonly known as CAMELS ratings. The agencies also sought feedback concerning the current

use of CAMELS ratings by the agencies in their bank application and enforcement action processes. The RFI stated that the comment period would close on December 30, 2019. The agencies have received requests to extend the comment period. An extension of the comment period will provide additional opportunity for the public to prepare comments to address the questions posed by the agencies. Therefore, the agencies are extending the end of the comment period for the proposal from December 30, 2019, to February 28, 2020.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 12, 2019.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on December 16, 2019.

Annmarie Boyd,

Assistant Executive Secretary.

[FR Doc. 2019–27848 Filed 12–26–19; 8:45 am]

BILLING CODE 6714–01–P 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the 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 7, 2020.

A. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Jamie Lynn Nelson, Washburn, North Dakota;* to acquire voting shares of McLean Bank Holding Company, Garrison, North Dakota, and thereby indirectly acquire voting shares of Garrison State Bank & Trust, Garrison, North Dakota; Bank of Turtle Lake, Turtle Lake, North Dakota; and Farmers Security Bank, Washburn, North Dakota.

B. Federal Reserve Bank of Cleveland (Mary S. Johnson, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *WVS Financial Corp. Employee Stock Ownership Plan, John A. Howard, Jr., trustee, both of Pittsburgh, PA;* to acquire voting shares of WVS Financial Corp. and thereby indirectly acquire voting shares of West View Savings Bank, both of Pittsburgh, PA.

Board of Governors of the Federal Reserve System, December 19, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–27851 Filed 12–26–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Financial Statements for Holding Companies (FR Y–9 Reports; OMB No. 7100–0128).

DATES: Comments must be submitted on or before February 25, 2020.

ADDRESSES: You may submit comments, identified by FR Y–9 Reports by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under

authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Report title: Financial Statements for Holding Companies.

Agency form number: FR Y–9C, FR Y–9LP, FR Y–9SP, FR Y–9ES, and FR Y–9CS.

OMB control number: 7100–0128.

Frequency: Quarterly, Semi-annually, annually, and on occasion.

Respondents: Bank holding companies, certain savings and loan holding companies,[1] any securities holding companies, and U.S. intermediate holding companies (collectively, ''HCs'').

Estimated number of respondents: FR Y–9C (non-advanced approaches HCs CBLR): 106; FR Y–9C (non-advanced approaches HCs non-CBLR): 237; FR Y–9C (advanced approaches HCs): 20; FR Y–9LP: 434; FR Y–9SP: 3,960; FR Y–9ES: 83; FR Y–9CS: 236.

Estimated average hours per response: FR Y–9C (non-advanced approaches HCs CBLR): 35.00 hours; FR Y–9C (non-advanced approaches HCs non-CBLR): 46.84 hours; FR Y–9C (advanced approaches HCs): 47.59 hours; FR Y–9LP: 5.27 hours; FR Y–9SP: 5.40 hours; FR Y–9ES: 0.50 hours; FR Y–9CS: 0.50 hours.

Estimated annual burden hours: FR Y–9C (non-advanced approaches HCs CBLR): 14,840 hours; FR Y–9C (non-advanced approaches HCs non-CBLR): 44,404 hours; FR Y–9C (advanced approaches HCs): 3,807 hours; FR Y–9LP: 9,149 hours; FR Y–9SP: 42,768 hours; FR Y–9ES: 42 hours; FR Y–9CS: 472 hours.

General description of report: The FR Y–9C consists of standardized financial statements similar to the Call Reports filed by commercial banks.[2] The FR Y–9C collects consolidated data from HCs and is filed quarterly by top-tier HCs with total consolidated assets of $3 billion or more.[3]

The FR Y–9LP, which collects parent company only financial data, must be submitted by each HC that files the FR Y–9C, as well as by each of its subsidiary HCs.[4] The report consists of standardized financial statements.

The FR Y–9SP is a parent company only financial statement filed semiannually by HCs with total consolidated assets of less than $3 billion. In a banking organization with total consolidated assets of less than $3 billion that has tiered HCs, each HC in the organization must submit, or have the top-tier HC submit on its behalf, a separate FR Y–9SP. This report collects basic balance sheet and income data for the parent company, as well as data on its intangible assets and intercompany transactions.

The FR Y–9ES is filed annually by each employee stock ownership plan (ESOP) that is also an HC. The report collects financial data on the ESOP's benefit plan activities. The FR Y–9ES consists of four schedules: A Statement of Changes in Net Assets Available for Benefits, a Statement of Net Assets Available for Benefits, Memoranda, and Notes to the Financial Statements.

The FR Y–9CS is a voluntary free-form supplemental report that the Board may utilize to collect critical additional data from HCs deemed to be needed in an expedited manner. The FR Y–9CS data collections are used to assess and monitor emerging issues related to HCs, and the report is intended to supplement the other FR Y–9 reports. The data requested by the FR Y–9CS would depend on the Board's data needs in a given situation. For example, changes made by the Financial Accounting Standards Board (FASB) may introduce into U.S. generally accepted accounting principles (U.S. GAAP) new data items that are not currently collected by the other FR Y–9 reports. The Board could use the FR Y–9CS report to collect these data until the items are implemented into the other FR Y–9 reports.[5]

Proposed revisions: The Board proposes to revise the FR Y–9C to implement various changes to the Board's capital rule that the Board has recently finalized. Each of the revisions to the FR Y–9C would take effect the same quarter as the effective date of the relevant associated revision to the Board's capital rule. The Board is also proposing an instructional revision for the reporting of operating leases on the FR Y–9C that would take effect March 31, 2020, as well as a FR Y–9C instructional change for home equity lines of credit that convert from revolving to non-revolving status that would take effect March 31, 2021. Finally, the Board proposes to revise the FR Y–9CS to clarify that response to the report is voluntary. Additional details are provided below for each of these proposed changes.

Simplifications Rule

The Board proposes to revise the FR Y–9C to implement the Board's final rule to simplify certain aspects of the capital rule (simplifications rule), which made a number of changes to the calculation of common equity tier 1 (CET1) capital, additional tier 1 capital, and tier 2 capital for non-advanced approaches holding companies.[6] [7] The

[1] An SLHC must file one or more of the FR Y–9 series of reports unless it is: (1) A grandfathered unitary SLHC with primarily commercial assets and thrifts that make up less than 5 percent of its consolidated assets; or (2) a SLHC that primarily holds insurance-related assets and does not otherwise submit financial reports with the SEC pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

[2] The Call Reports (OMB No. 7100–0036) consist of the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less than $5 Billion (FFIEC 051), the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only (FFIEC 041), and the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031).

[3] Under certain circumstances described in the FR Y–9C's General Instructions, HCs with assets under $3 billion may be required to file the FR Y–9C.

[4] A top-tier HC may submit a separate FR Y–9LP on behalf of each of its lower-tier HCs.

[5] The FR Y–9CS was most recently used by the Board on June 30, 2008. In that collection, data were requested from banking organizations implementing an Advanced Measurement Approach to calculate operational risk capital under the Basel II Risk-Based Capital Framework. The report was used to conduct a voluntary Loss Data Collection Exercise (LDCE) relating to operational risk.

[6] 84 FR 35234 (July 22, 2019).

[7] In general, an advanced approaches HC, as defined in the Board's Regulation Q, has consolidated total assets of $250 billion or more, has consolidated total on-balance sheet foreign exposure of $10 billion or more, has a subsidiary depository institution that uses the advanced approaches to calculate its total risk-weighted assets, or elects to use the advanced approaches to calculate its total risk-weighted assets. See 12 CFR 217.100.

simplifications rule results in different calculations for these tiers of regulatory capital for non-advanced approaches holding companies and advanced approaches HCs. To reflect the effects of the simplifications rule for non-advanced approaches HCs, the Board proposes to adjust the existing regulatory capital calculations reported on Schedule HC–R, Part I. Although the report would include two sets of calculations (for non-advanced approaches HCs and advanced approaches HCs), a HC would complete only the set applicable to that holding company.

The simplifications rule has an effective date of April 1, 2020. On October 29, 2019, the Board issued a final rule that permits non-advanced approaches banking organizations to implement the simplifications rule on January 1, 2020.[8] As a result, non-advanced approaches HCs have the option to implement the simplifications rule on the revised effective date of January 1, 2020, or wait until the quarter beginning April 1, 2020. The Board proposes revisions to Schedule HC–R, Regulatory Capital, to implement the associated changes to the capital rule effective as of the March 31, 2020, report date, consistent with the simplifications rule's optional effective date.

Additionally, the Board is proposing a number of revisions that would simplify the capital calculations on Schedule HC–R, Part I and Part II, and thereby reduce burden. As previously mentioned, the FR Y–9C would include two sets of calculations (one that incorporates the effects of the simplifications rule and another that does not); therefore, a holding company would only complete the column for the set of calculations applicable to that holding company. For the March 31, 2020, report date, non-advanced approaches HCs that elect to adopt the simplifications rule on January 1, 2020, would complete the column for the set of calculations that incorporates the effects of the simplifications rule. Non-advanced approaches HCs that elect to wait to adopt the simplifications rules on April 1, 2020, and all advanced approaches holding companies would complete the column for the set of calculations that does not reflect the effects of this rule (*i.e.,* that reflects the capital calculation in effect for all holding companies before this revision). Beginning with the June 30, 2020, report date, all non-advanced approaches holding companies would complete the column for the set of calculations that incorporates the effects of the simplifications. The advanced approaches holding companies would complete the column that does not reflect the effects of the simplifications rule.

Currently, the regulatory capital calculations in FR Y–9C Schedule HC–R require that a holding company's capital cannot include mortgage servicing assets (MSAs), certain temporary difference deferred tax assets (DTAs), and significant investments in the common stock of unconsolidated financial institutions in an amount greater than 10 percent of CET1 capital, on an individual basis, and that those three data items combined cannot comprise more than 15 percent of CET1 capital. Under the simplifications rule, the Board increased the threshold for MSAs, DTAs that could not be realized through net operating loss carrybacks (temporary difference DTAs),[9] and investments in the capital of unconsolidated financial institutions for non-advanced approaches HCs. In addition, the Board revised the capital calculation for minority interest included in the various capital categories for non-advanced approaches HCs and the calculation of the capital conservation buffer. The Board is proposing to revise Schedule HC–R to permit non-advanced approaches HCs to include as capital MSAs and temporary difference DTAs up to 25 percent of CET1 capital, on an individual basis. The 15 percent aggregate limit would be removed.

The simplifications rule also combined the current three categories of investments in financial institutions (non-significant investments in the capital of unconsolidated financial institutions, significant investments in the capital of unconsolidated financial institutions that are in the form of common stock, and significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock) into a single category, investments in the capital of unconsolidated financial institutions, and will apply a limit of 25 percent of CET1 capital on the amount of these investments that can be included in capital. Any investments in excess of the 25 percent limit would be deducted from capital using the corresponding deduction approach. The Board proposes to revise the FR Y–9C to implement this change.

Consistent with the current capital rule, a holding company must risk weight MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions that are not deducted. As a result of the simplifications rule, non-advanced approaches banking organizations will not be required to differentiate among categories of investments in the capital of unconsolidated financial institutions. The risk weight for such equity exposures generally will be 100 percent, provided the exposures qualify for this risk weight.[10] For non-advanced approaches banking organizations, the simplifications rule eliminates the exclusion of significant investments in the capital of unconsolidated financial institutions in the form of common stock from being eligible for a 100 percent risk weight.[11] The application of the 100 percent risk weight (i) requires a banking organization to follow an enumerated process for calculating adjusted carrying value and (ii) mandates the inclusion of equity exposures to determine whether the threshold has been reached. Equity exposures that do not qualify for a preferential risk weight will generally receive risk weights of either 300 percent or 400 percent, depending on whether the equity exposures are publicly traded. The Board proposes to revise the FR Y–9C to implement this change, as discussed below.

In order to implement these regulatory capital changes, a number of revisions are proposed to Schedule HC–R, Part I, for non-advanced approaches HCs. Specifically, the Board proposes to create two columns for existing items 11 through 19 on the FR Y–9C. Column A would be reported by non-advanced approaches HCs that elect to adopt the simplifications rule on January 1, 2020, in the March 31, 2020, FR Y–9C report

[8] *See* FR press release, dated October 29, 2019. *https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20191029a2.pdf.*

[9] The Board notes that the Tax Cuts and Jobs Act, Public Law 115–97, 131 Stat. 2054 (2017), eliminated the concept of net operating loss carrybacks for U.S. federal income tax purposes, although the concept may still exist in particular jurisdictions for state or foreign income tax purposes.

[10] Note that for purposes of calculating the 10 percent nonsignificant equity bucket, the capital rule excludes equity exposures that are assigned a risk weight of zero percent or 20 percent and community development equity exposures and the effective portion of hedge pairs, both of which are assigned a 100 percent risk weight. In addition, the 10 percent non-significant bucket excludes equity exposures to an investment firm that would not meet the definition of traditional securitization were it not for the application of criterion 8 of the definition of traditional securitization, and has greater than immaterial leverage.

[11] Equity exposures that exceed, in the aggregate, 10 percent of a non-advanced approaches banking organization's total capital would then be assigned a risk weight based upon the approaches available in sections 52 and 53 of the capital rule. 12 CFR 217.52 and .53.

and by all non-advanced approaches HCs beginning in the June 30, 2020 FR Y–9C report using the definitions under the simplifications rule. Column A would not include items 11 or 16, and items 13 through 15 would be designated as items 13.a, column A through item 15.a, column A to reflect the new calculation methodology. Column B would be reported by advanced approaches HCs and by non-advanced approaches HCs that elect to wait to adopt the simplifications rule on April 1, 2020, in the March 31, 2020, FR Y–9C report and only by advanced approaches HCs beginning in the June 30, 2020, FR Y–9C report using the existing definitions. Existing items 13 through 15 would be designated as items 13.b, column B through item 15.b, column B to reflect continued use of the existing calculation methodology.

With respect to the revisions related to the capital calculation for minority interests, the Board proposes to modify the FR Y–9C instructions to reflect the ability of non-advanced approaches HCs to use the revised method under the simplifications rule to calculate minority interest in existing items 4, 22, and 29 (CET1, additional tier 1, and tier 2 minority interest, respectively).

Community Bank Leverage Ratio

The Board proposes to revise the FR Y–9C to implement a simplified alternative measure of capital adequacy, the community bank leverage ratio (CBLR), for qualifying HCs with less than $10 billion in total consolidated assets. The proposed revisions would align the FR Y–9C with the CBLR final rule,[12] which implemented section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA).[13] The proposed revisions to the FR Y–9C would become effective for the March 31, 2020, report date, the first report date in respect of which a HC could elect to opt into the framework established by the community leverage bank ratio final rule (CBLR framework).

Under the CBLR final rule, HCs that have less than $10 billion in total consolidated assets, meet risk-based qualifying criteria, and have a leverage ratio of greater than 9 percent would be eligible to opt into the CBLR framework. A HC that opts into the CBLR framework, maintains a leverage ratio of greater than 9 percent, and continues to meet the other qualifying criteria will be considered to have satisfied the generally applicable risk-based and leverage capital requirements and any other capital or leverage requirements to which it is subject.

Under the CBLR final rule, a holding company that opts into the CBLR framework (CBLR HC) may opt out of the CBLR framework at any time, without restriction, by reverting to the generally applicable capital requirements in the Board's capital rule and reporting its regulatory capital information in the FR Y–9C Schedule HC–R, ''Regulatory Capital,'' Parts I and II, at the time of opting out.

As described in the CBLR final rule, a CBLR HC that no longer meets the qualifying criteria for the CBLR framework will be required within two consecutive calendar quarters (grace period) either to satisfy once again the qualifying criteria or demonstrate compliance with the generally applicable capital requirements. During the grace period, the HC would continue to be treated as a CBLR HC and would be required to report its leverage ratio and related components in FR Y–9C Schedule HC–R, Part I.[14] A CBLR HC that ceases to meet the qualifying criteria as a result of a business combination (*e.g.,* a merger) will receive no grace period, and will immediately become subject to the generally applicable capital requirements. Similarly, a CBLR HC that fails to maintain a leverage ratio greater than 8 percent would not be permitted to use the grace period and would immediately become subject to the generally applicable capital requirements.

The Board proposes to incorporate revisions related to the CBLR framework into Schedule HC–R, Part I. As provided in the CBLR final rule, the numerator of the community bank leverage ratio will be tier 1 capital, which is currently reported on Schedule HC–R, Part I, item 26. Therefore, the Board is not proposing any changes related to the numerator of the CBLR.

As provided in the planned CBLR final rule, the denominator of the community bank leverage ratio will be average total consolidated assets. Specifically, average total consolidated assets would be calculated in accordance with the existing reporting instructions for Schedule HC–R, Part I, items 36 through 39. The Board is not proposing any substantive changes related to the denominator of the community bank leverage ratio. However, the Board is proposing to move existing items 36 through 39 of Schedule HC–R, Part I, and renumber them as items 27 through 30 of Schedule HC–R, Part I, to consolidate all of the CBLR-related capital items earlier in Schedule HC–R, Part I.

As provided in the CBLR final rule, an HC will calculate its community bank leverage ratio by dividing tier 1 capital by average total consolidated assets (as adjusted), and the community bank leverage ratio would be reported as a percentage, rounded to four decimal places. Since this calculation is essentially identical to the existing calculation of the tier 1 leverage ratio in Schedule HC–R, Part I, item 44, the Board is not proposing a separate item for the community bank leverage ratio in Schedule HC–R, Part I. Instead, the Board proposes to move the tier 1 leverage ratio from item 44 of Part I and renumber it as item 31, and rename the item to the Leverage Ratio, as this ratio would apply to all HCs (as the community bank leverage ratio for qualifying HCs or the tier 1 Leverage Ratio for all other HCs).

As provided in the CBLR final rule, a CBLR bank will need to satisfy certain qualifying criteria in order to be eligible to opt into the CBLR framework. The proposed items identified below would collect information necessary to ensure that a HC continuously meets the qualifying criteria for using the CBLR framework.

Qualifying Criteria for Using the CBLR Framework

A HC would need to satisfy certain qualifying criteria to be eligible to opt into the CBLR framework. The proposed items below would collect the information necessary to ensure that an HC continuously meets the qualifying criteria for using the CBLR framework. Specifically, a qualifying HC must not be an advanced approaches (AA) HC and must meet the following criteria:

- A leverage ratio of greater than 9%;
- Total consolidated assets of less than $10 billion;
- Total trading assets and trading liabilities of 5 percent or less of total consolidated assets; and
- Total off-balance sheet exposures (excluding derivatives other than sold credit derivatives and unconditionally cancelable commitments) of 25 percent or less of total consolidated assets.[15]

[12] 84 FR 61776 (November 13, 2019).

[13] *See* Public Law 115–174, 132 Stat. 1296 (2018).

[14] For example, if the CBLR HC no longer meets one of the qualifying criteria as of February 15, and still does not meet the criteria as of the end of that quarter, the grace period for such an HC will begin as of the end of the quarter ending March 31. The banking organization may continue to use the CBLR framework as of June 30, but will need to comply fully with the generally applicable rule (including the associated reporting requirements) as of September 30, unless the HC once again meets all qualifying criteria of the CBLR framework, including a leverage ratio of greater than 9 percent, by that date.

[15] As provided in the CBLR final rule, the Board would reserve the authority to disallow the use of

Continued

Accordingly, the Board proposes to collect the items described below from CBLR HCs only:

• In proposed item 32 of Schedule HC–R, Part I, a CBLR HC would report total assets, as reported in Schedule HC, item 12.

• In proposed item 33, a CBLR HC would report the sum of trading assets from Schedule HC, item 5, and trading liabilities from Schedule HC, item 15, in Column A. The HC would also report that sum divided by total assets from Schedule HC, item 12, and expressed as a percentage in Column B. As provided in the CBLR final rule, trading assets and trading liabilities would be added together, not netted, for purposes of this calculation. Also as discussed in the CBLR final rule, a HC would not meet the definition of a qualifying community banking organization for purposes of the CBLR framework if the percentage reported in Column B is greater than 5 percent.

• In proposed items 34.a through 34.d, a CBLR HC would report information related to commitments, other off-balance sheet exposures, and sold credit derivatives.

—In proposed item 34.a, a CBLR HC would report the unused portion of conditionally cancellable commitments. This amount would be the amount of all unused commitments less the amount of unconditionally cancellable commitments, as discussed in the CBLR final rule and defined in the agencies' capital rule.[16] This item would be calculated consistent with the sum of Schedule HC–R, Part II, items 18.a and 18.b, Column A.

—In proposed item 34.b, a CBLR HC would report total securities lent and borrowed, which would be the sum of Schedule HC–L, items 6.a and 6.b.

—In proposed item 34.c, a CBLR HC would report the sum of certain other off-balance sheet exposures and sold credit derivatives. Specifically, a CBLR HC would report the sum of self-liquidating, trade-related contingent items that arise from the movement of goods; transaction-related contingent items (performance bonds, bid bonds, warranties, and performance standby letters of credit); sold credit protection in the form of guarantees and credit derivatives; credit-enhancing representations and warranties; financial standby letters of credit; forward agreements that are not derivative contracts; and off-balance sheet securitizations. A CBLR HC would not include derivatives that are not sold credit derivatives, such as foreign exchange swaps and interest rate swaps, in proposed item 34.c.

—In proposed item 34.d, a CBLR HC would report the sum of proposed items 34.a through 34.c in Column A. The HC would also report that sum divided by total assets from Schedule HC, item 12, and expressed as a percentage in Column B. As discussed in the CBLR final rule, a HC would not be eligible to opt into the CBLR framework if this percentage is greater than 25 percent.

• In proposed item 35, a CBLR HC would report the total of unconditionally cancellable commitments, which would be calculated consistent with the instructions for existing Schedule HC–R, Part II, item 19. This item is not used specifically to calculate a HC's eligibility for the CBLR framework. However, the Board is collecting this information in order to monitor balance sheet exposures that are not reflected in the CBLR framework and to identify any CBLR HCs with elevated concentrations in unconditionally cancellable commitments.

• In proposed item 36, a CBLR HC would report the amount of investments in the capital instruments of an unconsolidated financial institution that would qualify as tier 2 capital. Since the CBLR framework does not have a total capital requirement, a CBLR HC is neither required to calculate tier 2 capital nor make any deductions that would be taken from tier 2 capital. Therefore, if a CBLR HC has investments in the capital instruments of an unconsolidated financial institution that would qualify as tier 2 capital of the CBLR HC under the generally applicable capital requirements (tier 2 qualifying instruments), and the CBLR HC's total investments in the capital of unconsolidated financial institutions exceed 25 percent of its CET1 capital, the CBLR bank is not required to deduct the tier 2 qualifying instruments. A CBLR HC is required to make a deduction from CET1 capital or T1 capital only if the sum of its investments in the capital of an unconsolidated financial institution is in a form that would qualify as CET1 capital or T1 capital instruments of the CBLR HC and the sum exceeds the 25 percent CET1 threshold. The Board believes it is important to continue collecting information on the amount of investments in these capital instruments in order to identify any instances where such activity potentially creates an unsafe or unsound practice or condition.

Because a CBLR HC would not be subject to the generally applicable capital requirements, a CBLR HC would not need to complete any of the items in Schedule HC–R, Part I, after proposed item 36, nor would the holding company need to complete Schedule HC–R, Part II, Risk-Weighted Assets.

In connection with moving the leverage ratio calculations and inserting items for the CBLR qualifying criteria in Schedule HC–R, Part I, existing items 27 through 35 of Schedule HC–R, Part I, will be renumbered as items 37 through 45. Existing items 40 through 43 will be renumbered as items 46 through 49, while existing items 46 through 48 will be renumbered as items 50 through 52. For advanced approaches HCs, existing items 45 for total leverage exposure and the supplementary leverage ratio, will be renumbered as item 53.

A CBLR HC would indicate that it has elected to apply the CBLR framework by completing Schedule HC–R, Part I, items 32 through 36. HCs not subject to the CBLR framework would be required to report all data items in Schedule HC–R, Part I, except for items 32 through 36.

Standardized Approach for Counterparty Credit Risk on Derivatives

The Board proposes to revise the FR Y–9C instructions to implement changes to the capital rule regarding how to calculate the exposure amount of derivative contracts (the standardized approach for counterparty credit risk, or ''SA–CCR'') that were implemented by final rule (the ''SA–CCR final rule'').[17]

The SA–CCR final rule amends the capital rule by replacing the current exposure methodology (CEM) with SA–CCR for advanced approaches HCs. Under the SA–CCR final rule, an advanced approaches HC will have to choose either SA–CCR or the internal models methodology to calculate the exposure amount of any noncleared and cleared derivative contracts and use SA–CCR to determine the risk-weighted asset amount of any default fund contributions. In addition, an advanced approaches HC will be required to use SA–CCR (instead of CEM) to calculate the exposure amount of noncleared and cleared derivative contracts and to determine the risk-weighted asset

the CBLR framework by an HC based on the risk profile of the HC. This authority derives from the general reservation of authority included in the Board's Regulation Q, in which the CBLR framework is be codified. *See* 12 CFR 217.1(d).

[16] *See* definition of ''unconditionally cancellable'' in 12 CFR 217.2.

[17] See Federal Reserve press release, dated November 19, 2019. *https://www.federalreserve.gov/newsevents/pressreleases/bcreg20191119c.htm.*

amount of default fund contributions under the standardized approach, as well as to determine the exposure amount of derivative contracts for purposes of the supplementary leverage ratio.

Under the SA–CCR final rule, a non-advanced approaches HC will be able to use either CEM or SA–CCR to calculate the exposure amount of any noncleared and cleared derivative contracts and to determine the risk-weighted asset amount of any default fund contributions under the standardized approach. A HC that meets the criteria for a banking organization subject to Category III standards [18] will also use SA–CCR for calculating its supplementary leverage ratio if it chooses to use SA–CCR to calculate its derivative and default fund exposures.

Accordingly, the Board proposes to revise the instructions for HC–R Part II, consistent with the SA–CCR final rule. Generally, the proposed revisions to the reporting of derivatives elements in Schedule HC–R, Part II, are driven by differences in the methodology for determining the exposure amount of a derivative contract under SA–CCR relative to CEM. These proposed revisions would be effective for the June 30, 2020, report date, the same quarter as the effective date of the SA–CCR final rule, with a mandatory compliance date of January 1, 2022.

High Volatility Commercial Real Estate (HVCRE)

The Board proposes to revise the FR Y–9C instructions to implement changes to the HVCRE exposure definition in section 2 of the capital rule [19] to conform to the statutory definition of an HVCRE Acquisition, Development, or Construction (ADC) loan (HVCRE final rule [20]). The revisions align the capital rule with section 214 of the EGRRCPA to exclude from the definition of HVCRE exposure credit facilities that finance the acquisition, development, or construction of one- to four-family residential properties.[21]

The HVCRE final rule also clarifies the definition of HVCRE exposure in the capital rule by adding a new paragraph that provides that the exclusion for one- to four-family residential properties would not include credit facilities that solely finance land development activities, such as the laying of sewers, water pipes, and similar improvements to land, without any construction of one- to four-family residential structures. In order for a loan to be eligible for this exclusion, the credit facility would be required to include financing for construction of one- to four-family residential structures.

The Board is now proposing to make conforming revisions to the instructions for Schedule HC–R, Part II, items 4.b and 5.b in order to implement the HVCRE final rule for all reporting HCs.

Operating Lease Liabilities

In February 2016, the FASB issued ASU No. 2016–02, ''Leases,'' which added Topic 842, Leases, to the Accounting Standards Codification (ASC). Once ASU 2016–02 is effective for a holding company, the ASU's accounting requirements, as amended by certain subsequent ASUs, supersede ASC Topic 840, Leases.

The most significant change that ASC Topic 842 makes to the previous lease accounting requirements is to lessee accounting. Under the lease accounting standards in ASC Topic 840, lessees recognize lease assets and lease liabilities on the balance sheet for capital leases, but do not recognize operating leases on the balance sheet. The lessee accounting model under Topic 842 retains the distinction between operating leases and capital leases, which the new standard labels finance leases. However, the new standard requires lessees to record a right-of-use (ROU) asset and a lease liability on the balance sheet for operating leases. (For finance leases, a lessee's lease asset also is designated an ROU asset.) In general, the new standard permits a lessee to make an accounting policy election to exempt leases with a term of one year or less at their commencement date from on-balance sheet recognition.

The Board also proposes to revise the FR Y–9C instructions to implement changes for operating leases to be reported as other liabilities instead of other borrowings for regulatory reporting purposes. The proposed change would better align the reporting of the single noninterest expense item for operating leases in the income statement (which is the presentation required by ASC Topic 842) with their balance sheet classification.

For HCs that are public business entities, as defined under U.S. GAAP, ASU 2016–02 is effective for fiscal years beginning after December 15, 2018, including interim reporting periods within those fiscal years. For HCs that are not public business entities, at present, the new standard is effective for fiscal years beginning after December 15, 2019, and interim reporting periods within fiscal years beginning after December 15, 2020. Early application of the new standard is permitted for all HCs.

The FR Y–9C Report Supplemental Instructions for March 2019 [22] stated that a lessee should report lease liabilities for operating leases and finance leases, including lease liabilities recorded upon adoption of the ASU, in Schedule HC–M, item 14, ''Other borrowings,'' which is consistent with the current FR Y–9C instructions for reporting a lessee's obligations under capital leases under ASC Topic 840. In response to this instructional guidance, the Board received questions from HCs concerning the reporting of a bank lessee's lease liabilities for operating leases. These HCs indicated that reporting operating lease liabilities as other liabilities instead of other borrowings would better align the reporting of the single noninterest expense item for operating leases in the income statement (which is the presentation required by ASC Topic 842) with their balance sheet classification and would be consistent with how these HCs report operating lease liabilities internally.

The Board agrees with the views expressed by these HCs and proposes to require that operating lease liabilities be

[18] The Board's final tailoring rule, approved on October 10, 2019, describes a Category III banking organization generally as a banking organization with $250 billion or more in total consolidated assets that is not a global systemically important bank (GSIB) nor has significant international activity, or a banking organization with total consolidated assets of $100 billion or more, but less than $250 billion, that meets or exceeds other specified risk-based indicators. *See* ''Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations,'' 84 FR 59032 (November 1, 2019).

[19] 12 CFR part 217.2.

[20] See Federal Reserve press release, dated November 19, 2019, *https://www.federalreserve.gov/newsevents/pressreleases/bcreg20191119b.htm.*

[21] Section 214 became effective upon enactment of the EGRRCPA. Accordingly, on July 6, 2018, the Board, along with the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC), issued a statement advising institutions that, when determining which loans should be subject to a heightened risk weight, they may choose to continue to apply the current regulatory definition of HVCRE exposure, or they may choose to apply the heightened risk weight only to those loans they reasonably believe meet the definition of ''HVCRE ADC loan'' set forth in section 214 of the EGRRCPA. *See* Board, FDIC, and OCC, *Interagency statement regarding the impact of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180706a1.pdf.*

The Board temporarily implemented this revision to the FR Y–9C through an emergency PRA clearance that permitted, but did not require, a HC to use the definition of HVCRE ADC loan in place of the existing definition of HVCRE loan.

[22] *https://www.federalreserve.gov/reportforms/supplemental/SI_FRY9_201903.pdf.*

reported on the FR Y–9C balance sheet in Schedule HC, item 20, ''Other liabilities.'' In Schedule HC–G, Other Liabilities, operating lease liabilities would be reported in item 4, ''Other'' effective March 31, 2020.

Reporting Home Equity Lines of Credit That Convert From Revolving to Non-Revolving Status

Holding companies report the amount outstanding under revolving, open-end lines of credit secured by 1–4 family residential properties (commonly known as home equity lines of credit or HELOCs) in item 1.c.(1) of Schedule HC–C, Loans and Lease Financing Receivables. The amounts of closed-end loans secured by 1–4 family residential properties are reported in Schedule HC–C, item 1.c.(2)(a) or (b), depending on whether the loan is a first or a junior lien.[23]

A HELOC is a line of credit secured by a lien on a 1–4 family residential property that generally provides a draw period followed by a repayment period. During the draw period, a borrower has revolving access to unused amounts under a specified line of credit. During the repayment period, the borrower can no longer draw on the line of credit, and the outstanding principal is either due immediately in a balloon payment or repaid over the remaining loan term through monthly payments. The FR Y–9C instructions do not address the reporting treatment for a home equity line of credit when it reaches its end-of-draw period and converts from revolving to nonrevolving status. This leads to inconsistency in how these credits are reported in Schedule HC–C, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b), and in other holding company items that use the definitions of these three loan categories.

To address this absence of instructional guidance and promote consistency in reporting, the Board proposes to clarify the instructions for reporting loans secured by 1–4 family residential properties by specifying that after a revolving open-end line of credit has converted to non-revolving closed-end status, the loan should be reported as closed-end in Schedule HC–C, item 1.c.(2)(a) or (b), as appropriate.

The Board believes that it is important to collect accurate data on loans secured by 1–4 family residential properties in the FR Y–9C report. Consistent classification of HELOCs based on the status of the draw period is particularly important for the Board's safety and soundness monitoring. Due to the structure of HELOCs discussed above, borrowers generally are not required to make principal repayments during the draw period, which may create a financial shock for borrowers when they must make a balloon payment or begin regular monthly repayments after the draw period. Some HCs report HELOCs past the draw period as revolving, and this practice increases the amounts outstanding, charge-offs, recoveries, past dues, and nonaccruals reported in the open-end category relative to the amounts reported by HCs that treat HELOCs past the draw period as closed-end, which makes the data less useful for analysis and safety and soundness monitoring. In addition, in Accounting Standards Update No. 2019–04,[24] the FASB amended ASC Subtopic 326–20 on credit losses to require that, when presenting credit quality disclosures in notes to financial statements prepared in accordance with U.S. GAAP, an entity must separately disclose line-of-credit arrangements that are converted to term loans from line-of-credit arrangements that remain in revolving status. The Board has determined that there would be little or no impact to the regulatory capital calculations or other regulatory reporting requirements as a result of this clarification. Therefore, the Board is proposing to clarify the FR Y–9C instructions for Schedule HC–C, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b), to state that revolving open-end lines of credit that have converted to non-revolving closed-end status should be reported as closed-end loans. The effect of this clarification would extend to the instructions for the following data items that reference the Schedule HC–C loan category definitions for open-end and closed-end loans secured by 1–4 family residential properties:

- Schedule HI–B, Part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b);
- Schedule HC–C, Memoranda item 1.b;
- Schedule HC–C, Memoranda items 6.a, 6.b, 6.c;
- Schedule HC–M, items 6.a.(1)(c)(1), 6.a.(1)(c)(2)(a), and 6.a.(1)(c)(2)(b);
- Schedule HC–N, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b);
- Schedule HC–N, items 12.a.(3)(a), 12.a.(3)(b)(1), and 12.a.(3)(b)(2);
- Schedule HC–N, Memoranda item 1.b; and
- Schedule HC–S, Memorandum items 2.a, 2.b, and 2.c

This instructional clarification would not apply to the reporting of asset-backed securities collateralized by HELOCs in Schedule HC–B, Memorandum item 5.b, and Schedule HC–D, Memorandum item 5.b and securitizations of closed-end 1–4 family residential loans and home equity lines in Schedule HC–S, columns A and B.

To provide time needed for any systems changes, the Board proposes that compliance with the clarified instructions would not be required until the March 31, 2021, report date. HCs not currently reporting in accordance with the clarified instructions would be permitted, but not required, to report in accordance with the clarified instructions before that date.

Proposed Revisions to the FR Y–9CS

The Board proposes to revise the FR Y–9CS to clarify that response to the report is voluntary.

Legal authorization and confidentiality: The Board has the authority to impose the reporting and recordkeeping requirements associated with the Y–9 series of reports on bank holding companies (''BHCs'') pursuant to section 5 of the Bank Holding Company Act (''BHC Act'') (12 U.S.C. 1844); on savings and loan holding companies pursuant to section 10(b)(2) and (3) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)(2) and (3)) as amended by sections 369(8) and 604(h)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''); on U.S. intermediate holding companies (''U.S. IHCs'') pursuant to section 5 of the BHC Act (12 U.S.C. 1844), as well as pursuant to sections 102(a)(1) and 165 of the Dodd-Frank Act (12 U.S.C. 511(a)(1) and 5365);[25] and on securities holding companies pursuant to section 618 of the Dodd-Frank Act (12 U.S.C.

[23] Holding companies report additional information on open-end and closed-end loans secured by 1–4 family residential properties in certain other FR Y–9C schedules in accordance with the loan category definitions in Schedule HC–C, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b).

[24] Accounting Standards Update No. 2019–04, ''Codification Improvements to Topic 326, Financial Instruments—Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments,'' issued in April 2019.

[25] Section 165(b)(2) of Title I of the Dodd-Frank Act (12 U.S.C. 5365(b)(2)) refers to ''foreign-based bank holding company.'' Section 102(a)(1) of the Dodd-Frank Act (12 U.S.C. 5311(a)(1)) defines ''bank holding company'' for purposes of Title I of the Dodd-Frank Act to include foreign banking organizations that are treated as bank holding companies under section 8(a) of the International Banking Act (12 U.S.C. 3106(a)). The Board has required, pursuant to section 165(b)(1)(B)(iv) of the Dodd-Frank Act (12 U.S.C. 5365(b)(1)(B)(iv)), certain foreign banking organizations subject to section 165 of the Dodd-Frank Act to form U.S. intermediate holding companies. Accordingly, the parent foreign-based organization of a U.S. IHC is treated as a BHC for purposes of the BHC Act and section 165 of the Dodd-Frank Act. Because Section 5(c) of the BHC Act authorizes the Board to require reports from subsidiaries of BHCs, section 5(c) provides additional authority to require U.S. IHCs to report the information contained in the FR Y–9 series of reports.

1850a(c)(1)(A)). The FR Y–9C, FR Y–9LP, FR Y–9SP, and FR Y–9ES reports, and the recordkeeping requirements set forth in the respective instructions to those reports, are mandatory. The FR Y–9CS supplemental report is voluntary.

With respect to the FR Y–9C report, Schedule HI's Memoranda item 7(g) ''FDIC deposit insurance assessments,'' Schedule HC–P's item 7(a) ''Representation and warranty reserves for 1–4 family residential mortgage loans sold to U.S. government agencies and government sponsored agencies,'' and Schedule HC–P's item 7(b) ''Representation and warranty reserves for 1–4 family residential mortgage loans sold to other parties'' are considered confidential commercial and financial information. Such treatment is appropriate under exemption 4 of the Freedom of Information Act (''FOIA'') (5 U.S.C. 552(b)(4)), because these data items reflect commercial and financial information that is both customarily and actually treated as private by the submitter, and which the Board has previously assured submitters will be treated as confidential. It also appears that disclosing these data items may reveal confidential examination and supervisory information, and in such instances, this information would also be withheld pursuant to exemption 8 of the FOIA (5 U.S.C. 552(b)(8)), which protects information related to the supervision or examination of a regulated financial institution.

In addition, for both the FR Y–9C report and the FR Y–9SP report, Schedule HC's Memoranda item 2.b., the name and email address of the external auditing firm's engagement partner, is considered confidential commercial information and protected by exemption 4 of the FOIA (5 U.S.C. 552(b)(4)), if the identity of the engagement partner is treated as private information by HCs. The Board has assured respondents that this information will be treated as confidential since the collection of this data item was proposed in 2004.

Aside from the data items described above, the remaining data items on the FR Y–9C report and the FR Y–9SP report are generally not accorded confidential treatment. The data items collected on FR Y–9LP, FR Y–9ES, and FR Y–9CS [26] reports, are also generally not accorded confidential treatment. As provided in the Board's Rules Regarding Availability of Information (12 CFR part 261), however, a respondent may request confidential treatment for any data items the respondent believes should be withheld pursuant to a FOIA exemption. The Board will review any such request to determine if confidential treatment is appropriate, and will inform the respondent if the request for confidential treatment has been denied.

To the extent the instructions to the FR Y–9C, FR Y–9LP, FR Y–9SP, and FR Y–9ES reports each respectively direct the financial institution to retain the workpapers and related materials used in preparation of each report, such material would only be obtained by the Board as part of the examination or supervision of the financial institution. Accordingly, such information is considered confidential pursuant to exemption 8 of the FOIA (5 U.S.C. 552(b)(8)). In addition, the workpapers and related materials may also be protected by exemption 4 of the FOIA, to the extent such financial information is treated as confidential by the respondent (5 U.S.C. 552(b)(4)).

Consultation outside the agency: The Board consulted with the FDIC and the OCC in regard to these proposed revisions.

Board of Governors of the Federal Reserve System, December 19, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–27850 Filed 12–26–19; 8:45 am]

BILLING CODE 6210–01–P

[26] The FR Y–9CS is a supplemental report that may be utilized by the Board to collect additional information that is needed in an expedited manner from HCs. The information collected on this supplemental report is subject to change as needed. Generally, the FR Y–9CS report is treated as public. However, where appropriate, data items on the FR Y–9CS report may be withheld under exemptions 4 and/or 8 of the FOIA (5 U.S.C. 552(b)(4) and (8)).

FEDERAL RESERVE SYSTEM

Privacy Act of 1974; Notice of a New System of Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, notice is given that the Board of Governors of the Federal Reserve System (Board) proposes to modify an existing system of records entitled, BGFRS–23, ''FRB—Freedom of Information Act and Privacy Act Case Tracking and Reporting System.'' BGFRS–23 permits Board staff to track Freedom of Information Act (FOIA) and Privacy Act (PA) requests, input processing data, and produce reports.

DATES: Comments must be received on or before January 27, 2020. This modified system of records will become effective January 27, 2020, without further notice, unless comments dictate otherwise.

The Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, requires a 30-day period prior to publication in the **Federal Register** in which to review the system and to provide any comments to the agency. The public is then given a 30-day period in which to comment, in accordance with 5 U.S.C. 552a(e)(4) and (11).

ADDRESSES: You may submit comments, identified by *BGFRS–23 ''FRB—Freedom of Information Act and Privacy Act Case Tracking System,''* by any of the following methods:

- *Agency website: https://www.federalreserve.gov.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include SORN name and number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons, or to remove sensitive PII. Public comments may also be viewed electronically or in paper form in Room 146, 1709 New York Avenue NW, Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: David B. Husband, Counsel, (202) 530–6270, or *david.b.husband@frb.gov;* Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: BGFRS–23 allows staff to log and track the receipt and processing of FOIA or PA requests from individuals (*i.e.,* ''Requesters'') using data that is either received from the requester, his/her representative, or from another federal agency which is referring a request to the Board for disclosure of records that originated from the Board. The system also contains data automatically generated by the system about the request (*e.g.,* record number). Board staff use the system to record the status of the request, relevant deadlines, other key

events or data (such as the date of the response to the request), and any related administrative appeals.

The Board is amending the system to update the system manager, clarify the category of individuals covered by the system, update the description of the categories of records in the system, and note that records are no longer stored in paper form but solely in electronic form. In addition, the Board is amending the applicable routine uses. The Board is adding its General Routine Use D (permitting disclosure to the Department of Justice, a court, an adjudicative body or administrative tribunal, or a party in litigation), and General Routine Use G (permitting disclosure to contractors, agents, or others). At the request of the Office of Government Information Services (OGIS) the Board is also adding a new system-specific routine use to allow OGIS to fulfill its mediation responsibilities. The Board is also modifying the existing system-specific routine use for disclosure to other agencies for the purpose of access or amendment of responsive request. The modification clarifies that the Board will only share information under this routine use with the other agency when that agency has a substantial interest in the determination of the request or for the purpose of consulting with that agency regarding the propriety of access to the record in order to complete the processing of the request.

The Board is also making technical changes to BGFRS–23 consistent with the template laid out in OMB Circular No. A–108. Accordingly, the Board has made technical corrections and non-substantive language revisions to the following categories: ''Policies and Practices for Storage of Records,'' ''Policies and Practices for Retrieval of Records,'' ''Policies and Practices for Retention and Disposal of Records,'' ''Administrative, Technical and Physical Safeguards,'' ''Record Access Procedures,'' ''Contesting Record Procedures'' and ''Notification Procedures.'' The Board has also created the following new fields: ''Security Classification'' and ''History''.

SYSTEM NAME AND NUMBER:

BGFRS–23, ''FRB—Freedom of Information Act and Privacy Act Case Tracking and Reporting System.''

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The Board maintains the records at the Board's central office, located at: Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

SYSTEM MANAGER(S):

Candace Ambrose, Manager, Information Disclosure Section, Office of the Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551, 202–452–2407, or *candace.ambrose@frb.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), and 12 CFR 261 and 261a.

PURPOSE(S) OF THE SYSTEM:

These records are collected and maintained to process requests made under the provisions of the Freedom of Information Act (FOIA) and Privacy Act and to assist the Board in carrying its responsibilities related to the FOIA and Privacy Act.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual requesters who submit requests and administrative appeals pursuant to the provisions of the FOIA or Privacy Act; individual requesters whose FOIA or Privacy Act requests, appeals, or other records, have been referred to the Board by other agencies; attorneys or other persons who are authorized to represent individuals submitting requests and appeals; and individuals who are the subject of FOIA requests or appeals submitted by a third-party.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system contain contact information on requesters and the attorneys/representatives of the requestors, including names, addresses, email addresses, fax numbers, and telephone numbers. Records may also include the date the request was made, a description of the information requested, and the staff assigned to process the request or appeal. The system may also include voluntarily submitted information, which the Board has not requested, such as, but not limited to, the individual's social security number and bank account or mortgage loan numbers. The Board also compiles statistical and administrative data on the requests it processes for reporting purposes, including the Board's annual FOIA report to the Department of Justice, submitted in accordance with 5 U.S.C. 552(e).

RECORD SOURCE CATEGORIES:

Information is provided by the individual making the request or their representative, or by other agencies which are referring requests for access to records that originated from the Board, and Board staff engaged in processing or making determinations on the requests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

General routine uses C, D, G, I, and J apply to this system. These general routine uses are located at *https://www.federalreserve.gov/files/SORN-page-general-routine-uses-of-board-systems-of-records.pdf* and are published in the **Federal Register** at 83 FR 43872 at 43873–74 (August 28, 2018). In addition, records may also be disclosed to:

1. Another Federal Government agency having a substantial interest in the determination of the request or for the purpose of consulting with that agency as to the propriety of access to the record in order to complete the processing of the request;

2. The National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures and compliance with the FOIA and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies; and

3. The news media and the public, unless it is determined that release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records are stored on a secure server.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records can be retrieved by the name of the requester, tracking number assigned to the request, subject matter of the request, or any other field of information that is collected.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The Board retains the records for the designated retention period, which ranges from six years after final agency action or three years after final adjudication by the courts, whichever is later, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The system has the ability to track individual user actions within the system. The audit and accountability controls are based on NIST and Board standards which, in turn, are based on applicable laws and regulations. The controls assist in detecting security violations and performance or other issues in the system. Access to the system is restricted to authorized users within the Board who require access for official business purposes. Users are classified into different roles and common access and usage rights are established for each role. User roles are used to delineate between the different types of access requirements such that users are restricted to data that is required in the performance of their duties. Periodic assessments and reviews are conducted to determine whether users still require access, have the appropriate role, and whether there have been any unauthorized changes.

RECORD ACCESS PROCEDURES:

The Privacy Act allows individuals the right to access records maintained about them in a Board system of records. Your request for access must: (1) Contain a statement that it is made pursuant to the Privacy Act of 1974; (2) provide either the name of the Board system of records expected to contain the record requested or a concise description of the system of records; (3) provide the information necessary to verify your identity; and (4) provide any other information that may assist in the rapid identification of the record you seek.

Current or former Board employees may make a request for access by contacting the Board office that maintains the record. The Board handles all Privacy Act requests as both a Privacy Act request and as a Freedom of Information Act request. The Board does not charge fees to a requestor seeking to access or amend his/her Privacy Act records.

You may submit your Privacy Act request to the—

Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington DC 20551.

You may also submit your Privacy Act request electronically through the Board's FOIA ''Electronic Request Form'' located here: *https://www.federalreserve.gov/secure/forms/efoiaform.aspx*.

CONTESTING RECORD PROCEDURES:

The Privacy Act allows individuals to seek amendment of information that is erroneous, irrelevant, untimely, or incomplete and is maintained in a system of records that pertains to them. To request an amendment to your record, you should clearly mark the request as a ''Privacy Act Amendment Request.'' You have the burden of proof for demonstrating the appropriateness of the requested amendment and you must provide relevant and convincing evidence in support of your request.

Your request for amendment must: (1) Provide the name of the specific Board system of records containing the record you seek to amend; (2) identify the specific portion of the record you seek to amend; (3) describe the nature of and reasons for each requested amendment; (4) explain why you believe the record is not accurate, relevant, timely, or complete; and (5) unless you have already done so in a related Privacy Act request for access or amendment, provide the necessary information to verify your identity.

NOTIFICATION PROCEDURES:

Same as ''Access procedures'' above. You may also follow this procedure in order to request an accounting of previous disclosures of records pertaining to you as provided for by 5 U.S.C. 552a(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

No exemptions are claimed for this system.

HISTORY:

This SORN was previously published in the **Federal Register** at 73 FR 24984 at 25002 (May 6, 2008). The SORN was also amended to incorporate two new routine uses required by OMB at 83 FR 43872 (August 28, 2018).

Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–27866 Filed 12–26–19; 8:45 am]

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FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Banking Organization Systemic Risk Report (FR Y–15; OMB No. 7100–0352). Certain revisions become effective beginning with the December 31, 2019, report date. Other revisions become effective for the June 30, 2020, or December 31, 2020, report dates, as described below.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files. These documents also are available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are placed into OMB's public docket files.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Report title: Banking Organization Systemic Risk Report.

Agency form number: FR Y–15.

OMB control number: 7100–0352.

Effective dates: December 31, 2019, and June 30, 2020.

Frequency: Quarterly.

Respondents: The FR Y–15 panel is currently comprised of top-tier bank holding companies (BHCs), covered savings and loan holding companies (SLHCs), and intermediate holding companies (IHCs) with $50 billion or more in total consolidated assets, and any BHC designated as a global systemically important bank holding

company (GSIB)[1] based on its method 1 score calculated as of December 31 of the previous calendar year that does not otherwise meet the consolidated assets threshold for BHCs.[2] Pursuant to separate revisions to the FR Y–15 recently made by the Board, the reporting panel for the FR Y–15 will, effective June 30, 2020, consist of U.S. BHCs and SLHCs with $100 billion or more in consolidated assets, foreign banking organizations with $100 billion or more in combined U.S. assets, and any BHC designated as a GSIB.[3]

Estimated number of respondents: 43.

Estimated average hours per response: 405.

Estimated annual burden hours: 69,660.

General description of report: Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[4] directs the Board to establish enhanced prudential standards, including risk-based capital requirements, for certain large financial institutions. These standards must be more stringent than the standards applicable to other financial institutions that do not present similar risks to U.S. financial stability. Additionally, these standards must increase in stringency based on several factors, including the size and risk characteristics of a company subject to the rule, and the Board must take into account the differences among bank holding companies and nonbank financial companies.

Pursuant to the requirement to establish enhanced risk-based capital standards under section 165 of the Dodd-Frank Act, the Board published a final rule establishing a GSIB surcharge on the largest, most interconnected U.S. BHCs in August 2015.[5] The GSIB surcharge is calculated using an indicator-based approach that focuses on those aspects of a BHC's operations that are likely to generate negative externalities in the case of its failure or distress. The rule's methodologies assess six components of a BHC's systemic footprint: size, interconnectedness, substitutability, complexity, cross-jurisdictional activity, and reliance on short-term wholesale funding. The indicators comprising these six components are reported on the FR Y–15. More generally, the FR Y–15 report is used to monitor the systemic risk profile of the institutions that are subject to enhanced prudential standards under section 165.

Additionally, section 165 the Dodd-Frank Act requires that the Board consider the extent to which a proposal would result in greater or more concentrated risks to the stability of the United States banking or financial system as part of its review of certain banking applications.[6] The data reported on the FR Y–15 are used by the Board to analyze the systemic risk implications of such applications.

The FR Y–15 consists of the following schedules:

- Schedule A—Size Indicator
- Schedule B—Interconnectedness Indicators
- Schedule C—Substitutability Indicators
- Schedule D—Complexity Indicators
- Schedule E—Cross-Jurisdictional Activity Indicators
- Schedule F—Ancillary Indicators
- Schedule G—Short-term Wholesale Funding Indicator

Some of the reporting requirements within the schedules overlap with data already collected in the Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128), the Country Exposure Report (FFIEC 009; OMB No. 7100–0035), and the Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101; OMB No. 7100–0319). Where relevant data are already collected by those reports, the FR Y–15 automatically populates items based on the source form so that the information does not need to be reported twice. Automatically-retrieved items are listed in the general instructions of the FR Y–15 under section H, titled ''Data Items Automatically Retrieved from Other Reports.''

Legal authorization and confidentiality: The Board has the authority to require BHCs, SLHCs, and FBOs and IHCs, to file the FR Y–15 pursuant to, respectively, section 5 of the Bank Holding Company Act (''BHC Act'') (12 U.S.C. 1844), section 10(b) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)), and section 5 of the BHC Act, in conjunction with section 8 of the International Banking Act (12 U.S.C. 3106). The FR Y–15 reports are mandatory. The data collected on the FR Y–15 are made public unless a specific request for confidentiality is submitted by the reporting entity, either on the FR Y–15 or on the form from which the data item is obtained. Determinations regarding confidential treatment will be made on a case-by-case basis based on exemption 4 of the Freedom of Information Act (''FOIA''), which protects from disclosure trade secrets and commercial or financial information (5 U.S.C. 552(b)(4)). In addition, a number of the items in the FR Y–15 are retrieved from the FR Y–9C, FFIEC 101 and FFIEC 009, and confidential treatment may also extend to any automatically-calculated items on the FR Y–15 that have been derived from confidential data items and that, if released, would reveal the underlying confidential data. To the extent confidential data collected under the FR Y–15 will be used for supervisory purposes, it may be exempt from disclosure under exemption 8 of the FOIA (5 U.S.C. 552(b)(8)).

Current actions: On September 10, 2019, the Board published a notice in the **Federal Register** (84 FR 47509) requesting public comment for 60 days on the extension, with revision, of the Banking Organization Systemic Risk Report. Under the proposal, the FR Y–15 would have been revised by (1) adding trading volume items to the memoranda section of Schedule C; (2) adding a separate line item for equity securities with readily determinable fair values not held for trading on Schedule D; (3) adding derivatives items and revised total cross jurisdictional claims and total cross jurisdictional liabilities items to the memoranda section of Schedule E; (4) adding a requirement that respondents keep a record of the data submitted; and (5) making other minor clarifications to the form and instructions. The revisions were proposed to be effective for the December 31, 2019, report date. The comment period for this notice expired on November 12, 2019. The Board received three comments. The Board has adopted the proposal with certain modifications, discussed below.

[1] *See* 12 CFR 217.402.

[2] According to the Board's statement issued in July 2018, the Board will take no action to require BHCs and covered SLHCs with less than $100 billion in total consolidated assets to file the FR Y–15, pursuant to the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (EGRRCPA). *See https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg 20180706b1.pdf.*

[3] *See* Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations, 84 FR 59032 (Nov. 1, 2019) (''Tailoring Rule''). In connection with the Tailoring Rule, the FR Y–15 was revised, effective for the June 30, 2020, report date, notably to add schedules applicable for foreign banking organizations and certain additional line items to the form. The amendments to the FR Y–15 related to the Tailoring Rule will be incorporated into the form beginning with the June 30, 2020 effective date. The Board will release an updated FR Y–15 form and instructions that incorporate both the changes to the Y–15 in this release and those from the Tailoring Rule prior to June 30, 2020.

[4] Public Law 111–203 (2010); 12 U.S.C. 5365.

[5] 80 FR 49082 (August 14, 2015).

[6] Public Law 111–203, 604(d), (f); 12 U.S.C. 1842(c)(7) and 1828(c)(5).

Detailed Discussion of Public Comments

The Board received three comment letters on the proposed information collection: Two letters from financial industry trade organizations and one letter from a U.S. GSIB. Among other issues, commenters requested a delay in the effective date of certain proposed items, clarifications on the scope and intent of certain proposed items, further information on the ability to use existing reporting form data submissions in the proposed items, and additional proposed changes to the Board's GSIB rule or the scope of current indicators in the GSIB surcharge methodology.

Comments on Changes to Schedule C (Substitutability Category)

For the proposed trading volume memorandum items, some commenters asked for further clarification on the scope of the items. One commenter asked whether securities considered ''traded'' only include the trading of securities held in the trading account, as defined in the FR Y–9C. The Board is confirming that the trading volume instructions do not refer to the scope of the trading account in the FR Y–9C and are based on a new separate measure of a banking organization's trading activity. ''Trading account'' in the FR Y–9C includes activities—such as foreign exchange, derivatives, and commodity activities—that are excluded from the scope of trading volume in Schedule C.

One commenter asked the Board to address whether the reference to ''contractual date'' in the proposed instructions was intended. In the final instructions, the Board has modified the proposed instructions to refer to ''trade date'' rather than ''contractual date,'' as the former term is consistent with the intended scope of the memorandum items.

One commenter requested clarification about the treatment of failed trades in the trading volume memoranda items. The Board has clarified in the instructions that if a trade were to fail and the full amount of the trade were not to settle, the transaction should not be reported in the trading volume memorandum items.

One commenter asked how to measure trading volume for an investment that a FR Y–15 filer newly consolidates onto its balance sheet, particularly if that investment does not have readily available information regarding the volume of securities purchased or sold prior to its consolidation. In the final instructions, the Board has modified the proposed instructions to state that a banking organization has the choice of: (1) Reporting previous quarters' data of trading volume activity for an unconsolidated entity, if such data are available or (2) begin immediately calculating the applicable trading volume activity upon consolidation and report an annualized amount based on the activity measurement until four quarters of data are available.

One commenter asked to clarify the proposed instruction's reference to transactions made on behalf of customers, including securities held as assets. In the final instructions, the Board has modified the proposed instructions to clarify the reference to the principal model of trading. Trading activity related to the principal model is within the scope of the trading volume memorandum items.

One commenter asked if a transaction in which a firm is not the lead underwriter should be reported and, if so, how to include it in Schedule C. In the final instructions, the Board has modified the proposed instructions to include language clarifying that all trades related to underwriting activity are to be included in the memorandum items.

One commenter asked if firms should exclude certain noncash transactions, including if a firm obtains securities from a bankruptcy settlement or a loan default. The Board is confirming that, consistent with the instructions, only securities purchased and sold are within the scope of the trading volume memorandum items (*i.e.,* securities obtained through bankruptcy settlements or loan defaults would be excluded from the scope of the trading volume memoranda items).

One commenter requested clarification on the definition of ''public sector'' in memorandum item M5(a) and whether the definition from the FFIEC 009 would apply. The Board included in the proposed instructions a definition of public sector consistent with the Board's capital rule in 12 CFR 217.2. The Board is finalizing the instructions with the same scope for public sector in memorandum item M5(a). The trading volume memoranda items do not reference the definition of public sector of the FFIEC 009.

One commenter requested that syndicated corporate loans be excluded from memorandum item M5(b) because, according to the commenter, syndicated corporate loans are not securities. Syndicated corporate loans often are arranged by banks and transferred to institutional investors in the form of collateralized loan obligations. The failure of a bank that is participating in the syndicate could jeopardize a corporate borrower's access to capital in the short-term, particularly in times of market stress or if that bank is the syndicate's lead arranger. Consistent with the proposed instructions, the Board is confirming that memorandum item M5(b) is not limited to registered securities and therefore syndicated corporate loans should be included in the scope of the item.

One commenter requested that trading activity in which the firm acts as an agent be excluded from memoranda items M5(a)–M5(d) because, according to the commenter, it is unclear why these transactions should be included and the reporting burden would be substantial. The Board has adopted the instructions for memoranda items M5(a)–M5(d) as proposed. Responses to these items should include all trading activity of the banking organization within scope of these memoranda items, including when the banking organization acts as an agent in the facilitation of trading activity. Facilitating trading activity as an agent banking organization acting on behalf of clients is an integral financial market infrastructure service, which may be difficult to substitute quickly under stress conditions.

One commenter identified erroneous references to ''item M5'' instead of ''item M5(a)'' in the instructions for memorandum item M5(b). The Board has updated the proposed instructions to replace the references to ''item M5'' with ''M5(a)'' in the instructions for memorandum item M5(b).

One commenter requested exemptions in memoranda items M5(a)–M5(d) for certain trading activities, notably underwriting municipal securities and temporarily holding such securities on the bank's balance sheet and purchasing securities with funds from deferred compensation plans for employees of the bank. According to the commenter, these trading activities are immaterial, but reporting such transactions would be burdensome. The Board believes that, to the extent that such trading activities fall within the proposed instructions for memoranda items M5(a)–M5(d), these transactions should be reported because these memoranda items are intended to capture all trading activity in scope. Therefore, the Board has adopted the instructions to these items as proposed.

One commenter asked for clarification on whether CUSIP and/or counterparty netting is permissible within the same legal entity. The Board is confirming in the instructions for memoranda items M5(a)–M5(d) that trading volumes should be reported on a gross basis without applying CUSIP or counterparty

netting when reporting external transactions or when excluding intra-group or intra-entity transactions. These memoranda items are intended to capture all trading activity flows in scope (*i.e.,* not a point-in-time, stock measurement), and therefore, applying CUSIP or counterparty netting within the same legal entity would be inappropriate.

One commenter requested clarification on whether the trading volume items represented the same population of trading securities reported in Schedule D of the FR Y–15. The Board is clarifying that the scope of the trading volume memorandum items is distinct and broader than that of the Trading and Available-for-Sale (AFS) Securities Indicator in the FR Y–15, consistent with the finalized instructions.

One commenter asked the Board to provide further clarification on what constitutes a security issued by a central government or agency. In the final instructions, the Board has clarified that a security issued by a central government or agency is defined according to the definition of sovereign exposure under 12 CFR 217.2 (''an exposure directly and unconditionally backed by the full faith and credit of a sovereign''). The Board has therefore modified the proposed instructions to add a citation to the definition of sovereign exposure in memorandum item M5 of Schedule C.

Comments on Changes to Schedule D (Complexity Category)

One commenter asked the Board to clarify that the previous references to the FR Y–9C (Schedule HC, item 2(b) and item 2(c)) in the instructions for items 5 and 6 of Schedule D should be reinstated. In the final instructions, the Board has modified the proposed instructions for items 5 and 6 to include those references.

Comments on Changes to Schedule E (Cross-Jurisdictional Activity Indicators)

One commenter requested clarity on the scope of exposures to be collected in memorandum item M4, *Other foreign liabilities on an immediate counterparty basis.* Given that Schedule E already collects non-derivative cross-jurisdictional liabilities data, it was unclear to the commenter what ''other'' liabilities may need to be reported. In the final instructions, the Board has modified the proposed instructions by revising the proposed title of memorandum item M4 to ''Consolidated foreign liabilities on an immediate counterparty basis, excluding derivative liabilities'' to enhance the clarity of the item. The existing cross-jurisdictional liabilities items in Schedule E measure amounts based on locational data (*i.e.,* not consolidated). Memoranda items M3 and M4 ask for new cross-jurisdictional liability data on a consolidated basis.[7]

Another commenter requested clarification as to whether memorandum item M3, *Foreign derivative liabilities on an immediate counterparty basis,* should align with data collected in the FFIEC 009 (Country Exposure Report). The FFIEC 009 collects certain information on foreign derivative claims, but does not collect information on foreign derivative liabilities. Therefore, memorandum item M3 represents a standalone and distinct data collection request that is not linked to data currently collected on the FFIEC 009. Certain definitional terms are used from the FFIEC 009 to provide guidance for completing memorandum item M3 (for example, ''immediate counterparty'').

One commenter asked the Board to clarify memoranda items M3 and M4, which requires respondents to ''include the . . . liabilities of U.S. offices to foreign counterparties regardless of whether the foreign counterparty is located inside or outside the United States.'' The commenter asked the Board to clarify whether this instruction is intended to ''solely'' capture the FR Y–15 filer's exposures to U.S. branches of counterparties with non-U.S. countries of incorporation. This instructional language does not ''solely'' capture exposures to U.S. branches of foreign counterparties; it is intended to capture exposures to any foreign counterparty located inside or outside the United States, including individuals. However, these instructions would not include as ''foreign counterparties'' IHCs, BHCs, or other banking organizations organized under the laws of the United States, any one of the fifty states of the United States, or the District of Columbia.

One commenter asked if margin liabilities related to derivative contracts reported in memorandum item M2 must be reported gross—that is, before applying a legally enforceable netting agreement under ASC Subtopic 210–20, Balance Sheet—Offsetting (formerly FASB Interpretation No. 39). The Board confirms that these margin liabilities should be reported on a gross basis, prior to netting.

One commenter requested the addition of a new line item to be added to Schedule E that would allow banks to report existing item 2, *Foreign liabilities (excluding local liabilities in the local currency),* on a net basis by taking balances sourced from TIC–B reports and applying the FFIEC 009's netting approach to those amounts. The addition of a new item which would affect the Board's GSIB surcharge rule methodology would necessitate a notice of proposed rulemaking and cannot be finalized as part of an Information Collection notice. The Board is retaining its existing netting approach as outlined in the FR Y–15 Instructions for line items 2, 2(a), and 3 of Schedule E at this time and is therefore not adding an additional line item for Foreign Liabilities in Schedule E.

One commenter requested that Section H of the General Instructions of the FR Y–15 be updated to specify that memorandum item M1 will be automatically retrieved from foreign derivative claims data reported in FFIEC 009, Schedule D, columns 1 through 4. In the final instructions, the Board has modified the proposed instructions to Section H of the General Instructions to state that this data will be automatically retrieved.

One commenter asked the Board to clarify whether the foreign derivative liabilities data collected in memorandum item M4 can be automatically retrieved from Schedule L of the FFIEC 009. The Board confirms that memorandum item M4 is not populated automatically from FFIEC 009, Schedule L. This is because, as mentioned above, Schedule L of the FFIEC 009 does not capture all the necessary exposures required in memorandum item M4: The FFIEC 009 data captures only foreign-office liability data, whereas memorandum item M4 also asks for the liabilities of U.S. offices to foreign counterparties.

Comments on Proposal's Effective Date

One commenter requested that all the proposed changes to the FR Y–15 be made effective as of June 30, 2020, as it would provide firms sufficient time to establish or modify the necessary processes and infrastructure. With regard to the trading volume items being added to Schedule C, the Board agrees with the commenter that additional time is necessary in order for existing FR Y–15 respondents to modify their relevant processes and infrastructure. Therefore, the Board is delaying the effective date for new memoranda items in Schedule C to the June 30, 2020, report date, for existing FR Y–15 respondents. Given that the line item being added to Schedule D utilizes information retrieved directly from current reporting on the FR Y–9C, the Board believes that it is unnecessary to delay the effective

[7] These memoranda items do not affect the extant required calculations based on the Board's GSIB surcharge rule.

date for this item. With regard to the memoranda items related to cross jurisdictional activity and derivatives in Schedule E, certain of these items will be calculated in large part consistent with current reporting requirements for the FFIEC 009. Therefore, the revisions to Schedules D and E will become effective for existing FR Y–15 respondents as of the December 31, 2019, report date, as originally proposed.

One commenter asked if the Board would require FBOs to complete the proposed memorandum items, including the trading volume memorandum items, with respect to their combined U.S. operations (CUSO), as certain FBOs will begin filing the FR Y–15 based on their CUSO as of June 30, 2020, consistent with the Board's recent tailoring rule. The Board has finalized the FR Y–15 revisions with the following effective dates for FBOs that will be required to file the FR Y–15 based on their CUSO:

- June 30, 2020, report date: Revisions to Schedule E;
- December 31, 2020, report date: Revisions to Schedules C and D.[8]

For the trading volume memorandum items being added to Schedule C, given that the FBO will begin filing the FR Y–15 based on its CUSO as of June 30, 2020, an FBO would annualize its CUSO trading activity until it were to file four quarters of the FR Y–15.

Comments on GSIB Surcharge Methodology

One commenter requested that prior to incorporating the proposed memoranda items into the GSIB surcharge framework, the Board undertake a holistic review and recalibration of the framework methodology subject to public comment. This commenter also requested that the Board adopt a procedural mechanism to ensure that the GSIB surcharge methodology is periodically reassessed, such as once every three or four years. These comments are beyond the scope of the proposal; however staff notes that any incorporation of these memoranda items into the GSIB surcharge framework would be subject to the rulemaking process and provide opportunity for public feedback.

[8] An FBO required to file the FR Y–15 for its CUSO as of December 31, 2020 would look back to collect two quarters of trading volume data (*i.e.,* trading volume information for July 1st–December 31st) and annualize the additional two quarters in Schedule C.

Board of Governors of the Federal Reserve System, December 19, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–27849 Filed 12–26–19; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10701, CMS–10191 and CMS–10142]

Agency Information Collection Activities: Submission for OMB Review; 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 (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 a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate 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 on the collection(s) of information must be received by the OMB desk officer by January 27, 2020.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR*, Email: *OIRA_submission@omb.eop.gov.*

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.*

1. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (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 (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-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 that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Medicare Beneficiary Experiences with Care Survey System; *Use:* The MBECS system is designed to conduct 1–2 surveys per year on priority groups of interest, thereby allowing CMS OMH to respond quickly to the data needs of stakeholders with interests in these underrepresented groups. Data collected through the MBECS system will be used to better understand—and thus serve the needs of—Medicare beneficiaries in minority populations. The core questionnaire will collect information on communication with medical professionals, coordination of health care, experiences getting needed health care, experiences with personal doctors and specialists, and key demographics. Data will be compared to benchmarks from the FFS CAHPS, MA CAHPS, and

NAM CAHPS surveys. The population-specific questionnaire module will collect information about issues most relevant for particular minority groups; population-specific modules will be described in individual information collection requests. These data will be compared to benchmarks from the relevant CAHPS source surveys when available.

Collection of these data from people who have been identified through CMS administrative data and administrative flags as part of specific minority populations will also serve as a critical validation step of this method for identifying difficult-to-study populations, thus making it easier to study beneficiaries in these groups in the future. *Form Number:* CMS–10701 (OMB control number: 0938–NEW); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 10,000; *Total Annual Responses:* 10,000; *Total Annual Hours:* 3,333. (For policy questions regarding this collection contact Luis Perez at 410–786–8557.)

2. *Type of Information Collection Request:* Revision with change of a currently approved collection; *Title of Information Collection:* Medicare Parts C and D Program Audit Protocols and Data Requests; *Use:* Under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and implementing regulations at 42 CFR parts 422 and 423, Medicare Part D plan sponsors and Medicare Advantage organizations are required to comply with all Medicare Parts C and D program requirements. CMS' annual audit plan ensures that we evaluate sponsoring organizations' compliance with these requirements. CMS program audits focus on high-risk areas that have the greatest potential for beneficiary harm. As such, CMS has developed several audit protocols that are included within the program area data request documents and that are posted to the CMS website each year for use by sponsoring organizations to prepare for their audit. As part of a robust audit process, CMS also requires sponsoring organizations who have been audited and found to have deficiencies to undergo a validation audit to ensure correction. The validation audit utilizes the same audit protocols, but only tests the elements where deficiencies were found, as opposed to re-administering the entire audit.

Currently CMS utilizes the following 5 protocols to audit sponsoring organization performance: Part D Formulary and Benefit Administration (FA); Part D Coverage Determinations, Appeals, and Grievances (CDAG); Part C Organization Determinations, Appeals, and Grievances (ODAG); Special Needs Model of Care (SNP–MOC) (only administered on organizations who operate SNPs); and, Compliance Program Effectiveness (CPE). The data collected is detailed in each of these protocols and the exact fields are located in the record layouts, at the end of each protocol. In addition, this collection request includes a pre-audit issue summary, three CPE questionnaires, one CPE organizational structure presentation template, one FA impact analysis template, two CDAG impact analysis templates, four ODAG impact analysis templates, three SNP–MOC impact analysis templates, and a SNP–MOC questionnaire.

The information gathered during this audit will be used by the Medicare Parts C and D Oversight and Enforcement Group (MOEG) within the Center for Medicare (CM) and CMS Regional Offices to assess sponsoring organizations' compliance with Medicare program requirements. If outliers or other data anomalies are detected, Regional Offices will work in collaboration with MOEG and other divisions within CMS for follow-up and resolution. Additionally, MA and Part D organizations will receive the audit results and will be required to implement corrective action to correct any identified deficiencies. *Form Number:* CMS–10191 (OMB control number: 0938–1000); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 201; *Total Annual Responses:* 207; *Total Annual Hours:* 39,456. (For policy questions regarding this collection contact Brenda Hudson at 443–743–9299.)

3. *Type of Information Collection Request:* Revision with change of a currently approved collection; *Title of Information Collection:* Bid Pricing Tool (BPT) for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP); *Use:* Under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), and implementing regulations at 42 CFR, Medicare Advantage organizations (MAOs) and Prescription Drug Plans (PDPs) are required to submit an actuarial pricing ''bid'' for each plan offered to Medicare beneficiaries for approval by the Centers for Medicare & Medicaid Services (CMS).

Medicare Advantage organizations (MAO) and Prescription Drug Plans (PDP) are required to submit an actuarial pricing ''bid'' for each plan offered to Medicare beneficiaries for approval by CMS. The MAOs and PDPs use the Bid Pricing Tool (BPT) software to develop their actuarial pricing bid. The competitive bidding process defined by the ''The Medicare Prescription Drug, Improvement, and Modernization Act'' (MMA) applies to both the MA and Part D programs. It is an annual process that encompasses the release of the MA rate book in April, the bid's that plans submit to CMS in June, and the release of the Part D and RPPO benchmarks, which typically occurs in August. *Form Number:* CMS–10142 (OMB control number: 0938–0944); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 555; *Total Annual Responses:* 4995; *Total Annual Hours:* 149,850. (For policy questions regarding this collection contact Rachel Shevland at 410–786–3026.)

Dated: December 20, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–27926 Filed 12–26–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Numbers: 93.581, 93.587, 93.612]

Notice for Public Comment on Administration for Native Americans' Program Policies and Procedures

AGENCY: Administration for Native Americans (ANA), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice for public comment.

SUMMARY: Pursuant to Section 814 of the Native American Programs Act of 1974 (NAPA), as amended, the ANA is required to provide members of the public an opportunity to comment on proposed changes in interpretive rules and general statements of policy and to give notice of the proposed changes no less than 30 days before such changes become effective. In accordance with notice requirements of NAPA, ANA herein describes proposed interpretive rules and general statements of policy that relate to ANA's funding opportunities in Fiscal Year (FY) 2020. Changes to FY 2020 Funding Opportunity Announcements (FOAs) will be based on the following previously published programs: Environmental Regulatory Enhancement (ERE), HHS–2018–ACF–ANA–NR–1344; Native American Language Preservation

and Maintenance—Esther Martinez Immersion (EMI), HHS–2018–ACF–ANA–NB–1343; Native American Language Preservation and Maintenance (P&M), HHS–2018–ACF–ANA–NL–1342; Social and Economic Development Strategies (SEDS), HHS–2018–ACF–ANA–NA–1339; Social and Economic Development Strategies—Alaska (SEDS–AK), HHS–2018–ACF–ANA–NK–1340. In addition, ANA will publish a new FOA, HHS–2020–ACF–ANA–NN–1837, which will be titled Social and Economic Development Strategies for Growing Organizations (SEDS–GO). More information about SEDS–GO will be published in a separate **Federal Register** Notice.

DATES: Comments are due by January 27, 2020. If ANA does not receive any significant comments within the 30 day comment period, ANA will proceed with the proposed changes in the respective published FOAs. The FOAs will serve as the final notice of these proposed changes.

ADDRESSES: Comments may be submitted to: Carmelia Strickland, Director of Program Operations, Administration for Native Americans, 330 C Street SW, Washington, DC 20201 or via email: *ANAComments@acf.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Carmelia Strickland, Director, Division of Program Operations, Administration for Native Americans, 330 C Street SW, Washington, DC 20201. Telephone: (877) 922–9262; Email: *ANAComments@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 814 of NAPA, as amended, (42 U.S.C. 2992b–1) incorporates provisions of the Administrative Procedure Act that require ANA to provide notice of its proposed interpretive rules and statements of policy and to seek public comment on such proposals. This notice serves to fulfill the statutory notice and public comment requirement. ANA voluntarily includes rules of practice and procedures in this notice in an effort to be transparent. The proposed interpretive rules, statements of policy, and rules of ANA practice and procedure reflected in clarifications, modifications, and new text will appear in the six FY 2020 FOAs: ERE, EMI, P&M, SEDS, SEDS–AK, and SEDS–GO.

ANA's past FOAs can be accessed at: *http://www.acf.hhs.gov/grants/open/foa/office/ana* or *http://www.acf.hhs.gov/grants/open/foa/.* Synopses and application forms will be available on *https://www.grants.gov.*

A. *Interpretive rules, statements of policy, procedures, and practice.* The proposals below reflect ANA's proposed changes in rules, policy, or procedure which will take effect in the FY 2020 FOAs.

1. Making the ANA grant application process easier—To address applicant feedback about applying for an ANA grant, the proposed changes will be made to simplify the process to the extent possible for eligible applicants by (i.) exempting ANA applications from the ACF two-file requirement, (ii.) changing how to upload the Objective Work Plan (OWP) and (iii.) providing staggered application deadlines.

i. ANA proposes to exempt applicants from the ACF standard two-file upload requirement when applying to all FY 2020 ANA FOAs in order to reduce the technical expertise and software required to combine multiple documents and files into only two-files. The 150 page limit remains in effect.

ii. ANA proposes to make the OWP form an ''Optional'' form in the application packages for each FOA. This technical change will allow applicants to submit the OWP form available in ANA's Application Toolkit or on *Grants.gov.* ANA's OWP form is available on the *Grants.gov* website as well as in the ANA Application Toolkit, which can be found on the ANA website. Although the form will still be required as part of a complete application, this change will help applicants to submit the form in whatever version they utilized to prepare the application rather than prescribing the use of the *Grants.gov* version.

iii. Finally, ANA proposes to publish the FOAs for EMI, P&M, and ERE first and then allow a two week period before the SEDS and SEDS–AK are published. The SEDS–GO FOAs may be published with the other SEDS FOAs or at a later date. Therefore, the application submission deadlines will also be staggered accordingly. ANA's intent for making these changes is to make applying for ANA funding easier for our Native communities and more accessible to ANA's eligible applicants.

2. *Application Requirements and Evaluation Criteria Scores*—Sections 803 and 806 of NAPA, 42 U.S.C. 2991b; 2991d–1. In FY 2018, ANA made substantial revisions to the application requirements and evaluation criteria included in our FOAs. The purpose of the revisions was to shift from a deficit-based to a strengths-based approach for application planning and development, as well as to emphasize a community-based approach to project planning and implementation. ANA stands behind the revisions made in FY 2018 and does not plan to change the information being requested. However, during the panel review process, ANA received feedback that the evaluation criteria was difficult to understand and redundant. Additionally, the ACF Uniform Project Description, which is the template used to prepare all ACF FOAs in accordance with the Paperwork Reduction Act (44 U.S.C. 3501–3521) was updated last year. To remain consist with our Application requirements and structure, ANA will move the ANA Project Framework, which was originally under Expected Outcomes, into the Approach section. ANA proposes the following Evaluation criteria scores for FY 2020:

Approach for a maximum of 76 points, to consist of: The ANA Project Framework: Long Term Community Goal (2 points), Current Community Condition (3 points), Project Goal (3 points), Objectives (6 points) Outcomes and Indicators (6 points), Outputs (4 points); Outcome Tracker and Outcome Tracking Strategy (7 points); Community-Based Strategy (10 points); Readiness and Implementation Strategy (20 points); and the Objective Work Plan (OWP) (15 points).

Organizational Capacity (12 points), to also consist of: Personnel and Partnerships.

Budget and Budget Justification for a maximum of 12 points, to consist of: Line Item Budget (4 points) and the narrative Budget Justification (8 points).

These changes are meant to streamline the information required for a successful grant application and provide smaller point allotments in order to make ANA's evaluation criterion more approachable. In addition, it is intended to provide greater guidance to panel reviewers on how to allocate scores.

3. *Changes to the SEDS–FOA: Commissioner priorities and bonus points*—Sections 803 and 803B of NAPA, 42 U.S.C. 2991b; 2991b–2. ANA Commissioner Jean Hovland has identified several priority areas that she would like to potentially fund through the SEDS program. Therefore, 5 bonus points will be available for applications that address one of the following priority areas: Elders, Veterans, First Responders, Murdered and Missing Indigenous Women (MMIW), and/or Human Trafficking. Applications that address one of more of these priorities areas should be reflected in the project goal, all objectives, indicator(s), and target population (either as participants or beneficiaries). Reviewers will provide 5 points if all elements are included in the application to address one or more priority areas. In addition, the program areas of interest will be expanded to include opportunity zones under economic competitiveness, and smoking and vaping under substance abuse prevention.

4. *Changes to SEDS–AK FOA*—Section 803 of NAPA, 42 U.S.C. 2991b.

ANA plans to modify the description of program purpose for the SEDS–AK FOA to expand the program areas of interest beyond governance. In addition, ANA wants to provide a competitive advantage for smaller Alaska Native villages or organizations that have never received ANA funding. Therefore, the FOA will state that reviewers may add up to 10 bonus points in the scoring criteria if an eligible entity that has never received an ANA award. ANA staff will confirm during the objective review process whether or not an applicant organization for SEDS–AK has received a past ANA award.

a. *Changes to EMI FOA*—Section 803C of NAPA, 42 U.S.C. 2991b–3. In accordance with 42 U.S.C. 2991b–3(c)(7), applicants for an EMI grant must provide a certification that the organization has not less than 3 years of experience in operating and administering a Native American language survival school, a Native American language nest, or any other educational program in which instruction is conducted in a Native American language. Previously, this requirement only applied to Native American language survival schools. ANA will now require all applicants for EMI to provide a certification of operation of not less than 3 years.

b. *Clarification to ERE FOA*—Section 803 of NAPA, 42 U.S.C. 2991b.

i. Section 803(d)(3) of NAPA (42 U.S.C. 2991b(d)(3)) permits Federal funds to be used as cost sharing or matching funds for an ERE project, as long as they are not provided from other ANA grants. Therefore, ANA will add this clarification in the ERE FOA. Before using Federal grant funds as matching funds, grantees must make sure that the authorizing statute for the matching Federal grant funds specifically allows its grant funds to be used as cost share or matching funds.

ii. ANA will also permit entities to apply for ERE grants even if they do not own land. There is no requirement within the provisions for ERE under NAPA that require the eligible entity to own land. Applications will be evaluated in accordance with the evaluation criteria in the FOA, including ensuring the purpose of the ERE program will be met.

Statutory Authority: Section 814 of the Native American Programs Act of 1974 (NAPA), as amended.

Jean Hovland,

Commissioner, Administration for Native Americans, Administration for Children and Families.

[FR Doc. 2019–27916 Filed 12–26–19; 8:45 am]

BILLING CODE 4184–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–2434]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Formal Meetings Between the Food and Drug Administration and Sponsors and Applicants of Prescription Drug User Fee Act Products

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 27, 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 0910–0429. 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.

Formal Meetings Between FDA and Sponsors and Applicants of Prescription Drug User Fee Act Products

OMB Control Number 0910–0429—Reinstatement

This information collection supports implementation of the Prescription Drug User Fee Amendments (PDUFA) of the FDA Reauthorization Act of 2017 (FDARA). Consistent with Agency regulations and provisions found in our ''Reauthorization Performance Goals And Procedures: Fiscal Years 2018 Through 2022,'' we have established procedural guidance pertaining to formal meetings between FDA and sponsors or applicants of certain drug or biological drug products regulated by the Center for Drug Evaluation (CDER) and Research and the Center for Biologics Evaluation and Research (CBER). Because these meetings often represent critical points in the regulatory process, we intend these recommendations to facilitate the timely and effective scheduling of such meetings, as well as ensure their efficiency and appropriate documentation.

While FDA regulations in 21 CFR 10.65, 312.47, 314.50, and 314.102 describe general considerations and set forth certain information collection elements pertaining to meetings with FDA, the guidance document entitled, ''Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products,'' discusses specific topics for sponsors of PDUFA products such as types of meetings, meeting formats, meetings requests, FDA response, and meeting packages. The guidance recommendations do not apply to abbreviated new drug applications, applications for biosimilar biological products, or submissions for medical devices. Issued consistent with our Good Guidance Practice regulations in 21 CFR 10.115, we originally developed the guidance in 1999 and it has since undergone various revisions to reflect reauthorization of relevant user fee legislation. The guidance explains our recommendations with regard to PDUFA meetings and that the following elements be included in a meeting request to FDA:

- Information identifying and describing the product;
- the type of meeting being requested; a brief statement of the purpose of the meeting;
- a list of objectives and expected outcomes from the meeting;
- a preliminary proposed agenda; a draft list of questions to be raised at the meeting;
- a list of individuals who will represent the sponsor or applicant at the meeting;
- a list of Agency staff requested to be in attendance;
- the approximate date that the information package will be sent to the Agency;
- and suggested dates and times for the meeting.

We use the information to determine the purpose of the meeting and to

arrange for scheduling and participation as appropriate.

Similarly, the guidance explains and discusses the preparation of an ''information package'' and recommends that it include the following information:

- Identifying information about the underlying product;
- a brief statement of the purpose of the meeting; a list of objectives and expected outcomes of the meeting;
- a proposed agenda for the meeting;
- a list of specific questions to be addressed at the meeting;
- a summary of clinical data that will be discussed (as appropriate);
- a summary of preclinical data that will be discussed (as appropriate); and
- chemistry, manufacturing, and controls information that may be discussed (as appropriate).

The information package enables us to prepare for the meeting and allows appropriate time for reviewing relevant product data. Although FDA reviews similar information in the meeting request, the information package should provide updated data reflecting the most current and accurate information available to the sponsor or applicant.

In the **Federal Register** of July 11, 2018 (83 FR 32130) we published a 60-day notice under the Paperwork Reduction Act of 1995 (PRA) requesting public comment on the proposed collection of information associated with meeting requests under PDUFA. No comments were received in response to the PRA notice. Separately, in the **Federal Register** (December 29, 2017; 82 FR 61763), we published a notice of availability announcing a 2017 revised draft version of the subject guidance, ultimately intending it to replace the current 2009 version. In the December 2017 notice of availability, the 2009 version was inadvertently withdrawn and the associated information collection discontinued. Accordingly, we are requesting reinstatement of the information collection. Although the associated guidance is currently being revised to reflect 2018–2022 PDUFA reauthorization goals and is being issued consistent with our Good Guidance Practice Regulation at 21 CFR 10.115, no changes have been made to the information collection elements recommended, nor have we modified the burden estimate we ascribe to the related activities.

We therefore estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Guidance recommendations	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Meeting Requests:					
CDER	1,319	2.31	3,058	10	30,580
CBER	301	1.21	363	10	3,630
Subtotal					34,210
Information Packages:					
CDER	1,149	2.19	2,522	18	45,396
CBER	187	1.12	210	18	3,780
Subtotal					49,176
Total					83,386

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimate reflects an overall increase since the previous OMB approval. We attribute this adjustment to an increase in the number of PDUFA-related meeting requests and information packages we have received over the last few years.

Based on Agency data, we estimate 1,319 sponsors and applicants (respondents) request 3,058 formal meetings with CDER annually, and 301 respondents request 363 formal meetings with CBER annually regarding the development and review of a PDUFA product. The hours per response, which is the estimated number of hours that a respondent spends preparing the information to be submitted with a meeting request in accordance with the guidance, is estimated to be 10 hours. We expect it takes this amount of time to gather and copy brief statements about the product as well as a description of the purpose and details of the meeting.

Also consistent with Agency data, we estimate 1,149 respondents submitted 2,522 information packages to CDER annually, and 187 respondents submitted 210 information packages to CBER annually, prior to a formal meeting regarding the development and review of a PDUFA product. We estimate 18 hours is needed to prepare the information package in accordance with the guidance.

Dated: December 10, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–27835 Filed 12–26–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program: List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility

for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, Maryland 20857; (301) 443–6593, or visit our website at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on November 1, 2019, through November 30, 2019. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, Maryland 20857. The Court's caption (*Petitioner's Name* v. *Secretary of HHS*) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: December 19, 2019.

Thomas J. Engels,

Administrator.

List of Petitions Filed

1. Christine Murschel, Coon Rapids, Minnesota, Court of Federal Claims No: 19–1700V
2. Colleen Hietpas on behalf of C. H., Neenah, Wisconsin, Court of Federal Claims No: 19–1702V
3. Fidencio Velasquez, Eagle Pass, Texas, Court of Federal Claims No: 19–1703V
4. Brooke Biel, West View, Pennsylvania, Court of Federal Claims No: 19–1704V
5. Joshua Brown, Bloomington, Indiana, Court of Federal Claims No: 19–1705V
6. Emily Thompson, Rocky Mount, North Carolina, Court of Federal Claims No: 19–1708V
7. Angela Lee, Kyle, Texas, Court of Federal Claims No: 19–1709V
8. Francisco Castellanos, Miami, Florida, Court of Federal Claims No: 19–1710V
9. Kenneth Holmes, Irving, Texas, Court of Federal Claims No: 19–1711V
10. Jaime Lehman, Miami, Florida, Court of Federal Claims No: 19–1712V
11. Mary Maloney, Stuart, Florida, Court of Federal Claims No: 19–1713V
12. Uriel Zamora and Edna Frias on behalf of A. Z., McAllen, Texas, Court of Federal Claims No: 19–1718V
13. Elizabeth Jackson, Boston, Massachusetts, Court of Federal Claims No: 19–1721V
14. Rose Dworkis, Glen Rock, New Jersey, Court of Federal Claims No: 19–1722V
15. Joanna Farjaszewska on behalf of A. M., Surprise, Arizona, Court of Federal Claims No: 19–1723V
16. Stephanie Stomel, Cherry Hill, New Jersey, Court of Federal Claims No: 19–1726V
17. Todd L. Friberg, Greensboro, North Carolina, Court of Federal Claims No: 19–1727V
18. Genevieve Avila, Waukegan, Illinois, Court of Federal Claims No: 19–1728V
19. Bobby Tate, Waupun, Wisconsin, Court of Federal Claims No: 19–1731V
20. Richard Porpora, Glen Falls, New York, Court of Federal Claims No: 19–1732V
21. Trina Garcia, Sparks, Nevada, Court of Federal Claims No: 19–1733V
22. Renee Worthy, Tallahassee, Florida, Court of Federal Claims No: 19–1735V
23. Henrietta LaRue, Lansdowne, Pennsylvania, Court of Federal Claims No: 19–1739V
24. Jonathan Cohen and Jessica Cohen on behalf of S. C., Deceased, Charlotte, North Carolina, Court of Federal Claims No: 19–1740V
25. Michelle Breslin, San Jose, California, Court of Federal Claims No: 19–1743V
26. Gary J. Hudeck, Midland, Michigan, Court of Federal Claims No: 19–1744V
27. Michael Eiras, Rocklin, California, Court of Federal Claims No: 19–1746V
28. Courtney Nina and Pedro Nina on behalf of Kennedy Nina, Odessa, Florida, Court of Federal Claims No: 19–1750V
29. Nancy Buzzelli Lilley, Greenville, North Carolina, Court of Federal Claims No: 19–1751V
30. Jason Manus, Englewood, New Jersey, Court of Federal Claims No: 19–1753V
31. Victoria Martinez, Wesley Chapel, Florida, Court of Federal Claims No: 19–1754V
32. Marlene Boger, Garrett, Indiana, Court of Federal Claims No: 19–1755V
33. Debra Owens, Beech Island, South Carolina, Court of Federal Claims No: 19–1757V
34. Esther Rubinson, Jackson, New Jersey,

Court of Federal Claims No: 19–1759V
35. Nicole Abrams-Kelly, Huntersville, North Carolina, Court of Federal Claims No: 19–1760V
36. Brittany Dock on behalf of K. E., Aurora, Colorado, Court of Federal Claims No: 19–1762V
37. Thomas Joseph Grandinetti, Syracuse, New York, Court of Federal Claims No: 19–1763V
38. Catherine Doyle, Cedar Knolls, New Jersey, Court of Federal Claims No: 19–1767V
39. Kristi A. Baker, Huntington, West Virginia, Court of Federal Claims No: 19–1771V
40. Olga Capkeviciene, Lakewood, Ohio, Court of Federal Claims No: 19–1773V
41. Laura Bell Frey, Franklin, Tennessee, Court of Federal Claims No: 19–1776V
42. Morgan Gaffney, Washington, District of Columbia, Court of Federal Claims No: 19–1777V
43. Katherine Beltz, Huntersville, North Carolina, Court of Federal Claims No: 19–1779V
44. Lisa B. Vendiola, Waipahu, Hawaii, Court of Federal Claims No: 19–1780V
45. Lisa J. Prince, Plano, Texas, Court of Federal Claims No: 19–1781V
46. Noelle Lynn Czopek on behalf of C. L. H., Jr., Pittsburgh, Pennsylvania, Court of Federal Claims No: 19–1782V
47. Ann M. Arpino, New Haven, Connecticut, Court of Federal Claims No: 19–1783V
48. Edwin Weiss, New York, New York, Court of Federal Claims No: 19–1786V
49. Julie Schottler, Rochester, Minnesota, Court of Federal Claims No: 19–1787V
50. Laura Valentin Maalouf, West Chester, Pennsylvania, Court of Federal Claims No: 19–1788V
51. Randy Li, Fort Polk, Louisiana, Court of Federal Claims No: 19–1789V
52. Donna Faye McKenney, Clackamas, Oregon, Court of Federal Claims No: 19–1799V
53. Phillip Woods, Novi, Michigan, Court of Federal Claims No: 19–1800V
54. Geoffrey Clive, Kansas City, Missouri, Court of Federal Claims No: 19–1802V
55. Connie Suzann Mundinger, Columbia, South Carolina, Court of Federal Claims No: 19–1804V
56. Carl Johnson, Eagan, Minnesota, Court of Federal Claims No: 19–1807V
57. Marjorie DeCamara, Manheim, Pennsylvania, Court of Federal Claims No: 19–1808V
58. Michelle Celentano, Tucson, Arizona, Court of Federal Claims No: 19–1809V
59. Claudia Marquez, Washington, District of Columbia, Court of Federal Claims No: 19–1811V
60. Thomas Bakker, Scottsdale, Arizona, Court of Federal Claims No: 19–1814V
61. Leigh-Anne Garry on behalf of M. G., Flourtown, Pennsylvania, Court of Federal Claims No: 19–1815V
62. Maria Reiser Manwill, West Valley City, Utah, Court of Federal Claims No: 19–1818V
63. Lori Hoeffken, Richmond, Texas, Court of Federal Claims No: 19–1819V
64. Tyler Ramdhanie, Halethorpe, Maryland, Court of Federal Claims No: 19–1820V
65. Misty Gehrke, Vancouver, Washington, Court of Federal Claims No: 19–1821V
66. Joyce C. Briggs, Durham, North Carolina, Court of Federal Claims No: 19–1822V
67. Michael Dean Vucenic, Modesto, California, Court of Federal Claims No: 19–1824V
68. Melissa Fischer, Clawson, Michigan, Court of Federal Claims No: 19–1825V

[FR Doc. 2019–27963 Filed 12–26–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Health Center Program Forms, OMB No. 0915–0285—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30 day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than January 27, 2020.

ADDRESSES: Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Health Center Program Forms OMB No. 0915–0285—Revision.

Abstract: The Health Center Program, administered by HRSA, is authorized under section 330 of the Public Health Service (PHS) Act, most recently amended by section 50901(b) of the Bipartisan Budget Act of 2018, Public Law 115–123. Health centers are community-based and patient-directed organizations that deliver affordable, accessible, quality, and cost-effective primary health care services to patients regardless of their ability to pay. Nearly 1,400 health centers operate approximately 12,000 service delivery sites that provide primary health care to more than 27 million people in every U.S. state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and the Pacific Basin. HRSA utilizes forms for new and existing health centers and other entities to apply for various grant and non-grant opportunities, renew grant and non-grant designations, report progress, and change their scopes of project.

A 60-day notice was published in the **Federal Register** on April 8, 2019, vol. 84, No. 67; pp. 13937–38. No public comments were received.

Need and Proposed Use of the Information: Health Center Program-specific forms are necessary for Health Center Program award processes and oversight. These forms provide HRSA staff and objective review committee panels with information essential for application evaluation, funding recommendation and approval, designation, and monitoring. These forms also provide HRSA staff with information essential for evaluating compliance with Health Center Program legislative and regulatory requirements.

HRSA intends to make several changes to its forms:

- *HRSA will modify the following forms to streamline and clarify data (e.g., text changes, updated instructions) currently being collected:* 1A, 1B, 1C, 2, 3, 3A, 4, 5A, 5B, 5C, 6A, 8, 12, Checklist for Adding a New Service, Checklist for Adding a New Service Delivery Site, Checklist for Adding a New Target Population, Checklist for Deleting Existing Service, Checklist for Deleting Existing Service Delivery Site, Clinical Performance Measures, Equipment List, Expanded Services, Federal Object Class Categories, Financial Performance Measures, Funding Sources, Health Center Controlled Networks (HCCN) Progress Report Table, Operational Plan, Program Specific Forms Instructions, Project Qualification Criteria, Project Work Plan, Proposal Cover Page, and the Summary Page.
- *HRSA will rename the following forms:* Substance Abuse Progress Report will be changed to Health Center Program Progress Report, Program Narrative Update will be changed to Project Narrative Update, and Outreach and Enrollment Supplemental form will be changed to Health Center Program: Supplemental Information.

• *HRSA will add the following forms to collect information to support funding applications and program monitoring:* Capital Semi-Annual Progress Report, Diabetes Action Plan Quarterly Report Template, FY 2018 Expanding Access to Quality Substance Use Disorder and Mental Health Services (SUD–MH)/Integrated Behavioral Health Services (IBHS) Progress Reporting, FY2020 Ending the HIV Epidemic—Primary Care HIV Prevention Progress Reporting, HRSA Electronic Handbooks Action Plan, HRSA Loan Guarantee Program Application, Participating Health Center List, Patient Target and Calculations, Project Overview, and Project Plan.

• *HRSA will remove the following forms to further streamline information collected by HRSA and reduce burden:* Alterations and Renovations Project Cover Page, Form 9: Need for Assistance, Form 10: Annual Emergency Preparedness Report, HCCN Work Plan, and Zika Progress Report.

Since the submission of the 60-day **Federal Register** notice (FRN), there are 5 additional new forms (for a total of 10 new forms) due to new initiatives that required clearance (2 HIV funding-related forms, 2 diabetes funding-related forms, and 1 HCCN funding-related form); the data needed for the new initiatives could not be captured in forms previously approved. Please note, the 60-day FRN included one form identified as ''new'' (Project Work Plan); however, that form was actually included in the previous OMB package submitted in 2017. The correction has been made in this 30-day FRN and this form is no longer listed as new in this documentation.

The 60-day FRN request contained 42,530 burden hours. However, this final 30-day notice includes an additional 16,712 burden hours, for a new total of 59,242 burden hours.

Likely Respondents: Health Center Program award recipients (those funded under section 330 of the PHS Act); Health Center Program look-alikes; state and national trade associations; and other organizations seeking Health Center Program funding.

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
Capital Semi-Annual Progress Report (new)	996	2	1,992	1.00	1,992
Checklist for Adding a New Service	450	1	450	2.00	900
Checklist for Adding a New Service Delivery Site	1,480	1	1,480	2.00	2,960
Checklist for Adding a New Target Population	100	1	100	2.00	200
Checklist for Deleting Existing Service	500	1	500	2.00	1,000
Checklist for Deleting Existing Service Delivery Site	750	1	750	2.00	1,500
Clinical Performance Measures	1,058	1	1,058	3.50	3,703
Diabetes Action Plan—Quarterly Report Template (new)	1,058	4	4,232	2.00	8,464
Equipment List	1,375	1	1,375	1.00	1,375
Expanded Services	996	1	996	1.00	996
Federal Object Class Categories	735	1	735	0.25	184
Financial Performance Measures	1,058	1	1,058	1.50	1,587
Form 1A: General Information Worksheet	1,058	1	1,058	1.00	1,058
Form 1B: BPHC Funding Request Summary	1,000	1	1,000	0.75	750
Form 1C: Documents on File	1,058	1	1,058	0.50	529
Form 2: Staffing Profile	1,058	1	1,058	1.00	1,058
Form 3: Income Analysis	1,058	1	1,058	1.00	1,058
Form 3A: FQHC Look-Alike Budget Information	50	1	50	1.00	50
Form 4: Community Characteristics	1,058	1	1,058	1.00	1,058
Form 5A: Services Provided	1,058	1	1,058	1.00	1,058
Form 5B: Service Sites	1,508	1	1,508	1.00	1,508
Form 5C: Other Activities/Locations	1,058	1	1,058	0.50	529
Form 6A: Current Board Member Characteristics	1,058	1	1,058	1.00	1,058
Form 6B: Request for Waiver of Board Member Requirements	1,058	1	1,058	1.00	1,058
Form 8: Health Center Agreements	1,058	1	1,058	1.00	1,058
Form 12: Organization Contacts	1,058	1	1,058	0.50	529
Funding Sources	735	1	735	0.50	368
FY2018 Expanding Access to Quality SUD–MH/IBHS Progress Reporting (new)	1,375	3	4,125	1.00	4,125
FY2020 Ending the HIV Epidemic—Primary Care HIV Prevention Progress Reporting (new)	182	1	182	1.00	182
HCCN Progress Report Table	90	1	90	1.00	90
Health Center Program Progress Report (previously Substance Abuse Progress Report)	735	1	735	1.00	735
Health Center Program: Supplemental Information (previously Outreach and Enrollment Supplemental Form)	500	1	500	1.00	500
HRSA Electronic Handbooks Action Plan (new)	1,058	4	4,232	1.00	4,232
HRSA Loan Guarantee Program Application (new)	20	1	20	1.00	20
Operational Plan	500	1	500	3.00	1,500

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Other Requirements for Sites	600	1	600	0.50	300
Participating Health Center List (new)	90	1	90	1.00	90
Patient Target and Calculations (new)	1,058	1	1,058	1.00	1,058
Program Specific Forms Instructions	1,500	1	1,500	1.00	1,500
Project Narrative Update (previously Program Narrative Update)	883	1	883	4.00	3,532
Project Overview (new)	182	1	182	1.00	182
Project Plan (new)	182	3	546	1.50	819
Project Qualification Criteria	735	1	735	1.00	735
Project Work Plan	135	1	135	4.00	540
Proposal Cover Page	735	1	735	1.00	735
Summary Page	1,558	1	1,558	0.50	779
Total Hours	37,605		48,063		59,242

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2019–27909 Filed 12–26–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HHS–NIH–CDC–SBIR PHS 2020–1: Reagents for Immunologic Analysis of Non-Mammalian and Underrepresented Mammalian Models (Topic 083).

Date: January 21, 2020.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Ann Marie M. Brighenti, Ph.D., Scientific Review Officer, Program Management & Operations Branch, Division of Extramural Activities, Scientific Review Program, Room 3E71, National Institutes of Health, National Institutes of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852, 301–761–3100, *mailto:ann-marie.cruz@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 19, 2019.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–27860 Filed 12–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the AIDS Research Advisory Committee, NIAID.

The meetings will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: January 27, 2020.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Martin Gutierrez, Program Coordinator, Scientific Planning and Operations, Division of AIDS, Room 8D50, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 98231, Rockville, MD 20852–9831, 240–292–4844, *mgutierrez@mail.nih.gov*.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: June 1, 2020.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Martin Gutierrez, Program Coordinator, Scientific Planning and Operations, Division of AIDS, Room 8D50, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 98231, Rockville, MD 20852–9831, 240–292–4844, *mgutierrez@mail.nih.gov*.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: September 14, 2020.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Martin Gutierrez, Program Coordinator, Scientific Planning and Operations, Division of AIDS, Room 8D50, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 98231, Rockville, MD 20852–9831, 240–292–4844, *mgutierrez@mail.nih.gov*.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856,

Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 19, 2019.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–27859 Filed 12–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 Alcohol Abuse and Alcoholism Initial Review Group; Epidemiology, Prevention and Behavior Research Review Subcommittee.

Date: March 2, 2020.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20817.

Contact Person: Anna Ghambaryan, M.D., Ph.D. Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2120, MSC 6902, Bethesda, MD 20892, 301–443–4032, *anna.ghambaryan@nih.gov*.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Clinical, Treatment and Health Services Research Review Subcommittee.

Date: March 12, 2020.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20817.

Contact Person: Ranga V. Srinivas, Ph.D., Chief, Extramural Project Review Branch, Extramural Project Review Branch, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2114, Bethesda, MD 20892, (301) 451–2067, *srinivar@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

December 19, 2019

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–27857 Filed 12–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed 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 Environmental Health Sciences Special Emphasis Panel; R21 Mechanism for Time-Sensitive Research Opportunities in Environmental Health Sciences.

Date: January 15, 2020.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Laura A., Thomas, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, Research Triangle Park, NC 27709, 919–541–2824, *laura.thomas@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: December 19, 2019.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–27861 Filed 12–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Pulmonary Vascular Disease Remodeling Review.

Date: February 12, 2020.

Time: 10:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Shelley S Sehnert, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892–7924, 301–435–0303, *ssehnert@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Cardiovascular-Renal Outcomes in Pregnant Women and Offspring.

Date: February 13, 2020.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20714.

Contact Person: Melissa E Nagelin, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892, 301–435–0297, *nagelinmh2@nhlbi.nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Maximizing the Scientific Value of the NHLBI Biorepository: Scientific Opportunities for Exploratory Research.

Date: February 20, 2020.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Zhihong Shan, Ph.D., MD, Scientific Review Officer, Division of Extramural Activities, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Rockville, MD 20892, *zhihong.shan@nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Circadian Patterns of Gene Expression Associated with Disease.

Date: February 28, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Zhihong Shan, Ph.D., MD, Scientific Review Officer, Division of Extramural Activities, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Rockville, MD 20892, *zhihong.shan@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: *December 19, 2019.*

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–27856 Filed 12–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(D) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Science Advisory Board for Biosecurity.

The meeting will be open to the public, with attendance limited to space available. The meeting will also be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*). Individuals planning to attend in person may preregister online at: *https://osp.od.nih.gov/biotechnology/national-science-advisory-board-for-biosecurity-nsabb/*. Preregistration will close at 12:00 noon Eastern Time (ET) on January 17, 2020. Individuals in attendance may also register onsite on the day of the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Science Advisory Board for Biosecurity.

Date: January 23–24, 2020.

Time: January 23, 2020, 12:30 p.m. to 5:00 p.m. (ET).

Agenda: The National Science Advisory Board for Biosecurity will discuss: (1) Considerations regarding security and public transparency when sharing information about research involving enhanced potential pandemic pathogens; (2) other business of the Board; and (3) a charge to the committee will be presented.

Place: Hyatt Regency Bethesda, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Time: January 24, 2020, 9:00 a.m. (ET) to Adjournment.

Agenda: The National Science Advisory Board for Biosecurity will discuss: (1) Considerations regarding security and public transparency when sharing information about research involving enhanced potential pandemic pathogens; and (2) other business of the Board.

Place: Hyatt Regency Bethesda, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Shayla Beckham, Management Program Analyst, Office of Science Policy, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892–9606, 301–496–9838, *shayla.beckham@nih.gov*.

Any interested person may file written comments by forwarding the statement to the Contact Person listed on this notice.

Additional information about the meeting, including an agenda, will be posted at: *https://osp.od.nih.gov/biotechnology/national-science-advisory-board-for-biosecurity-nsabb/* when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: December 19, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–27862 Filed 12–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel Transition to Independence SEP, March 10, 2020, 10:30 a.m. to 5:00 p.m., National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W602, Rockville, MD 20850 (Telephone Conference Call) which was published in the **Federal Register** on December 16, 2019, 84 FR 68465.

This meeting notice is amended to correct the meeting name from National Cancer Institute Special Emphasis Panel Transition to Independence SEP to National Cancer Institute Initial Review Group Transition to Independence. The meeting is closed to the public.

Dated: December 19, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–27854 Filed 12–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; Clinical Trials Review Committee.

Date: February 27–28, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn, Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Keary A. Cope, Ph.D., Scientific Review Officer, Office of Scientific

Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892–7924, 301–827–7912, *copeka@mail.nih.gov.*

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Patient-Oriented Research Review Committee.

Date: February 27–28, 2020.

Time: 8:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Stephanie Johnson Webb, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301–827–7992, *stephanie.webb@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 19, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–27855 Filed 12–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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 Advisory Allergy and Infectious Diseases Council.

Date: January 27, 2020.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Report from the Institute Director.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rm 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Allergy, Immunology and Transplantation Subcommittee.

Date: January 27, 2020.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rm. 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Microbiology and Infectious Diseases Subcommittee.

Date: January 27, 2020.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications

Place: National Institutes of Health, Natcher Building, Conference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rm. 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee.

Date: January 27, 2020.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Room A, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Program advisory discussions and reports from division staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rm. 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Allergy, Immunology and Transplantation Subcommittee.

Date: June 1, 2020.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rm. 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Microbiology and Infectious Diseases Subcommittee.

Date: June 1, 2020.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rm. 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee.

Date: June 1, 2020.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Room A, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Program advisory discussions and reports from division staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rm. 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: June 1, 2020.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Report from the Institute Director.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rm. 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Microbiology and Infectious Diseases Subcommittee.

Date: September 14, 2020.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rm 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: September 14, 2020.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Report from the Institute Director.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rm 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Allergy, Immunology and Transplantation Subcommittee.

Date: September 14, 2020.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rm 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee.

Date: September 14, 2020.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Room A, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Program advisory discussions and reports from division staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rm 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.niaid.nih.gov/facts/facts.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 19, 2019.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–27858 Filed 12–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0973]

Random Drug Testing Rate for Covered Crewmembers for 2020

AGENCY: Coast Guard, DHS.

ACTION: Notice of minimum random drug testing rate.

SUMMARY: The Coast Guard has set the calendar year 2020 minimum random drug testing rate at 50 percent of covered crewmembers.

DATES: The minimum random drug testing rate is effective January 1, 2020 through December 31, 2020.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Patrick Mannion, Drug and Alcohol Prevention and Investigation Program Manager, Office of Investigations and Analysis (CG–INV), U.S. Coast Guard Headquarters, via email; *DAPI@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard requires marine employers to establish random drug testing programs for covered crewmembers in accordance with 46 CFR 16.230. Marine employers are required by 46 CFR 16.500 to collect and maintain a record of drug testing data for each calendar year, and submit this data to the Coast Guard in a Management Information System (MIS) Report by March 15 of the following year.

Each year, the Coast Guard will publish a notice reporting the results of random drug testing for the previous calendar year's MIS data and the required minimum annual percentage rate for random drug testing for the next calendar year. The purpose of setting a minimum random drug testing rate is to promote maritime safety by establishing an effective deterrent to drug misuse within the maritime workforce. Intoxicated operations poses a serious threat to life, property and the environment in the maritime commons. As such, the minimum random drug testing rate is intended to deter and detect illegal drug misuse in the maritime industry.

The Coast Guard announces that the minimum random drug testing rate for calendar year 2020 is 50 percent. The Coast Guard continues a 50 percent minimum random drug testing rate for 2020 as a result of MIS data for the most recent reporting year which indicated that the positive rate continues to be greater than one percent. 46 CFR 16.230(f)(2) requires the Commandant to

set the minimum random drug testing rate at 50 percent when the positivity rate for drug use is greater than 1 percent.

For 2020, the minimum random drug testing rate will be 50 percent of covered employees for the period of January 1, 2020 through December 31, 2020 in accordance with 46 CFR 16.230(e).

Dated: December 19, 2019.

David C. Barata,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2019–27896 Filed 12–26–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

New Dates for the April and October 2020 Customs Broker's License Examinations

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection has changed the dates on which the semi-annual examination for an individual broker's license will be held in April and October 2020.

DATES: The customs broker's license examination scheduled for April 2020 will be held on Wednesday, April 1, 2020, and the customs broker's license examination scheduled for October 2020 will be held on Thursday, October 8, 2020.

FOR FURTHER INFORMATION CONTACT: Randy Mitchell, Director, Commercial Operations, Revenue and Entry, Office of Trade, (202) 325–6532, or *brokermanagement@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that a person (an individual, corporation, association, or partnership) must hold a valid customs broker's license and permit in order to transact customs business on behalf of others, sets forth standards for the issuance of brokers' licenses and permits, and provides for the taking of disciplinary action against brokers that have engaged in specified types of infractions. This section also provides that an examination may be conducted to assess an applicant's qualifications for a license.

The regulations issued under the authority of section 641 are set forth in Title 19 of the Code of Federal Regulations, part 111 (19 CFR part 111). Part 111 sets forth the regulations regarding the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers. These regulations also include the qualifications required of applicants and the procedures for applying for licenses and permits. Section 111.11 of the CBP regulations (19 CFR 111.11) sets forth the basic requirements for a broker's license, and in paragraph (a)(4) of that section provides that an applicant for an individual broker's license must attain a passing grade (75 percent or higher) on the examination.

Section 111.13 of the CBP regulations (19 CFR 111.13) sets forth the requirements and procedures for the examination for an individual broker's license and states that the customs broker's license examinations will be given on the fourth Wednesday in April and October unless the regularly scheduled examination date conflicts with a national holiday, religious observance, or other foreseeable event.

Due to the limited availability of testing sites and to ensure the integrity of exam conditions by preventing commingling of the administration of the broker exams with other types of exams, CBP has decided to change the regularly scheduled dates of the examination. This document announces that CBP has scheduled the April 2020 customs broker's license examination for Wednesday, April 1, 2020, and the October 2020 customs broker's license examination for Thursday, October 8, 2020.

Dated: December 18, 2019.

Brenda B. Smith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2019–27956 Filed 12–26–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1981]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Map Information eXchange

(FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Alabama: Limestone.	City of Huntsville (19–04–3429P).	The Honorable Thomas Battle, Jr., Mayor, City of Huntsville, 308 Fountain Circle, 8th Floor, Huntsville, AL 35801.	City Hall, 308 Fountain Circle, 8th Floor, Huntsville, AL 35801.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 9, 2020	010153
Colorado:						
Boulder	City of Lafayette (19–08–0592P).	The Honorable Alexandra Lynch, Mayor, City of Lafayette, 1290 South Public Road, Lafayette, CO 80026.	Planning Department, 1290 South Public Road, Lafayette, CO 80026.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 27, 2020	080026
Boulder	City of Longmont (19–08–0300P).	The Honorable Brian Bagley, Mayor, City of Longmont, 350 Kimbark Street, Longmont, CO 80501.	Public Works and Natural Resources Department, 385 Kimbark Street, Longmont, CO 80501.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 11, 2020	080027
Boulder	Unincorporated areas of Boulder County (19–08–0300P).	The Honorable Elise Jones, Chair, Boulder County Board of Commissioners, P.O. Box 471, Boulder, CO 80306.	Boulder County Transportation Department, 2525 13th Street, Suite 203, Boulder, CO 80304.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 11, 2020	080023
Boulder	Unincorporated areas of Boulder County (19–08–0592P).	The Honorable Elise Jones, Chair, Boulder County Board of Commissioners, P O. Box 471, Boulder, CO 80306.	Boulder County Transportation Department, 2525 13th Street, Suite 203, Boulder, CO 80304.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 27, 2020	080023
Broomfield	City and County of Broomfield (19–08–0592P).	The Honorable Randy Ahrens, Mayor, City and County of Broomfield, 1 Descombes Drive, Broomfield, CO 80020.	Engineering Department, 1 Descombes Drive, Broomfield, CO 80020.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 27, 2020	085073
Larimer	Unincorporated areas of Larimer County (19–08–0367P).	The Honorable Tom Donnelly, Chairman, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, CO 80522.	Larimer County Engineering Department, 200 West Oak Street, Suite 3000, Fort Collins, CO 80521.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 21, 2020	080101
Las Animas	Unincorporated areas of Las Animas County (19–08–0389P).	The Honorable Felix M. Lopez, District 1 Commissioner, Las Animas County, 200 East 1st Street, Trinidad, CO 81082.	Las Animas County Courthouse, 200 East 1st Street, Room 106, Trinidad, CO 81082.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 12, 2020	080105
Connecticut: Tolland.	Town of Somers (19–01–0920P).	The Honorable C.G. Knorr, Jr., First Selectman, Town of Somers Board of Selectmen, 600 Main Street, Somers, CT 06071.	Town Hall, 600 Main Street, Somers, CT 06071.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 18, 2020	090112

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Delaware: New Castle.	Unincorporated areas of New Castle County (19–03–0484P).	The Honorable Matthew Meyer, New Castle County Executive, 87 Read Way, New Castle, DE 19720.	New Castle County Land Use Department, 87 Read Way, New Castle, DE 19720.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 13, 2020	105085
Florida:						
Charlotte	Unincorporated areas of Charlotte County (19–04–1634P).	The Honorable Ken Doherty, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Community Development Department, 18500 Murdock Circle, Port Charlotte, FL 33948.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 6, 2020	120061
Monroe	Unincorporated areas of Monroe County (19–04–6687P).	The Honorable Sylvia Murphy, Mayor, Monroe County Board of Commissioners, 102050 Overseas Highway, Suite 234, Key Largo, FL 33037.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 2, 2020	125129
Monroe	Village of Islamorada (19–04–5432P).	The Honorable Deb Gillis, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Building Department, 86800 Overseas Highway, Islamorada, FL 33036.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 4, 2020	120424
Orange	City of Orlando (19–04–2940P).	The Honorable Buddy Dyer, Mayor, City of Orlando, 400 South Orange Avenue, Orlando, FL 32801.	Public Works Department, Engineering Division, 400 South Orange Avenue, Orlando, FL 32801.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 11, 2020	120186
Orange	City of Orlando (19–04–3467P).	The Honorable Buddy Dyer, Mayor, City of Orlando, 400 South Orange Avenue, Orlando, FL 32801.	Public Works Department, Engineering Division, 400 South Orange Avenue, Orlando, FL 32801.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 4, 2020	120186
Orange	Unincorporated areas of Orange County (19–04–2940P).	The Honorable Jerry L. Demings, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	Orange County Stormwater Management Department, 4200 South John Young Parkway, Orlando, FL 32839.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 11, 2020	120179
Orange	Unincorporated areas of Orange County (19–04–3467P).	The Honorable Jerry L. Demings, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	Orange County Stormwater Management Department, 4200 South John Young Parkway, Orlando, FL 32839.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 4, 2020	120179
Osceola	City of St. Cloud (19–04–0759P).	The Honorable Nathan Blackwell, Mayor, City of St. Cloud, 1300 9th Street, St. Cloud, FL 34769.	City Hall, 1300 9th Street, St. Cloud, FL 34769.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 28, 2020	120191
Osceola	Unincorporated areas of Osceola County (19–04–0759P).	The Honorable Fred Hawkins, Jr., Chairman, Osceola County Board of Commissioners, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County Human Resources Department, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 28, 2020	120189
Pasco	Unincorporated areas of Pasco County (19–04–0816P).	Mr. Dan Biles, Pasco County Administrator, 8731 Citizens Drive, New Port Richey, FL 34652.	Pasco County Facilities Management Department, 38301 McDonald Street, Dade City, FL 33525.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 24, 2020	120230
Sarasota	City of Sarasota (19–04–4552P).	The Honorable Liz Alpert, Mayor, City of Sarasota, 1565 1st Street, Room 101, Sarasota, FL 34236.	Development Services Department, 1565 1st Street, Sarasota, FL 34236.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 24, 2020	125150
Sarasota	City of Sarasota (19–04–5431P).	The Honorable Liz Alpert, Mayor, City of Sarasota, 1565 1st Street, Room 101, Sarasota, FL 34236.	Development Services Department, 1565 1st Street, Sarasota, FL 34236.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 13, 2020	125150
Georgia: Bryan	Unincorporated areas of Bryan County (19–04–2627P).	The Honorable Carter Infinger, Chairman, Bryan County Board of Commissioners, 51 North Courthouse Street, Pembroke, GA 31321.	Bryan County Engineering Department, 66 Captain Matthew Freeman Drive, Richmond Hill, GA 31324.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 3, 2020	130016

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Louisiana: Lafayette.	City of Youngsville (18–06–2837P).	The Honorable Ken Ritter, Mayor, City of Youngsville, 305 Iberia Street, Youngsville, LA 70592.	City Hall, 305 Iberia Street, Youngsville, LA 70592.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 6, 2020	220358
Montana:						
Gallatin	City of Bozeman (19–08–0500P).	Ms. Andrea Surratt, City of Bozeman Manager, P.O. Box 1230, Bozeman, MT 59771.	City Hall, 20 East Olive Street, Bozeman, MT 59715.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 2, 2020	300028
Gallatin	Unincorporated areas of Gallatin County (19–08–0500P).	The Honorable Joe P. Skinner, Chairman, Gallatin County Board of Commissioners, 311 West Main Street, Room 306, Bozeman, MT 59715.	Gallatin County Department of Planning and Community Development Department, Bozeman, MT 59715.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 2, 2020	300027
Nevada:						
Clark	City of Henderson (19–09–0090P).	Mr. Richard A. Derrick, City of Henderson Manager, P.O. Box 95050, Henderson, NV 89009.	Public Works Department, 240 South Water Street, Henderson, NV 89009.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 5, 2020	320005
Clark	Unincorporated areas of Clark County (19–09–0090P).	The Honorable Marilyn Kirkpatrick, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, NV 89155.	Clark County Drainage Review Department, 500 South Grand Central Parkway, Las Vegas, NV 89155.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 5, 2020	320003
North Carolina:						
Cherokee	Unincorporated areas of Cherokee County (18–04–7507P).	The Honorable Gary Westmoreland, Chairman, Cherokee County Board of Commissioners, 75 Peachtree Street, Murphy, NC 28906.	Cherokee County GIS Mapping Department, 75 Peachtree Street, Murphy, NC 28906.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 6, 2020	370059
Cleveland	Unincorporated areas of Cleveland County (19–04–0261P).	The Honorable Susan K. Allen, Chair, Cleveland County Board of Commissioners, 311 East Marion Street, Shelby, NC 28151.	Cleveland County Planning Department, 1333 Fallston Road, Shelby, NC 28151.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 6, 2020	370302
Oklahoma: Tulsa ...	City of Bixby (19–06–2128P).	The Honorable Brian Guthrie, Mayor, City of Bixby, P.O. Box 70, Bixby, OK 74008.	Development Services Department, 113 West Dawes, Bixby, OK 74008.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 12, 2020	400207
South Carolina: Horry.	City of Myrtle Beach (19–04–5527P)	Mr. John Pedersen, City of Myrtle Beach Manager, 937 Broadway Street, Myrtle Beach, SC 29577.	City Services Department, 921 North Oak Street, Myrtle Beach, SC 29577.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 13, 2020	450109
Texas:						
Bexar	City of Schertz (19-06-1878P).	The Honorable Michael Carpenter, Mayor, City of Schertz, 1400 Schertz Pkwy, Schertz, TX 78154.	Public Works Department, Floodplain Management Division, 10 Commercial Place, Schertz, TX 78154.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 10, 2020	480269
Bexar	Unincorporated areas of Bexar County (19–06–0327P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 1948 Probandt Street, San Antonio, TX 78214.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 18, 2020	480035
Collin	City of Murphy (19–06–0931P).	The Honorable Scott Bradley, Mayor, City of Murphy, 206 North Murphy Road, Murphy, TX 75094.	City Hall, 206 North Murphy Road, Murphy, TX 75094.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 10, 2020	480137
Collin	City of Plano (20–06–0039P).	The Honorable Harry LaRosiliere, Mayor, City of Plano, 1520 K Avenue, Plano, TX 75074.	Department of Engineering, 1520 K Avenue, Plano, TX 75074.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 28, 2020	480140
Collin	City of Sachse (19–06–0931P).	The Honorable Mike Felix, Mayor, City of Sachse, 3815 Sachse Road, Building B, Sachse, TX 75048.	Public Works Department, 3815 Sachse Road, Building B, Sachse, TX 75048.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 10, 2020	480186
Dallas	City of Grand Prairie (19–06–2040P).	The Honorable Ron Jensen, Mayor, City of Grand Prairie, P.O. Box 534045, Grand Prairie, TX 75053.	Development Department, 206 West Church Street, Grand Prairie, TX 75050.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 6, 2020	485472

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Denton	Town of Argyle (19–06–1846P).	The Honorable Donald Moser, Mayor, Town of Argyle, P.O. Box 609, Argyle, TX 76226.	Town Hall, 308 Denton Street, Argyle, TX 76226.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 28, 2020	480775
Johnson	City of Burleson (19–06–0971P).	The Honorable Ken Shetter, Mayor, City of Burleson, 141 West Renfro Street, Burleson, TX 76028.	City Hall, 141 West Renfro Street, Burleson, TX 76028.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 24, 2020	485459
McClennan	City of Waco (18–06–2475P).	The Honorable Kyle Deaver, Mayor, City of Waco, P.O. Box 2570, Waco, TX 76702.	Public Works Department, 401 Franklin Avenue, Waco, TX 76701.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 7, 2020	480461
Tarrant	City of Arlington (19–06–1226P).	The Honorable Jeff Williams, Mayor, City of Arlington, P.O. Box 90231, Arlington, TX 76004.	Public Works and Transportation Department, 101 West Abram Street, Arlington, TX 76010.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 27, 2020	485454
Tarrant	City of Fort Worth (19–06–0840P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works, Engineering Department, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 2, 2020	480596
Tarrant	City of Fort Worth (19–06–3630P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works, Engineering Department, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 28, 2020	480596
Utah:						
Washington	City of St. George (19–08–0174P).	The Honorable Jon Pike, Mayor, City of St. George, 175 East 200 North, St. George, UT 84770.	Public Works Department, 175 East 200 North, St. George, UT 84770.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 21, 2020	490177
Washington	City of Santa Clara (19–08–0174P).	The Honorable Rick Rosenberg, Mayor, City of Santa Clara, 2603 Santa Clara Drive, Santa Clara, UT 84765.	Building Department, 2603 Santa Clara Drive, Santa Clara, UT 84765.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 21, 2020	490178
Virginia:						
Albemarle	Unincorporated areas of Albemarle County (19–03–1243P).	Mr. Jeff Richardson, Albemarle County Executive, 401 McIntire Road, Charlottesville, VA 22902.	Albemarle County Community Development Department, 401 McIntire Road, Charlottesville, VA 22902.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 19, 2020	510006
Charlotte	Town of Drakes Branch (19–03–0477P).	The Honorable Denise L. Pridgen, Mayor, Town of Drakes Branch, P.O. Box 191, Drakes Branch, VA 23937.	Town Hall, 4800 Drakes Main Street, Drakes Branch, VA 23937.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 14, 2020	510032
Independent City.	City of Charlottesville (19–03–1243P).	Mr. Tarron J. Richardson, City of Charlottesville Manager, P.O. Box 911, Charlottesville, VA 22902.	Neighborhood Development Services Department, 610 East Market Street, Charlottesville, VA 22902.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 19, 2020	510033

[FR Doc. 2019–27959 Filed 12–26–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1979]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before March 26, 2020.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location

https://www.fema.gov/preliminaryfloodhazarddata and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1979, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminary floodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Linn County, Iowa and Incorporated Areas **Project: 17–07–0295S Preliminary Date: April 16, 2019**	
City of Alburnett	City Hall, 102 East 1st Street, Alburnett, IA 52202.
City of Bertram	City Hall, 50 Angle Street, Bertram, IA 52403.
City of Cedar Rapids	City Hall, 101 1st Street Southeast, Cedar Rapids, IA 52401.
City of Center Point	City Hall, 200 Franklin Street, Center Point, IA 52213.
City of Central City	City Hall, 137 4th Street North, Central City, IA 52214.
City of Coggon	City Hall, 118 East Main Street, Coggon, IA 52218.
City of Ely	City Hall, 1570 Rowley Street, Ely, IA 52227.
City of Fairfax	City Hall, 300 80th Street Court, Fairfax, IA 52228.
City of Hiawatha	City Hall, 101 Emmons Street, Hiawatha, IA 52233.
City of Lisbon	City Clerk Office, 115 North Washington Street, Lisbon, IA 52253.
City of Marion	City Hall, 1225 6th Avenue, Suite 200, Marion, IA 52302.
City of Mount Vernon	City Hall, 213 1st Street Northwest, Mount Vernon, IA 52314.
City of Palo	City Hall, 2800 Hollenbeck Road, Palo, IA 52324.
City of Robins	City Hall, 265 South 2nd Street, Robins, IA 52328.
City of Springville	City Hall, 304 Broadway, Springville, IA 52336.
City of Walford	City Hall, 120 5th Street North, Walford, IA 52351.
City of Walker	City Hall, 204 Greene Street, Walker, IA 52352.
Unincorporated Areas of Linn County	Linn County Planning & Development Department, 935 2nd Street Southwest, Cedar Rapids, IA 52404.
Howell County, Missouri and Incorporated Areas **Project: 16–07–1463S Preliminary Dates: December 12, 2016 and August 30, 2019**	
Unincorporated Areas of Howell County	Howell County Office Building, 35 Court Square, Room 302, West Plains, MO 65775.

Community	Community map repository address
Grant County, Oregon and Incorporated Areas Project: 11–10–0409S Preliminary Date: May 31, 2019	
City of Seneca	City Hall, 106 A Avenue, Seneca, OR 97873.
Unincorporated Areas of Grant County	Grant County Planning Department, 201 South Humboldt Street, Suite 170, Canyon City, OR 97820.

[FR Doc. 2019–27960 Filed 12–26–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1980]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona: Pinal	Town of Florence (19–09–2018P).	The Honorable Tara Walter, Mayor, Town of Florence, P.O. Box 2670, Florence, AZ 85132.	Public Works Department, 224 West 20th Street, Florence, AZ 85132.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 6, 2020	040084
California:						
Alameda	City of Dublin (19–09–0927P).	The Honorable David G. Haubert, Mayor, City of Dublin, 100 Civic Plaza, Dublin, CA 94568.	Public Works Department, 100 Civic Plaza, Dublin, CA 94568.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 16, 2020	060705
Alameda	City of Pleasanton (19–09–0927P).	The Honorable Jerry Thorne, Mayor, City of Pleasanton, P.O. Box 520, Pleasanton, CA 94566.	Engineering Department, 200 Old Bernal Avenue, Pleasanton, CA 94566.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 16, 2020	060012
Contra Costa	Unincorporated Areas of Contra Costa County (19–09–1287P).	The Honorable John M. Gioia, Chairman, Board of Supervisors, Contra Costa County, 11780 San Pablo Avenue, Suite D, El Cerrito, CA 94530.	Contra Costa County, Public Works Department, 255 Glacier Drive, Martinez, CA 94553.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 13, 2020	060025
Los Angeles	City of Hidden Hills (18–09–1642P).	The Honorable Larry G. Weber, Mayor, City of Hidden Hills, 6165 Spring Valley Road, Hidden Hills, CA 91302.	Building and Safety Department, 6165 Spring Valley Road, Hidden Hills, CA 91302.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 18, 2020	060125
San Diego	Unincorporated Areas of San Diego County (19–09–0630P).	The Honorable Dianne Jacob, Chair, Board of Supervisors, San Diego County, 1600 Pacific Highway, Room 335, San Diego, CA 92101.	San Diego County Flood Control District, Department of Public Works, 5510 Overland Avenue, Suite 410, San Diego, CA 92123.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 13, 2020	060284
Florida:						
Bay	City of Panama City Beach (19–04–4255P).	The Honorable Mike Thomas, Mayor, City of Panama City Beach, 110 South Arnold Road, Panama City Beach, FL 32413.	City Hall, 110 South Arnold Road, Panama City Beach, FL 32413.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 11, 2020	120013
Bay	Unincorporated Areas of Bay County (19–04–4490P).	Mr. Robert Majka, Jr., County Manager, Bay County, 840 West 11th Street, Panama City, FL 32401.	Bay County Planning and Zoning, 707 Jenks Avenue, Suite B, Panama City, FL 32401.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 11, 2020	120004
Nassau	Unincorporated Areas of Nassau County (19–04–4060P).	The Honorable Daniel B. Leeper, Vice-Chairman, Nassau County Commissioner, 96135 Nassau Place, Suite 1, Yulee, FL 32097.	Nassau County, Building Department, 96161 Nassau Place, Yulee, FL 32097.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 12, 2020	120170
Illinois:						
DuPage	City of Naperville (19–05–3885P).	The Honorable Steve Chirico, Mayor, City of Naperville, 400 South Eagle Street, Naperville, IL 60540.	City Hall, 400 South Eagle Street, Naperville, IL 60540.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 12, 2020	170213
Williamson	City of Carterville (19–05–2993P).	The Honorable Bradley Robinson, Mayor, City of Carterville, 103 South Division Street, Carterville, IL 62918.	City Hall, 103 South Division Street, Carterville, IL 62918.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 13, 2020	170716
Indiana:						
Allen	City of Fort Wayne (19–05–4349P).	The Honorable Tom Henry, Mayor, City of Fort Wayne, 200 East Berry Street, Suite 420, Fort Wayne, IN 46802.	Department of Planning Services, 200 East Berry Street, Suite 150, Fort Wayne, IN 46802.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 11, 2020	180003
Morgan	Unincorporated Areas of Morgan County (19–05–3282P).	Mr. Norman Voyles, Morgan County Commissioner, 180 South Main Street, Suite 112, Martinsville, IN 46151.	Morgan County Administration Building, 180 South Main Street, Martinsville, IN 46151.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 6, 2020	180176
New York:						
Westchester	Town of Bedford (18–02–1615P).	The Honorable Chris Burdick, Supervisor, Town of Bedford, 321 Bedford Road, Bedford Hills, NY 12550.	Town Planning Office, 425 Cherry Street, Bedford, NY 10507.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 20, 2020	360903

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Westchester ...	Village of Mount Kisco (18–02–1615P).	The Honorable Gina D. Picinich, Mayor, Village of Mount Kisco, 104 Main Street, Mount Kisco, NY 10549.	Village Engineer, 104 Main Street, Mount Kisco, NY 10549.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 20, 2020	360918
Texas: Tarrant	City of Fort Worth (19–06–0709P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, 1000 Throckmorton Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 12, 2020	480596

[FR Doc. 2019–27962 Filed 12–26–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[192A2100DD/AAKC001030/A0A501010.999900253G]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact Amendment in the State of Oregon

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The State of Oregon entered into a compact amendment with the Confederated Tribes of the Grand Ronde Community of Oregon governing certain forms of class III gaming; this notice announces the approval of the Amendment to the Amended and Restated Tribal State Compact for Regulation of Class III Gaming between the Confederated Tribes of the Grand Ronde Community of Oregon and the State of Oregon—Amendment III.

DATES: The compact amendment takes effect on December 27, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA) Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in class III gaming activities on Indian lands. As required by IGRA and 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The compact amendment authorizes the Tribe to engage in the additional class III gaming activities of race bookmaking and sports pools, and provides for the application of internal controls for the additional forms of class III gaming.

Dated: December 12, 2019.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2019–27986 Filed 12–26–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/A0A501010.999900253G]

Indian Gaming; Tribal-State Class III Gaming Compact Taking Effect in the State of California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice

SUMMARY: This notice announces that the Tribal State Compact between the State of California and the Cabazon Band of Mission Indians is taking effect.

DATES: The Compact takes effect on December 27, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA) Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Secretary took no action on the Tribal State Compact between the State of California and the Cabazon Band of Mission Indians within 45 days of its submission. Therefore, the Compact is considered to have been approved, but only to the extent it is consistent with IGRA. *See* 25 U.S.C. 2710(d)(8)(C).

Dated: December 12, 2019.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2019–27989 Filed 12–26–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/A0A501010.999900253G]

Indian Gaming; Tribal-State Class III Gaming Compact Taking Effect in the State of California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice

SUMMARY: This notice announces that the Tribal State Compact between the State of California and the Susanville Indian Rancheria is taking effect.

DATES: The compact takes effect December 27, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA) Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Secretary took no action on the Tribal State Compact between the State of California and the Susanville Indian Rancheria within 45 days of its submission. Therefore, the Compact is considered to have been approved, but only to the extent it is consistent with IGRA. *See* 25 U.S.C. 2710(d)(8)(C).

Dated: December 12, 2019.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2019–27990 Filed 12–26–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[120A2100DD/AAKC001030/ A0A501010.999900 253G; OMB Control Number 1076–0186]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Indian Child Welfare Act (ICWA) Proceedings in State Court

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before January 27, 2020.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to Mrs. Evangeline M. Campbell, 1849 C Street NW, Mail Stop 3645, Washington, DC 20240; fax: (202) 513–208–5113; email: *Evangeline.Campbell@bia.gov.* Please reference OMB Control Number 1076–0186 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mrs. Evangeline M. Campbell, (202) 513–7621.You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published October 2, 2019 (84 FR 52530). No comments were received in response to this notice.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Indian Child Welfare Act (ICWA or Act), 25 U.S.C. 1901 *et seq.,* imposes certain requirements for child custody proceedings that occur in State court when a child is an ''Indian child.'' The regulations, primarily located in Subpart I of 25 CFR 23, provide procedural guidance for implementing ICWA, which necessarily involves information collections to determine whether the child is Indian, provide notice to the Tribe and parents or Indian custodians, and maintain records. The information collections are conducted during a civil action (*i.e.,* a child custody proceeding). While these civil actions occur in State court, and the U.S. is not a party to the civil action, the civil action is subject to the Federal statutory requirements of ICWA, which the Secretary of the Interior oversees under the Act and general authority to manage Indian affairs under 25 U.S.C. 2 and 9.

Title of Collection: Indian Child Welfare Act (ICWA) Proceedings in State.

OMB Control Number: 1076–0186.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals/households and State/Tribal governments.

Total Estimated Number of Annual Respondents: 7,556.

Total Estimated Number of Annual Responses: 98,069.

Estimated Completion Time per Response: Varies from 15 minutes to 12 hours, depending on the activity.

Total Estimated Number of Annual Burden Hours: 301,811.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Non-hour Burden Cost: $309,955.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2019–27969 Filed 12–26–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[120A2100DD/AAKC001030/ A0A501010.999900 253G; OMB Control Number 1076–0161]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Tribal Transportation Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before January 27, 2020.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to Mr. LeRoy Gishi, Chief, Division of Transportation, Bureau of Indian

Affairs, 1849 C Street NW, MS–4513–MIB, Washington, DC 20240; fax: (202) 208–4696; email: *LeRoy.Gishi@bia.gov.* Please reference OMB Control Number 1076–0161 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mr. LeRoy Gishi by telephone at (202) 513–7711. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on July 26, 2019 (84 FR 36040). No comments on this information collection were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The regulations at 25 CFR 170, Tribal Transportation Program (TTP), implement 23 U.S.C. 202(d), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), which has been amended by Moving Ahead for Progress in the 21st Century Act (MAP–21) and the Fixing America's Surface Transportation Act (FAST). This information collection is necessary to implement the requirements of the law for allocating funding provided from the highway trust fund to Indian tribal governments. The BIA uses the information provided through information collection requirements to determine how funds appropriated by Congress under the statutes will be allocated to various Tribal governments for implementing the Tribal Transportation Program. BIA also uses the information to assist Tribal governments in meeting reporting requirements for their participation in the TTP program.

Title of Collection: Tribal Transportation Program.

OMB Control Number: 1076–0161.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Tribal governments.

Total Estimated Number of Annual Respondents: 1,630.

Total Estimated Number of Annual Responses: 1,630.

Estimated Completion Time per Response: Varies from half an hour to 40 hours.

Total Estimated Number of Annual Burden Hours: 23,448.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2019–27967 Filed 12–26–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[AAK6006201 210A2100DD AOR3030.999900]

Draft Environmental Impact Statement for Osage County Oil and Gas, Osage County, Oklahoma

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability; extension of comment deadline.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) has extended the deadline for comments on the Osage County Oil and Gas Draft Environmental Impact Statement (DEIS).

DATES: The deadline for comments on the DEIS is January 22, 2020.

ADDRESSES: Comments on the DEIS may be submitted by any of the following methods:

- *Email: osagecountyoilandgaseis@bia.gov.*
- *Fax:* (918) 287–5700.
- *Mail or hand delivery:* Osage County Oil and Gas EIS, BIA Osage Agency, Attn: Superintendent, P.O. Box 1539, Pawhuska, OK 74056.

The DEIS may be examined at the BIA Osage Agency, 813 Grandview Avenue, Pawhuska, Oklahoma. The DEIS is also available for review online on the project website: *https://www.bia.gov/regional-offices/eastern-oklahoma/osage-agency/osage-oil-and-gas-eis.*

FOR FURTHER INFORMATION CONTACT: Mr. Mosby Halterman, Supervisory Environmental Specialist, telephone: 918–781–4660; email: *mosby.halterman@bia.gov;* address: BIA Eastern Oklahoma Regional Office, P.O. Box 8002, Muskogee, OK 74402.

SUPPLEMENTARY INFORMATION: On November 22, 2019, BIA published a notice of availability of the DEIS and requested comments by January 6, 2020 (*i.e.,* 45 days following the date the EPA published its ''Notice of Availability'' in the **Federal Register**). *See* 84 FR 64556. The BIA now extends the deadline to the date listed in the **DATES** section of this notice.

Dated: December 12, 2019.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2019–27996 Filed 12–26–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/ A0A501010.999900253G]

Indian Gaming; Tribal-State Class III Gaming Compact Taking Effect in the State of California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Tribal State Compact between the State of California and the Hoopa Valley Tribe is taking effect.

DATES: This compact takes effect December 27, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA) Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Secretary took no action on the Tribal State Compact between the State of California and the Hoopa Valley Tribe within 45 days of its submission. Therefore, the Amendment to the Compact is considered to have been approved, but only to the extent it is consistent with IGRA. *See* 25 U.S.C. 2710(d)(8)(C).

Dated: December 12, 2019.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2019–27994 Filed 12–26–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/ A0A501010.999900253G]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact in the State of Louisiana

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The State of Louisiana entered into a compact with the Tunica-Biloxi Indian Tribe governing certain forms of class III gaming; this notice announces the approval of the Tribal-State Compact for the Conduct of Class III Gaming between the Tunica-Biloxi Indian Tribe of Louisiana and the State of Louisiana (Compact).

DATES: The Compact takes effect on December 27, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA) Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in class III gaming activities on Indian lands. As required by IGRA and 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Compact requires licensing of non-gaming vendors receiving in excess of $500,000 annually, authorizes sports betting, pari-mutuel wagering and fantasy sports betting that are permitted in the State of Louisiana. The initial term of the Compact is 7 years, with automatic extensions in 1 year increments unless either party provides a notice of non-renewal.

Dated: December 12, 2019.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2019–27987 Filed 12–26–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/ A0A501010.999900253G]

Indian Gaming; Tribal-State Class III Gaming Compacts and Amendments

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of address change.

SUMMARY: This notice announces that the address for submission of Tribal-State Class III gaming compacts, amendments, and extensions has changed.

DATES: The new address takes effect on December 27, 2019.

ADDRESSES: The new address for submission of Tribal-State Class III gaming compacts, amendments, and extensions is: Director, Office of Indian Gaming, U.S. Department of the Interior, 1849 C Street NW, Mail Stop 3543, Main Interior Building, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, (202) 219–4066.

SUPPLEMENTARY INFORMATION: The Office of Indian Gaming has moved to the new Mail Stop listed in the **ADDRESSES** section of this notice. Please submit any Tribal-State Class III gaming compact, amendment or extension under 25 CFR 293.9 to the new address from this date forward to ensure receipt by the Office of Indian Gaming to begin the 45-day timeline under 25 CFR 293.12.

Dated: December 12, 2019.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2019–27988 Filed 12–26–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[120A2100DD/AAKC001030/ A0A501010.999900 253G; OMB Control Number 1076–0136]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Indian Self-Determination and Education Assistance Act Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, we, the Bureau of Indian Affairs (BIA) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before January 27, 2020.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov*; or via facsimile to (202) 395–5806. Please provide a copy of your comments to Ms. Sunshine Jordan, Acting Division Chief, Office of Indian Services—Division of Self-Determination, 1849 C Street NW, MS 4513–MIB, Washington, DC 20240, telephone: (202) 513–7616; email: *Sunshine.Jordan@bia.gov*. Please

reference OMB Control Number 1076–0136 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ms. Sunshine Jordan by telephone at: (202) 513–7616; or by email at: *Sunshine.Jordan@bia.gov*. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain*.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on October 2, 2019 (84 FR 52529). No comments were received in response to this notice.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Indian Self-Determination and Education Assistance Act (ISDEAA) authorizes and directs the Bureau of Indian Affairs (BIA) to contract or compact with and fund Indian Tribes and Tribal organizations that choose to take over the operation of programs, services, functions and activities (PSFAs) that would otherwise be operated by the BIA. These PSFAs include programs such as law enforcement, social services, and tribal priority allocation programs. The contracts and compacts provide the funding that the BIA would have otherwise used for its direct operation of the programs had they not been contracted or compacted by the Tribe, as authorized by 25 U.S.C. 450 *et. seq.*

Congressional appropriations are divided among BIA and Tribes and Tribal organizations to pay for both the BIA's direct operation of programs and for the operation of programs by Tribes and Tribal organizations through Self-Determination contracts and compacts. The regulations implementing ISDEAA are at 25 CFR 900.

The data is maintained by BIA's Office of Indian Services, Division of Self-Determination. The burden hours for this continued collection of information are reflected in the Estimated Total Annual Hour Burden in this notice.

Title of Collection: Indian Self-Determination and Education Assistance Act Programs.

OMB Control Number: 1076–0136.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Federally recognized Indian Tribes, Tribal organizations and contractors.

Total Estimated Number of Annual Respondents: 567.

Total Estimated Number of Annual Responses: 7,063.

Estimated Completion Time per Response: Varies from 4 hours to 122 hours.

Total Estimated Number of Annual Burden Hours: 127,127 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2019–27971 Filed 12–26–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[120A2100DD/AAKC001030/A0A501010.999900 253G; OMB Control Number 1076–0100]

Agency Information Collection Activities; Renewal of Agency Information Collection for Acquisition of Trust Land

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before February 25, 2020.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Mailbox #44, Albuquerque, NM 87104; or by email to *Sharlene.RoundFace@bia.gov.* Please reference OMB Control Number 1076–0100 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ms. Sharlene Round Face by email at *Sharlene.RoundFace@bia.gov* or by telephone at (505) 563–5258.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA

minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Section 5 of the Indian Reorganization Act of June 18, 1934 (25 U.S.C. 5108) and the Indian Land Consolidation Act of January 12, 1983 (25 U.S.C. 2202) authorize the Secretary of the Interior (Secretary), in his/her discretion, to acquire lands through purchase, relinquishment, gift, exchange, or assignment within or without existing reservations for the purpose of providing land for Indian Tribes. Other specific laws also authorize the Secretary to acquire lands for individual Indians and Tribes. Regulations implementing the acquisition authority are at 25 CFR 151. In order for the Secretary to acquire land on behalf of individual Indians and Tribes, the BIA must collect certain information to identify the party(ies) involved and to describe the land in question. The Secretary also solicits additional information deemed necessary to make a determination to accept or reject an application to take land into trust for the individual Indian or Tribe, as set out in 25 CFR 151. This information collection allows the BIA to review applications for compliance with regulatory and statutory requirements. No specific form is used.

Title of Collection: Acquisition of Trust Land.

OMB Control Number: 1076–0100.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individual Indians and Federally Recognized Indian Tribes seeking acquisition of land into trust status.

Total Estimated Number of Annual Respondents: 500.

Total Estimated Number of Annual Responses: 500.

Estimated Completion Time per Response: Ranges from 100 to 150 hours.

Total Estimated Number of Annual Burden Hours: 55,000.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2019–27972 Filed 12–26–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[210A2100DD/AAKC001030/ A0A501010.999900 253G; OMB Control Number 1076–NEW]

Agency Information Collection Activities; Supervised Individual Indian Money Accounts

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA), are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before February 25, 2020.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Evangeline Campbell, Chief, Division of Human Services, Office of Indian Services, Bureau of Indian Affairs, Department of the Interior, 1849 C. Street NW, Mail Stop: 3645, Washington, DC 20240; or by email to *evangeline.campbell@bia.gov.* Please reference OMB Control Number 1076–NEW in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact George Peterson, IIM Specialist, Division of Human Services, Office of Indian Services, Bureau of Indian Affairs, Department of the Interior by email at *george.peterson@bia.gov,* or by telephone at (202) 208–4038.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The BIA is seeking approval for an information collection it conducts to provide assistance to individuals who have a supervised Individual Indian Money (IIM) Account under 25 CFR part 115. This information collection allows BIA to carry out trust duties and to manage and administer trusts for the exclusive benefit of Tribal and individual Indian beneficiaries pursuant to Federal law, including the American Indian Trust Fund Management Reform Act of 1994, Public Law 103–412, 108 Stat. 4239, 25 U.S.C. 4001. Upon the request of an adult or other interested party, a BIA Social Services provider may provide an account holder with a social services assessment under 25 CFR 20.404 to evaluate the account holder's circumstances, abilities, and need for assistance in management of his/her financial affairs. The provider conducting the assessment will evaluate the client's unmet needs with the account holder and/or representative, to

include the information noted in 25 CFR 115.420. The provider will then complete a plan for the Office of the Special Trustee for American Indians (OST) to disburse money (''distribution plan'') for the account holder based on unmet needs, as justified by information in Part 2 of the Social Services Assessment and Evaluation form.

Title of Collection: Supervised Individual Indian Money Accounts.

OMB Control Number: 1076–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Individual Indians with a supervised IIM account.

Total Estimated Number of Annual Respondents: Assessment and Evaluation form: 1,000; Distribution Plan 1,000; Major Purchase Request 20.

Total Estimated Number of Annual Responses: Assessment and Evaluation form: 1,000; Distribution Plan 1,000; Major Purchase Request 20.

Estimated Completion Time per Response: 2.5 hours for the Assessment and Evaluation form; 30 minutes for the Distribution Plan; and 30 minutes for the Major Purchase Request.

Total Estimated Number of Annual Burden Hours: 1,500 hours for the Assessment and Evaluation form; 500 hours for the Distribution Plan form; and 10 hours for the Major Purchase Request.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: Annually for the Assessment and Evaluation form, annually for the Distribution Plan, and on occasion as needed for the Major Purchase Request.

Total Estimated Annual Non-hour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2019–27973 Filed 12–26–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/ A0A501010.999900253G]

Indian Gaming; Extension of Tribal-State Class III Gaming Compact (Rosebud Sioux Tribe and the State of South Dakota)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces the extension of the Class III gaming compact between the Rosebud Sioux Tribe and the State of South Dakota.

DATES: The extension takes effect on December 27, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: An extension to an existing Tribal-State Class III gaming compact does not require approval by the Secretary if the extension does not modify any other terms of the compact. 25 CFR 293.5. The Rosebud Sioux Tribe and the State of South Dakota have reached an agreement to extend the expiration date of their existing Tribal-State Class III gaming compact to January 19, 2020. This publication provides notice of the new expiration date of the compact.

Dated: November 20, 2019.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2019–27995 Filed 12–26–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

[FWS–R4–ES–2019–N161; FVHC98220410150–XXX–FF04H00000]

Deepwater Horizon Oil Spill Alabama Trustee Implementation Group Final Restoration Plan III and Environmental Assessment: Provide and Enhance Recreational Opportunities; and Birds and Finding of No Significant Impact

AGENCY: Department of the Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA), the National Environmental Policy Act of 1969 (NEPA), the *Deepwater Horizon* Oil Spill Final Programmatic Damage Assessment Restoration Plan and Final Programmatic Environmental Impact Statement, Record of Decision, and Consent Decree, the Federal and State natural resource trustee agencies for the Alabama Trustee Implementation Group (AL TIG) have prepared a final restoration plan and environmental assessment entitled *Alabama Trustee Implementation Group Final Restoration Plan III/Environmental Assessment: Provide and Enhance Recreational Opportunities; and Birds* (AL RP III/EA), and *Finding of No Significant Impact* (FONSI). In the AL RP III/EA, the AL TIG is selecting to implement five projects to address lost recreational use and two projects for the restoration of birds. Implementation of these projects will help restore natural resources and the services they provide that were injured in the Alabama Restoration Area as a result of the *Deepwater Horizon* oil spill. The purpose of this notice is to inform the public of the availability of the final AL RP III/EA and FONSI.

ADDRESSES: *Obtaining Documents:* You may download the AL RP III/EA and FONSI from either of the following websites:

- *https://www.doi.gov/deepwaterhorizon/adminrecord.*
- *https://www.gulfspillrestoration.noaa.gov/restoration-areas/alabama.*

Alternatively, you may request a CD of the AL RP III/EA and FONSI (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Nanciann Regalado, via email at *nanciann_regalado@fws.gov,* via telephone at 678–296–6805, or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Introduction

On April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon,* which was being used to drill a well for BP Exploration and Production, Inc. (BP), in the Macondo prospect (Mississippi Canyon 252–MC252), experienced a significant explosion, fire, and subsequent sinking in the Gulf of Mexico, resulting in an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. The *Deepwater Horizon* oil spill is the largest oil spill in U.S. history, discharging millions of barrels of oil over a period of 87 days. In addition, well over 1 million gallons of dispersants were applied to the waters of the spill area in an attempt to disperse the spilled oil. An undetermined amount of natural gas was also released into the environment as a result of the spill.

The Trustees conducted the natural resource damage assessment (NRDA) for

the *Deepwater Horizon* oil spill under the Oil Pollution Act 1990 (OPA; 33 U.S.C. 2701 *et seq.*). Pursuant to OPA, Federal and State agencies act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. The OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship, including the loss of use and services from those resources from the time of injury until the completion of restoration to baseline (the resource quality and conditions that would exist if the spill had not occurred).

The *Deepwater Horizon* Trustees are:

- U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- U.S. Environmental Protection Agency (EPA);
- State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources;
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- State of Texas: Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

On April 4, 2016, the Trustees reached and finalized a settlement of their natural resource damage claims with BP in a Consent Decree approved by the United States District Court for the Eastern District of Louisiana. Pursuant to that Consent Decree, restoration projects in the Alabama Restoration Area are now chosen and managed by the AL TIG. The AL TIG comprises the following Trustees: State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama; DOI; NOAA; EPA; and USDA.

Background

In preparation for the draft AL RP III/EA planning process, on December 19, 2018, the AL TIG posted a notice on two websites: The NOAA Gulf Spill web portal at *http://www.gulfspillrestoration.noaa.gov,* and the Alabama Department of Conservation and Natural Resources Project Portal at *http://www.alabamacoastalrestoration.org/.* The notice requested public input on restoration project ideas in the Alabama Restoration Area, asking the public to focus their input on ''Provide and Enhance Recreational Opportunities'' and ''Birds'' restoration types. The AL TIG reviewed and considered these restoration project ideas and prepared a draft AL RP III/EA. Notice of availability of the draft AL RP III/EA was published in the **Federal Register** on September 3, 2019 (84 FR 46033). The AL TIG provided the public 30 days to review and comment on the draft AL RP III/EA. Comments submitted during that time were reviewed and addressed by the AL TIG before finalizing the AL RP III/EA. Details, including the AL TIG's responses to the comments, are provided in the final AL RP III/EA. Additional restoration planning for the Alabama Restoration Area will continue.

Overview of the Final AL RP III/EA

The final AL RP III/EA is being released in accordance with OPA NRDA regulations found in the Code of Federal Regulations (CFR) at 15 CFR part 990, NEPA and its implementing regulations found at 40 CFR parts 1500–1508, the Final PDARP/PEIS, and the Consent Decree. In the final AL RP III/EA and FONSI, the AL TIG selected projects to implement addressing two restoration types. Five were selected for funding under the ''Provide and Enhance Recreational Opportunities'' restoration type allocation proposing to use approximately $13,500,000 in DWH settlement funds. Two were selected for funding under the ''Birds'' restoration type allocation, using approximately $8,700,000 in DWH settlement funds. The following projects were selected for implementation (immediate or future):

Restoration Type—Provide and Enhance Recreational Opportunities

Perdido River Land Acquisition (Molpus Tract)
Bayfront Park Restoration and Improvement Phases IIa and IIb
Gulf State Park Pier Renovation
Perdido Beach Public Access Coastal Protection *
Bon Secour National Wildlife Refuge Recreation Enhancement—Mobile Street Boardwalk *

Restoration Type—Birds

Stewardship of Coastal Alabama Beach Nesting Bird Habitat
Dauphin Island West End Acquisition

Based on the NEPA analysis provided in the AL RP III/EA, the AL TIG Federal Trustees issued a FONSI in accordance with 40 CFR part 1508.13 and 15 CFR part 990.23. The FONSI is available in Appendix J of the AL RP III/EA.

Administrative Record

The documents comprising the Administrative Record for the AL RP III/EA can be viewed electronically at *https://www.doi.gov/deepwaterhorizon/adminrecord.*

Authority

The authority for this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*), its implementing Natural Resource Damage Assessment regulations found at 15 CFR part 990, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and its implementing regulations found at 40 CFR parts 1500–1508.

Mary Josie Blanchard,

Director of Gulf of Mexico Restoration, Department of the Interior.

[FR Doc. 2019–27891 Filed 12–26–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS01000.L51010000.ER0000. LVRWF1906190.19X; N–84631; MO#4500141706]

Notice of Availability for the Proposed Resource Management Plan Amendment and Final Environmental Impact Statement for the Gemini Solar Project in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of

* The Trustees are not proposing to exceed the allocation for ''Provide and Enhance Recreational Opportunities'' in this RP III/EA. Implementation of the selected alternatives, noted with an asterisk, is therefore pending fund availability. Additional funds could become available to the ''Provide and Enhance Recreational Opportunities'' restoration type for various reasons (*e.g.,* project cancellation or modification, projects under budget), at which time the AL TIG could allocate those recreational use funds to those noted alternatives, consistent with this RP III/EA, through TIG resolution.

Land Management (BLM) Las Vegas Field Office has prepared a Proposed Resource Management Plan (RMP) Amendment and Final Environmental Impact Statement (EIS) for the Gemini Solar Project and by this notice is announcing the opening of the protest period.

DATES: This notice initiates the protest period for proposed plan amendment. In accordance with CFR 1610.5–2 protests may be submitted in writing until January 27, 2020. Any person who participated in the planning process and has an interest which is or may be adversely affected by the approval or amendment of a RMP may protest such approval or amendment. A protest may raise only those issues which were submitted for the record during the planning process. The protest shall be in writing and shall be filed with the Director. The protest shall contain: (i) The name, mailing address, telephone number and interest of the person filing the protest; (ii) A statement of the issue or issues being protested; (iii) A statement of the part or parts of the plan or amendment being protested; (iv) A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party, or an indication of the date the issue or issues were discussed for the record; and (v) A concise statement explaining why the State Director's decision is believed to be wrong. The BLM will issue a Record of Decision approximately 90 days after the protest period opens which will be announced in a Notice of Availability in the **Federal Register**.

ADDRESSES: All protests must be in writing and mailed to one of the following addresses:

Regular Mail: Director (210), Attn: Protest Coordinator, P.O. Box 71383, Washington, DC 20024–1383

Overnight Delivery: Director (210), Attn: Protest Coordinator, 20 M Street SE, Room 2134LM, Washington, DC 20003

Electronic protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular mail or overnight delivery postmarked by the close of the protest period. Under these conditions, the BLM will consider the electronic protest as an advance copy and will afford it full consideration. If you wish to provide the BLM with such advance notification, you can submit your protest through the project's ePlanning page at *https://go.usa.gov/xntTQ.*

FOR FURTHER INFORMATION CONTACT: Nicholas Pay, Acting Energy & Infrastructure Project Manager, telephone 702–515–5284; address 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130–2301; email *blm_nv_sndo_geminisolar@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The applicant, Solar Partners XI, LLC (Arevia) has proposed to construct, operate, maintain and decommission a 690 megawatt photovoltaic solar electric generating facility and associated generation tie-line and access road facilities on approximately 7,100 acres of federal lands administered by the BLM. The proposed solar facility would be located approximately 33 miles northeast of Las Vegas and directly south of the Moapa River Indian Reservation in Clark County, Nevada. The expected life of the project is 30 years.

The Final EIS analyzed the direct, indirect and cumulative environmental impacts of the proposed action and alternatives. The Final EIS analyzed the Proposed Action, the Hybrid (BLM Preferred), All Mowing and the No Action Alternatives. All of the alternatives involve development on approximately 7,100 acres of land; however, each action/alternative differs in how the facility is constructed. The Proposed Action would involve solar development utilizing traditional development methods, which include disk and roll that removes all vegetation in the solar array areas. The Hybrid (BLM Preferred) Alternative would involve solar development utilizing a combination of traditional development methods in solar array areas (on approximately 2,500 acres) and mowing that leaves vegetation and natural land contours in place on the remaining solar array areas (on approximately 4,600 acres). The All Mowing Alternative would involve development of the facility utilizing only mowing in solar array areas. Where mowing is utilized in each alternative, desert tortoise would be reintroduced into the solar array areas after completion of construction, since habitat would remain. The No Action Alternative would be a continuation of existing conditions.

A Notice of Intent (NOI) to prepare an EIS for the proposed Gemini Solar Project was published in the **Federal Register** on July 13, 2018 (83 FR 32681). The public scoping period closed August 27, 2018. The BLM held two public scoping meetings. The BLM received 34 public scoping comment letters during the 45-day scoping period. The scoping comments focused on biological resources (desert tortoise and threecorner milkvetch); visual resources; recreation and public access; and impacts to the Old Spanish National Historic Trail.

A Notice of Availability (NOA) to prepare RMP Amendment and Draft EIS for the proposed Gemini Solar Project was published in the **Federal Register** on June 7, 2019 (84 FR 26701) The BLM held two public meetings. The public comment period closed September 5, 2019. The BLM received 114 substantive letters containing 1,147 individual substantive comments during the 90-day public comment period. The comments focused on range of alternatives; Mojave Desert Tortoise; bighorn sheep and migratory birds; threecorner milkvetch, other sensitive plants and native vegetation communities; Old Spanish National Historic Trail; change to Visual Resource Management Class; impacts to recreation; drainage impacts and hydrologic changes, erosion, and dust; and tribal concern. Comments on the Draft RMP Amendment and EIS were considered and incorporated as appropriate into the Proposed RMP Amendment and Final EIS. Public comments did not result in the addition of substantive revisions to the Draft RMP Amendment and EIS that were published in June of 2019. Responses to all comments are located in Appendix L of the Final EIS.

The BLM has utilized and coordinated the NEPA scoping and comment process to help fulfill the public involvement requirements under the National Historic Preservation Act (NHPA) (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3.) The information about historic and cultural resources within the area potentially affected by the proposed project has assisted the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and the NHPA.

The BLM has consulted and will continue to consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts to Indian trust assets and potential impacts to cultural resources have been analyzed in the Final EIS.

Before including your address, phone number, email address, or other personal identifying information in your protest, be advised that your entire protest—including your personal

identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

The BLM Director will make every attempt to promptly render a decision on each protest. The decision will be in writing and will be sent to the protesting party by certified mail, return receipt requested. The decision of the BLM Director shall be the final decision of the Department of the Interior on each protest. Responses to protest issues will be compiled and formalized in a Director's Protest Resolution Report made available following issuance of the decisions.

Authority: 40 CFR 1506.6, 40 CFR 1506.10.

Jon K. Raby,

Nevada State Director.

[FR Doc. 2019–27904 Filed 12–26–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZC03000.L51050000.EA0000. LVRCA19SA090; AZ–SRP–030–15–01]

Notice of Temporary Closure and Temporary Restrictions of Selected Public Lands in La Paz County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure and restrictions.

SUMMARY: As authorized under the provisions of the Federal Land Policy and Management Act of 1976, as amended, notice is hereby given that temporary closures and temporary restrictions of activities will be in effect on public lands administered by the Lake Havasu Field Office, Bureau of Land Management (BLM) to minimize the risk of potential collisions with spectators and racers during the annual Best In The Desert (BITD) off-highway vehicle (OHV) race events, Parker 250 and Parker 425, authorized under a Special Recreation Permit (SRP).

DATES: This notice is effective upon publication. The temporary restrictions for the Parker 250 take effect at noon, January 9, 2020, through 2 a.m. January 12, 2020. The temporary closure for the Parker 250 takes effect at 5 a.m. January 11, 2020, through 2 a.m. January 12, 2020. The temporary restrictions for the Parker 425 take effect at noon January 22, 2020, through 11:59 p.m. January 25, 2020. The temporary closure for the Parker 425 takes effect at 5 a.m. January 24, 2020, through 11:59 p.m. January 25, 2020.

FOR FURTHER INFORMATION CONTACT: Jason West, Field Manager, BLM Lake Havasu Field Office, 1785 Kiowa Avenue, Lake Havasu City, Arizona 86403, 928–505–1200. Also see the Lake Havasu Field Office website: *https://www.blm.gov/office/lake-havasu-field-office.* Persons who use a telecommunications device for hearing impaired (TDD) may call the Federal Relay Service (FRS) at 800–877–8339 to contact the above individual during normal business hours. FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: On January 6, 2015, the Decision Record authorizing the BITD Parker Races SRP was signed. This permit authorizes the BITD to utilize the Parker 400 course for the Parker 250 race event on January 11 through 12, 2020, and for the Parker 425 race event on January 24 through 25, 2020. The permit is authorized from 2015 through 2024. The Environmental Assessment analyzing these routes (EA #DOI–BLM–AZ–C030–2014–0040) concluded that allowing permitted motorized racers exclusive use of the *Lake Havasu Field Office Record of Decision/Approved Resource Management Plan* (2007) designated Parker 400 course would mitigate safety concerns. These routes receive the most intense and concentrated high-speed use during the two annual permitted events.

These temporary closures and restrictions affect public lands in and around the Parker 400 course near the communities of Parker and Bouse in La Paz County, Arizona. The temporary restriction area begins on public lands east of the eastern boundary of the Colorado River Indian Tribe (CRIT) Reservation, along Shea Road, then east into Osborne Wash onto the Parker-Swansea Road to the Central Arizona Project (CAP) Canal, then north on the west side of the CAP Canal, crossing the canal on the county-maintained road, running northeast into Mineral Wash Canyon, then southeast on the county-maintained road, through the four-corners intersection to the Midway (Pit) intersection, then east on Transmission Pass Road, through State Trust Land located in Butler Valley, turning north into Cunningham Wash to North Tank; continuing south to Transmission Pass Road and east (reentering public land) within two miles of Alamo Dam Road. The temporary restriction area boundary turns south and west onto the wooden power line road, onto the State Trust Land in Butler Valley, turning southwest into Cunningham Wash to the Graham Well, intersecting Butler Valley Road, then north and west on the county-maintained road to the ''Bouse Y'' intersection, two miles north of Bouse, Arizona. The temporary restriction area boundary proceeds north, paralleling the Bouse-Swansea Road to the Midway (Pit) intersection, then west along the north boundary (power line) road of the East Cactus Plain Wilderness Area to Parker-Swansea Road. The temporary restriction area boundary turns west into Osborne Wash crossing the CAP Canal, along the north boundary of the Cactus Plain Wilderness Study Area; it continues west staying in Osborne Wash and crossing Shea Road along the southern boundary of Gibraltar Wilderness, rejoining Osborne Wash at the CRIT Reservation boundary. The closure area follows the Parker 400 course as designated in the 2007 Lake Havasu Resource Management Plan.

The temporary closures and restrictions are necessary because of the high speed nature of the race event and the added safety concerns due to the limited visibility when there is no daylight. Roads leading into the public lands under the temporary closure and restrictions will be posted with copies of the temporary closure, temporary restrictions, and associated maps to notify the public. The temporary closure and restriction orders will be posted in the Lake Havasu Field Office and online at *https://www.blm.gov/office/lake-havasu-field-office.* Maps of the affected area and other documents associated with this temporary closure are available at the Lake Havasu Field Office, 1785 Kiowa Avenue, Lake Havasu City, Arizona.

The closures and restrictions are issued under the authority of 43 CFR 8364.1 which allows the BLM to establish closures for the protection of persons, property, and public lands and resources. Violation of any of the terms, conditions, or restrictions contained within this closure order may subject the violator to citation or arrest with a penalty or fine or imprisonment or both as specified by law.

Temporary Closure and Restrictions and Existing Regulations

1. Environmental Resource Management and Protection

a. No person may deface, disturb, remove, or destroy any natural object.

b. *Fireworks:* The use, sale, or possession of personal fireworks is prohibited.

c. Cutting or collecting firewood of any kind, including dead and downed wood or other vegetative material is prohibited.

d. *Grey Water Discharge:* The discharge and dumping of grey water onto the ground surface is prohibited. Grey water is defined as water that has been used for cooking, washing, dishwashing, or bathing and/or contains soap, detergent, food scraps, or food residue, regardless of whether such products are biodegradable or have been filtered or disinfected.

e. *Black Water Discharge:* The discharge and dumping of black water onto the ground surface is prohibited. Black water is defined as wastewater containing feces, urine, and/or flush water.

f. *Human Waste:* The depositing of human waste (liquid and/or solid) on the ground surface is prohibited.

g. *Trash:* The discharge of any and all trash/litter onto the ground surface is prohibited. All event participants must pack out or properly dispose of all trash at an appropriate disposal facility.

h. *Hazardous Materials:* The dumping or discharge of vehicle oil, petroleum products, or other hazardous household, commercial, or industrial refuse or waste onto the ground surface is prohibited. This applies to all recreational vehicles, trailers, motorhomes, port-a-potties, generators, and other camp infrastructure.

2. Alcohol/Prohibited Substance

a. Possession of an open container of an alcoholic beverage by the driver or operator of any motorized vehicle, whether or not the vehicle is in motion, is prohibited.

b. Possession of alcohol by minors. The following are prohibited:

i. Consumption or possession of any alcoholic beverage by a person under 21 years of age on public lands.

ii. Selling, offering to sell, or otherwise furnishing or supplying any alcoholic beverage to a person under 21 years of age on public lands.

c. Operation of a motor vehicle while under the influence of alcohol, marijuana, narcotics, or dangerous drugs is prohibited.

3. Drug Paraphernalia

a. The possession of drug paraphernalia is prohibited.

4. Disorderly Conduct

a. Disorderly conduct is prohibited. Disorderly conduct means that an individual, with the intent of recklessly causing public alarm, nuisance, jeopardy, or violence, or recklessly creating a risk thereof:

i. Engages in fighting or violent behavior;

ii. Uses language, an utterance or gesture, or engages in a display or act that is physically threatening or menacing, or done in a manner that is likely to inflict injury or incite an immediate breach of the peace.

iii. Obstructs, resists, or attempts to elude a law enforcement officer, or fails to follow their orders or directions.

5. Eviction of Persons

a. The temporary closure and restriction area is closed to any person who:

i. Has been evicted from the event by the permit holder, whether or not the eviction was requested by the BLM;

ii. Has been evicted from the event by the BLM; or

iii. Has been ordered by a law enforcement officer to leave the area of the permitted event.

b. Any person evicted from the event forfeits all privileges to be present within the temporary closure and restriction area.

6. Motor Vehicles

a. Motor vehicles must comply with the following requirements:

i. The operator of a motor vehicle must possess a valid driver's license.

ii. Motor vehicles and trailers must possess evidence of valid registration.

iii. Motor vehicle operators must possess evidence of valid insurance.

iv. Motor vehicles and trailers must not block a street used for vehicular travel or a pedestrian pathway. Parking any off-highway vehicle in violation of posted restrictions; or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles; creating a safety hazard; or endangering any person, property, or feature is prohibited. Vehicles parked in violation are subject to citation, removal, and/or impoundment at the owner's expense.

v. Motor vehicles must not exceed the posted speed limit.

vi. Operating a vehicle through, around, or beyond a restrictive sign, barricade, fence, or traffic control barrier or device is prohibited.

vii. Failure to obey any person authorized to direct traffic or control access to event area including law enforcement officers, BLM officials, and designated race officials is prohibited.

b. The temporary closure area is closed to motor vehicle use, except as provided below. Motor vehicles may be operated within the temporary closure area under the circumstances listed below:

i. Race participants and support vehicles on designated routes;

ii. BLM, medical, law enforcement, and firefighting vehicles are authorized at all times;

iii. Vehicles operated by the permit holder's staff or contractors and volunteers are authorized at all times. These vehicles must display evidence of event registration at all times in such manner that it is visible to the front of the vehicle while the vehicle is in motion.

7. Public Camping

a. The temporary closure and restriction area is closed to public camping with the following exceptions:

i. The permitted event's spectators, who are camped in designated spectator areas, as marked by protective fencing, barriers, and informational signage provided by the permit holder;

ii. The permit holder's authorized staff, contractors, and BLM-authorized event managers.

b. Spectator area site reservations, denying other visitors or parties from utilizing unoccupied portions of the spectator area by marking with flags, tape, posts, cones, etc. is prohibited. Vehicles and trailers may not be left unattended for over 72 hours.

c. Allowing any pet or other animal to be unrestrained is prohibited. All pets must be restrained by a leash of not more than six feet in length.

d. Failure to observe restricted area quiet hours of midnight to 6 a.m. is prohibited.

8. Weapons

a. Discharging or use of firearms or other weapons is prohibited.

b. The prohibition above shall not apply to county, state, tribal and Federal law enforcement personnel who are working in their official capacity at the event.

9. Race Course Closure

a. The designated race course as shown in the Lake Havasu Field Office approved RMP and Decision Record is closed to public entry during the temporary closure.

b. The temporary closure area is closed to use by members of the public with the following exceptions:

i. The person is an employee or authorized volunteer with the BLM, a law enforcement officer, emergency medical service provider, fire protection provider, or another public agency employee working at and assigned to the event;

ii. The person is working at or attending the event directly on behalf of the permit holder.

c. Failure to obey any official sign posted by the BLM, law enforcement, La Paz County, or the permit holder is prohibited.

Enforcement: Any person who violates these closure rules may be tried before a United States magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, state or local officials may also impose penalties for violations of Arizona law. A complete list of laws and regulations applicable to public lands in Arizona may be viewed at: *http://www.azd.uscourts.gov/sites/default/files/general-orders/19-14.pdf.*

Authority: 43 CFR 8364.1.

Jason West,

Field Manager.

[FR Doc. 2019–27906 Filed 12–26–19; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[DOI–2019–0008; R0810000, 20XR0680A1, RY.1541TT20153PATN]

Privacy Act of 1974; System of Records

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior proposes to modify the Bureau of Reclamation Privacy Act system of records titled, ''INTERIOR/WBR–12, Inventions and Patents.'' This system of records administers the Bureau of Reclamation internal program that manages and tracks applications for inventions and patents submitted by Federal employees, individuals, and organizations who have submitted a report of invention to Reclamation or employees who are seeking to file and secure patents. The Bureau of Reclamation is proposing to add new routine uses, modify existing routine uses to provide clarification, update authorities for this system, update categories of individuals and categories of records to reflect the expanded scope of the system, and to provide general and administrative updates to all sections in accordance with the Office of Management and Budget Circular A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.'' This modified system will be included in the Department of the Interior's inventory of record systems.

DATES: This modified system will be effective upon publication. New and modified routine uses will be effective January 27, 2020. Submit comments on or before January 27, 2020.

ADDRESSES: You may send comments identified by docket number [DOI–2019–0008], by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for sending comments.
- *Email: DOI_Privacy@ios.doi.gov.* Include docket number [DOI–2019–0008] in the subject line of the message.
- *U.S. Mail or Hand-Delivery:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

Instructions: All submissions received must include the agency name and docket number [DOI–2019–0008]. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Regina Magno, Associate Privacy Officer, Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225, *privacy@usbr.gov* or (303) 445–3326.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of the Interior (DOI), Bureau of Reclamation (Reclamation) maintains the ''INTERIOR/WBR–12, Inventions and Patents'' system of records. The purpose of this system is to administer an internal program to manage and track applications for inventions and patents submitted by Federal employees, individuals, and organizations (*i.e.,* businesses, state and local governments, universities, non-governmental organizations), who have submitted a report of invention to Reclamation or employees who are seeking to file and secure patents. Inventions may be developed solely by Reclamation employees or jointly with other Federal and/or other entities. The primary use of this system is to determine an inventor's rights to an invention, whether to file and secure a patent application for the invention, and to distribute a share of royalties for licensed inventions.

Reclamation inventors may receive monetary awards for filing the patent application and issuing the patent. The U.S. Patent and Trademark Office issues a patent for 20 years and patent maintenance fees are paid at specific time periods to maintain the patent at the discretion of the Chief, Research and Development, Bureau of Reclamation. Reclamation inventors who have assigned their patent rights to DOI may receive a share of royalty payments from Reclamation.

Reclamation is publishing this revised notice to update authorities for this system, update categories of individuals and categories of records to reflect the expanded scope of the system, and provide general and administrative updates to all sections in accordance with the Office of Management and Budget (OMB) Circular A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.'' Additionally, Reclamation is modifying existing routine uses to provide additional clarity and transparency. Routine use A was modified to further clarify disclosures to the Department of Justice or other Federal agencies when necessary in relation to litigation or judicial proceedings. Routine uses B, D, and E have been modified to provide additional clarification on external organizations and circumstances where disclosures are compatible with the purpose of the system or are proper and necessary to administer an internal program to manage and track applications for inventions and patents submitted by Federal employees, individuals, and organizations (*i.e.,* businesses, state and local governments, universities, non-governmental organizations) who have submitted a report of invention to Reclamation and/or employees who are seeking to file and secure patents. Modified routine use J and proposed routine use K allow Reclamation to share information with appropriate Federal agencies or entities when reasonably necessary to respond to a breach of personally identifiable information and to prevent, minimize, or remedy the risk of harm to individuals or the Federal Government, or assist an agency in locating individuals affected by a breach in accordance with OMB Memorandum M–17–12, ''Preparing for and Responding to a Breach of Personally Identifiable Information''.

Proposed new routine uses C, F, G, H, I, and L through P facilitate sharing of information with agencies and organizations to ensure the efficient

management of applications for inventions and patents, promote the integrity of the records in the system, or carry out a statutory responsibility of Reclamation or the Federal Government. Proposed routine use C facilitates sharing of information with the Executive Office of the President to resolve issues concerning individual's records. Routine use F allows Reclamation to share information with agencies when relevant for hiring and retention, or issuance of security clearance, license, contract, grant or benefit. Routine use G allows Reclamation to share information with the National Archives and Records Administration (NARA) to conduct records management inspections. Routine use H allows Reclamation to share information with external entities, such as state, territorial and local governments, and tribal organizations, as needed in response to court orders or for discovery purposes related to litigation. Routine use I allows Reclamation to share information with an expert, consultant, grantee, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system. Routine use L allows Reclamation to share information with the OMB during the coordination and clearance process in connection with legislative affairs. Routine use M allows Reclamation to share information with the Department of the Treasury to recover debts owed to the United States. Routine use N allows Reclamation to share information with the news media and the public if there is a legitimate public interest in the disclosure of the information. Routine use O allows Reclamation to share information with the U.S. Patent and Trademark Office for filing and issuing patent applications and patents. Routine use P allows Reclamation to share information with the Department of the Treasury, Internal Revenue Service, and state and local tax authorities to report miscellaneous income for tax reporting purposes for which an employee is or was subject to tax regardless of whether tax is or was withheld in accordance with Treasury Fiscal Requirements, as required.

II. Privacy Act

The Privacy Act of 1974, as amended, embodies fair information practice principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to records about individuals that are maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or an alien lawfully admitted for permanent residence. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act regulations at 43 CFR part 2, subpart K, and following the procedures outlined in the Records Access, Contesting Record, and Notification Procedures sections of this notice.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the existence and character of each system of records that the agency maintains and the routine uses of each system. The revised Inventions and Patents system of records notice is published in its entirety below. In accordance with 5 U.S.C. 552a(r), DOI has provided a report of this system of records to the Office of Management and Budget and to Congress.

III. Public Participation

You should be aware that your entire comment including your personal identifying information, such as your address, phone number, email address, or any other personal identifying information in your comment, may be made publicly available at any time. While you may request to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

SYSTEM NAME AND NUMBER:

INTERIOR/Reclamation-12, Inventions and Patents.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records in this system are maintained at the Bureau of Reclamation, Denver Federal Center, 6th and Kipling, Denver, CO 80225–0007.

SYSTEM MANAGER(S):

Chief, Research and Development, Bureau of Reclamation, Denver Federal Center, P.O. Box 25007, Denver, CO 80225–0007.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Stevenson-Wydler Innovation Act of 1980, 15 U.S.C. 3701, *et seq.,* as amended; The Federal Technology Transfer Act of 1986, Public Law 99–502; Executive Order 12591, Facilitating Access to Science and Technology, as modified by Executive Order 12618, Uniform Treatment of Federally Funded Inventions; Executive Order 9397, Numbering System for Federal Accounts Relating to Individual Persons, as modified by Executive Order 13478, Amendments to Executive Order 9397 Relating to Federal Agency Use of Social Security Numbers; and 26 U.S.C., Internal Revenue Code.

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the system is to manage and track applications for inventions and patents submitted by Federal employees, individuals, and organizations (*i.e.,* private organizations, state and local governments, universities, and other organizations) who have submitted a report of invention to Reclamation or are seeking to file and secure patents. This system enables Reclamation to determine the inventor's rights to an invention, whether to file and secure a patent application for the invention, and to distribute a share of royalties to inventors for licensed inventions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system include Federal employees, individual members of the public, and individuals acting on behalf of state and local government, private organizations, universities, or other organizations who have submitted reports of inventions to Reclamation for the purpose of filing and securing patents. This system contains records pertaining to state and local governments, private organizations, and other business entities that are not subject to the Privacy Act. However, records pertaining to individuals acting on behalf of an organization may reflect personal information that is subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records related to inventions such as descriptions and/or drawings of the invention in the patent application and information regarding the applicant that submitted a report of invention or is seeking to file a patent. Records contain information such as name, home or business address, personal or business phone number, personal or business email address, grade level for Federal employees, job title, project name, project title, patent application number, patent number, organization information, banking or financial information of the inventor to facilitate

royalty payments, and any information related to the processing of patents and royalty payments such as amount of shares or disbursements. Tax Identification Numbers or Social Security numbers may be collected and maintained in order to process royalty payments to individuals or organizations and to submit Form 1099–MISC, Miscellaneous Income, to the Internal Revenue Service for tax reporting purposes. Records in this system may also include information on Reclamation officials who process or approve applications, or otherwise manage or oversee the invention and patent process.

RECORD SOURCE CATEGORIES:

Records in this system are obtained from Federal employees, individual members of the public, and individuals acting on behalf of state and local government, private organizations, universities, or other organizations that have submitted a report of inventions to Reclamation and/or are seeking to file and secure patents, and Reclamation officials who process or approve applications, or otherwise manage or oversee the invention and patent process.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOI as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

(1) DOI or any component of DOI;

(2) Any other Federal agency appearing before the Office of Hearings and Appeals;

(3) Any DOI employee or former employee acting in his or her official capacity;

(4) Any DOI employee or former employee acting in his or her individual capacity when DOI or DOJ has agreed to represent that employee or pay for private representation of the employee; or

(5) The United States Government or any agency thereof, when DOJ determines that DOI is likely to be affected by the proceeding.

B. To a congressional office when requesting information on behalf of, and at the request of, the individual who is the subject of the record.

C. To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible with the reason for which the records are collected or maintained.

D. To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

E. To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

F. To Federal, state, territorial, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

G. To representatives of the National Archives and Records Administration (NARA) to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

H. To state, territorial and local governments and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

I. To an expert, consultant, grantee, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

J. To appropriate agencies, entities, and persons when:

(1) DOI suspects or has confirmed that there has been a breach of the system of records;

(2) DOI has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOI (including its information systems, programs, and operations), the Federal Government, or national security; and

(3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DOI's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

K. To another Federal agency or Federal entity, when DOI determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in:

(1) Responding to a suspected or confirmed breach; or

(2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

L. To the Office of Management and Budget (OMB) during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

M. To the Department of the Treasury to recover debts owed to the United States.

N. To the news media and the public, with the approval of the Public Affairs Officer in consultation with counsel and the Senior Agency Official for Privacy, where there exists a legitimate public interest in the disclosure of the information, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

O. To the U.S. Patent and Trademark Office to submit patent applications and facilitate the filing, issuance and maintenance of patent applications and patents.

P. To the Department of the Treasury, Internal Revenue Service, and state and local tax authorities to report miscellaneous income for tax reporting purposes as required under 26 U.S.C. 3402 and 26 CFR 601, for which an employee is or was subject to tax regardless of whether tax is or was withheld in accordance with Treasury Fiscal Requirements, as required.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records are contained in file folders stored in locked file cabinets at secured Reclamation facilities. Electronic records are contained in removable drives, computers, email, and electronic database(s).

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name, project name, title, patent application number, or patent number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are currently maintained in accordance with the Bureau of Reclamation Records Retention Schedule LAW–6.00—Inventions, Patents, and Copyrights (N1–115–94–9), which has been approved by NARA. This record schedule covers case files pertaining to inventions and patents, including correspondence and data supporting invention reports on patent applications. The disposition for these records is temporary and the records are cutoff at the end of each year. Paper, film, and electronic records are transferred to the Federal Record Center 10 years after cutoff or when volume warrants. The Federal Record Center will destroy these records 20 years after cutoff.

A new Departmental Records Schedule (DRS) has been submitted to NARA and is pending approval. Once NARA approves the DRS, the records related to this system of records will be maintained in accordance with DRS: 4.4.13 Legal—Litigation and Adjudication—Judicial 20 years. These files are temporary. Files are cutoff on final decision (when decision is made and all opportunities for appeal are settled/expired). Files are destroyed 20 years after cutoff.

Paper records are disposed of by shredding or pulping, and records contained on electronic media are degaussed or erased in accordance with the applicable records retention schedule, 384 Department Manual 1 and NARA guidelines.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The records contained in this system are safeguarded in accordance with 43 CFR 2.226 and other applicable security rules and policies. Records are accessible only by authorized DOI employees, and other Federal Government agencies and contractors who have contractual agreements with Reclamation to conduct activities related to inventions and patents. During normal hours of operation, paper records are secured in locked file cabinets under the control of authorized personnel. Computers and servers on which electronic records are stored are located in secured DOI and/or contractor facilities with physical, technical, and administrative levels of security such as access codes, security codes, and security guards, to prevent unauthorized access to the DOI network and information assets. Access to DOI networks and data requires a valid username and password, and is limited to DOI personnel and/or contractors who have a need to know of the information for the performance of their official duties. Access to contractor's networks and data requires restricted access limited to authorized personnel.

Computerized records systems follow the National Institute of Standards and Technology privacy and security standards as developed to comply with the Privacy Act of 1974 as amended, 5 U.S.C. 552a; the Paperwork Reduction Act of 1995, Public Law 104–13; the Federal Information Security Modernization Act of 2014, Public Law 113–283, as codified at 44 U.S.C. 3551, *et seq.;* and the Federal Information Processing Standard 199, Standards for Security Categorization of Federal Information and Information Systems. Security controls include user identification, passwords, database permissions, encryption, firewalls, audit logs, and network system security monitoring, and software controls. System administrators and authorized personnel are trained and required to follow established internal security protocols and must complete all security, privacy, and records management training and sign the DOI Rules of Behavior.

RECORD ACCESS PROCEDURES:

An individual requesting records on himself or herself should send a signed, written inquiry to the System Manager identified in this notice. The request must include the specific bureau or office that maintains the record to facilitate the location of the applicable records. The request envelope and letter should both be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS.'' A request for access must meet the requirements of 43 CFR 2.238.

CONTESTING RECORD PROCEDURES:

An individual requesting corrections or the removal of material from his or her records should send a signed, written request to the System Manager as identified in this notice. The request must include the specific bureau or office that maintains the record to facilitate the location of the applicable records. A request for corrections or removal must meet the requirements of 43 CFR 2.246.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on himself or herself should send a signed, written inquiry to the System Manager as identified in this notice. The request must include the specific bureau or office that maintains the record to facilitate the location of the applicable records. The request envelope and letter should both be clearly marked ''PRIVACY ACT INQUIRY.'' A request for notification must meet the requirements of 43 CFR 2.235.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None. Pursuant to 5 U.S.C. 552a(d)(5), the Privacy Act does not entitle an individual to access information compiled in reasonable anticipation of a civil action or proceeding related to patent litigation cases.

HISTORY:

64 FR 40894 (July 28, 1999); modification published 73 FR 20949 (April 17, 2008).

Teri Barnett,

Departmental Privacy Officer, Department of the Interior.

[FR Doc. 2019–27944 Filed 12–26–19; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–632–635 and 731–TA–1466–1468 (Preliminary)]

Fluid End Blocks From China, Germany, India, and Italy; Institution of Anti-Dumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–632–635 and 731–TA–1466–1468 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of fluid end blocks from

Germany, India, and Italy, provided for in subheadings 7218.91.00, 7218.99.00, 7224.90.00, 7326.19.00, 7326.90.86, and 8413.91.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and imports of such products alleged to be subsidized by the Governments of China, Germany, India, and Italy. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by February 3, 2020. The Commission's views must be transmitted to Commerce within five business days thereafter, or by February 10, 2020.

DATES: December 19, 2019.

FOR FURTHER INFORMATION CONTACT: Kristina Lara (202–205–3386), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to petitions filed on December 19, 2019, by Ellwood City Forge Company, Ellwood Quality Steels Company, and Ellwood National Steel Company, Ellwood City, Pennsylvania; A. Finkl & Sons, Chicago, Illinois; and FEB Fair Trade Coalition, Cleveland, Ohio.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on Thursday, January 9, 2020, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before January 7, 2020. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before January 14, 2020, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: December 19, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–27881 Filed 12–26–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1187]

Certain Electronic Devices With Optical Filters and Optical Sensor Systems and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 18, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of Viavi Solutions Inc. of San Jose, California. A supplement to the complaint was filed on December 9, 2019. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices with optical filters and optical sensor systems and components thereof by reason of infringement of certain claims of U.S. Patent No. 9,588,269 (''the '269 patent''); U.S. Patent No. 9,945,995 (''the '995 patent''); and U.S. Patent No. 10,222,526 (''the '526 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia Proctor, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2019).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 18, 2019, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1, 5–9, 11, 13, 15, 17, 18, and 22–27 of the '269 patent; claims 1, 4, 8, 13, and 18 of the '995 patent; and claims 27–30 of the '526 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''mobile phones and tablet computers, and components for mobile phones and tablet computers, including optical filters and optical sensor systems for mobile phones and tablet computers'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Viavi Solutions Inc., 6001 America Center Drive, Sixth Floor, San Jose, CA 95002.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Optrontec Inc., 19–15 Pyeongsan-ro 8beon-gil, Uichang-gu, Changwon, Gyeongnam, 51398, Republic of Korea

LG Electronics, Inc., LG Twin Towers, 128 Yeoui-daero, Yeongdeungpo-gu, Seoul, 07336, Republic of Korea

LG Innotek Co., Ltd., 17F, LG Seoulstation Bldg., 98 Huam-ro, Jung-gu, Seoul, 04637, Republic of Korea

LG Electronics U.S.A., Inc., 1000 Sylvan Avenue, Englewood Cliffs, NJ 07623

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: December 19, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–27837 Filed 12–26–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Informant Agreement—ATF Form 3252.2

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco,

Firearms and Explosives (ATF), will submit 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: The proposed information collection was previously published in the **Federal Register**, on October 24, 2019, allowing for a 60-day comment period. Comments are encouraged and will be accepted for an additional 30 days until January 27, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments regarding 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: Renee Reid, FO/ESB—Mailstop (7.E–401), either by mail at 99 New York Ave. NE, Washington DC, 20226, by email at *Renee.Reid@atf.gov,* or by telephone at 202–648–9255. 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 20503 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 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;

—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:* New Collection.

(2) *The Title of the Form/Collection:* Informant Agreement.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 3252.2.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other: None.

Abstract: Any individual registering as a confidential informant (CI) for ATF, must provide their personally identifiable information (PII) on the Informant Agreement—(ATF Form 3252.2). ATF will utilize the information to verify the identity of the CI, who can provide useful and credible information to ATF regarding felonious criminal activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,000 respondents will utilize the form annually, and it will take each respondent approximately 6 minutes to complete the form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 200 hours, which is equal to 2,000 (# of respondents) * .10 (6 minutes).

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 20, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–27924 Filed 12–26–19; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–571]

Bulk Manufacturer of Controlled Substances Application: Johnson Matthey Pharmaceutical Materials Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before February 25, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION:

In accordance with 21 CFR 1301.33(a), this is notice that on October 31, 2019, Johnson Matthey Pharmaceutical Materials Inc., 25 Patton Road, Devens, Massachusetts 01434 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Amphetamine	1100	II
Methylphenidate	1724	II
Nabilone	7379	II
Hydrocodone	9193	II
Levorphanol	9220	II
Alfentanil	9737	II
Remifentanil	9739	II
Sufentanil	9740	II

The company plans to utilize this facility to manufacture small quantities of the listed controlled substances in bulk for distribution to its customers as well as to conduct analytical testing in support of the company's primary manufacturing facility in West Deptford, New Jersey.

Dated: December 17, 2019.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2019–27951 Filed 12–26–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 17–23]

Lisa Hamilton, N.P.; Decision and Order

On March 17, 2017, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause to Lisa Hamilton, N.P., (hereinafter, Respondent), of Taunton,[1]

[1] According to DEA records, Respondent filed to change her registered address during the proceedings to 113 Washington Street, Number 1, Foxboro, Massachusetts 02035, but the initial Order

Continued

Massachusetts. Administrative Law Judge Exhibit (hereinafter, ALJX) 1 (Order to Show Cause (hereinafter, OSC)), at 1. The OSC proposed the revocation of and denial of any pending application to modify or renew Respondent's Certificate of Registration No. MH0525153 ''pursuant to 21 U.S.C. 823(f) and 824(a)(4) for the reason that [her] continued registration is inconsistent with the public interest as that term is defined in 21 U.S.C. 823(f). *Id.*

Specifically, the OSC alleged that Respondent issued prescriptions for controlled substances to eight individuals for other than a legitimate medical purpose and outside the usual course of professional practice, in violation of 21 CFR 1306.04(a), M.G.L. 94C § 19(a), and 244 CMR §§ 3.00, 4.00 *et. seq.,* and 9.03(5),(6),(39) and (44). *Id.* at 2–3. Additionally, the OSC alleged that from June 14, 2016, to February 3, 2017, Respondent's Massachusetts Controlled Substances Registration (hereinafter, MCSR) lapsed, yet Respondent continued to issue controlled substance prescriptions during that time period in violation of 21 CFR 1306.03(a), and M.G.L. 94C §§ 7(a) and 18(a). *Id.* at 4.

The OSC notified Respondent of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* (citing 21 CFR 1301.43). The OSC also notified Respondent of the opportunity to submit a corrective action plan. *Id.* at 4–5 (citing 21 U.S.C. 824(c)(2)(C)).

By letter dated April 10, 2017, Respondent timely requested a hearing. ALJX 2 (Request for a Hearing), at 1. The matter was placed on the docket of the Office of Administrative Law Judges and assigned to Chief Administrative Law Judge John J. Mulrooney, II (hereinafter, Chief ALJ). On April 13, 2017, the Chief ALJ established a schedule for the filing of prehearing statements. ALJX 3 (Order for Prehearing Statements), at 1. The Government filed its Prehearing Statement on April 25, 2017, and its Supplemental Prehearing Statement on June 23, 2017. ALJX 4 and ALJX 10, respectively. On May 8, 2017, the Chief ALJ issued a Notice to Show Cause, which noted that Respondent had not timely filed an adequate prehearing statement and required her to show good cause as to the reasons for the deficiency and to correct it by filing a prehearing statement by May 15, 2017. ALJX 5. By letter dated May 13, 2017, Respondent replied that she had not understood the additional requirements and filed a Prehearing Statement in compliance with the Chief ALJ's Order. ALJX 6. On May 16, 2017, the Chief ALJ issued an Order Regarding Late Compliance accepting Respondent's Prehearing Statement. ALJX 7. On May 24, 2017, the Chief ALJ issued a Prehearing Ruling that, among other things, set out the nine Stipulations already agreed upon and established schedules for the filing of additional joint stipulations and supplemental prehearing statements. ALJX 8 (Prehearing Ruling), at 1–2. Respondent filed her Supplemental Prehearing Statement on June 23, 2017. ALJX 11.

The hearing in this matter spanned two days.[2] The Recommended Rulings, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge (hereafter, R.D.) is dated September 18, 2017. Neither party filed exceptions to the R.D.; however, Respondent filed a motion to reconsider the R.D.,[3] which was denied by the Chief ALJ on October 24, 2017, because the motion ''raise[d] no newly discovered evidence and present[ed] no changed circumstances that would render the RD determination inappropriate.'' Transmittal Letter, at 1; ALJX 14 and 15 (citing *William H. Wyttenbach, M.D.,* 82 FR 18777 (2017)).

Having considered the record in its entirety, I agree with the R.D. that the record establishes, by substantial evidence, grounds for the revocation of Respondent's registration—that Respondent committed acts rendering her continued registration inconsistent with the public interest. R.D., at 56–59. I further agree with the R.D. that Respondent's acceptance of responsibility is insufficient, and that, even if it were sufficient, Respondent did not offer adequate remedial measures, and that overall the factors weigh in favor of sanction. *Id.*

I issue this Decision and Order based on the entire record before me. 21 CFR 1301.43(e). I make the following findings of fact.

Findings of Fact

Respondent's DEA Registration

Respondent is the holder of DEA Certificate of Registration No. MH0525153 at the registered address of 113 Washington Street, Number 1, Foxboro, Massachusetts 02035.[4] GX 1. Pursuant to this registration, Respondent is authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.*

The Government's Case

The Government's documentary evidence consists primarily of medical records for eight patients. The Government called two witnesses: a DEA Diversion Investigator (hereinafter, DI), and an expert, Marylou Gregory-Lee, MSN, ANP–BC (hereinafter, Nurse Practitioner Gregory-Lee).

DI testified about her investigation-related actions, including her roles in interviewing Respondent's former employer and collecting evidence on Respondent's prescribing activities and on her lapse in MCSR. Tr. 29–130; *see also* R.D., at 7–9. DI testified that Respondent came to her attention during an inspection of a practitioner at Signature Health, who, in response to standard questions related to whether he had ''information regarding any prescribers of concern, DEA registrants of concern, or . . . illegal activity involving controlled substances,'' stated that ''there was a person in the practice that got [sic] terminated'' and that ''some of the prescriptions in panel patients . . . were not indicated.'' Tr. 40, 41; *see also* R.D., at 7. Two subsequent subpoenas to Signature Health to obtain the identity of the practitioner produced the identification of Respondent and her prescribing activities and charts. Tr. 40–47; *see also* R.D., at 8. The DI also testified about her investigation into the seven-month lapse in Respondent's MCSR, during which Respondent issued approximately five hundred controlled substance prescriptions, of which DI obtained a ''representative sampling.'' Tr. 96–98; GX 18; *see also* R.D., at 8. Having read and analyzed all of the record evidence, I agree with the Chief ALJ that DI ''presented testimony that was plausible, detailed, consistent, and without any obvious motive to fabricate''; and, therefore, ''her testimony is afforded full credibility.'' R.D., at 9.

The Government's expert, Nurse Practitioner Gregory-Lee, is a Nurse

to Show Cause was issued to her registered address at the time, which was 1 Washington Street, Suite 900, Taunton, Massachusetts 02780.

[2] Hearings were held in Boston, Massachusetts on July 19 and 20, 2017.

[3] Respondent's motion for reconsideration states that she has ''in fact learned a lot from this case'' and indicates what she ''should'' and ''will'' do in the future. ALX 14, at 2. I agree with the Chief ALJ's denial of the motion. ALJX 15. This Agency's adjudicative process notably does not permit reconsideration in this manner and I do not believe that I can consider Respondent's promises, because doing so would, among other things, deprive the Government of an opportunity to address Respondent's representations and prevent a full credibility assessment.

[4] Since the issuance of the OSC, Respondent changed her address from 1 Washington St., Suite 900, Taunton, Massachusetts 02780. *See also* n.1, *supra.*

Practitioner in Florida. She was a registered nurse practitioner in Massachusetts but has been inactive in that state since February of 2016. GX 13, at 1 (Curriculum Vitae of Marylou Gregory-Lee, MSN, ANP–BC). She holds a Master of Science in Nursing from the University of Rhode Island. *Id.;* R.D., at 9. She testified that she has been a nurse for forty-nine and a half years and had practiced in Massachusetts from 1968 to approximately 2013, when she became a resident of Florida. Tr. 135–37. She was registered with the DEA to handle controlled substances, which expired in 2016. *Id.* The Chief ALJ accepted Nurse Practitioner Gregory-Lee as an ''expert in the field of controlled substance prescribing by advanced practice nurse practitioners in the State of Massachusetts and in the scope of their practice in the State of Massachusetts.'' *Id.* at 161–162. The matters about which Nurse Practitioner Gregory-Lee testified included her review and standard-of-care analysis of medical records belonging to eight of Respondent's patients, and she relied on her written reports analyzing the medical records for each patient. *e.g., id.* at 204–32, 233–62, 265–99, 300–14, 315–26, 370–82, 383–94, 394–402; *see also* R.D., at 13–28; GX 14 (Expert Summary Report).

Patient E.B.

The Government's records related to Patient E.B. show that the patient visited the Respondent on nine occasions and that controlled substances were prescribed on six. R.D., at 13; GX 5a and b; GX 14, at 3–5. Nurse Practitioner Gregory-Lee testified that the Massachusetts prescribing standard requires a pain assessment prior to prescribing controlled substances. Tr. 208. However, for Patient E.B, Respondent did not document a pain assessment during the initial physical exam, and instead noted remarks that the patient was ''pleasant,'' and had ''[n]o acute distress.'' *Id.;* GX 14, at 3; GX 5a, at 31. In a subsequent visit a month later, E.B. presented with a swollen wrist. GX 5a, at 24. Again, she testified that on April 3, 2013, Respondent documented that the patient ''is currently on a chronic pain medication'' and ''doesn't need any meds''; nevertheless, Respondent ordered oxycodone for the patient. Tr. 217; *see also* GX 5a, at 26; GX 5b, at 3 (demonstrating the prescription). Additionally, during this visit, Respondent did not document an assessment of pain related to the injury. Tr. 220. Nurse Practitioner Gregory-Lee also opined that it was generally inappropriate to issue prescriptions for post-hysterectomy abdominal pain from a 2006 operation, where the scarring tissue had been removed in 2007.[5] *Id.* at 224–25.

Patient D.C.

The file for Patient D.C. that was presented by the Government shows that the patient visited the Respondent on six occasions, at each of which the Respondent prescribed oxycodone. R.D., at 16; GX 6a and b; GX 14, at 6–7. Nurse Practitioner Gregory-Lee testified that it was unclear from the record what the patient's complaint was about—knee injury, lumbar disc, or coughing. Tr. 235–37; GX 6a, at 33–34. She determined that there was no physical evaluation and no pain assessment, and therefore, the oxycodone prescribed was not for a legitimate medical purpose. Tr. 238. On March 15, 2013, the record demonstrated that the purpose of Patient D.C.'s visit was an annual physical exam, but there was no physical exam documented. Tr. 243. Nurse Practitioner Gregory-Lee testified that a pain scale was mentioned but no results were recorded and oxycodone was prescribed. *Id; see also* GX 6a, at 30. On April 4, 2013, the physical exam stated, ''pleasant. No acute distress.'' GX 6a, at 28; Tr. 243. Nurse Practitioner Gregory-Lee testified that ''[t]here's a physical exam that's completely normal, and there's no pain assessment. Based on that information, why would you order oxycodone? So it's inappropriate.'' Tr. 245. Likewise, there were no pain assessments on further visits, but Respondent prescribed controlled substances. *Id.* at 247. After Respondent was terminated, a new nurse practitioner saw D.C. on June 24, 2013. *Id.* at 256; GX 6a, at 14–16. Unlike Respondent, she conducted a full physical examination, did not refill the oxycodone, referred D.C. for a toxicity screen, and had the patient follow up for a pain management visit.[6] *Id.*

Patient T.D.

The Government introduced records for Patient T.D. demonstrating ten visits to Respondent, which resulted in ten prescriptions for oxycodone and fentanyl. R.D., at 18; GX 7a and 7b; GX 14, at 8–10. Nurse Practitioner Gregory-Lee testified that the chart describes Patient T.D. as a binge drinker, and so the Respondent should have documented a conversation about the dangers of mixing alcohol and controlled substances and also should have done a urinalysis to check for alcohol. Tr. 266–69. She testified that, on February 14, 2013, the patient was documented as having ''tremors,'' but there was no physical evaluation, no pain assessment, and fentanyl and oxycodone were prescribed. GX 7b, at 8; Tr. 270. Further, she opined that on subsequent visits, there was no pain assessment, no documentation of pain or of the effectiveness of controlled substance medication, and no discussion with the patient, so the prescriptions for fentanyl and oxycodone were not issued for a legitimate medical purpose under Massachusetts standards. GX 7b, at 3, 8; Tr. 277–82. Additionally, she testified that on April 8, 2013, there was no office visit attached to Respondent's issuance of a controlled substance prescription and that the standard in Massachusetts requires an office visit for controlled substance prescriptions. Tr. 282–83; GX 7b, at 3. Finally, Nurse Practitioner Gregory-Lee testified that the records demonstrate that the patient requested that Respondent decrease his medication, but she prescribed him the full amount without further explanation in the charts. Tr. 287; GX 7b, at 4.

Patient M.J.

The Government's evidence related to Patient M.J. demonstrates four visits, each of which resulted in prescriptions for oxycodone, which Nurse Practitioner Gregory-Lee testified that, in her opinion, ''were not issued for a legitimate medical purpose because there was no pain assessment at any of the visits.'' R.D., at 22 (citing Tr. 301–14). Specifically, she testified that, on February 7, 2013, there was an initial visit with a physical exam, but there was no pain management or assessment. Tr. 299–300. On March 14, 2013, the records mentioned a ''Wong-Baker'' pain assessment, but the resulting number was not recorded. Nurse Practitioner Gregory-Lee stated, ''Exam was there. It was pleasant, no acute distress, gait was normal. Everything was—he did have some exam, and what he had was completely normal. There was no pain assessment, but she ordered oxycodone.'' *Id.* at 303; GX 8a, at 12; GX 8b, at 2. Again, regarding Patient M.J.'s visit on April 11, 2013, Nurse Practitioner Gregory-Lee testified that there was ''no pain assessment'' and ''[Respondent] did a physical exam that was completely normal.'' Tr. 306–7, GX

[5] On cross-examination, Respondent pointed out that EB's patient chart states, ''on chronic pain management went to Dr. Portnow for evaluation and he put her on oxycodone 15MG 3x daily as needed, she's doing well with this at this time.'' GX 5a, at 27; Tr. 425.

[6] It should be noted that another Physician did subsequently prescribe the patient with Oxycodone, but shortly thereafter, the patient was terminated from care by Signature Health for a violation of her Controlled Substances Agreement. GX 6a, at 3, 12.

8b,[7] at 3. GX 8a, at 8–10. Further, Nurse Practitioner Gregory-Lee noted that Signature Health terminated M.J.'s patient care on August 9, 2013, based on his violation of his controlled substances agreement. Tr. 311; GX 8a, at 3.

Patient E.L.

The Government's records on Patient E.L. encompass eight visits, during which Respondent prescribed him hydrocodone/acetaminophen and oxycodone/acetaminophen. R.D., at 23 (citing GX 9a and 9b and GX 14, at 13–15). Nurse Practitioner Gregory-Lee testified that Patient E.L. first visited Respondent on January 29, 2013, but there was no physical exam or pain assessment, and the patient was just documented as not feeling well. Tr. 315–17; GX 9a, at 22; GX 9b, at 1–2 (Percocet and Vicodin prescriptions). She testified further that on March 18, 2013, Respondent wrote a prescription with no corresponding patient visit, which does not meet the Massachusetts standard, because there was no pain assessment or physical evaluation. Tr. 322–23; GX 9b, at 6. On later visits, the patient presented with elbow pain, but there was no pain assessment and Nurse Practitioner Gregory-Lee opined that, in her expert opinion, the prescriptions were therefore not legitimate. Tr. 324–25; GX 9a, at 14. GX 9b, at 8–11. Nurse Practitioner Gregory Lee once again clarified that ''[a]ny time pain medication is ordered, you have to have a pain assessment.'' Tr. 366. Further, on May 10, 2013, Respondent increased the dosage without a pain assessment or physical exam, and Nurse Practitioner Gregory-Lee testified that an increase of dosage in particular requires a justification to comply with the standard in Massachusetts. Tr. 367–68; GX 9a, at 9.

Patient K.M.

The patient records presented by the Government regarding Patient K.M. reflect six visits to the Respondent, during four of which Respondent prescribed oxycodone, and none of which were prescribed for a legitimate medical purpose in the opinion of Nurse Practitioner Gregory-Lee, because there was no pain assessment. R.D., at 25 (citing GX 10a and b; and GX 14, at 16–17). Specifically, Nurse Practitioner Gregory-Lee testified that on March 4, 2013, Patient K.M. presented with a bruised elbow after a fall down the stairs, but Respondent did not order an x-ray, nor conduct a pain assessment. Tr. 374; GX 10a, at 17–19; GX 10b, at 1. On March 28, 2013, Patient K.M. returned claiming another fall down the stairs, but Respondent did not conduct a pain assessment and increased the dosage without documenting the reason. Tr. 376; GX 10b, at 1–2; GX 10a, at 14–16. Nurse Practitioner Gregory-Lee testified that further visits also resulted in the issuance of controlled substance prescriptions for other than a legitimate medical purpose under the applicable standard based on the lack of pain assessment—noting in one that ''[t]he pain was on physical exam, but there was no actual notation, assessment, of the severity, and no notation of the results of the x-rays, if they were even done, or reports, but the medication was ordered inappropriately as a result of that.'' Tr. 380; GX 10b, at 4a.

Patient G.R.

The Government's evidence for Patient G.R. demonstrates five visits to Respondent, at each of which the Respondent prescribed oxycodone. R.D., at 26; GX 11a and b; GX 14, at 18–19. Nurse Practitioner Gregory-Lee testified that Respondent did not conduct a pain assessment regarding the patient's shoulder pain on the first visit of this patient, and therefore, the prescription for oxycodone that Respondent issued was not legitimate. Tr. 386–88. On a subsequent visit, Respondent obtained an x-ray of the shoulder. Nurse Practitioner Gregory-Lee testified that there was a ''mention of a pain assessment, but there's no documentation of what it was. The findings on the x-ray that she now has show that there's no fracture, no dislocation, the joint is normal, there's no bone lesion, there's nothing wrong with that joint, but she orders oxycodone 10mg.'' Tr. 388–89; GX 11a, at 15; GX 11b, at 2.

Patient S.V.

The file for Patient S.V. demonstrates that the patient visited Respondent four times, three of which resulted in prescriptions for oxycodone. R.D., at 27; GX 12a and b; GX 14, at 20–21. In particular, Nurse Practitioner Gregory-Lee testified that Patient S.V. visited Respondent on April 18, 2013, and that, even though the chart mentions arthritis, it was unclear from the charts what the medication was prescribed to address. Tr. 395. She opined that the prescriptions for controlled substances were not legitimate under the standard ''for the first time you see a patient who comes in . . . to your practice and says, I have an ear infection, with a normal exam, and I have chronic pain, and I need oxycodone,'' and additionally, there was no documented pain assessment for this patient on any of the visits. Tr. 395–96. GX 12a, at 12–14.

Having read and analyzed all of the record evidence, I agree with the Chief ALJ that Nurse Practitioner Gregory-Lee is ''certainly a well-credentialed Advanced Practice Nurse Practitioner, and although she was not the most focused of witnesses, taken overall, her testimony was generally authoritative, consistent, objective and persuasive.'' R.D., at 29. I also agree that the Respondent's case did not adequately refute her representation of the Massachusetts standard of care; therefore, I agree and find that ''her opinions regarding the standard of care prevalent in Massachusetts . . . [should] be credited.'' *Id.*

Respondent's Case

Respondent's documentary evidence consists of emails related to the renewal of her Massachusetts controlled substance license and an advertisement for Signature Healthcare featuring herself. RX 2A–K and 1A. Respondent testified and called one witness, a pharmaceutical representative who knew Respondent for over ten years (hereinafter, D.W.). Tr. 471, 473.

Respondent initially demonstrated intent to have D.W. represent her at the hearing, but the Chief ALJ determined that D.W. was not eligible to represent her based on 21 CFR § 1316.50, which provides in relevant part that ''any person entitled to appear in a hearing may appear in person or by a representative in any proceeding or hearing . . . A representative must either be an employee of the person or an attorney at law who is a member of the bar, in good standing.'' *Id.;* R.D., at 4–6. The Chief ALJ found that, although D.W. had reportedly studied law and the Respondent ''pa[id] him hourly'' to give ''advice with law and licenses,'' he was not a barred attorney. Tr. 20; R.D., at 2. The Chief ALJ also found that he was not eligible to represent Respondent on the basis of an employee relationship, because he was not the Respondent's employee. *Id.* at 4. In making this determination, he relied on *Community for Creative Non-Violence* v. *Reid,* in which, in absence of a clear statutory definition of ''employee'' from Congress, the Supreme Court looked to the common law of agency and the Restatement of Agency for guidance. 490 U.S. 730, 751–52 (1989). Using the factors in the Restatement, the Chief ALJ analyzed the overall relationship between D.W. and the Respondent based on their testimony demonstrating that: payment was sporadic; D.W. was in a distinct occupation; the nature of

[7] Tr. 307 cites to GX8a, at 3, but the prescription issued on April 11, 2013, is in GX8b, at 3.

the work was not part of Respondent's regular business; and there was no demonstrated intent to form an employee relationship in the form of a contract or set wages. R.D., at 4–6 (citing to Restatement (Second) of Agency § 220).

The language in 21 CFR 1316.50 is not based on statutory mandate, other than the requirement that the Agency conduct its hearings in accordance with the procedures in subchapter II of chapter 5 of Title 5, which makes no mention of representation. 21 U.S.C. § 875(b). Further, the application of 21 CFR 1316.50 is necessarily fact-based. In this case, the ALJ repeatedly encouraged the Respondent to retain barred counsel. Tr. 24–25. Here, I find that the Chief ALJ's interpretation of the ambiguous term ''employee'' in the Agency's regulations is consistent with the purposes of the Controlled Substances Act (hereinafter, CSA) and is based on his ''fair and considered judgment,'' and I therefore, uphold the determination that D.W. was not an employee for purposes of representation under 21 CFR 1316.50. *Auer* v. *Robbins,* 519 U.S. 452, 462 (1997).

Called as a witness, D.W. testified to the Respondent's good reputation and that, in particular, she had a ''great representation'' with one of the physicians at Signature Health. Tr. 479; Tr. 476–79; R.D., at 37. He further testified that he knew about ''internal personnel records and decisions'' at Signature Health, and that he was present for ''a little bit heated of a discussion'' between Respondent and Human Resources, which he believed to be about vacation days. Tr. 480, 482–85; R.D., at 37. He also said that he spoke with one of the physicians, and he said Respondent's separation was about ''inappropriate something in the office, but it had to do with the argument.'' Tr. at 487; *see also* R.D., at 38.

I agree with the Chief ALJ that D.W.'s ''credibility was problematic.'' R.D., at 38. In particular, I find, as the Chief ALJ concluded, that ''his answers to whether and to what extent he has had a compensated business relationship with the Respondent were ambiguous, implausible, vague and confusing.'' *Id.* He testified that he was not providing the Respondent with legal advice,[8] but Respondent testified that he had provided legal advice. Tr. 505; Tr. 21, 23; *see also* R.D., at 38. Additionally, I find that his testimony related to his personal knowledge of the personnel decisions at Signature Health ''is likewise implausible.'' R.D., at 38.

Respondent testified regarding the allegations that her MCSR had lapsed. Tr. 523, 555–69; *see also* RX 2. She testified that she had been a nurse practitioner since 1999 and further described her education and experience. *Id.* at 528–47. She presented testimony about the circumstances of her termination from Signature Health. *Id.* at 548–51. She testified about the patients whose records the Government had presented. *Id.* at 570–74. Additionally, she testified about her standard practice in documenting patient visits. *Id.* at 583–622.

Regarding the allegations of the lapse in her MCSR, Respondent testified that renewal was due on June 14, 2016, and she provided paperwork to renew her license to the owner of Medi-Weightloss in Plainville, where she was employed on June 2, 2016, and he took the fee for the renewal out of her paycheck. *Id.* at 524–26; *see also* R.D., at 31. Respondent presented email evidence demonstrating that she had signed the form required to renew on June 2, 2016, prior to its expiration. Tr. 559–60; *see also* RX 2–H, Page 8 [9]; RX 2–I, Page 9 (back of form). She testified that, perhaps in August, she ''had called the office a couple of times to see if it had come in the mail, because it comes to the place where you work, but it's in your name.'' Tr. 527. When her current practice manager requested a copy of her license, she emailed her Medi-Weightloss employer to obtain it. *Id.* She provided email documentation between herself and her former employer requesting a copy of her renewal and demonstrating that she had thought it had been renewed. RX 2–A, Page 1. On October 12, 2016, she sent an email to her former employer that stated, ''[i]t has come to my attention that my MCSR renewal was not renewed by your facility. DPH [10] claims that they never received forms from your company for my renewal.'' *Id.* In approximately December or January, Respondent testified that she spoke to the Massachusetts Department of Health and Human Services and that they had no record of the check or her renewal, so she filed a new application ''right away.'' Tr. 568–69.

Regarding the circumstances of her termination at Signature Health, Respondent testified that she has never been fired from another job, but admitted that approximately two years ago, she left another job before she would be terminated for a personality conflict. *Id.* at 547–48. She testified that her termination from Signature Health was regarding a disagreement about vacation days that had not been paid and that the reason she was given was ''inappropriate conduct in a patient care setting.'' *Id.* at 549–51. She introduced an exhibit showing that Signature used her in an advertisement in May 2013, to demonstrate that there were no issues with her prescribing, because they were using her specifically to promote their business. RX 1; Tr. 586–88. She also testified that she was never approached for improper prescribing and that she had regular meetings with the collaborating physician, during which no one ever mentioned her prescribing practices. Tr. 586–87, 590; *see also* R.D., at 30.

Respondent testified that patients G.R., K.M., E.L., DC and E.B. had followed her through two practices to Signature Health. Tr. 570–71. She had treated G.R., K.M. and E.B. for approximately ten years and DC for approximately six years. *Id.* at 572. T.D., M.J. and S.V. had followed her from her previous employment, so she had been treating them for approximately a year previously, with the exception of M.J., whom she had been treating for ''[m]aybe less than a year.'' *Id.* at 573–74; *see also* R.D., at 33. She testified that she was merely continuing the care of these patients whom she knew well for chronic pain management. Tr. 580–81; *see also* R.D., at 35.

Respondent testified that several of the charts in the Government exhibits do not have her electronic signature on them. [11] Tr. 574–75; *see also* R.D., at 33. But when pressed, she said that the patients had still been prescribed the controlled substances. Tr. 576. She said that there may be notes on what she called ''scutsheets'' that she planned on entering in later, because she saw 18–28

[8] Respondent testified that D.W. had ''studied law,'' but was not an attorney. Tr. At 19.

[9] Respondent used both numbers and letters and page numbers on her exhibits. I am citing to both to avoid confusion.

[10] DPH is the acronym commonly used by the Massachusetts Department of Public Health. *See e.g., https://www.mass.gov/orgs/department-of-public-health.* Respondent uses this acronym in reference to the Massachusetts Department of Public Health in her testimony. Tr. 599 ([H]er practice manager ''said she had called DPH because we had put in for the addendum.'') If Respondent was referring to the Massachusetts DPH in this email, it would directly contradict her testimony that the first time she knew that DPH had not received the renewal was in December or January and she ''renewed it within less than a week'' of confirming that it had not been filed. Tr. 599–601.

[11] A review of the approximately fifty-two of patient records, where Respondent was the listed ''Document Author'' in the Government's exhibits demonstrates that seven of the records do not contain Respondent's electronic signature. GX5a, at 6, 9; GX6a, at 34; GX9a, at 6; GX9a, at 8; GX9a, at 10; GX12a, at 8. Due to the low percentage of records without signature, I find that Respondent's allegations do not hold weight.

patients a day and did not always have time to complete the charts. *Id.* at 577–80.

In response to Nurse Practitioner Gregory-Lee's testimony, Respondent stated that ''everybody does things different. It doesn't mean that it's a lower standard of care.'' *Id.* at 583. She additionally testified that she disagreed with Nurse Practitioner Gregory-Lee about the standard of care and that she does not ''believe that [she] unlawfully prescribed anything.'' *Id.* at. 584, 592, 605; *see also* R.D., at 35. On cross-examination, when pushed about whether her notes would be complete prior to seeing the patient again or prior to prescribing controlled substances, she said, ''I don't understand some of the notes. That's not my typical pattern.'' Tr. 612–16. She further alleged that the charts might have been tampered with, because they ''are not [her] typical charting.'' *Id.* at 627. When asked about writing a prescription without a patient visit, Respondent said, ''It wouldn't be what I usually do,'' but added that ''it's done all the time.'' *Id.* at 622. Respondent also raised concerns throughout her testimony that the DIs revised Nurse Practitioner Gregory-Lee's report and took such a long time to bring the charges against her. *Id.* at 593–94, 596; *see also* R.D., at 36. Additionally, Respondent specifically questioned the amount of time that it took for Nurse Practitioner Gregory-Lee to perform this audit, when she had testified that she had conducted ''over 100 chart audits.'' Tr. 409.

Having reviewed all the evidence, including and Respondent's testimony, I agree with the Chief ALJ that ''credibility for this witness is something of a mixed bag.'' R.D., at 36.

When called upon to explain the level of documentation supporting her controlled substance prescribing, the Respondent alternatively offered: (1) The documentation obtained from Signature omits handwritten ''scutnotes'' (described in no detail) that she obviously had not yet transferred to the EMR; (2) the documentation obtained from Signature is deficient because the Government did not (as she did not) subpoena medical records from other medical practices where she had treated the same Eight Patients; and, (3) some unknown person (possibly a medical assistant who had complained about the Respondent in the past) for unknown reasons has tampered with her [electronic medical record] entries pertaining to the Eight Patients to render them incomplete and unreliable . . . . Each theory arose independently at various times during the Respondent's testimony and struck more of convenience than an honest assessment of the lacking condition of the chart notes she prepared in support of her controlled substance prescribing.

Id. at 36–37.

Allegation That Respondent Prescribed Controlled Substances During the Lapse of Her MCSR

I find that the Government proved that Respondent's MCSR expired on June 14, 2016, and was not renewed until February 3, 2017. GX15 (Original Controlled Substances Registration); GX 16 (New Controlled Substances Registration). I find that Respondent proved that she had provided the paperwork to her employer and that she had no reason to believe that her MSCR had not been renewed until approximately October of 2016. Tr. 559–60; *see also* RX2–H, Page 8, RX2–1, page 9. However, I find that ''Respondent's own documentary evidence makes it virtually uncontroverted that she suspected that her MCSR had lapsed as of October 12, 2016, and yet she continued to issue controlled substance prescriptions in the state.'' R.D., at 45. In fact, according to her own email evidence, I find that she may have known of the renewal failure from the Massachusetts Department of Public Health as early as October. *See* n.6, *supra.* Respondent admits, as the DI testified, that she had written controlled substance prescriptions during the lapse period. Tr. 96 (DI's testimony), 598 (Respondent's admission). Additionally, I find that the Government's evidence confirms that she wrote controlled substance prescriptions after October 12, 2016, when she knew or should have known that her MCSR had lapsed. *See, e.g.,* GX 18c, at 40 (prescription for oxycodone dated November 3, 2016). In sum, I find that Respondent prescribed controlled substances without state authority to do so.

Allegation That Respondent's Controlled Substance Prescriptions Did Not Comply With DEA Regulations

The Government's Prehearing Statement additionally alleged that the Respondent's controlled substance prescriptions during the period of the lapse of her MCSR did not comply with DEA regulations, because they did not include a full address of the patient on the face of the prescriptions in violation of 21 CFR 1306.05(a). ALJX 4 (Government's Prehearing Statement), at 5. *See, e.g.,* GX 18b, at 4, 5; GX 18c, at 2, 3, 5, 8, 10, 11, 14, 16, 18, 20, 22, 24–26, 28, 30. Respondent argued that the address was unnecessary because the patients lived in a long-term care facility, and therefore, the pharmacist knew where the patients lived; however, the DI confirmed that failure to include a patient's address on the face of the prescription is a regulatory violation, regardless of the patient's residence in a long-term care facility. Tr. 122–25, 128. I find that Respondent prescribed controlled substances in violation of 21 CFR § 1306.05(a).

Allegation That Respondent Issued Prescriptions for Controlled Substances Below the Applicable Standard of Care

Paragraph (2) of the OSC alleges that Respondent ''issued prescriptions for controlled substances to several individuals . . . for other than a legitimate medical purpose and outside the usual course of professional practice.'' [12] OSC, at 2. The Government's expert, Nurse Practitioner Gregory-Lee, credibly testified that the Massachusetts prescribing standard requires a pain assessment prior to prescribing controlled substances. Tr. 208. I agree with the Chief ALJ and find that Respondent's prescribing of: oxycodone on six occasions to Patient DC; oxycodone on four occasions to Patient M.J.; oxycodone on seven occasions and hydrocodone [13] on six occasions to Patient E.L.[14]; oxycodone on four occasions to Patient K.M; oxycodone on five occasions to Patient G.R.; and oxycodone on three occasions to Patient S.V. were below the applicable standard for prescribing because Respondent did not conduct a pain assessment prior to issuing those prescriptions. *Id.* at 48–51.

Further, I agree with the Chief ALJ and find that, as Nurse Practitioner Gregory-Lee opined, Respondent's prescribing of oxycodone on seven occasions and fentanyl on four occasions to Patient T.D. ''fell below the requisite standard based on documented evidence of alcohol abuse indications that contraindicate controlled medication use, as well as a general lack of documentation, including abnormal physical examination findings or pain assessments.'' *Id.* at 48–49.

[12] I agree with the Chief ALJ's recommendation that I not sustain a few of the Government's allegations based on its failure to adequately provide notice to the Respondent in the prehearing statements and OSC of the matters of fact and law asserted. For example, I agree that the OSC and prehearing statements did not adequately notice Respondent's alleged failure to document any pain assessment concerning Patient E.B., despite adequate testimony and evidence presented by the Government's expert and the OSC's focus on the lack of drug screens. R.D., at 47–48.

[13] There were additionally five refills (ten total prescriptions) of hydrocodone (Vicodin) during the alleged period. R.D., at n. 126.

[14] The Chief ALJ also sustained the allegation in the OSC and the Government's 1st Prehearing Statement that the charting for Patient E.L. did not document a physical examination and, as such, justified a finding of prescribing below the standard of care in Massachusetts. R.D., at 50. I agree and find a violation related to the lack of physical examination for Patient E.L.

In addition, I agree with, and appreciate the substantial work involved in, the Chief ALJ's careful analysis of the Government's allegations that Respondent's prescriptions were unlawful because they were issued before the previous prescriptions should have been exhausted, if the pills had been ingested as prescribed. *Id.* at 52; OSC, at 2–3. I agree with the Chief ALJ and find that Respondent credibly rebutted the Government expert's premise that the prescriptions were filled too early, based on the fact that they were ordered for a thirty day supply, because the Respondent asserted that the electronic system automatically ''pops out by computer'' thirty days for each prescription. Tr. 636; R.D., at 52. However, I concur with the Chief ALJ's detailed analysis and I sustain the specific allegations, where the prescriptions taken at the rate of their dosages could not have been exhausted prior to when Respondent issued the next prescription. R.D., at 53–55.

In particular, the Chief ALJ concluded, and I agree, that prescriptions to Patient DC, dated February 13, 2013, but instructed not to be filled before February 16th, could not, at the rate of sixty tablets taken one every six hours,[15] have been exhausted before Respondent issued the next prescription on February 27th. *Id.* at 53 (citing GX 6b, at 2–3). Similarly, I find that the prescription issued on February 27, 2013, could not be exhausted at a rate of 120 tablets taken one every four hours before Respondent issued the next prescription on March 15, 2013. R.D., at 53 (citing GX 6b, at 3–4). The Chief ALJ further recommended that I sustain, and I do sustain, the early prescribing allegations related to four of the oxycodone prescriptions and the fentanyl prescription to Patient T.D. R.D., at 54 (citing GX 7a, at 32; GX 7b, at 3–5, 8). Additionally, the Chief ALJ recommended that I sustain, and I do sustain, the early prescribing allegations for: Patient K.M. of oxycodone on two occasions (R.D., at 54 (citing GX 10b, at 1–3)); Patient G.R. for one prescription (R.D., at 55 (citing GX 11b, at 1–2)); and Patient S.V. for two prescriptions (R.D., at 55 (citing GX 12b, at 1–3)).

In sum, I find that Respondent issued multiple controlled substance prescriptions outside of the usual course of the professional practice for advanced practice nurse practitioners in Massachusetts. R.D., at 47, 55–56.

Discussion

Allegation That Respondent's Registration Is Inconsistent With the Public Interest

Under Section 304 of the CSA, ''[a] registration . . . to . . . distribute[ ] or dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined by such section.'' 21 U.S.C. § 824(a)(4). In the case of a ''practitioner,'' which is defined in 21 U.S.C. 802(21) and includes a nurse practitioner, Congress directed the Attorney General to consider the following factors in making the public interest determination:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing . . . controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the . . . distribution[ ] or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f). These factors are considered in the disjunctive. *Robert A. Leslie, M.D.,* 68 FR 15,227, 15,230 (2003).

According to Agency decisions, I ''may rely on any one or a combination of factors and may give each factor the weight [I] deem[ ] appropriate in determining whether'' to revoke a registration. *Id.; see also Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d 823, 830 (11th Cir. 2018) (citing *Akhtar-Zaidi* v. *Drug Enf't Admin.,* 841 F.3d 707, 711 (6th Cir. 2016); *MacKay* v. *Drug Enf't Admin.,* 664 F.3d 808, 816 (10th Cir. 2011); *Volkman* v. *U. S. Drug Enf't Admin.,* 567 F.3d 215, 222 (6th Cir. 2009); *Hoxie* v. *Drug Enf't Admin.,* 419 F.3d 477, 482 (6th Cir. 2005). Moreover, while I am required to consider each of the factors, I ''need not make explicit findings as to each one.'' *MacKay,* 664 F.3d at 816 (quoting *Volkman,* 567 F.3d at 222); *see also Hoxie,* 419 F.3d at 482. ''In short, . . . the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's misconduct.'' *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 462 (2009). Accordingly, as the Tenth Circuit has recognized, findings under a single factor can support the revocation of a registration. *MacKay,* 664 F.3d at 821.

Under DEA's regulation, ''[a]t any hearing for the revocation . . . of a registration, the . . . [Government] shall have the burden of proving that the requirements for such revocation . . . pursuant to . . . 21 U.S.C. [§] 824(a) . . . are satisfied.'' 21 CFR 1301.44(e). In this matter, while I have considered all of the factors, I agree with the Chief ALJ that the Government's evidence in support of its *prima facie* case is confined to Factors Two and Four. R.D., at 42 (citing 21 U.S.C. 823(f)(2), (4)). I find that the Government's evidence with respect to Factors Two and Four satisfies its *prima facie* burden of showing that Respondent's continued registration would be ''inconsistent with the public interest.'' 21 U.S.C. 823(f). I further find that Respondent failed to produce sufficient evidence to rebut the Government's *prima facie* case.

Factors Two and/or Four—The Respondent's Experience in Dispensing Controlled Substances and Compliance With Applicable Laws Related to Controlled Substances

Respondent has demonstrated substantial experience both as a nurse practitioner, since 1999, and as a DEA registrant, since approximately 2000. R.D., at 42 (citing Tr. 528, 537). Her treatment of the patients as alleged in the OSC demonstrates that her prescribing practices fell short of the applicable standard of care. Even though the Agency considers the evidence related to her prescribing as presented in the OSC, and assumes that other than those allegations that the Government has substantially evidenced, the registrant has prescribed legally, Respondent herself testified that these individuals had followed her from other practices. Tr. 570–72; *see Wesley Pope, M.D.,* 82 FR 14944, 14982–84 (2017). It is difficult to believe that she had not prescribed below the standard previously to these patients; however, it is also unnecessary to explore, because Respondent did not formulate an adequate defense that the prescriptions listed in the OSC are isolated and that her history of prescribing was otherwise flawless. She mentioned that her documentation was ''not [her] usual charting,'' but in defense she alleged that the records had been tampered

[15] For example, there being twenty four hours in a day and one tablet prescribed every six hours, the prescription would have permitted four tablets per day. Sixty tablets at a rate of four a day should have lasted fifteen days, which should not have been exhausted prior to the end of March 2nd, possibly March 3rd, depending on the time of the day that it was filled.

with, and she defended against the Government's evidence entirely by stating, ''[E]verybody does things different. It doesn't mean that it's a lower standard of care.'' Tr. 627; *id.* at 583.

Factor four is demonstrated by evidence that a registrant has not complied with laws related to controlled substances, including violations of the CSA, DEA regulations, or other state or local laws regulating the prescribing of controlled substances.

Allegation That Respondent Prescribed Controlled Substances During the Lapse of Her MCSR

In Massachusetts, the state in which Respondent practices, a prescription for a controlled substance may be issued ''only by a practitioner who is: (1) authorized to prescribe controlled substances; and (2) registered pursuant to the provisions of this chapter.'' Mass. Gen. Laws Ann. ch. 94C, § 18(a) (West 2019); *see also id.* at § 7(a) (''[E]very person who manufactures, distributes or dispenses, or possesses with intent to manufacture, distribute or dispense any controlled substance within the commonwealth shall . . . register with the commissioner of public health.''); R.D., at 45. Additionally, as the Chief ALJ highlighted, the text of the Massachusetts Controlled Substances Act does not appear to include an excuse for compliance with the state registration requirement, regardless of intent. *Id.* Further, DEA's regulations provide that only an individual practitioner who is authorized to prescribe controlled substances by the jurisdiction in which he or she is licensed to practice his or her profession may issue a controlled substance prescription. 21 CFR 1306.03(a)(1). For all of these reasons, I find that Respondent violated federal and Massachusetts law by prescribing controlled substances without the authorization required in Massachusetts to do so.

Allegation That Controlled Substance Prescriptions Respondent Issued Did Not Comply With DEA Regulations

DEA regulations require that all prescriptions for controlled substance ''shall bear the full . . . address of the patient.'' 21 CFR 1306.05(a). As already discussed, I found that, during the time of the lapse in her MCSR, Respondent did not include the full address of the patients to whom they were issued. I find that this failure is a violation of 21 CFR 1306.05(a). *See also* R.D., at 46; ALJX 4, at 5.

Allegation That Respondent Issued Prescriptions for Controlled Substances Below the Applicable Standard of Care

According to the CSA's implementing regulations, a lawful prescription for controlled substances is one that is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). The Supreme Court has stated, in the context of the CSA's requirement, that schedule II controlled substances may be dispensed only by written prescription, that ''the prescription requirement . . . ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse . . . [and] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006). Massachusetts state law also requires that controlled substance prescriptions ''shall be issued for a legitimate medical purpose by a practitioner acting in the usual course of his professional practice.'' Mass. Gen. Laws Ann. ch. 94C, § 19(a) (West 2019); *see also* R.D., at 45.

The Government also alleged several Massachusetts regulatory violations in the OSC. OSC, at 2. Section 3 covers the general responsibility of nurses licensed in Massachusetts and Section 4 covers the responsibilities and accountability of Advanced Practice Registered Nurses. 244 Mass. Code Regs. sec. nos. 3 and 4 (2019); *see, e.g., id.* at 4.06. Among the standards of conduct in Massachusetts, Section 9.03 sets forth that nurses licensed by the Board of Registration in Nursing shall: practice in accordance with the accepted standards of practice; comply with other federal and state laws and regulations; and administer controlled substances in accordance with, and make complete accurate, and legible entries in all records required by, ''all federal and state laws and regulations and in a manner consistent with accepted standards of nursing practice.'' *Id.* at 9.03(5), (6), (39) and (44) (2019).

As already discussed, I find credible the testimony of the Government's expert witness that Respondent issued multiple controlled substance prescriptions below the Massachusetts standard of care, and I find that those violations and the other federal and state law and regulatory violations establish violations of the Massachusetts state regulations as described above.

I agree with the Chief ALJ and find that the record in this case establishes by substantial evidence that Respondent issued multiple controlled substance prescriptions below the applicable standard of care and, therefore, violated 21 CFR 1306.04(a) and Massachusetts statutory and regulatory provisions.

In sum, I find that, although the Government did not notice all of the evidence and not all of the evidence supported all of the Government's allegations, there remains substantial evidence on the record that Respondent: prescribed controlled substances without a valid MCSR in violation of state law; prescribed controlled substances without fulfilling the DEA regulation's requirement to include the patient's full address; and recurrently prescribed controlled substances below the usual standard of the professional practice in Massachusetts; and repeatedly issued prescriptions for controlled substances prior to the exhaustion of the patient's supply.

Sanction

Where, as here, the Government has met its *prima facie* burden of showing that Respondent's continued registration is inconsistent with the public interest due to her violations of the state standard of care for controlled substance prescribing, as well as due to her non-compliance with state law, the burden shifts to the Respondent to show why she can be entrusted with a new registration. *Garrett Howard Smith, M.D.,* 83 FR 18,882, 18,910 (2018) (collecting cases).

The CSA authorizes the Attorney General to ''promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient execution of his functions under this subchapter.'' 21 U.S.C. 871(b). This authority specifically relates ''to 'registration' and 'control,' and 'for the efficient execution of his functions' under the statute.'' *Gonzales,* 546 U.S. at 259. In efficiently executing the revocation and suspension authority delegated to me under the CSA for the aforementioned purposes, I review the evidence and argument Respondent submitted to determine whether or not she has presented ''sufficient mitigating evidence to assure the Administrator that [she] can be trusted with the responsibility carried by such a registration.'' *Samuel S. Jackson, D.D.S.,* 72 FR 23,848, 23,853 (2007) (quoting *Leo R. Miller, M.D.,* 53 FR 21,931, 21,932 (1988)). '''Moreover, because ''past performance is the best predictor of future performance,'' *ALRA Labs, Inc.* v. *Drug Enf't Admin.,* 54 F.3d 450, 452 (7th Cir. 1995), [the Agency] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must

accept responsibility for [the registrant's] actions and demonstrate that [registrant] will not engage in future misconduct.''' *Jayam Krishna-Iyer,* 74 FR at 463 (quoting *Medicine Shoppe,* 73 FR 364, 387 (2008)); *see also Jackson,* 72 FR at 23,853; *John H. Kennnedy, M.D.,* 71 FR 35,705, 35,709 (2006); *Prince George Daniels, D.D.S.,* 60 FR 62,884, 62,887 (1995). The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual respondent; therefore, the Agency looks at factors, such as the acceptance of responsibility, and the credibility of that acceptance as it relates to the probability of repeat violations or behavior, and the nature of the misconduct that forms the basis for sanction, while also considering the Agency's interest in deterring similar acts. *See Arvinder Singh, M.D.,* 81 FR 8247, 8248 (2016).

Regarding all of these matters, I agree with the analyses and conclusions contained in the R.D.'s Recommendation. R.D., at 56–59.

Here, the Respondent has accepted absolutely no responsibility for her actions. Regarding the allegations of her lapsed MCSR, she testified and presented evidence that she had relied to her detriment on a previous employer to file on her behalf; however, she also demonstrated that she had knowledge, and, possibly even contrary to her testimony, that she knew directly from the state, that her MCSR had not been renewed in October; and yet, she still continued prescribing controlled substances without obtaining a new MCSR until February. Tr. 524–69; RX 2; *see also* R.D., at 56–57 (''[H]er testimony and her reliance on the email correspondence with [her employer] leave no doubt that she continues to adhere to her position that the former bears all the blame, and she bears none.'')

Additionally, Respondent took no responsibility for the allegations related to her prescribing practices. Instead, she provided vague theories about evidence tampering, unfinished charts and testified that the Government's exhibits were ''not [her] typical notes.'' Tr. 574–75, 610, 616; *see also* R.D., at 57. She offered no intention of instituting remedial measures. ''There was no indication from the Respondent that she planned to, or already had, improved her recordkeeping practices when issuing prescriptions for powerful controlled substance medications.'' R.D., at 57.

In sum, I find that the record supports the imposition of a sanction because the Respondent did not unequivocally accept responsibility.

In sanction determinations, the Agency has also historically considered its interest in deterring similar acts, both with respect to the respondent in a particular case and the community of registrants as a whole. *See Joseph Gaudio, M.D.,* 74 FR 10,083, 10,095 (2009); *Singh,* 81 FR at 8248. Here, the interests of specific and general deterrence ''militate in favor of revocation.'' R.D., at 58. Respondent has evidenced no understanding that her controlled substance prescribing fell short of legal requirements.

> To the extent that her progress notes fail to establish an adequate basis for prescribing powerful controlled drugs, she chalks that up to the risks attendant upon the practice of a busy prescriber, and she fails to recognize any significance of prescriptions issued before the patient's previous medication supply would have been exhausted.

R.D., at 58–59. As such, it is not reasonable to believe that Respondent's future prescribing will comply with legal requirements. Further, given the number of Respondent's violations, a sanction less than revocation would send a message to the regulated community that ''so long as there is another person available to blame for failing to file required paperwork, and a busy . . . practice to blame for inadequate documentation,'' compliance with the law is not a condition precedent to maintaining a registration. *Id.* at 59.

In evaluating the egregiousness of Respondent's conduct, I agree with the Chief ALJ that although ''the record did not paint the picture of a pill mill operator, this Respondent failed to exercise the level of care in prescribing and documenting her prescribing decisions that would allow a meaningful evaluation by those charged with regulating controlled substances.'' *Id.* Throughout the hearing, she vehemently protested against any acceptance of responsibility, consistently pinning blame on everyone and anyone else, even when entirely implausible, and unsupported by the evidence, and she demonstrated a general disdain for the charges against her and the situation in which she had found herself. *Id.*

Accordingly, I find that the factors weigh in favor of sanction and I shall order the sanctions the Government requested, as contained in the Order below.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f) and 824(a), I hereby revoke DEA Certificate of Registration No. MH0525153 issued to Lisa Hamilton, N.P. I further hereby deny any pending application of Lisa Hamilton, N.P. to renew or modify this registration, as well as any other pending application of Lisa Hamilton, N.P. for registration in Massachusetts. This Order is effective January 27, 2020. ins

Dated: December 4, 2019.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2019–27945 Filed 12–26–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–572]

Importer of Controlled Substances Application: Siegfried USA, LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 27, 2020. Such persons may also file a written request for a hearing on the application on or before January 27, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on November 6, 2019, Siegfried USA, LLC, 33 Industrial Park Road, Pennsville, New Jersey 08070 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Opium, raw	9600	II
Poppy Straw Concentrate.	9670	II

The company plans to import the listed controlled substances to manufacture bulk active pharmaceutical ingredients (API) for distribution to its customers.

Dated: December 10, 2019.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2019–27953 Filed 12–26–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–552]

Importer of Controlled Substances Application: Myoderm

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 27, 2020. Such persons may also file a written request for a hearing on the application on or before January 27, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on October 14, 2019, Myoderm, 48 East Main Street, Norristown, Pennsylvania 19401–4915 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Amphetamine	1100	II
Lisdexamfetamine	1205	II
Methylphenidate	1724	II
Nabilone	7379	II
Oxycodone	9143	II
Hydromorphone	9150	II
Hydrocodone	9193	II
Morphine	9300	II
Oxymorphone	9652	II
Fentanyl	9801	II

The company plans to import the listed controlled substances for clinical trials, research, and analytical purposes. Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of FDA approved or non-approved finished dosage forms for commercial sale.

Dated: November 13, 2019.

William T. McDermott,

Acting Assistant Administrator.

[FR Doc. 2019–27954 Filed 12–26–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–566]

Bulk Manufacturer of Controlled Substances Application: Janssen Pharmaceuticals Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before February 25, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on October 9, 2019, Janssen Pharmaceuticals Inc., Buildings 1–5 & 7–14, 1440 Olympic Drive, Athens, Georgia 30601 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Methylphenidate	1724	II
Hydromorphone	9150	II
Hydrocodone	9193	II
Oripavine	9330	II
Thebaine	9333	II
Tapentadol	9780	II

The company plans to manufacture the above-listed controlled substances in bulk for distribution to its customers.

Dated: December 10, 2019.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2019–27952 Filed 12–26–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice To Ensure State Workforce Agencies Are Aware of the Revised Schedule of Remuneration for the Unemployment Compensation for Ex-Service Members (UCX) Program That Reflects the Military Pay Increase Effective January 1, 2020

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Each year, the Department of Defense issues a Schedule of Remuneration used by states for UCX purposes. States must use the schedule to determine Federal military wages for UCX ''first claims'' only when the Federal Claims Control Center (FCCC) responds to a request for information indicating that there is no Copy 5 of the

Certificate of Release or Discharge from Active Duty (DD Form 214) for an individual under the social security number provided. A response from the FCCC that indicates ''no DD214 on file'' will prompt the state to start the affidavit process and to use the attached schedule to calculate the Federal military wages for an unemployment insurance or UCX monetary determination.

The schedule applies to UCX ''first claims'' filed beginning with the first day of the first week that begins on or after January 1, 2020, pursuant to the UCX program regulations (see 20 CFR 614.12(c)). States must continue to use the 2019 schedule (or other appropriate schedule) for UCX ''first claims'' filed before the effective date of the revised schedule.

ATTACHMENT 1—2020 FEDERAL SCHEDULE OF REMUNERATION

[20 CFR 614.12(d)]

Pay grade	Monthly rate	Weekly	Daily
1. *Commissioned Officers:*			
O–10	20,684.19	4,826.31	689.47
O–9	20,686.06	4,826.75	689.54
O–8	19,743.71	4,606.87	658.12
O–7	17,653.35	4,119.11	588.44
O–6	15,603.69	3,640.86	520.12
O–5	13,191.69	3,078.06	439.72
O–4	11,353.33	2,649.11	378.44
O–3	8,955.53	2,089.62	298.52
O–2	7,256.81	1,693.26	241.89
O–1	5,629.58	1,313.57	187.65
2. *Commissioned Officers with Over 4 Years Active Duty As An Enlisted Member or Warrant Officer:*			
O–3 E	10,533.71	2,457.87	351.12
O–2 E	8,658.62	2,026.65	289.52
O–1 E	7,389.23	1,724.15	246.31
3. *Warrant Officer:*			
W–5	11,971.05	2,793.24	399.03
W–4	10,848.15	2,531.24	361.61
W–3	9,370.10	2,186.36	312.34
W–2	8,027.43	1,873.07	267.58
W–1	6,898.48	1,609.65	229.95
4. *Enlisted Personnel:*			
E–9	10,224.95	2,385.82	340.83
E–8	8,429.88	1,966.97	281.00
E–7	7,545.09	1,760.52	251.50
E–6	6,640.23	1,549.39	221.34
E–5	5,653.97	1,319.26	188.47
E–4	4,672.71	1,090.30	155.76
E–3	4,212.31	982.87	140.41
E–2	4,030.33	940.41	134.34
E–1	3,605.44	841.27	120.18

The Federal Schedule includes columns reflecting derived weekly and daily rates. This revised Federal Schedule of Remuneration is effective for UCX ''first claims'' filed beginning with the first day of the first week which begins on or after January 1, 2020, pursuant to 20 CFR 614.12(c).

John Pallasch,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2019–27893 Filed 12–26–19; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance 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. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of a currently approved collection ''National Longitudinal Survey of Youth 1979.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 25, 2020.

ADDRESSES: Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Carol Rowan, BLS Clearance Officer, 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The National Longitudinal Survey of Youth 1979 (NLSY79) is a representative national sample of

persons who were born in the years 1957 to 1964 and lived in the U.S. in 1978. These respondents were ages 14 to 22 when the first round of interviews began in 1979; they will be ages 55 to 62 as of December 31, 2019. The NLSY79 was conducted annually from 1979 to 1994 and has been conducted biennially since 1994. The longitudinal focus of this survey requires information to be collected from the same individuals over many years in order to trace their education, training, work experience, fertility, income, and program participation.

In addition to the main NLSY79, the biological children of female NLSY79 respondents have been surveyed since 1986. A battery of child cognitive, socio-emotional, and physiological assessments was administered biennially from 1986 until 2012 to NLSY79 mothers and their children. Starting in 1994, children who had reached age 15 by December 31 of the survey year (the Young Adults) were interviewed about their work experiences, training, schooling, health, fertility, self-esteem, and other topics. Funding for the NLSY79 Child and Young Adult surveys is provided by the Eunice Kennedy Shriver National Institute of Child Health and Human Development through an interagency agreement with the BLS and through a grant awarded to researchers at the Ohio State University Center for Human Resource Research (CHRR). The interagency agreement funds data collection for children and young adults up to age 24. The grant funds data collection for young adults age 25 and older.

One of the goals of the Department of Labor (DOL) is to produce and disseminate timely, accurate, and relevant information about the U.S. labor force. The BLS contributes to this goal by gathering information about the labor force and labor market and disseminating it to policymakers and the public so that participants in those markets can make more informed, and thus more efficient, choices. Research based on the NLSY79 contributes to the formation of national policy in the areas of education, training, employment programs, school-to-work transitions, and preparations for retirement. In addition to the reports that the BLS produces based on data from the NLSY79, members of the academic community publish articles and reports based on NLSY79 data for the DOL and other funding agencies. To date, more than 2,700 articles examining NLSY79 data have been published in scholarly journals. The survey design provides data gathered from the same respondents over time to form the only data set that contains this type of information for this important population group. Without the collection of these data, an accurate longitudinal data set could not be provided to researchers and policymakers, thus adversely affecting the DOL's ability to perform its policy- and report-making activities.

II. Current Action

The BLS seeks approval to conduct Round 29 of the NLSY79 and the associated surveys of biological children of female NLSY79 respondents.

The Young Adult Survey will be administered to young adults age 12 and older who are the biological children of female NLSY79 respondents. These young adults will be contacted regardless of whether they reside with their mothers. Members of the Young Adult grant sample are contacted for interviews every other round once they reach age 31. The NLSY79 Young Adult Survey involves interviews with approximately 6,326 young adults ages 12 and older. Of those, 4,555 will be contacted for interview in Round 29.

During the field period, about 100 main NLSY79 interviews will be validated to ascertain whether the interview took place as the interviewer reported and whether the interview was done in a polite and professional manner.

BLS has undertaken a continuing redesign effort to examine the current content of the NLSY79 and provide direction for changes that may be appropriate as the respondents age. The 2020 instrument reflects a number of changes recommended by experts in various fields of social science and by our own internal review of the survey's content. Additions to the questionnaire are accompanied by deletions of previous questions so that the overall time required to complete the survey should be lower than in 2018 and comparable to 2016.

The Round 29 questionnaire includes new questions on cognition and add questions on wealth. Questions that assess the cognitive functioning of the respondents will be added to Round 29 for all respondents. The first type ask the respondent to self-rate memory and change in memory. The next type of questions collect assessments of memory. These include word recall (both immediate and delayed), backward counting, and serial subtraction from 100 by 7s. These items were collected previously from NLSY79 respondents around age 48. Some new items will be included in this cognition battery that ask the date, the name of the president, and the name of common items from their definition. In addition, the assets module that has been asked in odd-numbered rounds since Round 19 will rotate back into the questionnaire.

Most of the changes made to the Young Adult questionnaire for 2020 have been made to streamline questions and sections in order to cut down on the amount of time it takes for a respondent to complete an interview. The Young Adult sample expects to include 459 respondents ages 12–22 and 4,096 respondents age 23 and older in Round 29.

The questions added to the Young Adult questionnaire expand our understanding of both physical and mental/emotional health and well-being such as gender identity and sexual orientation, resiliency, loneliness and social isolation, self-worth, and social cognition.

III. Desired Focus of Comments

The BLS 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.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Title of Collection: National Longitudinal Survey of Youth 1979.

OMB Number: 1220–0109.

Type of Review: Revision, with change, of a previously approved collection.

Affected Public: Individuals or households.

Form	Total respondents	Frequency	Total responses	Average time per response (minutes)	Estimated total burden (hours)
NLSY79 Round 29 Main Survey	6,750	Biennially	6,750	70	7,875
Round 29 Validation Interviews	100	Biennially	100	6	10
Young Adult Survey (Ages 12 to 13)	6	Biennially	6	50	5
Young Adult Survey (Ages 14 to 18, no children).	95	Biennially	95	66	105
Young Adult Survey (Ages 14 to 18, has children).	4	Biennially	4	86	6
Young Adult Survey (Ages 19 to 22, no children).	329	Biennially	329	63	345
Young Adult Survey (Ages 19 to 22, has children).	25	Biennially	25	83	35
Young Adult Survey, Grant component (Age 23 to 28, no children), interview.	964	Biennially	964	60	964
Young Adult Survey, Grant component (Age 23 to 28, has children), interview.	338	Biennially	338	80	451
Young Adult Survey, Grant component (Age 29 and older, no children), interview.	1,258	Biennially	1,258	70	1,468
Young Adult Survey, Grant component (Age 29 and older, has children), interview.	1,536	Biennially	1,536	90	2,304
Totals [1]	11,305		11,405		13,568

[1] The total number of 11,305 respondents across all the survey instruments is a mutually exclusive count that does not include the 100 reinterview respondents, who were previously counted among the main and young adult survey respondents.

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

Signed at Washington, DC, on December 19, 2019.

Mark Staniorski,

Chief, Division of Management Systems.

[FR Doc. 2019–27950 Filed 12–26–19; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0027]

The 1,3-Butadiene Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the 1,3-Butadiene (BD) Standard.

DATES: Comments must be submitted (postmarked, sent, or received) by February 25, 2020.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2012–0027, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA–2012–0027) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You also may contact Theda Kenney at the below address to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed

and continuing information collection requirements in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The 1,3 Butadiene Standard requires employers to monitor employee exposure to 1,3-Butadiene; develop and maintain compliance and exposure goal programs if employee exposures to BD are above the standard's permissible exposure limits or action level; label respirator filter elements to indicate the date and time it is first installed on the respirator; establish medical surveillance programs to monitor employee health, and to provide employees with information about their exposures; and the health effects of exposure to BD.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the collection of information (paperwork) requirements contained in the 1,3 Butadiene Standard. The agency is requesting a 28-hour adjustment decrease (from 915 hours to 887 burden hours). The adjustment is a result of a 34% decrease in the number of facilities/industrial sectors and total number of job categories in all facilities.

Type of Review: Extension of a currently approved collection.

Title: The 1,3 Butadiene Standard (29 CFR 1910.1051).

OMB Number: 1218–0170.

Affected Public: Business or other for-profits; Not-for-profit organizations; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 57.

Frequency of Response: On occasion.

Total Responses: 2,623.

Average Time per Response: Time per response ranges from 15 seconds (.004 hour) to write the date and time on each new cartridge label to 2 hours to complete a referral medical examination.

Estimated Total Burden Hours: 887.

Estimated Cost (Operation and Maintenance): $91,296.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile; or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number for this ICR (Docket No. OSHA–2012–0027). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as your social security number and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on December 19, 2019.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2019–27948 Filed 12–26–19; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0022]

Student Data Form; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in the Student Data Form.

DATES: Comments must be submitted (postmarked, sent, or received) by February 25, 2020.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket Number OSHA–2010–0022, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA–2010–0022) for this Information Collection Request (ICR). All comments, including any personal information you provide, such as social security number and date of birth, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the below phone number to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing collection of information requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The OSH Act authorizes the OSHA to conduct education and training courses (29 U.S.C. 670). These courses must educate an adequate number of qualified personnel to fulfill the purposes of the OSH Act, provide them with short-term training, inform them of the importance and proper use of safety and health equipment, and train employers and workers to recognize, avoid, and prevent unsafe and unhealthful working conditions.

Under Section 21 of the OSH Act, the OSHA Training Institute (the Institute) provides basic, intermediate, and advanced training and education in occupational safety and health for state compliance officers, agency professionals and technical support personnel, employers, workers, organizations representing workers and employers, educators who develop curricula and teach occupational safety and health courses, and representatives of professional safety and health groups. The Institute provides courses on occupational safety and health at the national training facility in Arlington Heights, Illinois.

Students attending Institute courses complete the one-page Student Data Form (OSHA Form 182) on the first day of class. The form provides information under five major categories titled ''Course Information,'' ''Personal Data,'' ''Employer Data,'' ''Emergency Contacts,'' and ''Student Groups.'' The OSHA Directorate of Training and Education (the Directorate) compiles, for each fiscal year, the following information from the ''Course Information'' and ''Student Groups'' categories: total student attendance at the Institute; the number of students attending each training course offered by the Institute; and the types of students attending these courses (for example, students from federal or state occupational safety and health agencies). The Directorate uses this information to demonstrate, in an accurate and timely manner, that the agency is providing the training and worker education mandated by Section 21 of the OSH Act. OSHA also uses this information to evaluate training output, and to make decisions regarding program/course revisions, budget support, and tuition costs.

The agency uses the information collected under the ''Course Information,'' ''Personal Data,'' and ''Employer Data'' to identify private sector students so that it can collect tuition costs from them or their employers as authorized by 31 U.S.C. 9701 (''Fees and Charges for Government Services and Things of Value''); Office of Management and Budget Circular A–25 (''User Charges''); and 29 CFR part 1949 (''Directorate of Training and Education, Occupational Safety and Health Administration''). The information in the ''Personal Data'' and ''Emergency Contacts'' categories permits OSHA to contact students who are residing in local hotels/motels if an emergency arises at their home or place of employment, and to alert supervisors/alternate contacts of a trainee's injury or illness.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of the agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

The agency is requesting an adjustment decrease of 67 burden hours (from 400 hours to 333 hours) as a result of the decreasing number of students attending the Institute from 5,000 to 4,000 students. The agency will summarize the comments submitted in response to this notice, and will include this summary in the request for approval to OMB.

Type of Review: Extension of a currently approved collection.

Title: Student Data Form (OSHA Form 182).

OMB Control Number: 1218–0172.

Affected Public: Individuals; business or other for-profit organizations; Federal government; State, Local, or Tribal governments.

Number of Respondents: 4,000.

Frequency of Responses: On occasion.

Total Responses: 4,000.

Average Time per Response: 5 minutes (5/60 hour).

Estimated Total Burden Hours: 333 hours.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number (OSHA–2010–0022) for this ICR. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or a facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov*. This document, as well as news releases and other relevant information, are available at OSHA's web page at *http://www.osha.gov*.

V. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on December 19, 2019.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2019–27949 Filed 12–26–19; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by January 27, 2020. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address, 703–292–8030, or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2020–025

1. *Applicant:* William Muntean, U.S. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Office of Ocean and Polar Affairs, 2201 C Street NW, Washington, DC 20520.

Activity for Which Permit Is Requested: Enter Antarctic Specially Protected Areas (ASPAs). The US Department of State proposes to lead an interagency team of inspectors into ASPAs to ensure compliance with the provisions and values of the Antarctic Treaty and the Protocol on Environmental Protection to the Antarctic Treaty. The applicant would review the appropriateness and effective of current management provisions for protecting and preserving Antarctica.

Location: ASPA 120, Pointe-Geologie Archipelago, Terre Adelie; ASPA 124, Cape Crozier, Ross Island; APSA, 125, Fildes Peninsula, King George Island; ASPA 135, North-east Bailey Peninsula, Budd Coast, Wilkes land; ASPA 157, Backdoor Bay, Cape Royds, Ross Island; ASPA 158, Hut Point, Ross Island; ASPA 161, Terra Nova Bay, Ross Sea.

Dates of Permitted Activities: January 1–December 31, 2020.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2019–27892 Filed 12–26–19; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0076]

Evaluating Electromagnetic and Radio-Frequency Interference in Safety-Related Instrumentation and Control Systems

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide, issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 2 to Regulatory Guide (RG) 1.180, ''Guidelines for Evaluating Electromagnetic and Radio-Frequency Interference in Safety-Related Instrumentation and Control Systems.'' RG 1.180 provides guidance on electromagnetic compatibility (EMC) practices and test methods that the staff of the NRC consider acceptable for qualifying safety-related instrumentation and control (I&C) systems for the expected electromagnetic environment in nuclear power plants. The RG would endorse, with certain exceptions, standards that were updated and corrected subsequent to the last time the NRC endorsed them in RG 1.180. More information on updates can be found in the ''Supplementary Information'' section below.

DATES: Revision 2 to RG 1.180 is available on December 27, 2019.

ADDRESSES: Please refer to Docket ID NRC–2018–0076 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2018–0076. Address questions about NRC dockets IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals 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.* Revision 2 to RG 1.180 and the regulatory analysis may be found in ADAMS under Accession Nos. ML19175A044 and ML17188A397 respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: David Dawood, Telephone: 301–415–2389, email: *David.Dawood@nrc.gov,* and Michael Eudy, Telephone: 301–415–3104, email: *Michael.Eudy@nrc.gov.* Both are staff members of the Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the NRC staff uses in evaluating specific issues or postulated events, and data that the NRC staff needs in its review of applications for permits and licenses.

Revision 2 of RG 1.180 was issued with a temporary identification of Draft Regulatory Guide, DG–1333. Revision 2 of RG 1.180 updates the guidance on EMC practices and test methods that the staff of the NRC consider acceptable for qualifying safety-related I&C systems for the expected electromagnetic environment in nuclear power plants. The revised RG endorses the current versions of previously endorsed military, Institute of Electrical and Electronics Engineers (IEEE), and International Electrotechnical Commission (IEC) specifications and standards; incorporates additional guidance for evaluating the effects of electrostatic discharge; and accounts for the evolution of the operational environment at nuclear power plants arising from the increased use of digital technology, including wireless communication for both personnel (personal digital assistants and smartphones) and industrial (remote I&C) applications.

Department of Defense, Federal, National Aeronautics and Space Administration, NASA, Department of Energy, and Government specifications, standards, handbooks, and publications are available free from *www.EverySpec.com.* Copies of IEEE documents may be purchased from the Institute of Electrical and Electronics Engineers Service Center, 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855, or through the IEEE's public website at *http://www.ieee.org/publications_standards/index.html.* Copies of IEC documents may be obtained through its website at *http://www.iec.ch/* or by writing the IEC Central Office at P.O. Box 131, 3 Rue de Varembé, 1211 Geneva, Switzerland, telephone +41 22 919 02 11.

II. Additional Information

The NRC published a notice of the availability of DG–1333 in the **Federal Register** on April 24, 2018 (83 FR 17867) for a 60-day public comment period. The public comment period closed on June 25, 2018. Public comments on DG–1333 and the staff responses to the public comments are available under ADAMS under Accession No. ML19175A048.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting and Issue Finality

Revision 2 to RG 1.180, would update the guidance on EMC practices and test methods that the staff of the NRC consider acceptable for qualifying safety-related I&C systems for the expected electromagnetic environment in nuclear power plants. This RG would not constitute backfitting as defined in title 10 of the Code of Federal Regulations (10 CFR) section 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' The subject of this RG, as described above, is an NRC-defined process that does not fall within the purview of subjects covered by either the Backfit Rule or the issue finality provision in 10 CFR part 52. Issuance of the RG would not constitute backfitting as defined in 10 CFR 50.109, or be otherwise inconsistent with the applicable issue finality provision in 10 CFR part 52, inasmuch as such applicants or potential applicants, with certain exceptions, are not within the scope of entities that are the subject of the Backfit Rule or an issue finality provision in part 52. The exceptions are whenever an applicant references a part 50 or part 52 license (*e.g.,* a construction permit) and/or regulatory approval (*e.g.,* a design certification or a standard design approval) with specified backfitting or issue finality provisions.

Dated at Rockville, Maryland, this 19th day of December, 2019.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2019–27882 Filed 12–26–19; 8:45 am]

BILLING CODE 7590–01–P

PUBLIC BUILDINGS REFORM BOARD

Public Meeting of the Public Buildings Reform Board

AGENCY: Public Buildings Reform Board.

ACTION: Meeting notice.

SUMMARY: As provided in section 5 of the Federal Assets Sale and Transfer Act of 2016 (FASTA), the Public Buildings Reform Board (PBRB) gives notice of one upcoming public meeting. At the public meeting in Washington, DC the PBRB will provide an update on its submitted list of recommendations to the Office of Management and Budget (OMB) and discuss expected next steps. The meeting will conclude with time for questions from attendees. Attendees can access the list of properties recommended for disposal on the PBRB website at *pbrb.gov/recommendations/.*

DATES: The public meeting will be held on Monday, January 13, 2020 in Washington, DC.

ADDRESSES: The public meeting will be held from 9:00 a.m. to 11 a.m., Eastern Time, at 1800 F Street NW, Washington, DC 20006 in the GSA Auditorium.

FOR FURTHER INFORMATION CONTACT: Please email all questions and comments to *fastainfo@pbrb.gov.*

SUPPLEMENTARY INFORMATION:

Background

FASTA created the PBRB as an independent Board to identify opportunities for the Federal government to significantly reduce its inventory of civilian real property and thereby reduce costs. The Board is directed, within 6 months of its formation, to recommend to the Office of Management and Budget (OMB) the sale of not fewer than five properties not on the list of surplus or excess with a fair market value of not less than $500 million and not more than $750 million. In two subsequent rounds over a five-year period, the Board is responsible for making recommendations for other sales, consolidations, property disposals or redevelopment of up to $7.25 billion.

Attendees can access the current list of properties recommended for disposal on the PBRB website at *pbrb.gov/recommendations/.*

Format

The format for all public meetings will be panel discussions with appropriate time allowed for Q&A. A portion of the meeting may be held in Executive Session if the Board is considering issues involving classified or proprietary information.

Registration

The meeting is open to the public, but prior registration is required. Please register by Thursday, January 9, 2020. To attend, please register at the following link: *https://www.eventbrite.com/e/public-buildings-reform-board-public-meeting-january-13-2020-tickets-86809745285.*

Dated: December 19, 2019.

Courtney Johnson,

Executive Officer, Public Buildings Reform Board.

[FR Doc. 2019–28031 Filed 12–23–19; 8:45 am]

BILLING CODE 3412–RT–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33721; File No. 812–14722]

Allianz Life Insurance Company of North America, et al; Notice of Application

December 20, 2019.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order approving the substitution of certain securities pursuant to section 26(c) of the Investment Company Act of 1940, as amended (''Act'') and an order of exemption pursuant to section 17(b) of the Act from section 17(a) of the Act.

APPLICANTS: Allianz Life Insurance Company of North America (''Allianz Life'') [1] and Allianz Life Insurance Company of New York (''Allianz NY'') [2] (together the ''Insurance Company Applicants''); their respective separate accounts, Allianz Life Variable Account A (''Allianz Account A''),[3] Allianz Life Variable Account B (''Allianz Account B''),[4] and Allianz Life of NY Variable Account C (''Allianz Account C'') [5] (collectively, the ''Separate Accounts'' and together with the Insurance Company Applicants, the ''Section 26 Applicants''); and Allianz Variable Insurance Products Trust (the ''VIP Trust''), Allianz Variable Insurance Products Fund of Funds Trust (the ''FOF Trust''), and the PIMCO Variable Insurance Trust (the ''PIMCO VIT'') (collectively with the Section 26 Applicants, the ''Section 17 Applicants'').

SUMMARY OF APPLICATION: The Section 26 Applicants seek an order pursuant to section 26(c) of the Act, approving the substitution of shares issued by certain investment portfolios of registered investment companies (the ''Target Funds'') for the shares of certain investment portfolios of registered investment companies (the ''Destination Funds''), held by the Separate Accounts as investment options for certain variable life insurance policies and variable annuity contracts (such policies and contracts, the ''Contracts'') issued by Allianz Life and Allianz NY (the ''Substitutions''). The Section 17 Applicants seek an order pursuant to section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to permit them to engage in certain in-kind transactions in connection with the Substitutions.

FILING DATES: The application was filed on December 7, 2016 and amended on May 31, 2017, August 4, 2017, May 31, 2019 and August 13, 2019.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief

[1] Allianz Life is a stock life insurance company organized under the laws of the state of Minnesota. Allianz Life offers fixed and variable annuities and individual life insurance. Allianz Life is licensed to do direct business in 49 states and the District of Columbia. Allianz Life is an indirect, wholly-owned subsidiary of Allianz SE, a European stock corporation.

[2] Allianz NY is a stock life insurance company organized under the laws of the state of New York. Allianz NY offers fixed and variable annuities. Allianz NY is licensed to do direct business in six states and the District of Columbia. Allianz NY is a wholly-owned subsidiary of Allianz Life, and an indirect, wholly-owned subsidiary of Allianz SE.

[3] Allianz Account A is a segregated asset account of Allianz Life established under Minnesota insurance laws. Allianz Account A is used to fund certain variable life insurance policies issued by Allianz Life. Allianz Account A is divided into subaccounts, each of which invests in and reflects the investment performance of a specific underlying registered open-end investment company or portfolio thereof (each an ''Investment Option''). Allianz Account A is registered as a unit investment trust under the Act.

[4] Allianz Account B is a segregated asset account of Allianz Life established under Minnesota insurance laws. Allianz Account B is used to fund certain variable annuity contracts issued by Allianz Life. Allianz Account B is divided into subaccounts, each of which invests in and reflects the investment performance of a specific Investment Option. Allianz Account B is registered as a UIT under the Act.

[5] Allianz Account C is a segregated asset account of Allianz NY established under New York insurance laws. Allianz Account C is used to fund certain variable annuity contracts issued by Allianz NY. Allianz Account C is divided into subaccounts, each of which invests in and reflects the investment performance of a specific Investment Option. Allianz Account C is registered as a UIT under the Act.

will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 14, 2020, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the requester's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. Applicants: Allianz Life Insurance Company of North America, Allianz Life Variable Account A, Allianz Life Variable Account B, Allianz Variable Insurance Products Trust, and Allianz Variable Insurance Products Fund of Funds Trust, 5701 Golden Hills Drive, Minneapolis, MN 55416–1297; Allianz Life Insurance Company of New York and Allianz Life of NY Variable Account C, 28 Liberty Street, 38th Floor, New York, NY 10005–1423; and PIMCO Variable Insurance Trust, 650 Newport Center Drive, Newport Beach, CA 92660.

FOR FURTHER INFORMATION CONTACT: Jennifer O. Palmer, Senior Counsel, David J. Marcinkus, Branch Chief, Daniele Marchesani, Assistant Chief Counsel, or Nadya B. Roytblat, Assistant Chief Counsel, at (202) 551–6825 (Chief Counsel's Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations

1. Variable insurance contracts (variable annuities and variable life insurance policies) are issued by insurance companies and typically have a two-tier structure. The top tier is a separate account of the insurance company, registered under the Act as a unit investment trust (''UIT''). The separate account, in turn, has subaccounts that invest in numerous (sometimes hundreds of) underlying mutual funds (open-end management investment companies registered under the Act) and exchange-traded funds. Contract holders allocate their assets across these various underlying funds available through the separate account.

2. Allianz Life and Allianz NY offer Contracts issued by the Separate Accounts with one or more of the Target Funds included as an Investment Option.[6] Under the Contracts, the Insurance Company Applicants reserve the right, subject to Commission approval and compliance with applicable laws, to substitute Investment Options with other Investment Options after appropriate notice. The Contracts also permit the Insurance Company Applicants to limit the manner in which a Contract owner may allocate purchase payments to the subaccounts that invest in an Investment Option.[7]

3. Each Insurance Company Applicant, on behalf of itself and its Separate Account(s), proposes to replace shares of the Target Funds that are held in subaccounts of their Separate Accounts with shares of the corresponding Destination Funds, as shown in the table below.[8] The Insurance Company Applicants state that the proposed Substitutions are part of an ongoing effort to make their Contracts more attractive to existing and prospective Contract owners and to make the Contracts more efficient to administer. Additional information for each Target Fund and the corresponding Destination Fund, including investment objectives, principal investment strategies, principal risks, and performance, as well as the fees and expenses of each Target Fund and its corresponding Destination Fund, can be found in the application.

Substitution	Target fund	Destination fund
1	Fidelity VIP FundsManager 50% Portfolio, Service Class 2	AZL Balanced Index Strategy Fund, Class 1.
2	Templeton Growth VIP Fund, Class 1	AZL MSCI Global Equity Index Fund, Class 1.
	Templeton Growth VIP Fund, Class 2	AZL MSCI Global Equity Index Fund, Class 2.
3	BlackRock Global Allocation V.I. Fund, Class III	AZL Moderate Index Strategy Fund, Class 1.
4	Fidelity VIP FundsManager 60% Portfolio, Service Class 2	AZL Moderate Index Strategy Fund, Class 1.
5	Franklin Allocation VIP Fund, Class 2	AZL Moderate Index Strategy Fund, Class 1.
6	Franklin Income VIP Fund, Class 1	AZL Fidelity Institutional Asset Management Multi-Strategy Fund, Class 1.
	Franklin Income VIP Fund, Class 2	AZL Fidelity Institutional Asset Management Multi-Strategy Fund, Class 2.
7	PIMCO All Asset Portfolio, Administrative Class	AZL Fidelity Institutional Asset Management Multi-Strategy Fund, Class 2.
8	Franklin Strategic Income VIP Fund, Class 2	AZL Fidelity Institutional Asset Management Total Bond Fund, Class 2.
9	Franklin Mutual Shares VIP Fund, Class 1	AZL Russell 1000 Value Index Fund, Class 1.
	Franklin Mutual Shares VIP Fund, Class 2	AZL Russell 1000 Value Index Fund, Class 2.
10	BNY Mellon VIF Appreciation Portfolio, Service Class	AZL S&P 500 Index Fund, Class 2.

[6] The number of Investment Options currently available under the affected Contracts ranges from 13 to 50.

[7] In addition to registering with the Commission as an investment company under the Act, each Separate Account has registered with the Commission its securities under the Securities Act of 1933 (''1933 Act''). In doing so, each Separate Account has filed a registration statement with the Commission that includes a prospectus describing the Contracts offered by the Separate Account and a copy of the form of such Contracts.

[8] The Destination Funds are all series of the VIP Trust, FOF Trust, or PIMCO VIT, each a Delaware statutory trust registered as an open-end management investment company under the Act and whose shares are registered under the 1933 Act. Shares of the VIP Trust and the FOF Trust are sold to separate accounts of Allianz Life and Allianz NY for the purpose of funding variable annuity contracts and variable life insurance policies. The Destination Funds offered by the VIP Trust and FOF Trust are managed by Allianz Investment Management LLC (''AIM''), an affiliate of the Insurance Company Applicants. AIM is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). Shares of the PIMCO VIT are sold to separate accounts of Allianz Life and Allianz NY, as well as other insurance companies, for the purpose of funding variable annuity contracts and variable life insurance policies. The Destination Funds offered by the PIMCO VIT are managed by Pacific Investment Management Company LLC (''PIMCO''), an affiliate of Insurance Company Applicants. PIMCO is registered as an investment adviser under the Advisers Act.

Substitution	Target fund	Destination fund
11	PIMCO Global Multi-Asset Managed Allocation Portfolio, Administrative Class.	PIMCO Balanced Allocation Portfolio, Administrative Class.
12	PIMCO Global Bond Opportunities Portfolio (Unhedged), Administrative Class.	PIMCO Global Core Bond (Hedged) Portfolio, Administrative Class.
13	PIMCO Dynamic Bond Portfolio, Administrative Class	PIMCO Total Return Portfolio, Administrative Class.

4. The proposed Substitutions will be described in supplements to the applicable prospectuses for the Contracts filed with the Commission (''Supplements'') and delivered to all affected Contract owners at least 30 days before the date the proposed Substitution is effected (''Substitution Date''). The Supplements, among other things, will advise Contract owners that, for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date, Contract owners are permitted to transfer all of or a portion of their Contract value out of any subaccount investing in a Target Fund to any other available subaccounts offered under their Contract without any transfer charge or limitation and without the transfer being counted as a transfer for purposes of transfer limitations and fees that would otherwise be applicable under the terms of the Contracts.

5. The Section 26 Applicants will send the Supplements to all existing Contract owners. Prospective purchasers and new purchasers of Contracts will be provided with a Contract prospectus and the Supplements, as well as prospectuses and supplements for the Destination Funds.

6. In addition to the Supplements distributed to Contract owners, within five business days after the Substitution Date, the Insurance Company Applicants will send Contract owners a written confirmation of the completed proposed Substitutions in accordance with rule 10b–10 under the Securities Exchange Act of 1934. The confirmation statement will include or be accompanied by a statement that reiterates the free transfer rights disclosed in the Supplements. The Insurance Company Applicants also will send each Contract owner current prospectuses for the Destination Funds involved to the extent that they have not previously received a copy.

7. Each Substitution will take place at the applicable Target and Destination Funds' relative per share net asset values (''NAV'') determined on the Substitution Date in accordance with section 22 of the Act and rule 22c–1 thereunder. Each Substitution will be effected by having each Target Fund subaccount redeem its Target Fund shares in cash and/or in-kind on the Substitution Date at NAV per share and purchase shares of the appropriate Destination Fund at NAV per share calculated on the same date.[9]

8. The Insurance Company Applicants or an affiliate will pay all expenses and transaction costs reasonably related to the proposed Substitutions. No costs of the Substitutions will be borne directly or indirectly by Contract owners. Contract owners will not incur any fees or charges as a result of the Substitutions, nor will their rights or the obligations of the Insurance Company Applicants under the Contracts be altered in any way. The proposed Substitutions will not cause the fees and charges under the Contracts currently being paid by Contract owners to be greater after the proposed Substitutions than before the proposed Substitutions. The charges for optional living benefit riders may change from time to time and any such changes would be unrelated to the proposed Substitutions.

9. The Section 26 Applicants state that the benefits offered by the guarantees under the Contracts will be the same immediately before and after the Substitutions. The Section 26 Applicants further state that the effect Substitutions may have on the value of the benefits offered by the Contract guarantees would depend, among other things, on the relative future performance of the Target Funds and Destination Funds, which the Section 26 Applicants cannot predict. The Section 26 Applicants further note that, at the time of the Substitutions, the Contracts will offer a comparable variety of Investment Options with as broad a range of risk/return characteristics.

10. The Section 26 Applicants further state that they will cause AIM or PIMCO, as applicable, as the investment adviser of each Destination Fund, to enter into a written contract with the applicable Destination Funds, whereby, during the two (2) years following the Substitution Date, the annual net operating expenses of each such Destination Fund will not exceed, on an annualized basis, the annual net operating expenses of any corresponding Target Fund for fiscal year 2018. The Section 26 Applicants further represent that separate account charges for any Contract owner on the Substitution Date will not be increased at any time during the two-year period following the Substitution Date.

Legal Analysis—Section 26(c) of the Act

1. The Section 26 Applicants request that the Commission issue an order pursuant to section 26(c) of the Act approving the Substitutions. Section 26(c) of the Act prohibits any depositor or trustee of a UIT holding the security of a single issuer from substituting the securities of another issuer without the approval of the Commission. Section 26(c) provides that such approval shall be granted by order of the Commission if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that Congress' concern underlying section 26(c) related to the lack of recourse and potentially additional fees experienced by investors in a single-security UIT in the case of a substitution.

2. Applicants submit that each of the Substitutions is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. In particular, Applicants point to the following:

(a) The contracts permit the substitutions, subject to Commission approval and compliance with applicable laws, upon appropriate notice;

(b) the prospectuses or statements of additional information for the Contracts contain appropriate disclosure of these rights;

(c) the Substitutions will be described in the Supplements delivered to all affected Contract owners at least 30 days before the Substitution Date;

(d) the Supplements also will advise Contract owners that, for a period beginning at least 30 days before the Substitution Date through at least 30

[9] The process for accomplishing the transfer of assets from each Target Fund to its corresponding Destination Fund will be determined on a case-by-case basis. In some cases, it is expected that the Substitutions will be effected by redeeming shares of a Target Fund for cash and using the cash to purchase shares of the Destination Fund. In other cases, it is expected that the Substitutions will be effected by redeeming the shares of a Target Fund in-kind; those assets will then be contributed in-kind to the corresponding Destination Fund to purchase shares of that fund.

days following the Substitution Date, Contract owners are permitted to transfer all of or a portion of their Contract value out of any subaccount investing in a Target Fund to any other available subaccounts offered under their Contract without any transfer charge or limitation and without the transfer being counted as a transfer for purposes of transfer limitations and fees that would otherwise be applicable under the terms of the Contracts;

(e) each Destination Fund and its corresponding Target Fund have similar or substantially similar investment objectives, principal investment strategies, and principal risks; [10] and

(f) the total net operating expenses of each Destination Fund will be the same or lower than those of the corresponding Target Fund for at least two years following the Substitution Date.

Applicants assert that, based on the terms noted above, and subject to the conditions set forth below, the proposed Substitutions do not raise the concerns underlying section 26(c) of the Act.

Opposition to Certain of the Proposed Substitutions

3. As shown in the chart above, some of the Target Funds are advised by Franklin Advisers, Inc. or one of its affiliates (''Franklin''). Franklin has submitted several letters to the Commission opposing the application and stating its intent to request a hearing should the Commission issue a notice on the application without resolving Franklin's concerns.[11]

4. The Franklin Letters assert that the proposed Substitutions do not meet the standard for an order under section 26(c) for the following reasons: [12]

(a) The Commission should approve substitutions under section 26(c) only when the insurance company seeks to replace a fund due to unforeseen circumstances, such as impairment of the fund or fraud, and not in other circumstances when the substitution would benefit the insurance company;

(b) the proposed Substitutions would, for the most part, replace actively managed funds with index funds that have lower performance, so that Contract owners will suffer a diminution in the value of the guarantees purchased by the contract holders, to the detriment of the contract holders and to the benefit of the Insurance Company Applicants; and

(c) as argued in a letter from the independent trustees of the Franklin-advised Target Funds, the shareholders remaining in these funds after the Substitutions would be harmed because the Substitutions would cause significant redemptions of shares of the Franklin-advised Target Funds, which could impact the ability of such funds to follow their current investment strategies and would likely increase costs to remaining shareholders.

The Application Satisfies the Standards in Section 26(c)

5. The Commission has considered these arguments. As noted above, section 26(c) states that ''The Commission shall issue an order approving a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act].''

A. The Allianz Application Is Consistent With Investor Protection

i. Protective Conditions

6. Since the early 1980s, the Commission has issued nearly 200 substitution orders under section 26(c) involving variable insurance contract UIT subaccounts replacing their underlying mutual funds. The terms and conditions of these orders [13] and of the Allianz application [14] are designed to address investor protection on the two points expressly addressed in the legislative history of Section 26(c).

ii. Consideration of Impact on Value of Guarantees Not Required

7. The Franklin Letters argue that in reviewing a substitution application under section 26(c), the Commission also should be concerned about any diminution in the value of the variable insurance contracts' guarantees as the underlying actively-managed mutual funds are being replaced with index mutual funds, to the benefit of the insurance company. Because typically the benefit base used for variable contracts' living and death benefit guarantees is reset periodically by reference to the contract's account value, contract holders are disadvantaged by the replacement of actively-managed fund options that seek to ''beat, rather than just meet, a benchmark.'' [15] The Commission believes that this argument should be rejected for several reasons.

8. First, consistent with prior substitution orders, the proposed Destination Funds are substantially similar to the Target Funds in the application.[16] Second, it is not a foregone conclusion that replacing an actively-managed fund with an index fund will lead to a diminution in the value of the variable insurance contract's guarantee. The application states that ''[w]hat effect the proposed [s]ubstitutions may have on the value of the benefits offered by the Contract guarantees would depend, among other things, on the relative future performance of the [Target Funds] and [Destination Funds], which [Applicants] cannot predict. Nevertheless, [Applicants] note that at the time of the proposed Substitutions, the Contracts will offer a comparable variety of investment options with as broad a range of risk/return characteristics.'' Finally, if the consideration of the impact of substitutions on changes in the value of contracts' guarantees were to factor into the Commission's review of substitution applications under section 26(c), the Commission would be tasking itself with calculating how

[10] Applicants note that prior Commission orders under section 26(c) for similar substitutions provide guidance as to the funds that may be viewed as comparable.

[11] *See* letters from Franklin to Sara Crovitz, dated May 10, 2017, June 8, 2017, and August 22, 2017, and to Dalia Blass, dated September 12, 2019, submitted by Morgan Lewis, and letter from the independent trustees of the Franklin Templeton Variable Insurance Products Trust to Sara Crovitz, dated August 18, 2017, submitted by Schiff Hardin (the ''Franklin Letters''), *available at https://www.sec.gov/rules/icreleases.shtml#insprodfundsub.* Allianz submitted two letters, dated August 4, 2017 and September 24, 2019, responding to the Franklin Letters.

[12] The Franklin Letters also argue that the proposed Substitutions are joint transactions and thus require an order under section 17(d) of the Act and rule 17d–1, which the application fails to request.

[13] As orders are subject to the terms and conditions set forth in the related applications, a reference to the terms and conditions of an order includes the terms and conditions described in the related application.

[14] In this regard, the September 12, 2019 Franklin Letter stated that ''We have done a preliminary analysis, and the effect of the proposed substitutions is that some of the [Destination] [F]unds would experience an increase in their total operating expense ratios and one fund would also lose the benefit of fee breakpoints.'' Among other things, the terms and conditions require that the total net operating expenses of each replacement fund will be the same or lower than those of the corresponding target fund for at least two years following the substitution date.

[15] Franklin Letter, dated May 10, 2017, submitted by Morgan Lewis, at p. 3.

[16] *See, e.g., AXA Equitable Life Ins. Co., et al.,* Rel. Nos. IC–33201 (Aug. 15, 2018) (Notice) and IC–33224 (Sep. 11, 2018) (Order), File No. 812–14831; *The Guardian Ins. & Annuity Co., Inc., et al.,* Rel. Nos. IC–32967 (Jan. 10, 2018) (Notice) and IC–33003 (Feb. 7, 2018) (Order), File No. 812–14714; *Commonwealth Annuity and Life Ins. Co., et al.,* Rel. Nos. IC–32615 (Apr. 27, 2017) (Notice) and IC–32644 (May 23, 2017) (Order), File No. 812–14646; *Transamerica Advisors Life Ins. Co., et al.,* Rel. Nos. IC–32571 (Mar. 24, 2017) (Notice) and IC–32606 (Apr. 19, 2017) (Order), File No. 812–14487; *Allianz Life Ins. Co. of North America, et al.,* Rel. Nos. IC–32207 (Aug. 3, 2016) (Notice) and IC–32242 (Aug. 29, 2016) (Order), File No. 812–14580.

substitutions would affect the value of variable insurance contract guarantees in the context of hundreds, if not thousands, of funds. Such calculations would be complex and rely on numerous assumptions and other factors, including estimates of the future performance of the funds involved over varying time frames, and the impact of future performance on the benefit base used to set the insurance guarantees.

B. The Application Is Consistent With the Purposes Fairly Intended by the Policy and Provisions of the Act

i. Section 26(c) of the Act

9. The purposes intended by section 26(c) of the Act, as discussed above, were to protect the UIT's shareholders from having no recourse when the single portfolio security of the UIT is replaced and incurring additional fees in reinvesting any redemption proceeds. For the reasons discussed above, the terms and conditions of the application satisfy these investor protection purposes.

ii. Section 1(b)(2) of the Act

10. Another potentially relevant purpose of the Act is set forth in Section 1(b)(2) of the Act. It states, in relevant part, that the national public interest and the interest of investors are adversely affected when the portfolio securities of investment companies are selected in the interest of ''persons engaged in other lines of business, rather than in the interest of all classes of such companies' security holders.'' In a substitution application (including the Allianz application), the portfolio securities (the underlying mutual funds) of the separate account UIT arguably are being selected in the interest of the insurance company that had issued the variable insurance contract. The Franklin Letters argue that the Commission should permit substitutions under section 26(c) only under exceptional or unforeseen circumstances, such as when the existing fund is impaired or in cases of fraud, and not in other circumstances when the substitution would benefit the insurance company. Although the Franklin Letters do not specifically refer to section 1(b)(2) of the Act in the context of this argument, we believe their argument may echo the concern reflected in that section.

11. To interpret section 26(c) as allowing Commission approval of substitutions only in unforeseen or exceptional circumstances would be in conflict with section 26(c), its legislative history, and the purposes of the Act more broadly. It also would be a significant departure from prior practice.[17] Further, the Commission believes any section 1(b)(2) concern is addressed by the standard terms and conditions of the substitution orders under section 26(c), including those in the Allianz application. These terms and conditions serve as a check on the insurance company's actions in replacing the mutual funds underlying its separate account UIT, and are designed to help investor protection. The Commission notes that insurance companies have offered separate account UITs with numerous investment options with the expectation and understanding that they would have the ability to make changes among the investment options in appropriate circumstances.[18] The variable insurance contracts expressly permit such substitutions.

iii. Section 12(d)(1)(E) of the Act

12. The Commission also has considered the concern expressed by the independent directors of the Franklin-advised Target Funds about the loss of assets in those funds as a result of the Substitutions. There is no indication in the legislative history of section 26(c) that Congress was concerned with the impact of the substitution on the company in which the UIT was invested.[19] The application involves subaccounts of UITs that invest in the Target Funds in reliance on section 12(d)(1)(E) of the Act.[20] The requirements of that section, which excepts certain fund-of-funds arrangements from the prohibitions in section 12(d)(1)(A), (B) and (C), are concerned with protecting the shareholders of both the investing UIT and the underlying fund.[21] The Commission has considered the concerns underlying section 12(d)(1)(E) as they might relate to the Franklin-advised Target Funds with respect to whether the Substitutions are consistent with ''the purposes fairly intended by the policy and provisions'' of the Act. The Commission believes the fact that the Franklin-advised funds could lose assets due to the Substitutions is not a concern under section 12(d)(1)(E), which does not limit a UIT's ability to redeem its shares from an underlying fund. A more relevant concern would be if the insurance company, through its separate account UIT, was trying to somehow engage in overreaching with respect to the Franklin-advised funds through the threat of redemption. No allegation has been made that Allianz is engaged in an attempt to overreach the Target Funds through a threat of redemption, and the Commission is not aware of any overreaching behavior.

iv. Section 17(d) of the Act

13. Finally, the Commission has considered the argument in the Franklin Letters that the Substitutions require an order under section 17(d) of the Act and rule 17d–1. These provisions generally prohibit an affiliated person of a registered investment company from participating in or effecting a joint transaction in which the registered investment company is a participant, without first obtaining an order of the Commission.[22] The Franklin Letters

[17] *Id.*

[18] *See, e.g.,* letter dated Jan. 21, 2017 from Sutherland on behalf of the Hartford Life Insurance Company, *et al.* to the Commission in response to the hearing requests of the American Funds, among others, on the Hartford Substitution Application, at 3 (stating ''[i]nsurance companies are not able to offer the significant benefits of various variable insurance contracts unconditionally. They can be responsibly offered only with certain unilateral insurer conditions, *e.g.,* limitations on initial and subsequent premium amounts; restricting access to certain underlying funds; age limitations for benefit availability; and, perhaps most vital to insurers, the ability to add, delete, merge, close and *substitute* fund offerings. Insurance companies use these contractual rights to manage operational expenses and insurance risks over the long life of their guarantees, and to manage contract owners' changing needs over those same durations''), *available at https://www.sec.gov/comments/812-14446/81214446-1523020-130992.pdf.*

[19] Legislative history indicates that Congress's concern in enacting section 26(c) was the protection of the contract holder. *See* Senate Report, *supra* note 10 (stating ''[t]he proposed amendment recognizes that in the case of a unit investment trust holding the securities of a single issuer notification to share holders does not provide adequate protection since the only relief available to the shareholders, if dissatisfied, would be to redeem their shares. A shareholder who redeems and reinvests the proceeds in another unit investment trust or in an open-end company would under most circumstances be subject to a new sales load'').

[20] Section 12(d)(1)(E) is a conditional exemption from the restrictions in section 12(d)(1), which limit so-called ''fund-of-funds'' arrangements in which one mutual fund invests in the shares of another. Section 12(d)(1)(E) exempts a fund acquiring shares of another fund from the 12(d)(1) limits if, among other things, the acquired shares are the only security owned by the acquiring fund. This exemption is relied upon by, among others, most insurance company separate accounts, which are organized as UITs and divided into subaccounts, each of which invests proceeds from the sale of interests in variable annuity and variable life insurance contracts in shares of a mutual fund.

[21] We note that section 12(d)(1)(E)(iii)(bb) requires section 26(c)-type Commission approval of substitutions in the fund-of-funds context only where the acquiring fund is *not* registered under the Act.

[22] Section 17(d) states: ''It shall be unlawful for any affiliated person of [. . .] a registered investment company [. . .], or any affiliated person of such a person [. . .], acting as principal to effect any transaction in which such registered company, or a company controlled by such registered company, is a joint or a joint and several participant with such person [. . .], or affiliated person, in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such

have not articulated why the proposed Substitutions would involve a joint transaction, including what would be the joint transaction and how an affiliated person of the funds involved, acting as principal, is participating in the transaction. In addition, we believe the Substitutions are similar to other transactions involving two-tier structures that are permitted under section 12(d)(1)(E) where relief from section 17(d) and rule 17d–1 is not necessary, regardless of whether the underlying fund is an affiliate of the top-tier fund.[23] As with those other structures, relief from section 17(a) is necessary for in-kind transactions between the top-tier fund and underlying fund.[24]

Legal Analysis—Section 17(a) of the Act

14. The Section 17 Applicants request that the Commission issue an order pursuant to section 17(b) of the Act exempting them from section 17(a)(1) and (2) of the Act to the extent necessary to permit them to carry out the Substitutions by redeeming shares issued by each applicable Target Fund in-kind and using the securities distributed as redemption proceeds to purchase shares issued by the applicable Destination Funds (the ''In-Kind Transactions'').

Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, knowingly from selling any security or other property to such registered investment company. Section 17(a)(2) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, knowingly from purchasing any security or other property from such registered investment company. ''Affiliated person'' is defined in section 2(a)(3) of the Act.[25]

15. At the close of business on the Substitution Date, the Insurance Company Applicants will redeem shares of each Target Fund either in-kind or in cash, or a combination thereof, and use the proceeds of such redemptions to purchase shares of the corresponding Destination Fund, with each subaccount of the applicable Separate Account investing the proceeds of its redemption from the Target Fund in the corresponding Destination Fund. Thus, the proposed transactions may involve a transfer of portfolio securities by each Target Fund to Allianz Life and Allianz NY. Immediately thereafter, Allianz Life and Allianz NY would purchase shares of the corresponding Destination Fund with the portfolio securities and/or cash received from the applicable Target Fund. This aspect of the Substitution may be considered to involve one or more sales by Allianz Life or Allianz NY of securities or other property to the applicable Destination Fund. Based on the affiliations detailed in the application, these in-kind transactions may be prohibited by section 17(a)(1) and (2) of the Act.

16. Section 17(b) of the Act, in relevant part, provides that, notwithstanding subsection (a), any person may file with the Commission an application for an order exempting a proposed transaction from one or more provisions of section 17(a). Pursuant to section 17(b), the Commission shall grant such application and issue such order of exemption if evidence establishes that: The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act; and the proposed transaction is consistent with the general purposes of the Act.

17. Accordingly, the Section 17 Applicants seek relief under section 17(b) from section 17(a) for the in-kind purchases and sales of the Destination Fund shares. The Section 17 Applicants submit that the In-Kind Transactions satisfy the standards for an order under section 17(b) because: (i) The terms of the proposed In-Kind Transactions, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned because the proposed In-Kind Transactions will comply with rule 17a–7 under the Act, other than the requirement relating to cash consideration (because the In-Kind Transactions will involve portfolio securities of the Target Funds and shares issued by the Destination Funds);[26] (ii) the In-Kind Transactions will be consistent with the policies of each Target Fund and corresponding Destination Fund as stated in their respective registration statements and reports filed with the Commission; and (iii) the In-Kind Transactions are consistent with the general purposes of the Act because they do not raise any investor protection concerns.

Applicants' Conditions

The Section 26 Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The proposed Substitutions will not be effected unless the Insurance Company Applicants determine that: (a) The Contracts allow the substitution of shares of registered open-end investment companies in the manner contemplated by the application; (b) the proposed Substitutions can be consummated as described in the application under applicable insurance laws; and (c) any regulatory requirements in each jurisdiction where the Contracts are qualified for sale have

registered or controlled company on a basis different from or less advantageous than that of such other participant.'' Rule 17d–1 prohibits such joint arrangements, ''unless an application regarding such joint enterprise, arrangement or profit-sharing plan has been filed with the Commission and has been granted by an order entered prior to the submission of such plan or modification to security holders for approval, or prior to such adoption or modification if not so submitted [. . .].'' Rule 17d–1 further states that, ''[i]n passing upon such applications, the Commission will consider whether the participation of such registered or controlled company in such joint enterprise, joint arrangement or profit-sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.''

[23] *See supra* note 20. Section 12(d)(1)(E) is also relied upon by master-feeder fund arrangements, in which one or more funds pool their assets by investing in a single fund with the same investment objective.

[24] *See* discussion of sections 17(a)(1) and 17(a)(2) of the Act *infra* pp. 17–18.

[25] Section 2(a)(3) defines affiliated person as ''(A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and (F) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof.''

[26] Rule 17a–7 is a conditional exemption from section 17(a) of the Act that permits purchase and sale transactions among affiliated investment companies, or between an investment company and a person that is affiliated solely by reason of having a common (or affiliated) investment adviser, common directors, and/or common officers. In the adopting release to the original Rule 17a–7, the Commission stated that the purpose of the rule was to ''eliminate filing and processing applications under circumstances where there appears to be no likelihood that the statutory finding for a specific exemption under Section 17(b) of the Act could not be made'' and that the conditions of the rule ''are designed to limit the exemption to those situations where the Commission, upon the basis of its experience, considers that there is no likelihood of overreaching of the investment companies participating in the transaction.'' Inv. Co. Act Rel. No. 4697 (Sep. 8, 1966) at 2–4.

been complied with to the extent necessary to complete the proposed Substitutions.

2. The Insurance Company Applicants or their affiliates will pay all expenses and transaction costs of the proposed Substitutions, including legal and accounting expenses, any applicable brokerage expenses and other fees and expenses. No fees or charges will be assessed to the Contract owners to effect the proposed Substitutions. The proposed Substitutions will not cause the fees and charges under the Contracts currently being paid by Contract owners to be greater after the proposed Substitution than before the proposed Substitution. For each Substitution, the combined current management fee and Rule 12b–1 fee of the Destination Fund at all asset levels will be no higher than that of the corresponding Target Fund at corresponding asset levels.

3. The proposed Substitutions will be effected at the relative net asset values of the respective shares in conformity with section 22(c) of the Act and rule 22c–1 thereunder without the imposition of any transfer or similar charges by the Section 26 Applicants. The proposed Substitutions will be effected without change in the amount or value of any Contracts held by affected Contract owners.

4. The proposed Substitutions will in no way alter the tax treatment of affected Contract owners in connection with their Contracts, and no tax liability will arise for affected Contract owners as a result of the proposed Substitutions.

5. The rights or obligations of the Insurance Company Applicants under the Contracts of affected Contract owners will not be altered in any way.

6. Affected Contract owners will be permitted to make at least one transfer of Contract value from the subaccount investing in the Target Fund (before the Substitution Date) or the Destination Fund (after the Substitution Date) to any other available Investment Option under the Contract without charge for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date. Except as described in any market timing/short-term trading provisions of the relevant prospectus, the Insurance Company Applicants will not exercise any right they may have under the Contract to impose restrictions on transfers between the subaccounts under the Contracts, including limitations on the future number of transfers, for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date.

7. All affected Contract owners will be notified, at least 30 days before the Substitution Date about: (a) The intended Substitution of the Target Funds with the Destination Funds; (b) the intended Substitution Date; and (c) information with respect to transfers as set forth in Condition 6 above. In addition, Insurance Company Applicants will deliver to all affected Contract owners, at least 30 days before the Substitution Date, a prospectus for each applicable Destination Fund.

8. Insurance Company Applicants will deliver to each affected Contract owner within five (5) business days of the Substitution Date a written confirmation which will include: (a) A confirmation that the proposed Substitutions were carried out as previously notified; (b) a restatement of the information set forth in the Supplements; and (c) before and after account values.

9. The Section 26 Applicants will cause AIM or PIMCO, as applicable, as the investment adviser of each Destination Fund, to enter into a written contract with the applicable Destination Funds, whereby, during the two (2) years following the Substitution Date, the annual net operating expenses of each such Destination Fund will not exceed, on an annualized basis, the annual net operating expenses of any corresponding Target Fund for fiscal year 2018. The Section 26 Applicants further agree that separate account charges for any Contract owner on the Substitution Date will not be increased at any time during the two-year period following the Substitution Date.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–27917 Filed 12–26–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87806; File No. SR–CBOE–2019–123]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 8.10 To Remove the Attestation Filing Requirements in Connection With Trading Permit Holders' Policy and Procedures Regarding the Misuse of Material, Nonpublic Information

December 19, 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 17, 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 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 8.10 to remove the attestation filing requirements in connection with Trading Permit Holders' (''TPHs'') policy and procedures regarding the misuse of material, nonpublic information. 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 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 remove the Rule 8.10 requirement that TPHs that file only annual SEC Form X–17A–5

[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).

reports (''FOCUS Reports'')[5] must also file contemporaneous attestations regarding compliance with the maintenance and enforcement of policies and procedures to prevent the misuse of material, nonpublic information with such reports. In addition, the Exchange also proposes to remove Rule 8.10.03, which provides that a subset of TPHs that file annual FOCUS Reports may use Exchange-developed OE–418 forms to satisfy the Rule 8.10 filing and recordkeeping requirements.[6]

Current Rule 8.10 provides that every TPH shall establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such TPH's business, to prevent the misuse, in violation of the Securities Exchange Act of 1934 (the ''Act'') and Exchange Rules, of material, nonpublic information by such TPH or persons associated with such TPH. It also provides that TPHs required to file FOCUS Reports on an annual basis only, pursuant to Rule 7.3 (Financial Reports), must contemporaneously file, with their annual reports, attestations signed by such TPHs stating that the procedures mandated by Rule 8.10 have been established, enforced and maintained. Current Rule 8.10.03 provides that the Exchange-developed form (OE–418) may be submitted by a subset of TPHs that only file annual FOCUS Reports to satisfy attestation and record keeping requirements pursuant to Rule 8.10. Specifically, the Exchange implemented the attestation requirement for TPHs that file FOCUS Reports only annually because those TPHs that file FOCUS Reports on a more frequent basis (*i.e.,* monthly and quarterly) were generally subject to periodic exams by the Exchange in which the Exchange reviewed, among other things, the procedures maintained by such TPHs pursuant to Rule 8.10.[7] TPHs filing FOCUS Reports only annually were not subject to periodic exams by the Exchange at the time when Rule 8.10 was originally adopted.

Today, however, all TPHs are subject to the Exchange's risk-based exam process, which is conducted by Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange pursuant to a regulatory services agreement (''RSA''). Examinations are based on an annual risk assessment to determine the cycle, scope and content of examinations per firm to ensure each firm is appropriately examined.[8] Moreover, the Exchange may conduct off-cycle examinations of a TPH, as necessary.

The Exchange notes that no more than 10 TPHs currently fall under the Rule 8.10 attestation requirement, and that the Exchange currently collects the OE–418 forms in accordance with Rule 8.10.03 for those TPHs that submit the form to satisfy the Rule's attestation and record-keeping requirements. As a result of the proposed rule change, all TPHs would continue to be subject to the Rule 8.10 recordkeeping requirement, which, pursuant to Rule 7.1, a TPH must make available to the Exchange upon request. The Exchange believes it is an additional administrative burden to the limited number of TPHs who are required to submit an attestation when all TPHs are now subject to periodic examination, including review of the TPHs procedures pursuant to Rule 8.10, if warranted.

The Exchange further notes that all TPHs are subject to Rule 8.16, which provides that, among other things, each TPH and associated person of a TPH is required to be under the supervision and control of appropriately qualified supervisor, as well as implement written supervisory procedures and a system for applying such procedures to supervise the types of business in which the TPH engages and to supervise the activities of all associated persons. Under paragraph (g) of Rule 8.16, each TPH must conduct an interview or meeting with all associated persons, during which compliance matters relevant to the activities of the associated person are discussed. Each TPH must also conduct an annual compliance review and written report on the TPH's supervision and compliance effort during the preceding year and on the adequacy of the TPH's ongoing compliance processes and procedures. The Rule further requires that the TPH's Chief Executive Officer (''CEO'') (or equivalent officer) certifies that the TPH has processes in place to: (a) Establish and maintain policies and procedures reasonably designed to achieve compliance with applicable Exchange Rules and federal securities laws and regulations; (b) modify such policies and procedures as business, regulatory and legislative changes and events dictate, and; (c) test the effectiveness of such policies and procedures on a periodic basis, the timing and extent of which is reasonably designed to ensure continuing compliance with Exchange Rules and federal securities laws and regulations. Rule 8.16 was adopted by the Exchange following its adoption of Rule 8.10, and prior to the adoption of Rule 8.16 only TPHs approved to conduct business with the public were subject to such supervision requirements.[9] The Exchange believes that the Rule 8.10 attestation requirement is generally redundant of the CEO certification requirement in Rule 8.16.

The Exchange believes that periodic TPH examinations and supervision requirements pursuant to Rule 8.16 are sufficient to ensure TPH compliance with the requirement to establish enforce and maintain policies and procedures to prevent the misuse of material, nonpublic information. As noted previously, the Exchange, through its regulatory services provider, now conducts periodic risk-based exams of all TPHs and all TPHs are currently subject to the supervision requirements of Rule 8.16. Therefore, the Exchange believes that the attestation requirement and accompanying OE–418 form are redundant of the current exam process and other Exchange Rules in place, thus, their proposed removal would lift an unnecessary additional reporting step and administrative procedure.

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.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] 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

[5] FOCUS Reports are ''Financial and Operational Combined Uniform Single Reports'' and must be completed by all broker-dealers registered with the Securities and Exchange Commission (the ''Commission''). The form reports a broker-dealer's financial and operating condition.

[6] *See* Cboe Options Regulatory Circular RG19–003, which sets forth the criteria for use of form OE–418: (1) Individual TPHs with no employees; (2) individual TPHs who employ no more than three non-TPH employees; or (3) TPH organizations with no more than three employees who are nominees and which employ no more than six non-TPH employees. (January 11, 2019).

[7] *See* Securities Exchange Act Release No. 29967 (November 19, 1991), 56 FR 61067 (November 29, 1991) (SR–CBOE–91–41).

[8] While examinations are on a risk-based exam cycle, each TPH is examined no less than every three years.

[9] *See* Securities Exchange Act Release No. 71644 (February 18, 2014), 79 FR 13365 (March 10, 2014) (SR–CBOE–2013–126).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

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) [12] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that removing the duplicative and unnecessary attestation requirement in connection with Rule 8.10 and 8.10.03 would serve 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 benefit investors. Specifically, the Exchange believes that the supervision, annual report and CEO certification requirements pursuant to Rule 8.16 and changes to its examination practices which subject all TPHs to periodic risk-based examination, both of which were implemented/adopted after the adoption of Rule 8.10, are sufficient to ensure that TPHs have internal processes and procedures in place for identifying and preventing misuse of material, non-public information. In addition, all TPHs are currently, and will remain, subject to the Rule 8.10 recordkeeping requirement, and they must make such records available to the Exchange upon request. Therefore, the proposed rule change is designed to lift the unnecessary administrative burden of the limited number of TPHs who are required to also attest that the procedure mandated by Rule 8.10 have been established, enforced and maintained. As a result of the above-stated practices and procedures already in place, the Exchange believes that removing the attestation requirement in Rule 8.10 would benefit investors by removing a duplicative and unnecessary reporting step and administrative procedure. Further, the Exchange does not believe that the proposed rule change would affect the protection of investors as the Exchange may at any time require TPHs to produce records in connection with maintenance and enforcement of policies and procedures to prevent the misuse of material, nonpublic information, as well as conduct an off-cycle examination of a TPH, as necessary.

In addition to this, the Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[13] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange. As noted above, the Exchange currently has the capacity under other Exchange Rules to be able to enforce compliance by TPHs related to submission of appropriate records in connection with the prevention of the misuse of non-public information. The Exchange believes that removing redundant and unnecessary rules would allow for the Exchange to be organized and better able to carry out the purposes of the Act and enforce compliance. Removing the Rule 8.10 attestation requirement would reduce the administrative burden on the Exchange in having to collect and maintain reports that are generally duplicative of reports required under other Exchange Rules, and would allow the Exchange to better allocate regulatory resources.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, the proposed rule change is not intended to address competitive issues but rather is concerned with facilitating less burdensome and more efficient regulatory administration. The Exchange notes that the Rule 8.10 requirement to maintain and enforce policies and procedures to prevent the misuse of material nonpublic information and recordkeeping requirement of such would continue to uniformly apply to all TPHs.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[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–2019–123 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–219–123. 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

[12] *Id.*

[13] 15 U.S.C. 78f(b)(1).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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–2019–123 and should be submitted on or before January 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–27873 Filed 12–26–19; 8:45 am]

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[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87801; File No. SR–NYSEAMER–2019–55]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Partial Amendment No. 1, To Amend the Fees for NYSE American BBO and NYSE American Trades

December 19, 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 4, 2019, NYSE American LLC (''NYSE American'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 17, 2019, the Exchange filed Partial Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Partial Amendment No. 1, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (1) amend the fees for NYSE American BBO and NYSE American Trades by modifying the application of the Access Fee; (2) amend the fees for NYSE American Trades by adopting a credit applicable to the Redistribution Fee; and (3) adopt a one-month free trial for all NYSE American market data products. The Exchange also proposes to remove certain obsolete text. The Exchange proposes to implement the proposed fee changes on February 3, 2020. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to decrease the fees for certain NYSE American market data products, as set forth on the NYSE American Equities Proprietary Market Data Fee Schedule (''Fee Schedule''). The purpose of these fee decreases, taken together with fee decreases filed by the Exchange's affiliated exchanges, New York Stock Exchange LLC (''NYSE'') and NYSE Arca, Inc. (''NYSE Arca''),[4] will reduce the fees associated with the NYSE BQT proprietary data product, which competes directly with similar products offered by both the Nasdaq and Cboe families of U.S. equity exchanges. Collectively, the proposed fee decreases are intended to respond to the competition posed by similar products offered by the other exchange groups.

Specifically, the Exchange proposes to (1) reduce the Access Fees by more than 86% for subscribers of NYSE American BBO and NYSE American Trades that receive a data feed and use those market data products in a display-only format; (2) provide for a credit applicable to the Redistribution Fee for subscribers of NYSE American Trades that use that market data product for display purposes; and (3) adopt a one-month free trial for all NYSE American market data products. The Exchange also proposes non-substantive changes to remove certain obsolete text from the Fee Schedule. All of the proposed changes would decrease fees for market data on the Exchange.

The Exchange proposes to implement these proposed fee changes on February 3, 2020.

Background

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. 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.''[5]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.''[6] Indeed, equity trading is currently dispersed across 13 exchanges,[7] 31 alternative trading systems,[8] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on

[3] In Partial Amendment No. 1, the Exchange provided an additional example in support of the proposed rule change.

[4] *See* SR–NYSE–2019–70 and SR–NYSEArca–2019–88.

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7–10–04) (Final Rule) (''Regulation NMS Adopting Release'').

[6] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule) (''Transaction Fee Pilot'').

[7] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[8] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

publicly-available information, no single exchange currently has more than 18% market share (whether including or excluding auction volume).[9]

With the NYSE BQT market data product, NYSE American and its affiliates compete head to head with the Nasdaq Basic[10] and Cboe One Feed[11] market data products. Similar to those market data products, NYSE BQT, which was established in 2014,[12] consists of certain elements from NYSE American BBO and NYSE American Trades as well as from market data products from the Exchange's affiliates, NYSE, NYSE Arca, NYSE National, Inc. (''NYSE National'')[13] and NYSE Chicago (''NYSE Chicago'').[14] Similar to both Nasdaq Basic and the Cboe One Feed, NYSE BQT provides investors with a unified view of comprehensive last sale and BBO data in all Tape A, B, and C securities that trade on the Exchange, NYSE, NYSE Arca, NYSE National and NYSE Chicago. Also, similar to Nasdaq Basic and the Cboe One Feed, NYSE BQT is not intended to be used for purposes of making order-routing or trading decisions, but rather, provides indicative prices for Tape A, B, and C securities.[15]

Currently, to subscribe to NYSE BQT, subscribers are charged an access fee of $250 per month.[16] Additionally, subscribers must also subscribe to, and pay applicable fees for NYSE American BBO, NYSE American Trades, NYSE BBO, NYSE Trades, NYSE Arca BBO, NYSE Arca Trades, NYSE National BBO, NYSE National Trades, NYSE Chicago BBO and NYSE Chicago Trades. Thus, the charges for NYSE BQT are the $250 Access Fee for NYSE BQT, plus a $1,500 access fee for each of NYSE BBO and NYSE Trades,[17] plus a $750 access fee for each of NYSE Arca BBO and NYSE Arca Trades,[18] plus a $750 access fee for each of NYSE American BBO and NYSE American Trades,[19] for a total of $6,250 ($250 + $3,000 + $1,500 + $1,500).[18] In addition, an NYSE BQT subscriber would need to pay for the applicable Professional or Non-Professional User Fees for the underlying market data products, as applicable.[19]

Because NYSE BQT is priced based on the fees associated with the underlying ten market data feeds, the Exchange and its affiliates propose to compete with the Cboe One Feed and Nasdaq basic by reducing fees for the underlying market data products that comprise NYSE BQT. Together with NYSE and NYSE Arca, the Exchange similarly proposes to compete for subscribers to NYSE BQT by designing its fee decreases to be attractive to subscribers of NYSE American BBO and NYSE American Trades that use such products for display-only purposes, which are more likely to be subscribers that service retail investors.

Access Fee—NYSE American BBO and NYSE American Trades

NYSE American BBO is a NYSE American-only market data product that allows a vendor to redistribute on a real-time basis the same best-bid-and-offer information that NYSE American reports under the Consolidated Quotation Plan (''CQ Plan'') for inclusion in the CQ Plan's consolidated quotation information data stream (''NYSE American BBO Information'').[20] NYSE American BBO Information includes the best bids and offers for all securities that are traded on the Exchange and for which NYSE American reports quotes under the CQ Plan. NYSE American BBO is available over a single data feed, regardless of the markets on which the securities are listed. NYSE American BBO is made available to its subscribers no earlier than the information it contains is made available to the processor under the CQ Plan.

NYSE American Trades is a NYSE American-only market data product that allows a vendor to redistribute on a real-time basis the same last sale information that NYSE American reports to the Consolidated Tape Association (''CTA'') for inclusion in the CTA's consolidated data stream and certain other related data elements (''NYSE American Last Sale Information'').[21] NYSE American Last Sale Information includes last sale information for all securities that are traded on the Exchange. NYSE American Trades is made available to its subscribers at the same time as the information it contains is made available to the processor under the CTA Plan.

Currently, subscribers of each of the NYSE American BBO and NYSE American Trades products that receive a data feed pay an Access Fee of $750 per month. The Exchange proposes to reduce the Access Fees for subscribers of NYSE American BBO and NYSE American Trades that receive a data feed and use those products in a display-only format, including for internal use for Professional Users and external distribution to both Professional and Non-Professional Users in a display-only format, from $750 per month (per product) to $100 per month (per product). The Exchange proposes to designate this access fee as a ''Per User Access Fee.'' A subscriber that receives a data feed and uses the market data product for any other purpose (such as a non-display use), including if combined with Per User use, would continue to pay the $750 per month Access Fee.[22] A subscriber will be charged only one access fee for each of the NYSE American BBO and NYSE American Trades products, depending on the use of that product.

The proposed rule change would result in lower fees for subscribers of each of NYSE American BBO and NYSE American Trades products that receive

[9] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share/.*

[10] As described on the Nasdaq website, available here: *http://www.nasdaqtrader.com/Trader.aspx?id=nasdaqbasic,* Nasdaq Basic is a ''low cost alternative'' that provides ''Best Bid and Offer and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA Trade Reporting Facility (''TRF'').''

[11] As described on the Cboe website, available here: *https://markets.cboe.com/us/equities/market_data_services/cboe_one/,* the Cboe One Feed is a ''market data product that provides cost-effective, high-quality reference quotes and trade data for market participants looking for comprehensive, real-time market data'' and provides a ''unified view of the market from all four Cboe equity exchanges: BZX Exchange, BYX Exchange, EDGX Exchange, and EDGY [sic] Exchange.''

[12] *See* Securities Exchange Act Release Nos. 72750 (August 4, 2014), 79 FR 46494 (August 8, 2014) (notice—NYSE BQT); and 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (approval order—NYSE BQT) (SR–NYSE–2014–40) (''NYSE BQT Filing'').

[13] In 2018, NYSE BQT was amended to include NYSE National BBO and NYSE National Trades. *See* Securities Exchange Act Release No. 83359 (June 1, 2018), 83 FR 26507 (June 7, 2018) (SR–NYSE–2018–22).

[14] In 2019, NYSE BQT was amended to include NYSE Chicago BBO and NYSE Chicago Trades. *See* Securities Exchange Act Release No. 87511 (November 12, 2019), 84 FR 63689 (November 18, 2019) (SR–NYSE–2019–60).

[15] *See* NYSE BQT Filing, *supra* note 12.

[16] *See* NYSE Proprietary Market Data Fees, available here: *https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Fee_Schedule.pdf.*

[17] *See id.*

[18] *See* NYSE Arca Equities Proprietary Market Data Fees, available here: *https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Equities_Fee_Schedule.pdf.*

[19] *See* Fee Schedule, available here: *https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Equities_Market_Data_Fee_Schedule.pdf.*

[20] *See* Securities Exchange Act Release Nos. 61936 (April 16, 2010), 75 FR 21088 (April 22, 2010) (SR–NYSEAmex–2010–35) (notice—NYSE American BBO); and 62187 (May 27, 2010), 75 FR 31500 (June 3, 2010) (SR–NYSEAmex–2010–35) (approval order—NYSE American BBO).

[21] *See* Securities Exchange Act Release Nos. 61936 (April 16, 2010), 75 FR 21088 (April 22, 2010) (SR–NYSEAmex–2010–35) (notice—NYSE American Trades); and 62187 (May 27, 2010), 75 FR 31500 (June 3, 2010) (SR–NYSEAmex–2010–35) (approval order—NYSE American Trades).

[22] With the proposed adoption of the Per User Access Fee, the Exchange proposes to rename the Access Fee as the General Access Fee.

a data feed and use such products for display-only purposes. The proposed Per User Access Fee of $100 per month, lowered from $750 per month, would result in a reduction of more than 86% for subscribers that receive a data feed and use the product in a display-only format. Additionally, the proposed rule change, together with the proposed rule changes by NYSE and NYSE Arca to similarly reduce the access fees to their BBO and trades products, would also significantly lower access fees for display-only subscribers of NYSE BQT, from $6,250 per month to $850 per month ($250 + $200 + $200 + $200), a reduction of more than 86%.

The proposed rule change is intended to encourage greater use of NYSE BQT by making it more affordable for data recipients that receive a data feed of NYSE American Trades and NYSE American BBO and use the products in a display-only format and thereby, allow the Exchange to compete more effectively with Cboe One Feed and Nasdaq Basic. The Exchange believes the proposed rule change would allow the Exchange to offer retail investors a competitively priced alternative to other top-of-book data products available in the marketplace.

Redistribution Fee—NYSE American Trades

The Exchange currently charges a Redistribution Fee of $750 per month for NYSE American Trades. A Redistributor is a vendor or any other person that provides a NYSE American data product to a data recipient or to any system that a data recipient uses, irrespective of the means of transmission or access. A Redistributor is required to report to the Exchange each month the number of Professional and Non-Professional Users and data feed recipients that receive NYSE American Trades. As noted above, for display use of NYSE American Trades, the Exchange currently charges a Per User Fee of $1 per month for each Professional User and a Per User Fee of $0.05 per month for each Non-Professional User. These user fees apply to each display device that has access to NYSE American Trades.

The Exchange proposes to adopt a credit that would be applicable to Redistributors that provide external distribution of NYSE American Trades to Professional and Non-Professional Users in a display-only format. As proposed, such Redistributors would receive a credit equal to the amount of the monthly Professional User and Non-Professional User Fees for such external distribution, up to a maximum of the Redistribution Fee for NYSE American Trades. For example, a Redistributor that reports external Professional Users and Non-Professional Users in a month totaling $750 or more would receive a maximum credit of $750 for that month, which could effectively reduce its Redistribution Fee to zero. If that same Redistributor were to report external User quantities in a month totaling $500 of monthly usage, that Redistributor would receive a credit of $500. Redistributors would have an incentive to increase their redistribution of NYSE American Trades because the credit they would be eligible to receive would increase if they report additional external User quantities.

By targeting this proposed credit to Redistributors that provide external distribution of NYSE American Trades in a display-only product, the Exchange believes that this proposed fee decrease would provide an incentive for Redistributors to make the NYSE BQT market data product available to its customers. Specifically, if a data recipient is interested in subscribing to NYSE BQT and relies on a Redistributor to obtain market data products from the Exchange, that data recipient would need its Redistributor to redistribute NYSE BQT. Currently, Redistributors that redistribute NYSE American market data products do not necessarily also make NYSE BQT available. Because data recipients that use NYSE BQT do so for display-only use, and therefore would use the NYSE American Trades market data product for display-only use, the Exchange believes that this proposed fee decrease for Redistributors of NYSE American Trades would provide an incentive for Redistributors to make NYSE BQT available to its customers, which will increase the availability of NYSE BQT to a larger potential population of data recipients.[23]

One-Month Free Trial—All NYSE American Market Data Products

The Exchange proposes a one-month free trial for any firm that subscribes to a particular NYSE American market data product for the first time. As proposed, a first-time subscriber would be any firm that has not previously subscribed to a particular NYSE American market data product listed on the Fee Schedule. As proposed, a first-time subscriber of a particular NYSE American market data produce [sic] would not be charged the Access Fee, Non-Display Fee, any applicable Professional and Non-Professional User Fee, and Redistribution Fee for that product for one calendar month. For example, a firm that currently subscribes to NYSE American BBO would be eligible to receive a free one-month trial of NYSE American Trades, whether in a display-only format or for non-display use. On the other hand, a firm that currently pays an Access Fee and receives NYSE American BBO for non-display use would not be eligible to receive a free one-month trial of NYSE American BBO in a display-only format. The proposed free trial would be for the first full calendar month following the date a subscriber is approved to receive trial access to the particular NYSE American market data product. The Exchange would provide the one-month free trial for each particular product to each subscriber once.

The Exchange believes that providing a one-month free trial to NYSE American market data products listed on the Fee Schedule would enable potential subscribers to determine whether a particular NYSE American market data product provides value to their business models before fully committing to expend development and implementation costs related to the receipt of that product and is intended to encourage increased use of the Exchange's market data products by defraying some of the development and implementation costs subscribers would ordinarily have to expend before using a product.

Non-Substantive Changes

In March 2016, the Exchange amended the Fee Schedule to adopt footnote 3 regarding a Decommission Extension Fee for receipt of the NYSE American BBO and NYSE American Trades market data products.[24] And in October 2016, the Exchange amended the Fee Schedule to adopt footnote 6 regarding a Decommission Extension Fee for receipt of the NYSE American Order Imbalances market data product.[25] The Decommission Extension Fee for NYSE American BBO, NYSE American Trades, and NYSE American Order Imbalances was adopted to allow existing subscribers at the time to receive these market data products in their legacy format as the Exchange was transitioning to a newer distribution protocol. The Decommission Extension Fee for NYSE American BBO and NYSE Trades expired on September 1, 2016, and the Decommission Extension Fee for NYSE

[23] NYSE American does not charge a Redistribution Fee for NYSE American BBO.

[24] *See* Securities Exchange Act Release No. 77389 (March 17, 2016), 81 FR 15375 (March 22, 2016) (SR–NYSEMKT–2016–37).

[25] *See* Securities Exchange Act Release No. 79287 (November 10, 2016), 81 FR 81216 (November 17, 2016) (SR–NYSEMKT–2016–100).

American Order Imbalances expired on April 28, 2017. The Exchange proposes to remove rule text regarding the Decommission Extension Fee for NYSE American BBO and NYSE American Trades from footnote 3 of the Fee Schedule, and for NYSE American Order Imbalances from footnote 6 of the Fee Schedule, as that rule text is now obsolete because the period of time during which the Decommission Extension Fee for NYSE American BBO and NYSE American Trades and for NYSE American Order Imbalances was applicable has passed. The Exchange proposes to replace the text in footnote 3 with rule text regarding the proposed fee change related to the Access Fee for NYSE American BBO and NYSE American Trades described above, and replace the text in footnote 6 with rule text regarding the proposed fee change related to the Redistribution Fee for NYSE American Trades described above.

The Exchange also proposes a non-substantive amendment to move the text describing the Enterprise Fee on the Fee Schedule to appear below the Non-Professional User Fee. The Exchange is not making any substantive changes to this fee. The Exchange believes that this proposed non-substantive change will make the Fee Schedule easier to navigate, as the Enterprise Fee is related to Per User fees.

The Exchange also proposes a non-substantive, clarifying amendment to footnote 4 to delete the term ''clients'' and replace it with the term ''Professional Users and Non-Professional Users.'' This proposed change is consistent with the operation of the Enterprise Fee, which relates only to the Professional User and Non-Professional Per User fees. The Exchange believes that this proposed change would promote clarity and transparency of the Fee Schedule, without making any substantive changes.

Applicability of Proposed Rule Change

As noted above, the proposed rule change is designed to reduce the overall cost of NYSE BQT by reducing specified fees applicable to the underlying market data products that comprise NYSE BQT. There is currently only one subscriber to NYSE BQT (a vendor) and the Exchange believes that the proposed rule change would provide an incentive both for data subscribers to subscribe to NYSE BQT and for Redistributors to subscribe to the product for purposes of providing external distribution of NYSE BQT.

Because the proposed rule change is targeted to potential customers of NYSE BQT, which is designed to be a product for display-only data subscribers, the proposed changes to the NYSE American BBO and NYSE American Trades Access Fees, together with the proposed changes on NYSE and NYSE Arca, are narrowly construed with that purpose in mind. Accordingly, these proposed fee changes are not designed for data subscribers that use NYSE American BBO or NYSE American Trades for non-display use, or for Redistributors that redistribute NYSE American Trades to data subscribers that use that market data product for non-display uses. This proposed rule change would not result in any changes to the market data fees for NYSE American BBO and NYSE American Trades for such data subscribers.

There are currently no subscribers to NYSE American BBO and NYSE American Trades that would meet the qualifications to be eligible for these proposed fee changes. The Exchange believes that this proposed rule change has the potential to attract new Redistributors for NYSE BQT and new NYSE BQT subscribers that would be subscribing to NYSE American BBO and NYSE American Trades for the first time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[26] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[27] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Proposed Rule Change Is Reasonable

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. 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.'' [28]

With respect to market data, the decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC* upheld the Commission's reliance on the existence of competitive market mechanisms to evaluate the reasonableness and fairness of fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system ''evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed'' and that the SEC wield its regulatory power ''in those situations where competition may not be sufficient,'' such as in the creation of a ''consolidated transactional reporting system.'' [29]

The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' ''[30]

1. The Proposed Fees Are Constrained by Significant Competitive Forces

a. Exchange Market Data Is Sold in a Competitive Market

In 2018, Charles M. Jones, the Robert W. Lear of Professor of Finance and Economics of the Columbia University School of Business, conducted an analysis of the market for equity market data in the United States. He canvassed the demand for both consolidated and exchange proprietary market data products and the uses to which those products were put by market participants, and reported his conclusions in a paper annexed hereto.[31] Among other things, Professor Jones concluded that:

- ''The market [for exchange market data] is characterized by robust competition: exchanges compete with each other in selling proprietary market data products. They also compete with consolidated data feeds and with data provided by alternative trading systems ('ATSs'). Barriers to entry are very low, so existing exchanges must also take into account competition from new entrants, who generally try to build market share by offering their

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(4), (5).

[28] *See* Regulation NMS Adopting Release, 70 FR 37495, at 37499.

[29] *NetCoalition* v. *SEC,* 615 F.3d 525, 535 (D.C. Cir. 2010) (''*NetCoalition I*'') (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323).

[30] *Id.* at 535.

[31] *See* Exhibit 3A, Charles M. Jones, *Understanding the Market for U.S. Equity Market Data,* August 31, 2018 (hereinafter ''Jones Paper'').

proprietary market data products for free for some period of time.'' [32]

• ''Although there are regulatory requirements for some market participants to use consolidated data products, there is no requirement for market participants to purchase any proprietary market data product for regulatory purposes.'' [33]

• ''There are a variety of data products, and consumers of equity market data choose among them based on their needs. Like most producers, exchanges offer a variety of market data products at different price levels. Advanced proprietary market data products provide greater value to those who subscribe. As in any other market, each potential subscriber takes the features and prices of available products into account in choosing what market data products to buy based on its business model.'' [34]

• ''Exchange equity market data fees are a small cost for the industry overall: The data demonstrates that total exchange market data revenues are orders of magnitude smaller than (i) broker-dealer commissions, (ii) investment bank earnings from equity trading, and (iii) revenues earned by third-party vendors.'' [35]

• ''For proprietary exchange data feeds, the main question is whether there is a competitive market for proprietary market data. More than 40 active exchanges and alternative trading systems compete vigorously in both the market for order flow and in the market for market data. The two are closely linked: an exchange needs to consider the negative impact on its order flow if it raises the price of its market data. Furthermore, new entrants have been frequent over the past 10 years or so, and these venues often give market data away for free, serving as a check on pricing by more established exchanges. These are all the standard hallmarks of a competitive market.'' [36]

Professor Jones' conclusions are consistent with the demonstration of the competitive constraints on the pricing of market data demonstrated by analysis of exchanges as platforms for market data and trading services, as shown below.

b. Exchanges That Offer Market Data and Trading Services Function as Two-Sided Platforms

An exchange may demonstrate that its fees are constrained by competitive forces by showing that the platform theory of competition applies.

As the United States Supreme Court recognized in *Ohio* v. *American Express,* platforms are firms that act as intermediaries between two or more sets of agents, and typically the choices made on one side of the platform affect the results on the other side of the platform via externalities, or ''indirect network effects.'' [37] Externalities are linkages between the different ''sides'' of a platform such that one cannot understand pricing and competition for goods or services on one side of the platform in isolation; one must also account for the influence of the other side. As the Supreme Court explained:

> To ensure sufficient participation, two-sided platforms must be sensitive to the prices that they charge each side. . . . Raising the price on side A risks losing participation on that side, which decreases the value of the platform to side B. If the participants on side B leave due to this loss in value, then the platform has even less value to side A—risking a feedback loop of declining demand. . . . Two-sided platforms therefore must take these indirect network effects into account before making a change in price on either side.[38]

The Exchange and its affiliated exchanges have long maintained that they function as platforms between consumers of market data and consumers of trading services. Proving the existence of linkages between the two sides of this platform requires an in-depth economic analysis of both public data and confidential Exchange data about particular customers' trading activities and market data purchases. Exchanges, however, are prohibited from sharing details about these specific customer activities and purchases. For example, pursuant to Exchange Rule 7.41, transactions executed on the Exchange are processed anonymously.

The Exchange and its affiliated exchanges have retained a third party expert, Marc Rysman, Professor of Economics Boston University, to analyze how platform economics applies to stock exchanges' sale of market data products and trading services, and to explain how this affects the assessment of competitive forces affecting the exchanges' data fees.[39] Professor Rysman was able to analyze exchange data that is not otherwise publicly available in a manner that is consistent with the exchanges' confidentiality obligations to customers. As shown in his paper, Professor Rysman surveyed the existing economic literature analyzing stock exchanges as platforms between market data and trading activities, and explained the types of linkages between market data access and trading activities that must be present for an exchange to function as a platform. In addition, Professor Rysman undertook an empirical analysis of customers' trading activities within the NYSE group of exchanges in reaction to NYSE's introduction in 2015 of the NYSE Integrated Feed, a full order-by-order depth of book data product.[40]

Professor Rysman's analysis of this confidential firm-level data shows that firms that purchased the NYSE Integrated Feed market data product after its introduction were more likely to route orders to NYSE as opposed to one of the other NYSE-affiliated exchanges, such as NYSE Arca or NYSE American.[41] Moreover, Professor Rysman shows that the same is true for firms that did *not* subscribe to the NYSE Integrated Feed: the introduction of the NYSE Integrated Feed led to more trading on NYSE (as opposed to other NYSE-affiliated exchanges) by firms that did *not* subscribe to the NYSE Integrated Feed.[42] This is the sort of externality that is a key characteristic of a platform market.[43]

From this empirical evidence, Professor Rysman concludes:

• ''[D]ata is more valuable when it reflects more trading activity and more liquidity-providing orders. These linkages alone are enough to make platform economics necessary for understanding the pricing of market data.'' [44]

• ''[L]inkages running in the opposite direction, from data to trading, are also very likely to exist. This is because market data from an exchange reduces uncertainty about the likelihood, price, or timing of execution for an order on that exchange. This reduction in uncertainty makes trading on that exchange more attractive for traders that subscribe to that exchange's market data. Increased trading by data subscribers, in turn, makes trading on the exchange in question more attractive

[32] Jones Paper at 2.

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.* at 39–40.

[37] *Ohio* v. *American Express,* 138 S. Ct. 2274, 2280–81 (2018).

[38] *Id.* at 2281.

[39] *See* Exhibit 3B, Marc Rysman, *Stock Exchanges as Platforms for Data and Trading,* December 2, 2019 (hereinafter ''Rysman Paper''), ¶ 7.

[40] *See* Securities Exchange Act Release Nos. 74128 (January 23, 2015), 80 FR 4951 (January 29, 2015) (SR–NYSE–2015–03) (Notice of filing and immediate effectiveness of proposed rule change to establish NYSE Integrated Feed) and 76485 (November 20, 2015), 80 FR 74158 (November 27, 2015) (SR–NYSE–2015–57) (Notice of filing and immediate effectiveness of proposed rule change to establish fees for the NYSE Integrated Feed).

[41] Rysman Paper ¶¶ 79–89.

[42] *Id.* ¶¶ 90–91.

[43] *Id.* ¶ 90.

[44] *Id.* ¶ 95.

for traders that do not subscribe to the exchange's market data.'' [45]

• The ''mechanisms by which market data makes trading on an exchange more attractive for subscribers to market data . . . apply to a wide assortment of market data products, including BBO, order book, and full order-by-order depth of book data products at all exchanges.'' [46]

• ''[E]mpirical evidence confirms that stock exchanges are platforms for data and trading.'' [47]

• ''The platform nature of stock exchanges means that data fees cannot be analyzed in isolation, without accounting for the competitive dynamics in trading services.'' [48]

• ''Competition is properly understood as being between platforms (*i.e.,* stock exchanges) that balance the needs of consumers of data and traders.'' [49]

• ''Data fees, data use, trading fees, and order flow are all interrelated.'' [50]

• ''Competition for order flow can discipline the pricing of market data, and vice-versa.'' [51]

• ''As with platforms generally, overall competition between exchanges will limit their overall profitability, not margins on any particular side of the platform.'' [52]

c. Exchange Market Data Fees Are Constrained by the Availability of Substitute Platforms

Professor Rysman's conclusions that exchanges function as platforms for market data and transaction services mean that exchanges do not set fees for market data products without considering, and being constrained by, the effect the fees will have on the order-flow side of the platform. And as the D.C. Circuit recognized in *NetCoalition I,* ''[n]o one disputes that competition for order flow is fierce.'' [53] The court further noted that ''no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers,'' and that an exchange ''must compete vigorously for order flow to maintain its share of trading volume.'' [54]

Similarly, the Commission itself has recognized that the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [55] The Commission's Division of Trading and Markets has also recognized that with so many ''operating equities exchanges and dozens of ATSs, there is vigorous price competition among the U.S. equity markets and, as a result, [transaction] fees are tailored and frequently modified to attract particular types of order flow, some of which is highly fluid and price sensitive.'' [56] Indeed, today, equity trading is currently dispersed across 13 exchanges,[57] 31 alternative trading systems,[58] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 18% market share.[59]

Further, low barriers to entry mean that new exchanges may rapidly and inexpensively enter the market and offer additional substitute platforms to compete with the Exchange.[60] In addition to the 13 presently-existing exchanges, three new ones are expected to enter the market in 2020: Long Term Stock Exchange (LTSE), which has been approved as an equities exchange but is not yet operational; [61] Members Exchange (MEMX), which has recently filed its application to be approved as a registered equities exchange; [62] and Miami International Holdings (MIAX), which has announced its plan to introduce equities trading on an existing registered options exchange.[63]

Given Professor Rysman's conclusion that exchanges are platforms for market data and trading, this fierce competition for order flow on the trading side of the platform acts to constrain, or ''discipline,'' the pricing of market data on the other side of the platform.[64] And due to the ready availability of substitutes and the low cost to move order flow to those substitute trading venues, an exchange setting market data fees that are not at competitive levels would expect to quickly lose business to alternative platforms with more attractive pricing.[65] Although the various exchanges may differ in their strategies for pricing their market data products and their transaction fees for trades—with some offering market data for free along with higher trading costs, and others charging more for market data and comparatively less for trading—the fact that exchanges are platforms ensures that no exchange makes pricing decisions for one side of its platform without considering, and being constrained by, the effects that price will have on the other side of the platform.

In sum, the fierce competition for order flow thus constrains any exchange from pricing its market data at a supracompetitive price, and constrains the Exchange in setting its fees at issue here.

The proposed fees are therefore reasonable because in setting them, the Exchange is constrained by the availability of numerous substitute platforms offering market data products and trading. Such substitutes need not be identical, but only substantially similar to the product at hand.

More specifically, in reducing specified fees for the NYSE American BBO and NYSE American Trades market data products, the Exchange is constrained by the fact that, if its pricing across the platform is unattractive to customers, customers have their pick of an increasing number of alternative platforms to use instead of the Exchange. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish reasonable fees. The existence of numerous alternative platforms to the Exchange's platform ensures that the Exchange cannot set unreasonable market data fees without suffering the negative effects of that decision in the fiercely competitive market for trading order flow.

[45] *Id.* ¶ 96.

[46] *Id.*

[47] *Id.* ¶ 97.

[48] *Id.* ¶ 98.

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] *Id.* ¶ 100.

[53] *NetCoalition I,* 615 F.3d at 544 (internal quotation omitted).

[54] *Id.*

[55] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18).

[56] Commission Division of Trading and Markets, Memorandum to EMSAC, dated October 20, 2015, available here: *https://www.sec.gov/spotlight/emsac/memo-maker-taker-fees-on-equities-exchanges.pdf.*

[57] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[58] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[59] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[60] *See* Jones Paper at 10–11.

[61] *See* Securities Exchange Act Release No. 85828 (May 10, 2019) (File No. 10–234) (Findings, Opinion, and Order of the Commission in the Matter of the Application of Long Term Stock Exchange, Inc. for Registration as a National Securities Exchange).

[62] *See* Securities Exchange Act Release No. 87436 (October 31, 2019) (File No. 10–237) (Notice of filing of application of MEMX LLC for registration as a national securities exchange under Section 6 of the Act).

[63] *See* Press Release of Miami International Holdings Inc., dated May 17, 2019, available here: *https://www.miaxoptions.com/sites/default/files/press_release-files/MIAX_Press_Release_05172019.pdf.*

[64] Rysman Paper ¶ 98.

[65] *See* Jones Paper at 11.

d. The Availability of Substitute Market Data Products Constrains Fees for NYSE American BBO, NYSE American Trades, and NYSE BQT

Even putting aside the facts that exchanges are platforms and that pricing decisions on the two sides of the platform are intertwined, the Exchange is constrained in setting the proposed market data fees by the availability of numerous substitute market data products.

The NYSE BQT market data product is subject to significant competitive forces that constrain its pricing. Specifically, as described above, NYSE BQT competes head-to-head with the Nasdaq Basic product and the Cboe One Feed. These products each serve as reasonable substitutes for one another as they are each designed to provide investors with a unified view of real-time quotes and last-sale prices in all Tape A, B, and C securities. Each product provides subscribers with consolidated top-of-book quotes and trades from multiple U.S. equities markets. In the case of NYSE BQT, this product provides top-of-book quotes and trades data from five NYSE-affiliated U.S. equities exchanges, which together account for approximately 24% of consolidated U.S. equities trading volume as of October 2019.[66] Cboe One Feed similarly provides top-of-book quotes and trades data from Cboe's four U.S. equities exchanges. NYSE BQT, Nasdaq Basic, and Cboe One Feed are all intended to provide indicative pricing and are not intended to be used for order routing or trading decisions.

In addition to competing with proprietary data products from Nasdaq and Cboe, NYSE BQT also competes with the consolidated data feed. However, the Exchange does not claim that NYSE BQT is a substitute for consolidated data with respect to requirements under the Vendor Display Rule, which is Regulation NMS Rule 603(c).

The fact that this filing is proposing reductions in certain fees, fee credits, and free trial periods is itself confirmation of the inherently competitive nature of the market for the sale of proprietary market data. For example, Cboe recently filed proposed rule changes to reduce certain of its Cboe One Feed fees and noted that it attracted two additional customers because of the reduced fees.[67]

The Exchange notes that NYSE American BBO, NYSE American Trades, and NYSE BQT are entirely optional. The Exchange and its affiliates are not required to make the proprietary data products that are the subject of this proposed rule change available or to offer any specific pricing alternatives to any customers, nor is any firm or investor required to purchase these data products. Unlike some other data products (*e.g.,* the consolidated quotation and last-sale information feeds) that firms are required to purchase in order to fulfil regulatory obligations,[68] a customer's decision whether to purchase any of the Exchange's proprietary market data feeds is entirely discretionary. Most firms that choose to subscribe to the proprietary market data products from the Exchange and its affiliates do so for the primary goals of using them to increase their revenues, reduce their expenses, and in some instances compete directly with the Exchange's trading services. Such firms are able to determine for themselves whether or not the products in question or any other similar products are attractively priced. If market data products from the Exchange and its affiliates do not provide sufficient value to firms based on the uses those firms may have for it, such firms may simply choose to conduct their business operations in ways that do not use the products.[69] A clear illustration of this point is the fact that today, NYSE BQT has just one subscriber.

In addition, in the case of products that are also redistributed through market data vendors, such as Bloomberg and Refinitiv, the vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Currently, only one vendor subscribes to NYSE BQT, and that vendor has limited redistribution of NYSE BQT. No other vendors currently subscribe to NYSE BQT and likely will not unless their customers request it, and customers will not elect to pay the proposed fees unless such product can provide value by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. All of these factors operate as constraints on pricing proprietary data products.

Because of the availability of substitutes, an exchange that overprices its market data products stands a high risk that users may substitute another source of market data information for its own. Those competitive pressures imposed by available alternatives are evident in the Exchange's proposed pricing.

In setting the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish reasonable fees. The existence of numerous alternatives to the Exchange's platform and, more specifically, alternatives to the market data products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data

[66] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share/market/2019-10-31/.*

[67] *See* Securities Exchange Act Release Nos.86667 (August 14, 2019) (SR–CboeBZX–2019–069); 86670 (August 14, 2019) (SR–CboeBYX–2019–012); 86676 (August 14, 2019) (SR–CboeEDGA–2019–013); and 86678 (August 14, 2019) (SR–CboeEDGX–2019–048) (Notices of filing and Immediate effectiveness of proposed rule change to reduce fees for the Cboe One Feed) (collectively ''Cboe One Fee Filings''). The Cboe One Fee Filings were in effect from August 1, 2019 until September 30, 2019, when the Commission suspended them and instituted proceedings to determine whether to approve or disapprove those proposals. *See, e.g.,* Securities Exchange Act Release No. 87164 (September 30, 2019), 84 FR 53208 (October 4, 2019) (SR–CboeBZX–2019–069). On October 1, 2019, the Cboe equities exchanges refiled the Cboe One Fee Filings on the basis that they had new customers subscribe as a result of the Cboe One Fee Filings, and therefore its fee proposal had increased competition for top-of-book market data. *See* Securities Exchange Act Release Nos. 87312 (October 15, 2019), 84 FR 56235 (October 21, 2019) (SR–CboeBZX–2019–086); 87305 (October 14, 2019), 84 FR 56210 (October 21, 2019) (SR–CboeBYX–2019–015); 87295 (October 11, 2019), 84 FR 55624 (October 17, 2019) (SR–CboeEDGX–2019–059); and 87294 (October 11, 2019), 84 FR 55638 (October 17, 2019) (SR–CboeEDGZ–2019–015) (Notices of filing and immediate effectiveness of proposed rule changes to re-file the Small Retail Broker Distribution Program) (''Cboe One Fee Re-Filings''). On November 26, 2019, the Commission suspended the Cboe One Fee Re-Filings and instituted proceedings to determine whether to approve or disapprove those proposals. *See, e.g.,* Securities Exchange Act Release No. 87629 (November 26, 2019) (SR–CboeBZX–2019–086) (**Federal Register** publication pending).

[68] The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations. *See In the Matter of the Application of Securities Industry and Financial Markets Association for Review of Actions Taken by Self-Regulatory Organizations,* Release Nos. 34–72182; AP–3–15350; AP–3–15351 (May 16, 2014). Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions, and some broker-dealers and ATSs have chosen not to do so.

[69] *See generally* Jones Paper at 8, 10–11.

product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

2. The Proposed Fees Are Reasonable

The specific fees that the Exchange proposes for NYSE American Trades and NYSE American BBO are reasonable, for the following additional reasons.

Overall. This proposed fee change is a result of the competitive environment, as the Exchange seeks to decrease certain of its fees to attract subscribers that do not currently use the NYSE BQT market data product. The Exchange is proposing the fee reductions at issue to make the Exchange's fees more competitive for a specific segment of market participants, thereby increasing the availability of the Exchange's data products, and expanding the options available to firms making data purchasing decisions based on their business needs. The Exchange believes that this is consistent with the principles contained in Regulation NMS to ''promote the wide availability of market data and to allocate revenues to SROs that produce the most useful data for investors.'' [70]

Access Fee. By adopting a reduced access fee to access U.S. equity market data that is used in display-only format and that serves as the foundation of NYSE BQT, the Exchange believes that more data recipients may choose to subscribe to these products, thereby expanding the distribution of this market data for the benefit of investors that participate in the national market system and increasing competition generally. In addition, the proposed reduced access fee is reasonable when compared to similar fees for comparable products offered by other markets. For example, NYSE American Trades provides investors with alternative market data and is similar to the Nasdaq Last Sale Data Feed; Nasdaq charges redistributors a monthly fee of $1,500 per month, which is higher than the current access fee for NYSE American Trades, and higher than the proposed access fee for display-only users.[71] The Exchange also believes that offering a reduced access fee for display-only use expands the range of options for offering the Exchange's market data products and would allow data recipients greater choice in selecting the most appropriate level of data and fees for the Professional and Non-Professional Users they service.

The Exchange determined to charge the $100 access fee for its proposed Per User Access Fee because it constitutes a substantial reduction of the current fee, with the intended purpose of increasing use of NYSE BQT. NYSE BQT has been in place since 2014 but has only one subscriber, which itself has limited distribution of the product. The Exchange believes that in order to compete with other indicative pricing products such as Nasdaq Basic and Cboe One Feed, it needs to provide a meaningful financial incentive for data recipients to subscribe to NYSE BQT. Accordingly, the proposed reduction to the Access Fees for NYSE American Trades and NYSE American BBO, together with the proposed reduction to the Access Fees for NYSE BBO, NYSE Trades, NYSE Arca BBO, and NYSE Arca Trades, is reasonable because the reductions will make NYSE BQT a more attractive offering for data recipients and make it more competitive with Nasdaq Basic and Cboe One Feed. For example, the External Distribution Fee for Cboe One Feed is currently $5,000 (which is the sum of the External Distribution fees for the four exchange data products that are included in Cboe One Feed) plus a Data Consolidation Fee of $1,000, for a total of $6,000. Evidence of the competition among exchange groups for these products has previously been demonstrated via fee changes. For example, following the introduction of the Cboe One Feed, Nasdaq responded by reducing its fees for the Nasdaq Basic product.[72] With the proposed changes by the Exchange, NYSE, and NYSE Arca, the Exchange is similarly seeking to compete by decreasing the total access fees for NYSE BQT from $6,250 to $850. This proposed rule change therefore demonstrates the existence of an effective, competitive market because this proposal resulted from a need to generate innovative approaches in response to competition from other exchanges that offer market data for a specific segment of market participants.

Redistribution Fees. Similarly, the proposed reduction to the NYSE American Trades Redistribution Fee is reasonable because it is designed to provide an incentive for Redistributors to make NYSE BQT available so that data recipients can subscribe to NYSE BQT. The Exchange further believes that the proposed reduction to the NYSE American Trades Redistribution Fee is reasonable because it is designed to compete with a similar credit offered by the Cboe family of equity exchanges.[73]

One-Month Free Trial. The Exchange believes that the proposed rule change to provide the NYSE American market data products to new customers free-of-charge for their first subscription month is reasonable because it would allow vendors and subscribers to become familiar with the feeds and determine whether they suit their needs without incurring fees. Making a new market data product available for free for a trial period is consistent with offerings of other exchanges. For example, Nasdaq offers new subscribers its market data products a 30-day waiver of user fees.[74]

Deletion of Obsolete Text. The Exchange believes that it is reasonable to delete references to obsolete rule text and dates from the Fee Schedule and to make non-substantive clarifying amendments. The Exchange believes that the proposed changes are reasonable because they would result in greater specificity and precision within the Fee Schedule, which would contribute to reasonably ensuring that the fees described there are clear and accurate. Specifically, the proposed changes are reasonable because they would remove obsolete rule text and dates from the Fee Schedule related to a Decommission Extension Fee that is no longer charged by the Exchange and provide greater specificity regarding the application of the Enterprise Fee.

For all of the foregoing reasons, the Exchange believes that the proposed fees are reasonable.

The Proposed Fees Are Equitably Allocated

The Exchange believes the proposed fees for NYSE American Trades and

[70] *See* Regulation NMS Adopting Release, 70 FR 37495, at 37503.

[71] *See* Section 139(d) of the Nasdaq Equity 7 Pricing Schedule.

[72] *See e.g.* Securities Exchange Act Release No. 83751 (July 31, 2018), 83 FR 38428 (August 6, 2018) (SR–NASDAQ–2018–058) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Lower Fees and Administrative Costs for Distributors of Nasdaq Basic, Nasdaq Last Sale, NLS Plus and the Nasdaq Depth-of-Book Products Through a Consolidated Enterprise License). Nasdaq filed the proposed fee change to lower the Enterprise Fee for Nasdaq Basic and other market data products in response to the Enterprise Fee for the Cboe One Feed adopted by Cboe family of exchanges.

[73] *See, e.g.,* BZX Price List—U.S. Equities available at *http://www.nasdaqtrader.com/Trader.aspx?id=DPUSdata#db* [sic]. BZX charges $500 per month for internal distribution, and $2,500 per month for external distribution, of BZX Last Sale. BZX also charges $500 per month for internal distribution, and $2,500 per month for external distribution, of BZX Top. Each external distributor is eligible to receive a credit against its monthly Distributor Fee for BZX Las [sic] Sale equal to the amount of its monthly User Fees up to a maximum of the Distributor Fee for BZX Las [sic] Sale. *See* Cboe BZX U.S. Equities Exchange Fee Schedule at *http://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[74] *See* Section 112(b)(1) of Nasdaq's Equity 7 Pricing Schedule.

NYSE American BBO are allocated fairly and equitably among the various categories of users of the feed, and any differences among categories of users are justified.

Overall. As noted above, this proposed fee change is a result of the competitive environment for market data products that provide indicative pricing information across a family of exchanges. To respond to this competitive environment, the Exchange seeks to amend its fees to access NYSE American Trades and NYSE American BBO in a display-only format, which the Exchange hopes will attract additional subscribers for its NYSE BQT market data product. The Exchange is proposing the fee reductions to make the Exchange's fees more competitive for a specific segment of market participants, thereby increasing the availability of the Exchange's data products, expanding the options available to firms making data purchasing decisions based on their business needs, and generally increasing competition.

Access Fee. The Exchange believes that the proposed Per User Access Fee is equitable as it would apply equally to all data recipients that choose to subscribe to NYSE American Trades or NYSE American BBO in a display-only format. Because NYSE American Trades and NYSE American BBO are optional products, any data recipient could choose to subscribe to NYSE American Trades or NYSE American BBO for display-only use and be eligible for the proposed reduced fee. The Exchange does not believe that it is inequitable that this proposed fee reduction would be available only to data recipients that use NYSE American Trades or NYSE American BBO in a display-only format. Non-display data represents a different set of use cases than display-only usage; non-display data can be used by data recipients for a wide variety of profit-generating purposes, including proprietary and agency trading and smart order routing, as well as by data recipients that operate order matching and execution platforms that compete directly with the Exchange for order flow. The data also can be used for a variety of non-trading purposes that indirectly support trading, such as risk management and compliance. Although some of these non-trading uses do not directly generate revenues, they can nonetheless substantially reduce the recipient's costs by automating such functions so that they can be carried out in a more efficient and accurate manner and reduce errors and labor costs, thereby benefiting end users. The Exchange believes that charging a different access fee for non-display use is equitable because data recipients can derive substantial value from such uses, for example, by automating tasks so that can be performed more quickly and accurately and less expensively than if they were performed manually.

Redistribution Fees. The Exchange believes the proposed change to provide a credit to a Redistributor that externally redistributes NYSE American Trades to Professional and Non-Professional Users in a display-only format in an amount equal to the monthly Professional User and Non-Professional User fees for such external distribution, up to a maximum of the Redistribution Fee, is equitably allocated. The proposed change would apply equally to all Redistributors that choose to externally redistribute the NYSE American Trades product, and would serve as an incentive for Redistributors to make NYSE American Trades more broadly available for use by both Professional and Non-Professional Users. This, in turn, could provide an incentive for Redistributors to make NYSE BQT available to their customers.

One-Month Free Trial. The Exchange believes the proposal to provide the NYSE American market data products to new customers free-of-charge for their first subscription month is equitable because it applies to any first-time subscriber, regardless of the use they plan to make of the feed. As proposed, any first-time subscriber would not be charged the Access Fee, Non-Display Fee, any applicable Professional and Non-Professional User Fee, or Redistribution Fee for any of the NYSE American market data products for one calendar month. The Exchange believes it is equitable to restrict the availability of this one-month free trial to customers that have not previously subscribed to any NYSE American market data product, since customers who are current or previous subscribers are already familiar with the products and whether they would suits their needs.

Deletion of Obsolete Text. The Exchange believes that deleting obsolete rule text and dates from the Fee Schedule and make non-substantive clarifying amendments is equitably allocated because these proposed changes do not change fees, but rather, result in greater specificity and precision within the Fee Schedule, which would contribute to reasonably ensuring that the fees described there are clear and accurate. The Exchange also believes that the proposed changes are equitable because all readers of the Fee Schedule would benefit from the increased specificity and clarity that this proposed rule change would provide.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the NYSE American market data products are equitably allocated.

The Proposed Fees Are Not Unfairly Discriminatory

The Exchange believes the proposed fees are not unfairly discriminatory because any differences in the application of the fees are based on meaningful distinctions between customers, and those meaningful distinctions are not unfairly discriminatory between customers.

Overall. As noted above, this proposed fee change is a result of the competitive environment for market data products that provide indicative pricing information across a family of exchanges. To respond to this competitive environment, the Exchange seeks to amend its fees to access NYSE American Trades and NYSE American BBO in a display-only format, which the Exchange hopes will attract more subscribers for its NYSE BQT market data product. The Exchange is proposing the fee reductions to make the Exchange's fees more competitive for a specific segment of market participants, thereby increasing the availability of the Exchange's data products, expanding the options available to firms making data purchasing decisions based on their business needs, and generally increasing competition.

Access Fee. The Exchange believes that the proposed Per User Access Fee is not unfairly discriminatory as it would apply equally to all data recipients that choose to subscribe to NYSE American Trades or NYSE American BBO in a display-only format. Because NYSE American Trades and NYSE American BBO are optional products, any data recipient could choose to subscribe to NYSE American Trades or NYSE American BBO for display-only use and be eligible for the proposed reduced fee. The Exchange does not believe that it is unfairly discriminatory that this proposed fee reduction would be available only to data recipients that use NYSE American Trades or NYSE American BBO in a display-only format. Non-display data can be used by data recipients for a wide variety of profit-generating purposes, including proprietary and agency trading and smart order routing, as well as by data recipients that operate order matching and execution platforms that compete directly with the Exchange for order flow. The data also can be used for a variety of non-trading purposes that indirectly support trading, such as risk management and compliance.

While some of these non-trading uses do not directly generate revenues, they can nonetheless substantially reduce the recipient's costs by automating such functions so that they can be carried out in a more efficient and accurate manner and reduce errors and labor costs, thereby benefiting end users. The Exchange therefore believes that there is a meaningful distinction between display and non-display users of market data and that charging a different access fee for non-display use is not unfairly discriminatory because data recipients can derive substantial value from such non-display uses, for example, by automating tasks so that can be performed more quickly and accurately and less expensively than if they were performed manually.

Redistribution Fees. The Exchange believes the proposed change to provide a credit to a Redistributor that externally redistributes NYSE American Trades to Professional and Non-Professional Users in a display-only format in an amount equal to the monthly Professional User and Non-Professional User fees for such external distribution, up to a maximum of the Redistribution Fee, is not unfairly discriminatory. The proposed credit would apply equally to all Redistributors that choose to externally redistribute the NYSE American Trades product for display use, and would serve as an incentive for Redistributors to make NYSE American Trades more broadly available for use by both Professional and Non-Professional Users. This, in turn, could provide an incentive for Redistributors to make NYSE BQT available to their customers.

The Exchange believes that there is a meaningful distinction between vendors that distribute market data in a display-only format, as such vendors are more likely to service the non-professional community, and vendors that distribute market data for non-display use only, as users of non-display data are more likely to be professionals that derive substantial value from such non-display uses. While this credit is not available to vendors that redistribute NYSE American Trades for non-display use only, such vendors would be eligible for this credit if they choose to expand their distribution of NYSE American Trades for display use. NYSE BQT is targeted for display use and the Exchange believes that the proposed credit would increase the number of Redistributors—whether current vendors that redistribute on a non-display only basis or new vendors—that would make NYSE BQT available to their customers.

One-Month Free Trial. The Exchange believes that the proposed rule change providing for a one-month free trial period to test is not unfairly discriminatory because the financial benefit of the fee waiver would be available to all firms subscribing to a NYSE American market data product for the first time on a free-trial basis. The Exchange believes there is a meaningful distinction between customers that are subscribing to a market data for the first time, who may benefit from a period within which to set up and test use of the product before it becomes fee liable, and users that are already receiving the Exchange's market data products and are deriving value from such use. The Exchange believes that the limited period of the free trial would not be unfairly discriminatory to other users of the Exchange's market data products because it is designed to provide a reasonable period of time to set up and test a new market data product. The Exchange further believes that providing a free trial for a calendar month would ease administrative burdens for data recipients to subscribe to a new data product and eliminate fees for a period before such users are able to derive any benefit from the data.

Deletion of Obsolete Text. The Exchange believes that deleting obsolete rule text and dates from the Fee Schedule and make non-substantive clarifying amendments is not unfairly discriminatory because these proposed changes do not change fees, but rather, result in greater specificity and precision within the Fee Schedule, which would contribute to reasonably ensuring that the fees described there are clear and accurate. The Exchange also believes that the proposed changes are not unfairly discriminatory because all readers of the Fee Schedule would benefit from the increased specificity and clarity that this proposed rule change would provide.

For all of the foregoing reasons, the Exchange believes that the proposed fees are not unfairly discriminatory.

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.

Intramarket Competition. The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As noted above, the proposed fee schedule would apply to all subscribers of NYSE American market data products, and customers may not only choose whether to subscribe to the products at all, but also may tailor their subscriptions to include only the products and uses that they deem suitable for their business needs.

The Exchange also believes that the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue market on competition. As shown above, to the extent that particular proposed fees apply to only a subset of subscribers, those distinctions are not unfairly discriminatory and do unfairly burden one set of customers over another. To the contrary, by tailoring the proposed fees in this manner, the Exchange believes that it has eliminated the potential burden on competition that might result, for instance, from unfairly asking vendors that distribute market data in a display-only format to pay the same fees as vendors that distribute market data for non-display use to professionals that derive substantial value from such non-display uses.

Intermarket Competition. The Exchange believes that the proposed fees do not impose a burden on competition or on other exchanges that is not necessary or appropriate; indeed, the Exchange believes the proposed fee changes would have the effect of increasing competition. As demonstrated above and in Professor Rysman's attached paper, exchanges are platforms for market data and trading. In setting the proposed fees, the Exchange is constrained by the availability of substitute platforms also offering market data products and trading, and low barriers to entry mean new exchange platforms are frequently introduced. The fact that exchanges are platforms ensures that no exchange can make pricing decisions for one side of its platform without considering, and being constrained by, the effects that price will have on the other side of the platform. In setting fees at issue here, the Exchange is constrained by the fact that, if its pricing across the platform is unattractive to customers, customers will have its pick of an increasing number of alternative platforms to use instead of the Exchange. Given this intense competition between platforms, no one exchange's market data fees can impose an unnecessary burden on competition, and the Exchange's proposed fees do not do so here.

In addition, the Exchange believes that the proposed fees do not impose a burden on competition or on other exchanges that is not necessary or appropriate because of the availability of numerous substitute market data products. Specifically, as described above, NYSE BQT competes head-to-head with the Nasdaq Basic product and

the Cboe One Feed. These products each serve as reasonable substitutes for one another as they are each designed to provide investors with a unified view of real-time quotes and last-sale prices in all Tape A, B, and C securities. Each product provides subscribers with consolidated top-of-book quotes and trades from multiple U.S. equities markets. NYSE BQT provides top-of-book quotes and trades data from five NYSE-affiliated U.S. equities exchanges, while Cboe One Feed similarly provides top-of-book quotes and trades data from Cboe's four U.S. equities exchanges. NYSE BQT, Nasdaq Basic, and Cboe One Feed are all intended to provide indicative pricing and therefore, are reasonable substitutes for one another. Additionally, market data vendors are also able to offer close substitutes to NYSE BQT. Because market data users can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another source of market data information for its own. These competitive pressures ensure that no one exchange's market data fees can impose an unnecessary burden on competition, and the Exchange's proposed fees do not do so here.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [75] of the Act and subparagraph (f)(2) of Rule 19b–4 [76] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [77] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEAMER–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–NYSEAMER–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–NYSEAMER–2019–55, and should be submitted on or before January 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[78]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–27870 Filed 12–26–19; 8:45 am]

BILLING CODE 8011–01–P

[75] 15 U.S.C. 78s(b)(3)(A).

[76] 17 CFR 240.19b–4(f)(2).

[77] 15 U.S.C. 78s(b)(2)(B).

[78] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87804; File No. SR–ICC–2019–011]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Default Auction Procedures—Initial Default Auctions and the ICC Secondary Auction Procedures

December 19, 2019.

I. Introduction

On October 31, 2019, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise ICC's Default Auction Procedures—Initial Default Auctions (''Initial Default Auction Procedures'') and Secondary Auction Procedures. The proposed rule change was published for comment in the **Federal Register** on November 18, 2019.[3] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

To resolve a default by a Clearing Participant, ICC may auction the defaulting Clearing Participant's open CDS contracts through one or more auctions where ICC's other, non-defaulting Clearing Participants bid on the contracts.[4] If ICC does not auction

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to the ICC Default Auction Procedures—Initial Default Auctions and the ICC Secondary Auction Procedures; Exchange Act Release No. 87502 (Nov. 12, 2019); 84 FR 63693 (Nov. 18, 2019) (''Notice'').

[4] Capitalized terms used herein but not otherwise defined have the meanings assigned to them in the ICC Clearing Rules (the ''Rules'') or the Auction Procedures. The description herein is substantially excerpted from the Notice, 84 **Federal Register** at 63693.

off all of the open CDS contracts in an initial auction, ICC may conduct one or more secondary auctions to allocate the remaining open CDS contracts. ICC conducts initial auctions pursuant to its Initial Default Auction Procedures and secondary auctions pursuant to its Secondary Auction Procedures (collectively, the ''Auction Procedures''). The proposed rule change would improve both the initial and secondary default auction processes by amending the Auction Procedures to (i) require that ICC use the automated Default Management System (''DMS'') to communicate with Clearing Participants and that Clearing Participants use the DMS to communicate with ICC; (ii) allow for all or nothing bidding in default auctions; and (iii) update defined terms and make clarifications in light of these changes.

The proposed rule change would make substantially identical changes to both the Initial Default Auction Procedures and the Secondary Auction Procedures. Thus, for the sake of brevity, the description below refers collectively to changes to the Auction Procedures.

A. Automated DMS

ICC's DMS is a web-based system that ICC uses to set the specifications for an auction as well as to communicate certain information to, and receive certain information from, Clearing Participants with respect to an auction. Clearing Participants bid on auctions through the DMS, and the DMS in turns controls bidding by, for example, prohibiting a Clearing Participant from submitting more than one valid all-or-nothing bid, as discussed further below. Moreover, through the DMS, ICC announces winners of auctions. ICC has assigned to Clearing Participants credentials for logging into and using the DMS, and Clearing Participants have tested the DMS by using it in various default drills.

Currently, under the Auction Procedures, ICC communicates the details of an auction to Clearing Participants in writing, using a standardized form that is currently set out in Annex A of the Auction Procedures. The proposed rule change would delete Annex A in its entirety and would require that ICC communicate the details of an auction to Clearing Participants through the DMS rather than in writing. Similarly, the proposed rule change would require that ICC notify the winning bidder in an auction through the DMS, rather than by email, telephone, or in writing (which are the methods that the Auction Procedures currently require ICC to use to notify a winning bidder). Finally, the Auction Procedures allow ICC to set a minimum bid requirement for an auction, under which Clearing Participants are required to bid for a minimum notional amount of contracts. Currently ICC must communicate this minimum bid requirement to Clearing Participants through a notice, the form of which is set out in Annex B to the Auction Procedures. Under the proposed rule change, ICC would still be able to set a minimum bid requirement as before, but the proposed rule change would delete Annex B in its entirety and would require that ICC communicate the details of a minimum bid requirement to Clearing Participants through the DMS instead. Thus, the proposed rule change would give ICC the ability to communicate the details of an auction to Clearing Participants electronically, through the DMS, which is designed to help improve the speed and consistency of such communications.

The proposed rule change similarly would require that Clearing Participants communicate with ICC through the DMS rather than through written communications as required under the current Rules. Specifically, Clearing Participants currently are required to submit bids in writing using a Bid Form. Under the proposed rule change Clearing Participants would be required to submit bids in an auction electronically through the DMS instead. This is designed to improve the speed and accuracy of such submissions.

Finally, the current Auction Procedures specify that ICC may set a minimum bid size for an auction and currently provide that any bid below the minimum bid size will be null and void. The proposed rule change would leverage the DMS to automate these existing requirements by specifying that the DMS would be designed to automatically prevent Clearing Participants from submitting bids below the minimum bid size and to render null and void any bid below the minimum bid size that the DMS accepted in error. This too is designed to help improve the speed and accuracy of bid submissions by Clearing Participants, and also to help ensure that such bid submissions are consistent with existing requirements.

B. All or Nothing Bidding

Currently, the Auction Procedures do not permit a Clearing Participant to submit an all or nothing bid. An all or nothing bid is a bid in which the Clearing Participant stipulates that, should its bid be the winning bid, the Clearing Participant will receive 100% of the contracts being auctioned or no contracts at all. The proposed rule change would revise the Auction Procedures to allow Clearing Participants to submit all or nothing bids. Specifically, a Clearing Participant could submit one all or nothing bid per auction. A Clearing Participant would do so by marking the bid as an all or nothing bid in the bid submission (which, as noted above, would be submitted electronically through the DMS). The proposed rule change would also specify that a Clearing Participant could submit in the same auction both one all or nothing bid and non-all or nothing bids (referred to in the proposed rule change as ''Standard Bids'') on its own behalf or on behalf of its customers.

Under the Auction Procedures, ICC determines the auction price by ordering bids sequentially, starting with the highest bid price and ending with the lowest bid price. The price of the bid at which, along with any equal or higher bids, the sum of the notional amount of contracts being purchased equals or is greater than the notional amount of contracts that ICC is auctioning is the clearing price of the auction (the ''Auction Clearing Price''). In other words, ICC proceeds down the list of bids by price, starting with the highest priced bid, and sets the Auction Clearing Price at the bid that, along with the other higher priced bids before it, allows ICC to allocate 100% of the open CDS contracts.

The Auction Procedures currently require that, in the event there are multiple bids at the Auction Clearing Price and there is a shortfall of open CDS contracts, ICC must allocate the contracts *pro rata* according to the notional amount of contracts that each winning bidder requested in its bid. As revised under the proposed rule change, the Auction Procedures would require that, where there is an all or nothing bid in the sequence of bids before the Auction Clearing Price, the price of the all or nothing bid would set the Auction Clearing Price (because that would be the highest priced bid that would allow ICC to allocate 100% of the open contracts). In that case, ICC would allocate to the all or nothing bidder 100% of the contracts even if there are Standard Bids at a higher or equal price. If there were more than one all or nothing bid at the Auction Clearing Price, then the Auction Procedures, as revised under the proposed rule change, would require that ICC allocate the portfolio equally among all the bidders submitting all or nothing bids.

The proposed rule change would update other provisions of the Auction Procedures to clarify how those

provisions would apply in light of all or nothing bidding. First, the Auction Procedures currently provide that ICC may, after an initial auction, in its discretion and after consultation with the CDS Risk Committee, determine the Auction Clearing Price for such an auction to be less than 100% of the notional amount of the contracts and declare a second auction to auction off the remaining contracts. ICC may do so if, in its reasonable determination, awarding 100% of the notional amount of the contracts would have a material impact on the amounts payable or receivable by ICC. The proposed rule change would not alter this provision but would specify that, in such a situation, ICC could disregard any all or nothing bids received in the initial auction.

Second, the proposed rule change would revise the Auction Procedures to clarify how an all or nothing bid affects the calculation of a Clearing Participant's bid price for purposes of determining the competitiveness of a Clearing Participant's bid and satisfaction of a Clearing Participant's minimum bid requirement. The competitiveness of a Clearing Participant's bid and satisfaction of a Clearing Participant's minimum bid requirement are important because under ICC Rule 802(b) and the default auction priority set out in the Auction Procedures, in the event that ICC needs to use non-defaulting Clearing Participants' contributions to the Guaranty Fund to resolve the default of a Clearing Participant, ICC uses first the contributions to the Guaranty Fund attributable to Clearing Participants that did not satisfy their minimum bid requirement (referred to as Non-Bidding Participants), followed by those that submitted less competitive bids. Currently, ICC uses the weighted average of a Clearing Participant's Standard Bids to determine bid price and thus to determine the competitiveness of a Clearing Participant's bids in an auction for these purposes. Under the updated Auction Procedures, as revised by the proposed rule change, where a Clearing Participant has submitted both an all or nothing bid and one or more Standard Bids, the Clearing Participant's bid price would be the more competitive of (1) the weighted average bid price of all valid Standard Bids made by the Clearing Participant in the auction (weighted by the portfolio size of each such bid, and converted into USD at the relevant FX spot rate, if applicable) and (2) the price of any valid All or Nothing Bid made by the Clearing Participant in the Auction. For this purpose, the more competitive of the two would be the one that results in the best outcome for ICC; in other words, the bid under which ICC will receive the most, or pay out the least, cash in return for the auctioned contracts.

Finally, under the updated Auction Procedures, as revised by the proposed rule change, if a Clearing Participant's Standard Bids do not satisfy its minimum bid requirement, the Clearing Participant's bid price would be the price of its all or nothing bid. Where a Clearing Participant has submitted only one or more Standard Bids (and has not submitted an all or nothing bid), and that Clearing Participant's Standard Bids do not satisfy its minimum bid requirement, the Auction Procedures would treat the Clearing Participant as a Non-Bidding Participant, which, as noted above, has consequences under ICC Rule 802(b). Specifically, if ICC needs to use non-defaulting Clearing Participants' contributions to the Guaranty Fund to resolve the default of a Clearing Participant, ICC uses first the contributions to the Guaranty Fund attributable to Non-Bidding Participants.[5]

C. Updates to Defined Terms and Clarifications

Related to the changes described above, the proposed rule change would update defined terms and make an additional clarification to the Auction Procedures.

In connection with the proposed requirement that Clearing Participants submit bids through the DMS, and to better specify the meaning of the defined term, the proposed rule change would change the defined term ''Closing Time'' to ''Bidding Close Time.'' The proposed rule change would define the term as the bidding close time specified by ICC in the relevant auction specifications.

To distinguish all or nothing bids, the proposed rule change would add to the Auction Procedures the defined term ''Standard Bid.'' A Standard Bid would be a valid bid submitted by a Clearing Participant that was not an all or nothing bid.

To refer to a bid submitted through the DMS, rather than in paper through the bid form, the proposed rule change would create the defined term ''Bid Submission.'' The proposed rule change would define the term Bid Submission to mean a bid submitted through the DMS.

Finally, the Auction Procedures currently allow a Clearing Participant to transfer its minimum bid requirement to an affiliate that is also a Clearing Participant. The Auction Procedures specify that, in such a case, a Clearing Participant that so transfers or outsources its minimum bid requirement to an affiliate remains liable for any breach by its affiliate in respect of such Clearing Participant's Minimum Bid Requirement. The proposed rule change would further clarify that in such a case, a Clearing Participant will take on the same position as a Senior Bidder, Split Bidder, Subordinate Bidder, or Non-Bidding Participant as the affiliate, as appropriate. This change is unrelated to the other changes discussed above, but ICC is using the proposed rule change to submit this additional clarification.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[6] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[7] and Rule 17Ad–22(d)(11) thereunder.[8]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible, and, in general, to protect investors and the public interest.[9] As discussed above, the proposed rule change would require that ICC use the DMS to communicate certain information to Clearing Participants, such as specific parameters of an auction, and would in turn, require Clearing Participants to use the DMS to communicate their bids to ICC. The DMS would also automatically reject bids that do not satisfy the minimum bid size. The Commission

[5] *See* ICC Rule 802(b) and the default auction priority set out in the Auction Procedures.

[6] 15 U.S.C. 78s(b)(2)(C).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 240.17Ad–22(d)(11).

[9] 15 U.S.C. 78q–1(b)(3)(F).

believes that in doing so the proposed rule change would improve the efficiency and accuracy of communications regarding default auctions, which may help to avoid delays or miscommunications that could delay the completion of an auction. Thus, in requiring use of the DMS, the Commission believes the proposed rule change would help to promote the prompt resolution of default auctions. Similarly, the Commission believes that all or nothing bidding would enhance ICC's ability to sell all of the open CDS contracts in an initial default auction by providing a means for a single bidder to take all of the contracts and requiring that ICC allocate such contracts to that bidder if the all or nothing bid meets the Auction Clearing Price. Finally, the Commission believes that the updates to the defined terms and the clarification regarding a Clearing Participant's ability to transfer its minimum requirement to an affiliate would support and enhance ICC's ability to implement these changes.

Through default auctions, ICC allocates the open CDS contracts of a defaulting Clearing Participant to other, non-defaulting Clearing Participants. Thus, in improving the efficiency of such auctions, the Commission believes the proposed rule change would promote the prompt and accurate clearance and settlement of the CDS transactions resulting from such auctions. Moreover, the Commission believes that the default of a Clearing Participant, if not promptly resolved, could causes losses for ICC. The Commission believes the proposed rule change would help to avoid these losses by promoting the prompt resolution of default auctions, and therefore the prompt resolution of a Clearing Participant's default. Because losses resulting from the default of a Clearing Participant could disrupt ICC's ability to operate and therefore threaten ICC's access to securities and funds, the Commission believes the proposed rule change also would help to assure the safeguarding of securities and funds in ICC's custody and control. Finally, for these reasons, the Commission believes that the proposed rule change would, in general, protect investors and the public interest.

Therefore, the Commission finds that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds in ICC's custody and control, and, in general, protect investors and the public interest, consistent with the Section 17A(b)(3)(F) of the Act.[10]

B. Consistency With Rule 17Ad–22(d)(11)

Rule 17Ad–22(d)(11) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of its default procedures publicly available and establish default procedures that ensure that ICC can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default.[11] As discussed above, the Commission believes the proposed rule change would improve the efficiency and accuracy of communications regarding default auctions and increase the likelihood that ICC is able to allocate all open CDS contracts in an initial auction by providing a means for a single bidder to take all of the contracts up for auction. The Commission believes that these changes would help ICC to resolve defaults quickly through auctions. The Commission believes, in turn, that resolving defaults quickly through auctions would therefore help to ensure that ICC can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a Clearing Participant's default.

Therefore, for the above reasons the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(d)(11).[12]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[13] and Rule 17Ad–22(d)(11) thereunder.[14]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[15] that the proposed rule change (SR–ICC–2019–011), be, and hereby is, approved.[16]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–27872 Filed 12–26–19; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 15 U.S.C. 17Ad–22(d)(11).

[12] 15 U.S.C. 17Ad–22(d)(11).

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 17 CFR 240.17Ad–22(d)(11).

[15] 15 U.S.C. 78s(b)(2).

[16] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–072, OMB Control No. 3235–0076]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Form D

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form D (17 CFR 239.500) is a notice of sales filed by issuers making an offering of securities in reliance on an exemption under Regulation D (17 CFR 230.501 *et seq.*) or Section 4(a)(5) of the Securities Act of 1933 (15 U.S.C. 77d(a)(5)). Regulation D sets forth rules governing the limited offer and sale of securities without Securities Act registration. The purpose of Form D is to collect empirical data, which provides a continuing basis for action by the Commission either in terms of amending existing rules and regulations or proposing new ones. In addition, the Form D allows the Commission to elicit information necessary in assessing the effectiveness of Regulation D (17 CFR 230.501 *et seq.*) and Section 4(6) of the Securities Act of 1933 (15 U.S.C. 77d(6)) as capital-raising devices for all businesses. Approximately 23,571 issuers file Form D and it takes approximately 4 hours per response. We estimate that 25% of 4 hours per response (1 hour per response) is prepared by the issuer for an annual reporting burden 23,571 hours (1 hour per response × 23,571 responses).

Written comments are invited on: (a) Whether this collection of information

is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 19, 2019.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–27863 Filed 12–26–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87803; File No. SR–NYSE–2019–70]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Partial Amendment No. 1, To Amend the Fees for NYSE BBO and NYSE Trades

December 19, 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 4, 2019, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 17, 2019, the Exchange filed Partial Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Partial Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (1) amend the fees for NYSE BBO and NYSE Trades by modifying the application of the Access Fee; (2) amend the fees for NYSE Trades by adopting a credit applicable to the Redistribution Fee; and (3) adopt a one-month free trial for all NYSE market data products. The Exchange also proposes to remove certain obsolete text. The Exchange proposes to implement the proposed fee changes on February 3, 2020. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to decrease the fees for certain NYSE market data products, as set forth on the NYSE Proprietary Market Data Fee Schedule (''Fee Schedule''). These fee decreases, taken together with fee decreases filed by the Exchange's affiliated exchanges, NYSE Arca, Inc. (''NYSE Arca'') and NYSE American LLC (''NYSE American''),[4] will reduce the fees associated with the NYSE BQT proprietary data product, which competes directly with similar products offered by both the Nasdaq and Cboe families of U.S. equity exchanges. Collectively, the proposed fee decreases are intended to respond to the competition posed by similar products offered by the other exchange groups.

Specifically, the Exchange proposes to (1) reduce the Access Fees by more than 93% for subscribers of NYSE BBO and NYSE Trades that receive a data feed and use those market data products in a display-only format; (2) provide for a credit applicable to the Redistribution Fee for subscribers of NYSE Trades that use that market data product for display purposes; and (3) adopt a one-month free trial for all NYSE market data products. The Exchange also proposes non-substantive changes to remove certain obsolete text from the Fee Schedule. All of the proposed changes would decrease fees for market data on the Exchange.

The Exchange proposes to implement these proposed fee changes on February 3, 2020.

Background

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. 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.'' [5]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [6] Indeed, equity trading is currently dispersed across 13 exchanges,[7] 31 alternative trading systems,[8] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 18% market share (whether including or excluding auction volume).[9]

With the NYSE BQT market data product, NYSE and its affiliates compete

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Partial Amendment No. 1, the Exchange provided an additional example in support of the proposed rule change.

[4] *See* SR–NYSEArca–2019–88 and SR–NYSEAmer–2019–55.

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7–10–04) (Final Rule) (''Regulation NMS Adopting Release'').

[6] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule) (''Transaction Fee Pilot'').

[7] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[8] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[9] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

head to head with the Nasdaq Basic [10] and Cboe One Feed [11] market data products. Similar to those market data products, NYSE BQT, which was established in 2014,[12] consists of certain elements from the NYSE BBO and NYSE Trades market data products as well as from market data products from the Exchange's affiliates, NYSE Arca, NYSE American, NYSE National, Inc. (''NYSE National''),[13] and NYSE Chicago, Inc. (''NYSE Chicago'').[14] Similar to both Nasdaq Basic and the Cboe One Feed, NYSE BQT provides investors with a unified view of comprehensive last sale and BBO data in all Tape A, B, and C securities that trade on the Exchange, NYSE Arca, NYSE American, NYSE National, and NYSE Chicago. Also similar to Nasdaq Basic and the Cboe One Feed, NYSE BQT is not intended to be used for purposes of making order-routing or trading decisions, but rather provides indicative prices for Tape A, B, and C securities.[15]

The Exchange currently charges an access fee of $250 per month for NYSE BQT, and, as provided for in footnote 5 to the Fee Schedule, to subscribe to NYSE BQT, subscribers must also subscribe to, and pay applicable fees for NYSE BBO, NYSE Trades, NYSE Arca BBO, NYSE Arca Trades, NYSE American BBO, NYSE American Trades, NYSE National BBO, NYSE National Trades, NYSE Chicago BBO, and NYSE Chicago Trades. Thus, the charges for NYSE BQT are the $250 access fee for NYSE BQT,[16] plus a $1,500 access fee for each of NYSE BBO and NYSE Trades, plus a $750 access fee for each of NYSE Arca BBO and NYSE Arca trades,[17] plus a $750 access fee for each of NYSE American BBO and NYSE American Trades,[18] for a total of $6,250 ($250 + $3,000 + $1,500 + $1,500).[19] In addition, an NYSE BQT subscriber would need to pay for the applicable Professional or Non-Professional User Fees for the underlying market data products, as applicable.[20]

To reduce administrative burdens on subscribers of NYSE BQT, the Exchange does not currently require NYSE BQT subscribers to complete separate paperwork for each of the underlying market data products. Rather, NYSE BQT subscribers need only subscribe to NYSE BQT, and then NYSE charges such subscribers for the underlying market data feeds as part of the fees for NYSE BQT. To promote transparency of how data recipients would subscribe to NYSE BQT, the Exchange proposes to amend footnote 5 to the Fee Schedule to provide that ''[t]o subscribe to NYSE BQT, subscribers must also [sic] pay applicable fees for'' the underlying market data products, and would delete the text that requires NYSE BQT subscribers to separately subscribe to the underlying market data products. This proposed amendment does not change the fees for NYSE BQT.

Because NYSE BQT is priced based on the fees associated with the underlying ten market data feeds, the Exchange and its affiliates propose to compete with the Cboe One Feed and Nasdaq Basic by reducing fees for the underlying market data products that comprise NYSE BQT. Together with NYSE Arca and NYSE American, the Exchange similarly proposes to compete for subscribers to NYSE BQT by designing its fee decreases to be attractive to subscribers of NYSE BBO and NYSE Trades that use such products for display-only purposes, which are more likely to be subscribers that service retail investors.

Access Fee—NYSE BBO and NYSE Trades

NYSE BBO is a NYSE-only market data product that allows a vendor to redistribute on a real-time basis the same best-bid-and-offer information that NYSE reports under the Consolidated Quotation Plan (''CQ Plan'') for inclusion in the CQ Plan's consolidated quotation information data stream (''NYSE BBO Information'').[21] NYSE BBO Information includes the best bids and offers for all securities that are traded on the Exchange and for which NYSE reports quotes under the CQ Plan. NYSE BBO is available over a single data feed, regardless of the markets on which the securities are listed. NYSE BBO is made available to its subscribers no earlier than the information it contains is made available to the processor under the CQ Plan.

NYSE Trades is a NYSE-only market data product that allows a vendor to redistribute on a real-time basis the same last sale information that NYSE reports to the Consolidated Tape Association (''CTA'') for inclusion in the CTA's consolidated data stream and certain other related data elements (''NYSE Last Sale Information'').[22] NYSE Last Sale Information includes last sale information for all securities that are traded on the Exchange. NYSE Trades is made available to subscribers at the same time as the information it contains is made available to the processor under the CTA Plan.

Currently, subscribers of each of the NYSE BBO and NYSE Trades products that receive a data feed pay an Access Fee of $1,500 per month. The Exchange

[10] As described on the Nasdaq website, available here: *http://www.nasdaqtrader.com/Trader.aspx?id=nasdaqbasic,* Nasdaq Basic is a ''low cost alternative'' that provides ''Best Bid and Offer and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA Trade Reporting Facility (''TRF'').''

[11] As described on the Cboe website, available here: *https://markets.cboe.com/us/equities/market_data_services/cboe_one/,* the Cboe One Feed is a ''market data product that provides cost-effective, high-quality reference quotes and trade data for market participants looking for comprehensive, real-time market data'' and provides a ''unified view of the market from all four Cboe equity exchanges: BZX Exchange, BYX Exchange, EDGX Exchange, and EDGY [sic] Exchange.''

[12] *See* Securities Exchange Act Release Nos. 72750 (August 4, 2014), 79 FR 46494 (August 8, 2014) (notice—NYSE BQT); and 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (approval order—NYSE BQT) (SR–NYSE–2014–40) (''NYSE BQT Filing'').

[13] In 2018, NYSE BQT was amended to include NYSE National BBO and NYSE National Trades. *See* Securities Exchange Act Release No. 83359 (June 1, 2018), 83 FR 26507 (June 7, 2018) (SR–NYSE–2018–22).

[14] In 2019, NYSE BQT was amended to include NYSE Chicago BBO and NYSE Chicago Trades. *See* Securities Exchange Act Release No. 87511 (November 12, 2019), 84 FR 63689 (November 18, 2019) (SR–NYSE–2019–60).

[15] *See* NYSE BQT Filing, *supra* note 12.

[16] The Exchange is not proposing any change to the $250 access fee for NYSE BQT.

[17] *See* NYSE Arca Equities Proprietary Market Data Fees (''NYSE Arca Price List''), available here: *https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Equities_Fee_Schedule.pdf.*

[18] *See* NYSE American Equities Proprietary Market Data Fees (''NYSE American Price List''), available here: *https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Equities_Fee_Schedule.pdf.*

[19] There are currently no fees charged for the NYSE National BBO, NYSE National Trades, NYSE Chicago BBO, or NYSE Chicago Trades market data products.

[20] The Exchange is not proposing any changes to the User Fees. Currently, the Professional User Fees for each of NYSE BBO and NYSE Trades is $4 per month, and the Non-Professional User Fees for each of NYSE BBO and NYSE Trades is $0.20 per month. *See* Fees Schedule, available here: *https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Fee_Schedule.pdf.* The Professional User Fees for each of NYSE Arca BBO and NYSE Arca Trades is $4 per month, and the Non-Professional User Fees for each of NYSE Arca BBO and NYSE Arca Trades is $0.25 per month. *See* NYSE Arca Price List, available here: *https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Equities_Fee_Schedule.pdf.* The Professional User Fees for each of NYSE American BBO and NYSE American Trades is $4 per month, and the Non-Professional User Fees for each of NYSE American BBO and NYSE American Trades is $0.25 per month. *See* NYSE American Price List, available here: *https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Equities_Fee_Schedule.pdf.*

[21] *See* Securities Exchange Act Release Nos. 61914 (April 14, 2010), 75 FR 21077 (April 22, 2010) (SR–NYSE–2010–30) (notice—NYSE BBO); and 62181 (May 26, 2010), 75 FR 31488 (June 3, 2010) (SR–NYSE–2010–30) (approval order—NYSE BBO).

[22] *See* Securities Exchange Act Release Nos. 59309 (January 28, 2009), 74 FR 6073 (February 4, 2009) (SR–NYSE–2009–04) (notice—NYSE Trades); and 59309 (March 19, 2009), 74 FR 13293 (March 26, 2009) (SR–NYSE–2009–04) (approval order—NYSE Trades).

proposes to reduce the Access Fees for subscribers of NYSE BBO and NYSE Trades that receive a data feed and use those products in a display-only format, including for internal use for Professional Users and external distribution to both Professional and Non-Professional Users in a display-only format, from $1,500 per month (per product) to $100 per month (per product). The Exchange proposes to designate this access fee as a ''Per User Access Fee.'' A subscriber that receives a data feed and uses the market data product for any other purpose (such as a non-display use), including if combined with Per User use, would continue to pay the $1,500 per month Access Fee.[23] A subscriber will be charged only one access fee for each of the NYSE BBO and NYSE Trades products, depending on the use of that product.

The proposed rule change would result in lower fees for subscribers of each of the NYSE BBO and NYSE Trades products that receive a data feed and use such products for display-only purposes. The proposed Per User Access Fee of $100 per month, lowered from $1,500 per month, would result in a reduction of more than 93% for subscribers that receive a data feed and use the product in a display-only format. Additionally, the proposed rule change, together with the corresponding proposed rule changes by NYSE Arca and NYSE American to similarly reduce the access fees to their BBO and Trades products, would also significantly lower access fees for display-only subscribers of NYSE BQT, from $6,250 per month to $850 per month ($250 + $200 + $200 + $200), a reduction of more than 86%.

The proposed rule change is intended to encourage greater use of NYSE BQT by making it more affordable for data recipients that receive a data feed of NYSE Trades and NYSE BBO and use the products in a display-only format and thereby, allow the Exchange to compete more effectively with Cboe One Feed and Nasdaq Basic. The Exchange believes the proposed rule change would allow the Exchange to offer retail investors a competitively priced alternative to other top-of-book data products available in the marketplace.

Redistribution Fee—NYSE Trades

The Exchange currently charges a Redistribution Fee of $1,000 per month for NYSE Trades. A Redistributor is a vendor or any other person that provides a NYSE data product to a data recipient or to any system that a data recipient uses, irrespective of the means of transmission or access. A Redistributor is required to report to the Exchange each month the number of Professional and Non-Professional Users and data feed recipients that receive NYSE Trades. As noted above, for display use of NYSE Trades, the Exchange currently charges a Per User Fee of $4 per month for each Professional User and a Per User Fee of $0.20 per month for each Non-Professional User. These user fees apply to each display device that has access to NYSE Trades.

The Exchange proposes to adopt a credit that would be applicable to Redistributors that provide external distribution of NYSE Trades to Professional and Non-Professional Users in a display-only format. As proposed, such Redistributors would receive a credit equal to the amount of the monthly Professional User and Non-Professional User Fees for such external distribution, up to a maximum of the Redistribution Fee for NYSE Trades. For example, a Redistributor that reports external Professional Users and Non-Professional Users in a month totaling $1,000 or more would receive a maximum credit of $1,000 for that month, which could effectively reduce its Redistribution Fee to zero. If that same Redistributor were to report external User quantities in a month totaling $500 of monthly usage, that Redistributor would receive a credit of $500. Redistributors would have an incentive to increase their redistribution of NYSE Trades because the credit they would be eligible to receive would increase if they report additional external User quantities.

By targeting this proposed credit to Redistributors that provide external distribution of NYSE Trades in a display-only product, the Exchange believes that this proposed fee decrease would provide an incentive for Redistributors to make the NYSE BQT market data product available to its customers. Specifically, if a data recipient is interested in subscribing to NYSE BQT and relies on a Redistributor to obtain market data products from the Exchange, that data recipient would need its Redistributor to redistribute NYSE BQT. Currently, Redistributors that redistribute NYSE market data products do not necessarily also make NYSE BQT available. Because data recipients that use NYSE BQT do so for display-only use, and therefore would use the NYSE Trades market data product for display-only use, the Exchange believes that this proposed fee decrease for Redistributors of NYSE Trades would provide an incentive for Redistributors to make NYSE BQT available to its customers, which will increase the availability of NYSE BQT to a larger potential population of data recipients.[24]

One-Month Free Trial—All NYSE Market Data Products

The Exchange proposes a one-month free trial for any firm that subscribes to a particular NYSE market data product for the first time. As proposed, a first-time subscriber would be any firm that has not previously subscribed to a particular NYSE market data product listed on the Fee Schedule. As proposed, a first-time subscriber of a particular NYSE market data product would not be charged the Access Fee, Non-Display Fee, any applicable Professional and Non-Professional User Fee, and Redistribution Fee for that product for one calendar month. For example, a firm that currently subscribes to NYSE BBO would be eligible to receive a free one-month trial of NYSE Trades, whether in a display-only format or for non-display use. On the other hand, a firm that currently pays an Access Fee and receives NYSE BBO for non-display use would not be eligible to receive a free one-month trial of NYSE BBO in a display-only format. The proposed free trial would be for the first full calendar month following the date a subscriber is approved to receive trial access to the particular NYSE market data product. The Exchange would provide the one-month free trial for each particular product to each subscriber once.

The Exchange believes that providing a one-month free trial to NYSE market data products listed on the Fee Schedule would enable potential subscribers to determine whether a particular NYSE market data product provides value to their business models before fully committing to expend development and implementation costs related to the receipt of that product, and is intended to encourage increased use of the Exchange's market data products by defraying some of the development and implementation costs subscribers would ordinarily have to expend before using a product.

Non-Substantive Changes

In March 2016, the Exchange amended the Fee Schedule to adopt footnote 3 regarding a Decommission Extension Fee for receipt of the NYSE BBO and NYSE Trades market data

[23] With the proposed adoption of the Per User Access Fee, the Exchange proposes to rename the Access Fee as the General Access Fee.

[24] NYSE does not charge a Redistribution Fee for NYSE BBO.

products.[25] And in October 2016, the Exchange amended the Fee Schedule to adopt footnote 7 regarding a Decommission Extension Fee for receipt of the NYSE Order Imbalances market data product.[26] The Decommission Extension Fee for NYSE BBO, NYSE Trades, and NYSE Order Imbalances was adopted to allow existing subscribers at the time to receive these market data products in their legacy format, as the Exchange was then transitioning to a newer distribution protocol. The Decommission Extension Fee for NYSE BBO and NYSE Trades expired on September 1, 2016, and the Decommission Extension Fee for NYSE Order Imbalances expired on April 28, 2017. The Exchange proposes to remove rule text regarding the Decommission Extension Fee for NYSE BBO and NYSE Trades from footnote 3 of the Fee Schedule, and for NYSE Order Imbalances from footnote 7 of the Fee Schedule, as that rule text is now obsolete because the period of time during which the Decommission Extension Fee for NYSE BBO and NYSE Trades and for NYSE Order Imbalances was applicable has passed. The Exchange proposes to mark footnote 3 as ''Reserved,'' and replace the text in footnote 7 with rule text regarding the proposed fee change related to the Redistribution Fee for NYSE Trades described above.

The Exchange also proposes a non-substantive amendment to move the text describing the Enterprise Fee on the Fee Schedule to appear below the Non-Professional User Fee. The Exchange is not making any substantive changes to this fee. The Exchange believes that this proposed non-substantive change will make the Fee Schedule easier to navigate, as the Enterprise Fee is related to Per User fees.

The Exchange also proposes a non-substantive, clarifying amendment to footnote 4 to delete the term ''clients'' and replace it with the term ''Professional Users and Non-Professional Users.'' This proposed change is consistent with the operation of the Enterprise Fee, which relates only to the Professional User and Non-Professional Per User Fees. The Exchange believes that this proposed change would promote clarity and transparency of the Fee Schedule, without making any substantive changes.

Applicability of Proposed Rule Change

As noted above, the proposed rule change is designed to reduce the overall cost of NYSE BQT by reducing specified fees applicable to the underlying market data products that comprise NYSE BQT. The Exchange currently has only one subscriber to NYSE BQT (a vendor), and believes that the proposed rule change would provide an incentive both for data subscribers to subscribe to NYSE BQT and for Redistributors to subscribe to the product for purposes of providing external distribution of NYSE BQT.

Because the proposed rule change is targeted to potential customers of NYSE BQT, which is designed to be a product for display-only data subscribers, the proposed changes to the NYSE BBO and NYSE Trades Access Fees, together with the proposed changes on NYSE Arca and NYSE American, are narrowly construed with that purpose in mind. Accordingly, these proposed fee changes are not designed for data subscribers that use NYSE BBO or NYSE Trades for non-display use, or for Redistributors that redistribute NYSE Trades to data subscribers that use that market data product for non-display uses. This proposed rule change would not result in any changes to the market data fees for NYSE BBO and NYSE Trades for such data subscribers.

The Exchange believes that two current subscribers to the NYSE BBO and NYSE Trades market data products would meet the qualifications to be eligible for these proposed fee changes. The Exchange further believes that this proposed rule change has the potential to attract new Redistributors for NYSE BQT, as well as new NYSE BQT subscribers that would be subscribing to NYSE BBO and NYSE Trades for the first time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[27] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[28] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Proposed Rule Change Is Reasonable

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. 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.'' [29]

With respect to market data, the decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC* upheld the Commission's reliance on the existence of competitive market mechanisms to evaluate the reasonableness and fairness of fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system ''evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed'' and that the SEC wield its regulatory power ''in those situations where competition may not be sufficient,'' such as in the creation of a ''consolidated transactional reporting system.'' [30]

The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [31]

1. The Proposed Fees Are Constrained by Significant Competitive Forces

a. Exchange Market Data Is Sold in a Competitive Market

In 2018, Charles M. Jones, the Robert W. Lear of Professor of Finance and Economics of the Columbia University School of Business, conducted an analysis of the market for equity market data in the United States. He canvassed the demand for both consolidated and exchange proprietary market data products and the uses to which those products were put by market participants, and reported his conclusions in a paper annexed hereto.[32] Among other things, Professor Jones concluded that:

[25] *See* Securities Exchange Act Release No. 77388 (March 17, 2016), 81 FR 15363 (March 22, 2016) (SR–NYSE–2016–21).

[26] *See* Securities Exchange Act Release No. 79286 (November 10, 2016), 81 FR 81186 (November 17, 2016) (SR–NYSE–2016–73).

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(4), (5).

[29] *See* Regulation NMS Adopting Release, 70 FR 37495, at 37499.

[30] *NetCoalition* v. *SEC,* 615 F.3d 525, 535 (D.C. Cir. 2010) (''*NetCoalition I*'') (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323).

[31] *Id.* at 535.

[32] *See* Exhibit 3A, Charles M. Jones, *Understanding the Market for U.S. Equity Market Data,* August 31, 2018 (hereinafter ''Jones Paper'').

• ''The market [for exchange market data] is characterized by robust competition: exchanges compete with each other in selling proprietary market data products. They also compete with consolidated data feeds and with data provided by alternative trading systems ('ATSs'). Barriers to entry are very low, so existing exchanges must also take into account competition from new entrants, who generally try to build market share by offering their proprietary market data products for free for some period of time.'' [33]

• ''Although there are regulatory requirements for some market participants to use consolidated data products, there is no requirement for market participants to purchase any proprietary market data product for regulatory purposes.'' [34]

• ''There are a variety of data products, and consumers of equity market data choose among them based on their needs. Like most producers, exchanges offer a variety of market data products at different price levels. Advanced proprietary market data products provide greater value to those who subscribe. As in any other market, each potential subscriber takes the features and prices of available products into account in choosing what market data products to buy based on its business model.'' [35]

• ''Exchange equity market data fees are a small cost for the industry overall: the data demonstrates that total exchange market data revenues are orders of magnitude smaller than (i) broker-dealer commissions, (ii) investment bank earnings from equity trading, and (iii) revenues earned by third-party vendors.'' [36]

• ''For proprietary exchange data feeds, the main question is whether there is a competitive market for proprietary market data. More than 40 active exchanges and alternative trading systems compete vigorously in both the market for order flow and in the market for market data. The two are closely linked: an exchange needs to consider the negative impact on its order flow if it raises the price of its market data. Furthermore, new entrants have been frequent over the past 10 years or so, and these venues often give market data away for free, serving as a check on pricing by more established exchanges. These are all the standard hallmarks of a competitive market.'' [37]

[33] Jones Paper at 2.

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.* at 39–40.

Professor Jones' conclusions are consistent with the demonstration of the competitive constraints on the pricing of market data demonstrated by analysis of exchanges as platforms for market data and trading services, as shown below.

b. Exchanges That Offer Market Data and Trading Services Function as Two-Sided Platforms

An exchange may demonstrate that its fees are constrained by competitive forces by showing that the platform theory of competition applies.

As the United States Supreme Court recognized in *Ohio* v. *American Express,* platforms are firms that act as intermediaries between two or more sets of agents, and typically the choices made on one side of the platform affect the results on the other side of the platform via externalities, or ''indirect network effects.'' [38] Externalities are linkages between the different ''sides'' of a platform such that one cannot understand pricing and competition for goods or services on one side of the platform in isolation; one must also account for the influence of the other side. As the Supreme Court explained:

> To ensure sufficient participation, two-sided platforms must be sensitive to the prices that they charge each side. . . . Raising the price on side A risks losing participation on that side, which decreases the value of the platform to side B. If the participants on side B leave due to this loss in value, then the platform has even less value to side A—risking a feedback loop of declining demand. . . . Two-sided platforms therefore must take these indirect network effects into account before making a change in price on either side.[39]

The Exchange and its affiliated exchanges have long maintained that they function as platforms between consumers of market data and consumers of trading services. Proving the existence of linkages between the two sides of this platform requires an in-depth economic analysis of both public data and confidential Exchange data about particular customers' trading activities and market data purchases. Exchanges, however, are prohibited from sharing details about these specific customer activities and purchases. For example, pursuant to Exchange Rule 7.41, transactions executed on the Exchange are processed anonymously.

The Exchange and its affiliated exchanges have retained a third party expert, Marc Rysman, Professor of Economics Boston University, to analyze how platform economics applies to stock exchanges' sale of market data products and trading services, and to explain how this affects the assessment of competitive forces affecting the exchanges' data fees.[40] Professor Rysman was able to analyze exchange data that is not otherwise publicly available in a manner that is consistent with the exchanges' confidentiality obligations to customers. As shown in his paper, Professor Rysman surveyed the existing economic literature analyzing stock exchanges as platforms between market data and trading activities, and explained the types of linkages between market data access and trading activities that must be present for an exchange to function as a platform. In addition, Professor Rysman undertook an empirical analysis of customers' trading activities within the NYSE group of exchanges in reaction to NYSE's introduction in 2015 of the NYSE Integrated Feed, a full order-by-order depth of book data product.[41]

Professor Rysman's analysis of this confidential firm-level data shows that firms that purchased the NYSE Integrated Feed market data product after its introduction were more likely to route orders to NYSE as opposed to one of the other NYSE-affiliated exchanges, such as NYSE Arca or NYSE American.[42] Moreover, Professor Rysman shows that the same is true for firms that did *not* subscribe to the NYSE Integrated Feed: The introduction of the NYSE Integrated Feed led to more trading on NYSE (as opposed to other NYSE-affiliated exchanges) by firms that did *not* subscribe to the NYSE Integrated Feed.[43] This is the sort of externality that is a key characteristic of a platform market.[44]

From this empirical evidence, Professor Rysman concludes:

• ''[D]ata is more valuable when it reflects more trading activity and more liquidity-providing orders. These linkages alone are enough to make platform economics necessary for understanding the pricing of market data.'' [45]

[38] *Ohio* v. *American Express,* 138 S. Ct. 2274, 2280–81 (2018).

[39] *Id.* at 2281.

[40] *See* Exhibit 3B, Marc Rysman, *Stock Exchanges as Platforms for Data and Trading,* December 2, 2019 (hereinafter ''Rysman Paper''), ¶ 7.

[41] *See* Securities Exchange Act Release Nos. 74128 (January 23, 2015), 80 FR 4951 (January 29, 2015) (SR–NYSE–2015–03) (Notice of filing and immediate effectiveness of proposed rule change to establish NYSE Integrated Feed) and 76485 (November 20, 2015), 80 FR 74158 (November 27, 2015) (SR–NYSE–2015–57) (Notice of filing and immediate effectiveness of proposed rule change to establish fees for the NYSE Integrated Feed).

[42] Rysman Paper ¶¶ 79–89.

[43] *Id.* ¶¶ 90–91.

[44] *Id.* ¶ 90.

[45] *Id.* ¶ 95.

• ''[L]inkages running in the opposite direction, from data to trading, are also very likely to exist. This is because market data from an exchange reduces uncertainty about the likelihood, price, or timing of execution for an order on that exchange. This reduction in uncertainty makes trading on that exchange more attractive for traders that subscribe to that exchange's market data. Increased trading by data subscribers, in turn, makes trading on the exchange in question more attractive for traders that do not subscribe to the exchange's market data.'' [46]

• The ''mechanisms by which market data makes trading on an exchange more attractive for subscribers to market data . . . apply to a wide assortment of market data products, including BBO, order book, and full order-by-order depth of book data products at all exchanges.'' [47]

• ''[E]mpirical evidence confirms that stock exchanges are platforms for data and trading.'' [48]

• ''The platform nature of stock exchanges means that data fees cannot be analyzed in isolation, without accounting for the competitive dynamics in trading services.'' [49]

• ''Competition is properly understood as being between platforms (*i.e.,* stock exchanges) that balance the needs of consumers of data and traders.'' [50]

• ''Data fees, data use, trading fees, and order flow are all interrelated.'' [51]

• ''Competition for order flow can discipline the pricing of market data, and vice-versa.'' [52]

• ''As with platforms generally, overall competition between exchanges will limit their overall profitability, not margins on any particular side of the platform.'' [53]

c. Exchange Market Data Fees Are Constrained by the Availability of Substitute Platforms

Professor Rysman's conclusions that exchanges function as platforms for market data and transaction services mean that exchanges do not set fees for market data products without considering, and being constrained by, the effect the fees will have on the order-flow side of the platform. And as the D.C. Circuit recognized in *NetCoalition I,* ''[n]o one disputes that competition for order flow is fierce.'' [54] The court further noted that ''no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers,'' and that an exchange ''must compete vigorously for order flow to maintain its share of trading volume.'' [55]

Similarly, the Commission itself has recognized that the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [56] The Commission's Division of Trading and Markets has also recognized that with so many ''operating equities exchanges and dozens of ATSs, there is vigorous price competition among the U.S. equity markets and, as a result, [transaction] fees are tailored and frequently modified to attract particular types of order flow, some of which is highly fluid and price sensitive.'' [57] Indeed, today, equity trading is currently dispersed across 13 exchanges,[58] 31 alternative trading systems,[59] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 18% market share.[60]

Further, low barriers to entry mean that new exchanges may rapidly and inexpensively enter the market and offer additional substitute platforms to compete with the Exchange.[61] In addition to the 13 presently-existing exchanges, three new ones are expected to enter the market in 2020: Long Term Stock Exchange (LTSE), which has been approved as an equities exchange but is not yet operational; [62] Members Exchange (MEMX), which has recently filed its application to be approved as a registered equities exchange; [63] and Miami International Holdings (MIAX), which has announced its plan to introduce equities trading on an existing registered options exchange.[64]

Given Professor Rysman's conclusion that exchanges are platforms for market data and trading, this fierce competition for order flow on the trading side of the platform acts to constrain, or ''discipline,'' the pricing of market data on the other side of the platform.[65] And due to the ready availability of substitutes and the low cost to move order flow to those substitute trading venues, an exchange setting market data fees that are not at competitive levels would expect to quickly lose business to alternative platforms with more attractive pricing.[66] Although the various exchanges may differ in their strategies for pricing their market data products and their transaction fees for trades—with some offering market data for free along with higher trading costs, and others charging more for market data and comparatively less for trading—the fact that exchanges are platforms ensures that no exchange makes pricing decisions for one side of its platform without considering, and being constrained by, the effects that price will have on the other side of the platform.

In sum, the fierce competition for order flow thus constrains any exchange from pricing its market data at a supracompetitive price, and constrains the Exchange in setting its fees at issue here.

The proposed fees are therefore reasonable because in setting them, the Exchange is constrained by the availability of numerous substitute platforms offering market data products and trading. Such substitutes need not be identical, but only substantially similar to the product at hand.

More specifically, in reducing specified fees for the NYSE BBO and NYSE Trades market data products, the Exchange is constrained by the fact that, if its pricing across the platform is unattractive to customers, customers

[46] *Id.* ¶ 96.

[47] *Id.*

[48] *Id.* ¶ 97.

[49] *Id.* ¶ 98.

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] *Id.* ¶ 100.

[54] *NetCoalition I,* 615 F.3d at 544 (internal quotation omitted).

[55] *Id.*

[56] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18).

[57] Commission Division of Trading and Markets, Memorandum to EMSAC, dated October 20, 2015, available here: *https://www.sec.gov/spotlight/emsac/memo-maker-taker-fees-on-equities-exchanges.pdf.*

[58] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[59] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[60] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[61] *See* Jones Paper at 10–11.

[62] *See* Securities Exchange Act Release No. 85828 (May 10, 2019) (File No. 10–234) (Findings, Opinion, and Order of the Commission in the Matter of the Application of Long Term Stock Exchange, Inc. for Registration as a National Securities Exchange).

[63] *See* Securities Exchange Act Release No. 87436 (October 31, 2019) (File No. 10–237) (Notice of filing of application of MEMX LLC for registration as a national securities exchange under Section 6 of the Act).

[64] *See* Press Release of Miami International Holdings Inc., dated May 17, 2019, available here: *https://www.miaxoptions.com/sites/default/files/press_release-files/MIAX_Press_Release_05172019.pdf.*

[65] Rysman Paper ¶ 98.

[66] *See* Jones Paper at 11.

have their pick of an increasing number of alternative platforms to use instead of the Exchange. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish reasonable fees. The existence of numerous alternative platforms to the Exchange's platform ensures that the Exchange cannot set unreasonable market data fees without suffering the negative effects of that decision in the fiercely competitive market for trading order flow.

d. The Availability of Substitute Market Data Products Constrains Fees for NYSE BBO, NYSE Trades, and NYSE BQT

Even putting aside the facts that exchanges are platforms and that pricing decisions on the two sides of the platform are intertwined, the Exchange is constrained in setting the proposed market data fees by the availability of numerous substitute market data products.

The Exchange's NYSE BQT market data product is subject to significant competitive forces that constrain its pricing. Specifically, as described above, NYSE BQT competes head-to-head with the Nasdaq Basic product and the Cboe One Feed. These products each serve as reasonable substitutes for one another as they are each designed to provide investors with a unified view of real-time quotes and last-sale prices in all Tape A, B, and C securities. Each product provides subscribers with consolidated top-of-book quotes and trades from multiple U.S. equities markets. In the case of NYSE BQT, this product provides top-of-book quotes and trades data from five NYSE-affiliated U.S. equities exchanges, which together account for approximately 24% of consolidated U.S. equities trading volume as of October 2019.[67] Cboe One Feed similarly provides top-of-book quotes and trades data from Cboe's four U.S. equities exchanges. NYSE BQT, Nasdaq Basic, and Cboe One Feed are all intended to provide indicative pricing and are not intended to be used for order routing or trading decisions.

In addition to competing with proprietary data products from Nasdaq and Cboe, NYSE BQT also competes with the consolidated data feed. However, the Exchange does not claim that NYSE BQT is a substitute for consolidated data with respect to requirements under the Vendor Display Rule, which is Regulation NMS Rule 603(c).

The fact that this filing is proposing reductions in certain fees, fee credits, and free trial periods is itself confirmation of the inherently competitive nature of the market for the sale of proprietary market data. For example, Cboe recently filed proposed rule changes to reduce certain of its Cboe One Feed fees and noted that it attracted two additional customers because of the reduced fees.[68]

The Exchange notes that NYSE BBO, NYSE Trades, and NYSE BQT are entirely optional. The Exchange is not required to make the proprietary data products that are the subject of this proposed rule change available or to offer any specific pricing alternatives to any customers, nor is any firm or investor required to purchase the Exchange's data products. Unlike some other data products (*e.g.,* the consolidated quotation and last-sale information feeds) that firms are required to purchase in order to fulfil regulatory obligations,[69] a customer's decision whether to purchase any of the Exchange's proprietary market data feeds is entirely discretionary. Most firms that choose to subscribe to the NYSE's proprietary market data feeds do so for the primary goals of using them to increase their revenues, reduce their expenses, and in some instances compete directly with the Exchange's trading services. Such firms are able to determine for themselves whether or not the products in question or any other similar products are attractively priced. If the NYSE market data feeds do not provide sufficient value to firms based on the uses those firms may have for it, such firms may simply choose to conduct their business operations in ways that do not use the products.[70] A clear illustration of this point is the fact that today, NYSE BQT has just one subscriber.

In addition, in the case of products that are also redistributed through market data vendors, such as Bloomberg and Refinitiv, the vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Currently, only one vendor subscribes to NYSE BQT, and that vendor has limited redistribution of NYSE BQT. No other vendors currently subscribe to NYSE BQT and likely will not unless their customers request it, and customers will not elect to pay the proposed fees unless such product can provide value by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. All of these factors operate as constraints on pricing proprietary data products.

Because of the availability of substitutes, an exchange that overprices its market data products stands a high risk that users may substitute another source of market data information for its own. Those competitive pressures imposed by available alternatives are evident in the Exchange's proposed pricing.

In setting the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered

[67] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share/market/2019-10-31/.*

[68] *See* Securities Exchange Act Release Nos. 86667 (August 14, 2019) (SR–CboeBZX–2019–069); 86670 (August 14, 2019) (SR–CboeBYX–2019–012); 86676 (August 14, 2019) (SR–CboeEDGA–2019–013); and 86678 (August 14, 2019) (SR–CboeEDGX–2019–048) (Notices of filing and Immediate effectiveness of proposed rule change to reduce fees for the Cboe One Feed) (collectively ''Cboe One Fee Filings''). The Cboe One Fee Filings were in effect from August 1, 2019 until September 30, 2019, when the Commission suspended them and instituted proceedings to determine whether to approve or disapprove those proposals. *See, e.g.,* Securities Exchange Act Release No. 87164 (September 30, 2019), 84 FR 53208 (October 4, 2019) (SR–CboeBZX–2019–069). On October 1, 2019, the Cboe equities exchanges refiled the Cboe One Fee Filings on the basis that they had new customers subscribe as a result of the Cboe One Fee Filings, and therefore its fee proposal had increased competition for top-of-book market data. *See* Securities Exchange Act Release Nos. 87312 (October 15, 2019), 84 FR 56235 (October 21, 2019) (SR–CboeBZX–2019–086); 87305 (October 14, 2019), 84 FR 56210 (October 21, 2019) (SR–CboeBYX–2019–015); 87295 (October 11, 2019), 84 FR 55624 (October 17, 2019) (SR–CboeEDGX–2019–059); and 87294 (October 11, 2019), 84 FR 55638 (October 17, 2019) (SR–CboeEDGZ–2019–015) (Notices of filing and immediate effectiveness of proposed rule changes to re-file the Small Retail Broker Distribution Program) (''Cboe One Fee Re-Filings''). On November 26, 2019, the Commission suspended the Cboe One Fee Re-Filings and instituted proceedings to determine whether to approve or disapprove those proposals. *See, e.g.,* Securities Exchange Act Release No. 87629 (November 26, 2019) (SR–CboeBZX–2019–086) (**Federal Register** publication pending).

[69] The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations. *See In the Matter of the Application of Securities Industry and Financial Markets Association for Review of Actions Taken by Self-Regulatory Organizations,* Release Nos. 34–72182; AP–3–15350; AP–3–15351 (May 16, 2014). Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions, and some broker-dealers and ATSs have chosen not to do so.

[70] *See generally* Jones Paper at 8, 10–11.

all relevant factors and has not considered irrelevant factors in order to establish reasonable fees. The existence of numerous alternatives to the Exchange's platform and, more specifically, alternatives to the market data products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

2. The Proposed Fees Are Reasonable

The specific fees that the Exchange proposes for NYSE Trades and NYSE BBO are reasonable, for the following additional reasons.

Overall. This proposed fee change is a result of the competitive environment, as the Exchange seeks to decrease certain of its fees to attract subscribers that do not currently use the NYSE BQT market data product. The Exchange is proposing the fee reductions at issue to make the Exchange's fees more competitive for a specific segment of market participants, thereby increasing the availability of the Exchange's data products, and expanding the options available to firms making data purchasing decisions based on their business needs. The Exchange believes that this is consistent with the principles contained in Regulation NMS to ''promote the wide availability of market data and to allocate revenues to SROs that produce the most useful data for investors.'' [71]

Amendment to Footnote 5: The Exchange believes that the proposed amendment to footnote 5 of the Fee Schedule is reasonable because it does not impose any new or different fees for subscribers of NYSE BQT, but rather, clarifies the Fee Schedule to reduce the administrative burden for such subscribers. The proposed rule change is similar to how Nasdaq charges for its Nasdaq Last Sale Plus product because firms that receive that product must also pay the monthly administrative fees for underlying data products, but the Nasdaq rules do not require that Nasdaq Last Sale Plus customers also subscribe to those underlying feeds.[72]

Access Fee. By adopting a reduced access fee to access U.S. equity market data that is used in display-only format and that serves as the foundation of NYSE BQT, the Exchange believes that more data recipients may choose to subscribe to these products, thereby expanding the distribution of this market data for the benefit of investors that participate in the national market system and increasing competition generally. In addition, the proposed reduced access fee is reasonable when compared to similar fees for comparable products offered by other markets. For example, NYSE Trades provides investors with alternative market data and is similar to the Nasdaq Last Sale Data Feed; Nasdaq charges redistributors a monthly fee of $1,500 per month, which is the same as the current access fee for NYSE Trades, and higher than the proposed access fee for display-only users.[73] The Exchange also believes that offering a reduced access fee for display-only use expands the range of options for offering the Exchange's market data products and would allow data recipients greater choice in selecting the most appropriate level of data and fees for the Professional and Non-Professional Users they service.

The Exchange determined to charge the $100 access fee for its proposed Per User Access Fee because it constitutes a substantial reduction of the current fee, with the intended purpose of increasing use of NYSE BQT. NYSE BQT has been in place since 2014 but has only one subscriber, which itself has limited distribution of the product. The Exchange believes that in order to compete with other indicative pricing products such as Nasdaq Basic and Cboe One Feed, it needs to provide a meaningful financial incentive for data recipients to subscribe to NYSE BQT. Accordingly, the proposed reduction to the Access Fees for NYSE Trades and NYSE BBO, together with the proposed reduction to the Access Fees for NYSE American BBO, NYSE American Trades, NYSE Arca BBO, and NYSE Arca Trades, is reasonable because the reductions will make NYSE BQT a more attractive offering for data recipients and make it more competitive with Nasdaq Basic and Cboe One Feed. For example, the External Distribution Fee for Cboe One Feed is currently $5,000 (which is the sum of the External Distribution fees for the four exchange data products that are included in Cboe One Feed) plus a Data Consolidation Fee of $1,000, for a total of $6,000. Evidence of the competition among exchange groups for these products has previously been demonstrated via fee changes. For example, following the introduction of the Cboe One Feed, Nasdaq responded by reducing its fees for the Nasdaq Basic product.[74] With the proposed changes by the Exchange, NYSE, and NYSE Arca, the Exchange is similarly seeking to compete by decreasing the total access fees for NYSE BQT from $6,250 to $850. This proposed rule change therefore demonstrates the existence of an effective, competitive market because this proposal resulted from a need to generate innovative approaches in response to competition from other exchanges that offer market data for a specific segment of market participants.

Redistribution Fees. Similarly, the proposed reduction to the NYSE Trades Redistribution Fee is reasonable because it is designed to provide an incentive for Redistributors to make NYSE BQT available so that data recipients can subscribe to NYSE BQT. The Exchange further believes that the proposed reduction to the NYSE Trades Redistribution Fee is reasonable because it is designed to compete with a similar credit offered by the Cboe family of equity exchanges.[75]

One-Month Free Trial. The Exchange believes that the proposed rule change to provide the NYSE market data products to new customers free-of-charge for their first subscription month is reasonable because it would allow vendors and subscribers to become familiar with the feeds and determine whether they suit their needs without incurring fees. Making a new market data product available for free for a trial period is consistent with offerings of other exchanges. For example, Nasdaq offers new subscribers its market data products a 30-day waiver of user fees.[76]

[71] *See* Regulation NMS Adopting Release, 70 FR 37495, at 37503.

[72] *See* Section 138(e)(1) [sic] of the Nasdaq Equity 7 Pricing Schedule.

[73] *See* Section 139(d) of the Nasdaq Equity 7 Pricing Schedule.

[74] *See e.g.* Securities Exchange Act Release No. 83751 (July 31, 2018), 83 FR 38428 (August 6, 2018) (SR–NASDAQ–2018–058) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Lower Fees and Administrative Costs for Distributors of Nasdaq Basic, Nasdaq Last Sale, NLS Plus and the Nasdaq Depth-of-Book Products Through a Consolidated Enterprise License). Nasdaq filed the proposed fee change to lower the Enterprise Fee for Nasdaq Basic and other market data products in response to the Enterprise Fee for the Cboe One Feed adopted by Cboe family of exchanges.

[75] *See, e.g.,* BZX Price List—U.S. Equities available at *http://www.nasdaqtrader.com/Trader.aspx?id=DPUSdata#db* [sic]. BZX charges $500 per month for internal distribution, and $2,500 per month for external distribution, of BZX Last Sale. BZX also charges $500 per month for internal distribution, and $2,500 per month for external distribution, of BZX Top. Each external distributor is eligible to receive a credit against its monthly Distributor Fee for BZX Las [sic] Sale equal to the amount of its monthly User Fees up to a maximum of the Distributor Fee for BZX Las [sic] Sale. *See* Cboe BZX U.S. Equities Exchange Fee Schedule at *http://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[76] *See* Section 112(b)(1) of Nasdaq's Equity 7 Pricing Schedule.

Deletion of Obsolete Text. The Exchange believes that it is reasonable to delete references to obsolete rule text and dates from the Fee Schedule and to make non-substantive clarifying amendments. The Exchange believes that the proposed changes are reasonable because they would result in greater specificity and precision within the Fee Schedule, which would contribute to reasonably ensuring that the fees described there are clear and accurate. Specifically, the proposed changes are reasonable because they would remove obsolete rule text and dates from the Fee Schedule related to a Decommission Extension Fee that is no longer charged by the Exchange and provide greater specificity regarding the application of the Enterprise Fee.

For all of the foregoing reasons, the Exchange believes that the proposed fees are reasonable.

The Proposed Fees Are Equitably Allocated

The Exchange believes the proposed fees for NYSE Trades and NYSE BBO are allocated fairly and equitably among the various categories of users of the feed, and any differences among categories of users are justified.

Overall. As noted above, this proposed fee change is a result of the competitive environment for market data products that provide indicative pricing information across a family of exchanges. To respond to this competitive environment, the Exchange seeks to amend its fees to access NYSE Trades and NYSE BBO in a display-only format, which the Exchange hopes will attract additional subscribers for its NYSE BQT market data product. The Exchange is proposing the fee reductions to make the Exchange's fees more competitive for a specific segment of market participants, thereby increasing the availability of the Exchange's data products, expanding the options available to firms making data purchasing decisions based on their business needs, and generally increasing competition.

Amendment to Footnote 5: The Exchange believes that the proposed amendment to footnote 5 of the Fee Schedule is equitably allocated. The proposed change does not impose any new or different fees for subscribers of NYSE BQT, but rather, clarifies the Fee Schedule to reduce the administrative burden for all subscribers of the NYSE BQT product.

Access Fee. The Exchange believes that the proposed Per User Access Fee is equitable as it would apply equally to all data recipients that choose to subscribe to NYSE Trades or NYSE BBO in a display-only format. Because NYSE BBO and NYSE Trades are optional products, any data recipient could choose to subscribe to NYSE BBO or NYSE Trades for display-only use and be eligible for the proposed reduced fee. The Exchange does not believe that it is inequitable that this proposed fee reduction would be available only to data recipients that use NYSE Trades or NYSE BBO in a display-only format. Non-display data represents a different set of use cases than display-only usage; non-display data can be used by data recipients for a wide variety of profit-generating purposes, including proprietary and agency trading and smart order routing, as well as by data recipients that operate order matching and execution platforms that compete directly with the Exchange for order flow. The data also can be used for a variety of non-trading purposes that indirectly support trading, such as risk management and compliance. Although some of these non-trading uses do not directly generate revenues, they can nonetheless substantially reduce the recipient's costs by automating such functions so that they can be carried out in a more efficient and accurate manner and reduce errors and labor costs, thereby benefiting end users. The Exchange believes that charging a different access fee for non-display use is equitable because data recipients can derive substantial value from such uses, for example, by automating tasks so that can be performed more quickly and accurately and less expensively than if they were performed manually.

Redistribution Fees. The Exchange believes the proposed change to provide a credit to a Redistributor that externally redistributes NYSE Trades to Professional and Non-Professional Users in a display-only format in an amount equal to the monthly Professional User and Non-Professional User fees for such external distribution, up to a maximum of the Redistribution Fee, is equitably allocated. The proposed change would apply equally to all Redistributors that choose to externally redistribute the NYSE Trades product, and would serve as an incentive for Redistributors to make NYSE Trades more broadly available for use by both Professional and Non-Professional Users. This, in turn, could provide an incentive for Redistributors to make NYSE BQT available to their customers.

One-Month Free Trial. The Exchange believes the proposal to provide the NYSE market data products to new customers free-of-charge for their first subscription month is equitable because it applies to any first-time subscriber, regardless of the use they plan to make of the feed. As proposed, any first-time subscriber would not be charged the Access Fee, Non-Display Fee, any applicable Professional and Non-Professional User Fee, or Redistribution Fee for any of the NYSE market data products for one calendar month. The Exchange believes it is equitable to restrict the availability of this one-month free trial to customers that have not previously subscribed to any NYSE market data product, since customers who are current or previous subscribers are already familiar with the products and whether they would suits their needs.

Deletion of Obsolete Text. The Exchange believes that deleting obsolete rule text and dates from the Fee Schedule and make non-substantive clarifying amendments is equitably allocated because these proposed changes do not change fees, but rather, result in greater specificity and precision within the Fee Schedule, which would contribute to reasonably ensuring that the fees described there are clear and accurate. The Exchange also believes that the proposed changes are equitable because all readers of the Fee Schedule would benefit from the increased specificity and clarity that this proposed rule change would provide.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the NYSE market data products are equitably allocated.

The Proposed Fees Are Not Unfairly Discriminatory

The Exchange believes the proposed fees are not unfairly discriminatory because any differences in the application of the fees are based on meaningful distinctions between customers, and those meaningful distinctions are not unfairly discriminatory between customers.

Overall. As noted above, this proposed fee change is a result of the competitive environment for market data products that provide indicative pricing information across a family of exchanges. To respond to this competitive environment, the Exchange seeks to amend its fees to access NYSE Trades and NYSE BBO in a display-only format, which the Exchange hopes will attract more subscribers for its NYSE BQT market data product. The Exchange is proposing the fee reductions to make the Exchange's fees more competitive for a specific segment of market participants, thereby increasing the availability of the Exchange's data products, expanding the options available to firms making data purchasing decisions based on their

business needs, and generally increasing competition.

Amendment to Footnote 5: The Exchange believes that the proposed amendment to footnote 5 of the Fee Schedule is not unfairly discriminatory. The proposed change does not impose any new or different fees for any subscribers of NYSE BQT, but rather, clarifies the Fee Schedule to reduce the administrative burden for all subscribers of the NYSE BQT product.

Access Fee. The Exchange believes that the proposed Per User Access Fee is not unfairly discriminatory as it would apply equally to all data recipients that choose to subscribe to NYSE Trades or NYSE BBO in a display-only format. Because NYSE BBO and NYSE Trades are optional products, any data recipient could choose to subscribe to NYSE BBO or NYSE Trades for display-only use and be eligible for the proposed reduced fee. The Exchange does not believe that it is unfairly discriminatory that this proposed fee reduction would be available only to data recipients that use NYSE Trades or NYSE BBO in a display-only format. Non-display data can be used by data recipients for a wide variety of profit-generating purposes, including proprietary and agency trading and smart order routing, as well as by data recipients that operate order matching and execution platforms that compete directly with the Exchange for order flow. The data also can be used for a variety of non-trading purposes that indirectly support trading, such as risk management and compliance. While some of these non-trading uses do not directly generate revenues, they can nonetheless substantially reduce the recipient's costs by automating such functions so that they can be carried out in a more efficient and accurate manner and reduce errors and labor costs, thereby benefiting end users. The Exchange therefore believes that there is a meaningful distinction between display and non-display users of market data and that charging a different access fee for non-display use is not unfairly discriminatory because data recipients can derive substantial value from such non-display uses, for example, by automating tasks so that can be performed more quickly and accurately and less expensively than if they were performed manually.

Redistribution Fees. The Exchange believes the proposed change to provide a credit to a Redistributor that externally redistributes NYSE Trades to Professional and Non-Professional Users in a display-only format in an amount equal to the monthly Professional User and Non-Professional User fees for such external distribution, up to a maximum of the Redistribution Fee, is not unfairly discriminatory. The proposed credit would apply equally to all Redistributors that choose to externally redistribute the NYSE Trades product for display use, and would serve as an incentive for Redistributors to make NYSE Trades more broadly available for use by both Professional and Non-Professional Users. This, in turn, could provide an incentive for Redistributors to make NYSE BQT available to their customers.

The Exchange believes that there is a meaningful distinction between vendors that distribute market data in a display-only format, as such vendors are more likely to service the non-professional community, and vendors that distribute market data for non-display use only, as users of non-display data are more likely to be professionals that derive substantial value from such non-display uses. While this credit is not available to vendors that redistribute NYSE Trades for non-display use only, such vendors would be eligible for this credit if they choose to expand their distribution of NYSE Trades for display use. NYSE BQT is targeted for display use and the Exchange believes that the proposed credit would increase the number of Redistributors—whether current vendors that redistribute on a non-display only basis or new vendors—that would make NYSE BQT available to their customers.

One-Month Free Trial. The Exchange believes that the proposed rule change providing for a one-month free trial period to test is not unfairly discriminatory because the financial benefit of the fee waiver would be available to all firms subscribing to a NYSE market data product for the first time on a free-trial basis. The Exchange believes there is a meaningful distinction between customers that are subscribing to a market data for the first time, who may benefit from a period within which to set up and test use of the product before it becomes fee liable, and users that are already receiving the Exchange's market data products and are deriving value from such use. The Exchange believes that the limited period of the free trial would not be unfairly discriminatory to other users of the Exchange's market data products because it is designed to provide a reasonable period of time to set up and test a new market data product. The Exchange further believes that providing a free trial for a calendar month would ease administrative burdens for data recipients to subscribe to a new data product and eliminate fees for a period before such users are able to derive any benefit from the data.

Deletion of Obsolete Text. The Exchange believes that deleting obsolete rule text and dates from the Fee Schedule and make non-substantive clarifying amendments is not unfairly discriminatory because these proposed changes do not change fees, but rather, result in greater specificity and precision within the Fee Schedule, which would contribute to reasonably ensuring that the fees described there are clear and accurate. The Exchange also believes that the proposed changes are not unfairly discriminatory because all readers of the Fee Schedule would benefit from the increased specificity and clarity that this proposed rule change would provide.

For all of the foregoing reasons, the Exchange believes that the proposed fees are not unfairly discriminatory.

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.

Intramarket Competition. The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As noted above, the proposed fee schedule would apply to all subscribers of NYSE market data products, and customers may not only choose whether to subscribe to the products at all, but also may tailor their subscriptions to include only the products and uses that they deem suitable for their business needs.

The Exchange also believes that the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue market on competition. As shown above, to the extent that particular proposed fees apply to only a subset of subscribers, those distinctions are not unfairly discriminatory and do unfairly burden one set of customers over another. To the contrary, by tailoring the proposed fees in this manner, the Exchange believes that it has eliminated the potential burden on competition that might result, for instance, from unfairly asking vendors that distribute market data in a display-only format to pay the same fees as vendors that distribute market data for non-display use to professionals that derive substantial value from such non-display uses.

Intermarket Competition. The Exchange believes that the proposed fees do not impose a burden on

competition or on other exchanges that is not necessary or appropriate; indeed, the Exchange believes the proposed fee changes would have the effect of increasing competition. As demonstrated above and in Professor Rysman's attached paper, exchanges are platforms for market data and trading. In setting the proposed fees, the Exchange is constrained by the availability of substitute platforms also offering market data products and trading, and low barriers to entry mean new exchange platforms are frequently introduced. The fact that exchanges are platforms ensures that no exchange can make pricing decisions for one side of its platform without considering, and being constrained by, the effects that price will have on the other side of the platform. In setting fees at issue here, the Exchange is constrained by the fact that, if its pricing across the platform is unattractive to customers, customers will have its pick of an increasing number of alternative platforms to use instead of the Exchange. Given this intense competition between platforms, no one exchange's market data fees can impose an unnecessary burden on competition, and the Exchange's proposed fees do not do so here.

In addition, the Exchange believes that the proposed fees do not impose a burden on competition or on other exchanges that is not necessary or appropriate because of the availability of numerous substitute market data products. Specifically, as described above, NYSE BQT competes head-to-head with the Nasdaq Basic product and the Cboe One Feed. These products each serve as reasonable substitutes for one another as they are each designed to provide investors with a unified view of real-time quotes and last-sale prices in all Tape A, B, and C securities. Each product provides subscribers with consolidated top-of-book quotes and trades from multiple U.S. equities markets. NYSE BQT provides top-of-book quotes and trades data from five NYSE-affiliated U.S. equities exchanges, while Cboe One Feed similarly provides top-of-book quotes and trades data from Cboe's four U.S. equities exchanges. NYSE BQT, Nasdaq Basic, and Cboe One Feed are all intended to provide indicative pricing and therefore, are reasonable substitutes for one another. Additionally, market data vendors are also able to offer close substitutes to NYSE BQT. Because market data users can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another source of market data information for its own. These competitive pressures ensure that no one exchange's market data fees can impose an unnecessary burden on competition, and the Exchange's proposed fees do not do so here.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [77] of the Act and subparagraph (f)(2) of Rule 19b–4 [78] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [79] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2019–70 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–NYSE–2019–70. 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–NYSE–2019–70 and should be submitted on or before January 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[80]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–27871 Filed 12–26–19; 8:45 am]

BILLING CODE 8011–01–P

[77] 15 U.S.C. 78s(b)(3)(A).

[78] 17 CFR 240.19b–4(f)(2).

[79] 15 U.S.C. 78s(b)(2)(B).

[80] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87808; File No. SR–CBOE–2019–125]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Silexx Trading Platform ("Silexx" or the "Platform") Fees Schedule

December 19, 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 18, 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 the Silexx trading platform (''Silexx'' or the ''platform'') 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 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 purpose of this filing is to amend the Silexx Fees Schedule to adopt a new ''drop copy'' fee.[3]

By way of background, the Silexx platform consists of a ''front-end'' order entry and management trading platform (also referred to as the ''Silexx terminal'') for listed stocks and options that supports both simple and complex orders,[4] and a ''back-end'' platform which provides a connection to the infrastructure network. From the Silexx platform (*i.e.,* the collective front-end and back-end platform), a Silexx user has the capability to send option orders to U.S. options exchanges, send stock orders to U.S. stock exchanges (and other trading centers), input parameters to control the size, timing, and other variables of their trades, and also includes access to real-time options and stock market data, as well as access to certain historical data. The Silexx platform is designed so that a user may enter orders into the platform to send to an executing broker (including Trading Permit Holders (''TPHs'')) of its choice with connectivity to the platform, which broker will then send the orders to Cboe Options (if the broker is a TPH) or other U.S. exchanges (and trading centers) in accordance with the user's instructions.[5] The Silexx front-end and back-end platforms are a software application that are installed locally on a user's desktop. Silexx grants users licenses to use the platform, and a firm or individual does not need to be a TPH to license the platform. Use of Silexx is completely optional.

In an effort to integrate Silexx and the PULSe drop copy network, the Exchange established a method by which a TPH or non-TPH market participant may connect to the Silexx back-end platform through a third-party terminal (*i.e.,* a front-end platform other than a Silexx or PULSe terminal. Such a TPH or non-TPH market participant is hereinafter referred to as a ''Silexx integrated partner''). Specifically, such a Silexx integrated partner may access the Silexx back-end platform through a third-party front-end which will only provide the Silexx integrated partner with access to the PULSe drop copy network via a Financial Information eXchange (''FIX'') hub.[6] FIX is an industry-standard, non-proprietary application program interface (''API'') that permits market participants to connect to exchanges. FIX language-based connectivity, upon request, provides customers (both TPHs and non-TPHs) of TPHs that are brokers and PULSe[7] users (''PULSe brokers'') with the ability to receive ''drop copy'' order fill messages from their PULSe brokers. These fill messages allow customers to update positions, risk calculations, and streamline back-office functions.

As a result of the recent integration between Silexx and the PULSe drop copy network, Silexx front-end users and Silexx integrated partners have access to the PULSe drop copy network. Therefore, both Silexx users and Silexx integrated partners may send notice execution messages to the PULSe drop copy network, who will then forward such messages (*i.e.,* drop copies) on to a PULSe or Silexx-user customer (the ''customer'') for which it has a connection. The Exchange proposes to adopt a fee applicable to the Silexx integrated partner, given this new functionality, which would allow a customer to receive drop copies via the PULSe drop copy network from a non-PULSe, non-Silexx terminal (*i.e.,* a Silexx integrated partner). Particularly, the Exchange proposes to adopt a fee of $500 per month for each customer connection to which a Silexx integrated partner will submit drop copies from non-PULSe, non-Silexx terminals. At this time, the Exchange proposes no fee to the customer receiving the drop copies from the Silexx integrated partner. To illustrate the manner in which the fee would be assessed, consider the following examples.

Example #1

Consider a PULSe or Silexx user (the ''customer'') sends its order to a Silexx integrated partner that is also a TPH (the ''Silexx integrated TPH'') for execution via a third-party front-end platform (*i.e.,* a terminal other than Silexx or PULSe). The Silexx integrated TPH then submits the order to the Exchange or another market center through its own third-party front-end system. Under the new functionality, for a $500/month fee the Silexx integrated TPH may establish a connection to the Silexx back-end platform which will provide

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The Exchange initially filed the proposed fee changes on December 2, 2019 (SR–CBOE–2019–113). On December 12, 2019, the Exchange withdrew that filing and refiled the proposed fee changes (SR–CBOE–2019–121).On December 18, 2019 the Exchange withdrew that filing and submitted this filing (SR–CBOE–2019–125).

[4] The platform also permits users to submit orders for commodity futures, commodity options and other non-security products to be sent to designated contract markets, futures commission merchants, introducing brokers or other applicable destinations of the users' choice.

[5] Silexx does not allow users to send orders directly to the Exchange or other market centers; however, an additional version of the Silexx platform, Silexx FLEX, supports the trading of FLEX Options and allows authorized Users with direct access to the Exchange. See Securities Exchange Act Release No. 87028 (September 19, 2019) 84 FR 50529 (September 25, 2019) (SR–CBOE–2019–061).

[6] The Exchange notes that a Silexx integrated partner will have no access to Silexx front-end platform functionality. A Silexx integrated partner will only have access to the back-end platform, which provides connectivity to the PULSe drop copy network through a FIX hub.

[7] The PULSe workstation is a front-end order entry system designed for use with respect to orders that may be sent to the trading systems of the Exchange. TPHs may make PULSe workstations available to their customers, which may include TPHs, non-broker dealer public customers, and non-TPH broker dealers.

connectivity to the PULSe drop copy network and allow the Silexx integrated TPH to send fill messages back to its customer. The connection fee would be assessed to the Silexx integrated TPH on a per customer connection basis.[8]

Example #2

Consider a PULSe or Silexx user (the ''customer'') sends its order to a Silexx integrated partner that is a non-TPH (the ''Silexx integrated non-TPH'') for execution via a third-party front-end platform (*i.e.,* a terminal other than Silexx or PULSe). The Silexx integrated non-TPH then submits the order to another market center (or to the Exchange through a third-party TPH) through its own front-end system. Under the new functionality, for a $500/month fee the Silexx integrated non-TPH may establish a connection to the Silexx back-end platform which will provide connectivity to the PULSe drop copy network and allow the Silexx integrated non-TPH to send fill messages back to its customer. The connection fee would be assessed to the Silexx integrated non-TPH on a per customer connection basis.[9]

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.[10] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed fee is reasonable as it is similar to other established PULSe fees related to drop-copy functionality.[12] For example, the PULSe Fees Schedule provides for a drop copy fee of $425 per month payable by the TPH customer receiving the drop copies. Specifically, for each PULSe-using TPH broker that provides a TPH customer drop copies, such receiving TPH customer incurs a fee of $425 per month. Similarly, the PULSe Fees schedule provides for a drop copy fee of $0.02/contract (capped at $400 per month) payable by the TPH sending the drop copies to its non-TPH customers. Specifically, for each non-TPH PULSe-using customer for which a TPH broker provides drop copies, the TPH broker incurs a fee of $0.02/contract (capped at $400 per month). The proposed fee is slightly higher than the comparable PULSe fees because Silexx Integrated Partners are paying no additional fees, such as a PULSe or Silexx terminal fee.

Additionally, the proposed fee would support the introduction of a new drop copy functionality that provides an alternative means for customers to receive their fill messages. Particularly, the new drop copy functionality provides a Silexx integrated partner with the ability to leverage the existing infrastructure of the PULSe drop copy network, which provides customers with the ability to receive valuable information about transactions executed across the market place. By utilizing the existing infrastructure, customers already connected to the PULSe drop copy network may experience cost savings by eliminating the need to connect to another platform to receive drop copies. Further, customers will not be charged an additional fee to receive such drop copies via the PULSe drop copy network. Additionally, Silexx integrated partners may experience lower fees than those of competitor providers charging for drop copies. As noted above, the drop copy fill messages allow customers to update positions, risk calculations, and streamline back-office functions. The Exchange notes that the decision as to whether or not to utilize the PULSe drop copy network is entirely optional for all users.

The Exchange believes that assessing the proposed fee to Silexx integrated partners using non-PULSe, non-Silexx terminals is equitable and not unfairly discriminatory as PULSe and Silexx terminal users already pay monthly fees related to the use of such workstations and access to the PULSe drop copy network. The Exchange believes the fee is equitable and not unfairly discriminatory because the monthly fee is assessed uniformly to any market participant who sends drop copies through the PULSe drop copy network from non-PULSe, non-Silexx terminals. Further, the Exchange believes the fee is equitable and not unfairly discriminatory because, as discussed above, the fee is similar to fees assessed to PULSe users utilizing the PULSe drop copy network.

B. Self-Regulatory Organization's Statement on Burden on Competition

Cboe Options does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed drop copy fee is assessed equally to similarly situated Silexx integrated TPHs or non-TPHs electing to use the drop copy functionality.

The Exchange does not believe that the proposed change will cause any unnecessary burden on intermarket competition because the proposed fee relates to the use of an Exchange-supported order entry management system. To the extent that any proposed change makes Silexx a more attractive platform for market participants, such market participants are welcome to become Silexx users or Silexx integrated partners.

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[13] and paragraph (f) of Rule 19b–4[14] 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

[8] The Exchange notes that the Silexx integrated TPH must establish a connection for each applicable customer to receive drop copies via the PULSe drop copy network. Thus, the fee is applied on a per customer or per connection basis. For example, if a Silexx integrated TPH has two customers that receive drop copies via the PULSe drop copy network, the Silexx integrated TPH would be assessed a monthly fee of $1,000 ($500 x 2).

[9] The Exchange notes that the Silexx integrated non-TPH must establish a connection for each applicable customer to receive drop copies via the PULSe drop copy network. Thus, the fee is applied on a per customer or per connection basis. For example, if a Silexx integrated non-TPH has two customers that receive drop copies via the PULSe drop copy network, the Silexx integrated non-TPH would be assessed a monthly fee of $1,000 ($500 x 2).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] *See e.g.,* PULSe Fees Schedule drop copy fees.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f).

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–2019–125 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–2019–125. 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–2019–125 and should be submitted on or before January 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–27875 Filed 12–26–19; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Form N–17D–1; SEC File No. 270–231, OMB Control No. 3235–0229

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l–3520), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 17(d) (15 U.S.C. 80a–17(d)) of the Investment Company Act of 1940 (''Act'') authorizes the Commission to adopt rules that protect funds and their security holders from overreaching by affiliated persons when the fund and the affiliated person participate in any joint enterprise or other joint arrangement or profit-sharing plan. Rule 17d–1 under the Act (17 CFR 270.17d–1) prohibits funds and their affiliated persons from participating in a joint enterprise, unless an application regarding the transaction has been filed with and approved by the Commission. Paragraph (d)(3) of the rule provides an exemption from this requirement for any loan or advance of credit to, or acquisition of securities or other property of, a small business concern, or any agreement to do any of the foregoing (''investments'') made by a small business investment company (''SBIC'') and an affiliated bank, provided that reports about the investments are made on forms the Commission may prescribe. Rule 17d–2 (17 CFR 270.17d–2) designates Form N–17D–1 (17 CFR 274.00) (''form'') as the form for reports required by rule 17d–1.

SBICs and their affiliated banks use form N–17D–1 to report any contemporaneous investments in a small business concern. The form provides shareholders and persons seeking to make an informed decision about investing in an SBIC an opportunity to learn about transactions of the SBIC that have the potential for self-dealing and other forms of overreaching by affiliated persons at the expense of shareholders.

Form N–17D–1 requires SBICs and their affiliated banks to report identifying information about the small business concern and the affiliated bank. The report must include, among other things, the SBIC's and affiliated bank's outstanding investments in the small business concern, the use of the proceeds of the investments made during the reporting period, any changes in the nature and amount of the affiliated bank's investment, the name of any affiliated person of the SBIC or the affiliated bank (or any affiliated person of the affiliated person of the SBIC or the affiliated bank) who has any interest in the transactions, the basis of the affiliation, the nature of the interest, and the consideration the affiliated person has received or will receive.

There is one SBIC that may file the form annually.[1] The Commission estimates the burden of filling out the form is approximately one hour per response and would likely be completed by an accountant or other professional. Based on past filings, the Commission estimates that no more than one SBIC is likely to use the form each year. Most of the information requested on the form should be readily available to the SBIC or the affiliated bank in records kept in the ordinary course of business, or with respect to the SBIC, pursuant to the recordkeeping requirements under the Act. Commission staff estimates that it should take approximately one hour for an accountant or other professional to complete the form.[2] The estimated total annual burden of filling out the form is 1 hour, at an estimated total annual cost of $216.[3] The Commission will not keep responses on Form N–17D–1 confidential.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not

[1] As of October 22, 2019, one SBIC was registered with the Commission.

[2] This estimate of hours is based on past conversations with representatives of SBICs and accountants that have filed the form.

[3] The estimated wage figure is based on published rates for Senior Accountants ($216). The $216/hour figure for a Senior Account is from Securities Industry and Financial Markets Association's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

derived from a comprehensive or even a representative survey or study of the costs of Commission rules. 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.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 19, 2019.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–27853 Filed 12–26–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 18f–1 and Form N–18f–1; SEC File No. 270–187, OMB Control No. 3235–0211

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l–3520), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 18f–1 (17 CFR 270.18f–1) enables a registered open-end management investment company (''fund'') that may redeem its securities in-kind, by making a one-time election, to commit to make cash redemptions pursuant to certain requirements without violating section 18(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–18(f)). A fund relying on the rule must file Form N–18F–1 (17 CFR 274.51) to notify the Commission of this election. The Commission staff estimates that 22 funds file Form N–18F–1 annually, and that each response takes one hour. Based on these estimates, the total annual burden hours associated with the rule is estimated to be 22 hours. The estimated burden hours associated with rule 18f–1 and Form 18F–1 have decreased by 16 hours from the current allocation of 38 hours. This decrease is due to a decrease in the estimated number of investment companies filing Form N–18F–1 annually. There is no external cost associated with this collection of information.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. 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.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 19, 2019.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–27852 Filed 12–26–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87807; File No. SR–EMERALD–2019–37]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 515, Execution of Orders and Quotes

December 19, 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 16, 2019, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') 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 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 is filing a proposal to amend Exchange Rule 515, Execution of Orders and Quotes, to make minor, non-substantive edits and clarifying changes to the rule text.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald* at MIAX Emerald's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 Exchange proposes to amend Exchange Rule 515, Execution of Orders and Quotes, to make minor, non-substantive edits and clarifying changes to the rule text in order to provide consistency and clarity within the rule text. Specifically, the Exchange proposes to amend subsection (c)(1)(ii)(C)3. to correct a citation to the subsection that discusses the Managed Interest Process. Subsection (c)(1)(ii)(C)3. of Exchange Rule 515 currently states:

> If the Exchange receives a new Post-Only OQ on the opposite side of the market from a Post-Only Order being managed under this subsection (c)(1)(ii)(B) and the new Post-Only OQ locks or crosses the Book price of the resting Post-Only Order, the Exchange will re-book the resting Post-Only Order at the same price as its displayed price and manage the resting Post-Only Order and the new Post-Only OQ under the POP Process of subsection (i) of this Rule.

The Exchange proposes to amend the citation to ''subsection (c)(1)(ii)(B)'' in subsection (c)(1)(ii)(C)3. to remove the citation to item ''(B).'' Accordingly, with the proposed change, the new citation will be to the general section covering the Managed Interest Process for Non-Routable orders, which is subsection (c)(1)(ii). The purpose of this proposed change is to provide consistency and clarity within the rule text.

Next, the Exchange proposes to make several amendments to subsection (c)(1)(ii)(B) of Exchange Rule 515 to correct the punctuation in that subsection. Subsection (c)(1)(ii)(B) currently provides that if the limit price of an order locks or crosses the current opposite side ABBO and the EBBO is inferior to the ABBO, the System [3] will display the order one MPV away from the current opposite side ABBO, and book the order at a price that will lock the current opposite side ABBO. Should the ABBO price change to an inferior price level, the order's Book price will continuously re-price to lock the new ABBO and the managed order's displayed price will continuously re-price one MPV away from the new ABBO until (1) the order has traded to and including its limit price, (2) the order has traded to and including its price protection limit at which time any remaining contracts are cancelled, (3) the order is fully executed or (4) the order is cancelled. The Exchange now proposes to insert a colon at the end of the second sentence in subsection (c)(1)(ii)(B) that leads into the four different scenarios that describe when the System will stop repricing the order pursuant to the Managed Interest Process. Further, the Exchange proposes to delete the commas after each sentence in subsections (c)(1)(ii)(B)(1) through (c)(1)(ii)(B)(3), and replace those commas with semicolons. The purpose of these changes is to provide consistency and clarity throughout the rule text.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act [4] in general, and furthers the objectives of Section 6(b)(5) of the Act [5] 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, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposed changes promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes make clarifying edits to the rule text of Exchange Rule 515, and correct an error to a particular citation to provide uniformity in the Exchange's rulebook. The Exchange believes that these proposed changes will provide greater clarity to Members and the public regarding the Exchange's rules and that it is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes the proposed changes will not impose any burden on intra-market competition as there is no functional change to the Exchange's System and because the rules of the Exchange apply to all MIAX Emerald participants equally. The proposed rule changes will have no impact on competition as they are not designed to address any competitive issues but rather are designed to remedy minor non-substantive issues and provide added clarity to the rule text of Exchange Rule 515. In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal does not address any competitive issues and is intended to protect investors by providing further transparency regarding the Exchange's functionality.

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 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 [6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[7]

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:

[3] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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–EMERALD–2019–037 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-*EMERALD–2019–037.* 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–EMERALD–2019–037 and should be submitted on or before January 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–27874 Filed 12–26–19; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 10977]

Notice of Public Meeting in Preparation for an International Maritime Organization Committee

The Department of State will conduct an open meeting at 9:30 a.m. on Wednesday, January 8, 2020, at the headquarters of the Radio Technical Commission for Maritime Services (RTCM) in Suite 705, 1621 N Kent Street, Arlington, Virginia 22209. The primary purpose of the meeting is to prepare for the 7th session of the International Maritime Organization's (IMO) Sub-Committee on Navigation, Communication, and Search and Rescue to be held at the IMO Headquarters, United Kingdom, January 15–24, 2020. The agenda items to be considered include:

— Decisions of other IMO bodies
— Routing measures and mandatory ship reporting systems
— Updates to the LRIT system
— Application of the ''Indian Regional Navigation Satellite System (IRNSS)'' in the maritime field and development of performance standards for shipborne IRNSS receiver equipment
— Recognition of the Japanese regional navigation satellite system Quasi-Zenith Satellite System (QZSS) and development of performance standards for shipborne satellite navigation system receiver equipment
— Revision of the Guidelines for vessel traffic services (resolution A.857(20))
— Consideration of descriptions of Maritime Services in the context of e-navigation
— Updating of the GMDSS master plan and guidelines on MSI Maritime Safety Information (MSI)
— Safety measures for non-SOLAS ships operating in polar waters
— Revision of SOLAS chapters III and IV for Modernization of the GMDSS, including related and consequential amendments to other existing instruments)
— Response to matters related to the Radiocommunication ITU R Study Group and ITU World Radiocommunication Conference
— Revision of the Guidelines on places of refuge for ships in need of assistance (resolution A.949(23))
— Developments in GMDSS satellite services
— Further development of the provision of global maritime SAR services
— Guidelines on harmonized aeronautical and maritime search and rescue procedures, including SAR training matters
— Amendments to the IAMSAR Manual
— Unified interpretation of provisions of IMO safety, security, and environment-related Conventions
— Validated model training courses
— Biennial status report and provisional agenda for NCSR 8
— Election of Chair and Vice-Chair for 2021
— Any other business

Members of the public may attend this meeting up to the seating capacity of the room. Upon request to the meeting coordinator, members of the public may also participate via teleconference, up to the capacity of the teleconference phone line. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, George Detweiler, by email at *George.H.Detweiler@uscg.mil,* by phone at (202) 372–1566, or in writing at 2703 Martin Luther King Jr. Ave. SE Stop 7418, Washington DC 20593–7418 not later than January 1, 2020, 7 days prior to the meeting. Requests made after January 1, 2020 might not be able to be accommodated. In the case of inclement weather where the U.S. Government is closed or delayed, a public meeting may be conducted virtually. The meeting coordinator will confirm whether the virtual public meeting will be utilized and will provide call in details to those who have registered. Members of the public can find out whether the U.S. Government is delayed or closed by visiting *www.opm.gov/status/.*

Jeremy M. Greenwood,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2019–27912 Filed 12–26–19; 8:45 am]

BILLINGCODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 10988]

Notice of Public Meeting in Preparation for International Maritime Organization (IMO) Meeting

The Department of State will conduct an open meeting at 1:00 p.m. Eastern Standard Time on Thursday, January 23, 2020, in Room 6I10–01–C of the Douglas A. Munro Coast Guard Headquarters Building at St. Elizabeth's, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593. The primary purpose of the meeting is to prepare for the seventh session of the International Maritime Organization's (IMO) Sub-Committee on Pollution Prevention and Response (PPR 7) to be held at the IMO Headquarters,

United Kingdom, on February 17–21, 2020.

The agenda items to be considered include:

—Adoption of the agenda
—Decisions of other IMO bodies
—Safety and pollution hazards of chemicals and preparation of consequential amendments to the IBC Code
—Revised guidance on ballast water sampling and analysis
—Revised guidance on methodologies that may be used for enumerating viable organisms
—Amendment of Annex 1 to the AFS Convention to include controls on cybutryne, and consequential revision of relevant guidelines
—Review of the 2011 Guidelines for the control and management of ships' biofouling to minimize the transfer of invasive aquatic species (resolution MEPC.207(62))
—Reduction of the impact on the Arctic of Black Carbon emissions from international shipping
—Development of guidelines for onboard sampling of fuel oil not in use by the ship
—Standards for shipboard gasification of waste systems and associated amendments to regulation 16 of MARPOL Annex VI
—Review of the 2015 Guidelines for exhaust gas cleaning systems (resolution MEPC.259(68))
—Evaluation and harmonization of rules and guidance on the discharge of liquid effluents from EGCS into waters, including conditions and areas
—Development of amendments to MARPOL Annex VI and the NO_X Technical Code on the use of multiple engine operational profiles for a marine diesel engine
—Development of measures to reduce risks of use and carriage of heavy fuel oil as fuel by ships in Arctic waters
—Review of the IBTS Guidelines and amendments to the IOPP Certificate and Oil Record Book
—Revision of MARPOL Annex IV and associated guidelines to introduce provisions for record-keeping and measures to confirm the lifetime performance of sewage treatment plants
—Follow-up work emanating from the Action Plan to address marine plastic litter from ship
—Unified interpretation to provisions of IMO environment-related conventions
—Biennial agenda and provisional agenda for PPR 8
—Election of Chair and Vice-Chair for 2021
—Any other business
—Report to the Marine Environment Protection Committee

Members of the public may attend this meeting up to the seating capacity of the room. Upon request to the meeting coordinator, members of the public may also participate via teleconference, up to the capacity of the teleconference phone line. Those who RSVP will be notified of the call-in number. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Ms. Melissa Perera, by email at *Melissa.E.Perera@uscg.mil,* by phone at (202) 372–1446, or in writing at COMDT (CG–OES–3), ATTN: Ms. Melissa Perera, 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593–7509, not later than January 15, 2020, five business days prior to the meeting. Requests made after January 15, 2020, might not be able to be accommodated. Please note that due to security considerations, two valid, government-issued photo identifications must be presented to gain entrance to the Coast Guard Headquarters building. The building is accessible by taxi, public transportation, and privately owned conveyance (upon request).

Jeremy M. Greenwood,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2019–27927 Filed 12–26–19; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice: 10985]

Boundary Waters Treaty of 1909; Fargo, ND Hearing International Red River Board Report on Nutrient Targets

AGENCY: International Joint Commission, State.

ACTION: Notice of public hearing.

SUMMARY: The International Joint Commission Invites Public Comment on Recommendations by the International Red River Board (IRRB) on proposed nutrient concentration objectives and nutrient load targets for the Red River at the boundary between the United States and Canada. Comments will be accepted at a public hearing to be held on January 16, 2020 in Fargo, North Dakota and by mail, email and on-line until February 28, 2020. The IRRB's full report can be found on the IJC website at the following link: *www.ijc.org/what/engagement/public-comment-IIRB-nutrient-2020*. Public Hearing on IRRB's Report on Proposed Nutrient Water Quality Objectives:

DATES: January 16, 2020. Time: 7–9 p.m.

ADDRESSES: Delta Marriott Fargo, 1635 42nd St. SW, Fargo, ND 58103.

FOR FURTHER INFORMATION CONTACT: Sarah Lobrichon (Ottawa), 613–992–5368, *lobrichons@ottawa.ijc.org* or Frank Bevacqua (Washington), 202–736–9024, *bevacqauf@washington.ijc.org*.

SUPPLEMENTARY INFORMATION: The Commission reports on water quality of the Red River as it crosses the boundary pursuant to a reference under Article IX of the Boundary Waters Treaty between the United States and Canada. Commission recommendations to the two federal governments under Article IX References of the Boundary Waters Treaty are not binding and not to be considered decisions of the two federal governments.

The International Red River Board was established by the Commission in part to assist in reporting on the water quality of the Red River as it crosses the boundary and to recommend amendments or additions to the water quality objectives approved by the U.S. and Canadian governments in 1968 when considered warranted by the Commission.

In the 2000s the IRRB identified nutrients as an issue of concern. The Board established a Water Quality Committee to develop recommendations for potential nutrient load allocations and/or targets. At the IRRB's September 2019 meeting the Board agreed to recommend the following nutrient concentration objectives and nutrient load targets for the Red River at the boundary between the U.S. and Canada:

Nutrient concentration objective: Total Phosphorus 0.15 mg/L; Total Nitrogen 1.15 mg/L
Application: Seasonal Average (April 1–October 30)
Nutrient load target: Total Phosphorus 1,400 tonnes/year; Total Nitrogen 9,525 tonnes/year
Application: Five year running average

Commissioners will be present to hear comments at the above referenced public hearing in Fargo, North Dakota on January 16, 2020 from 7–9 p.m. A public comment period on the IRRB's report will also be open through February 28, 2020. Public input is essential to the Commission's consideration of a recommendation to the Governments of the United States and Canada.

The International Joint Commission was established under the Boundary Waters Treaty of 1909 to help the United

States and Canada prevent and resolve disputes over the use of the waters the two countries share. Its responsibilities include investigating and reporting on issues of concern when asked by the governments of the two countries. www.ijc.org.

Charles A. Lawson,

Secretary, U.S. Section, International Joint Commission, Department of State.

[FR Doc. 2019–27946 Filed 12–26–19; 8:45 am]

BILLING CODE 4710–14–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2019–0038]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that FHWA will submit the collection of information described below to the Office of Management and Budget (OMB) for review and comment. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 4, 2019. The PRA submission describes the nature of the information collection and its expected cost and burden.

DATES: Please submit comments by January 27, 2020.

ADDRESSES: You may submit comments identified by DOT Docket ID Number FHWA 2019–0038, by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lindsey Svendsen, 202–366–2035, or Arnold Feldman, 202–366–2028, Office of Real Estate Services, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Alternative Uses of the Right of Way.

Background: Government agencies that acquire real property for a Federal-aid highway project in which Federal funds participated in any phase, are charged with managing the acquired property after the project is completed, as described in 23 CFR 710 Subpart D—Real Property Management. As a part of this consideration, any excess or available right-of-way (ROW) for potential disposal must be determined and inventoried. Each State Department of Transportation (SDOT) must track, manage and update its inventory continually until the property is disposed.

This survey will collect information that will support analysis of the current state of the practice of Alternative Uses of the ROW nationwide. The report will identify current processes and tools used by SDOTs to identify and track ROW available for alternative uses, the types of alternative use requests they receive, and any safety, operational, or legal issues related to alternative uses. The survey will also identify additional opportunities for improving the existing processes, tools for identifying and tracking ROW that can streamline agencies' Property Management programs and provide information to states that have shown interest in alternative uses.

Respondents: Each of the 52 SDOTs (for the 50 states, the District of Columbia, and Puerto Rico) will be asked to respond to a written questionnaire. A subset of the state DOT's will be asked to participate in follow up interviews.

Frequency: One-time survey.

Estimated Average Burden per Response: Approximately 2 hours per survey response and 1 hour per interview.

Estimated Total Annual Burden Hours: Approximately 120 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: December 19, 2019.

Michael Howell,

Information Collection Officer.

[FR Doc. 2019–27898 Filed 12–26–19; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0204]

Agency Information Collection Activities; Renewal of a Currently-Approved Information Collection Request: Unified Registration System, FMCSA Registration/Updates

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the information collection request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. FMCSA requests approval to renew the ICR titled ''Unified Registration System, FMCSA Registration/Updates,'' OMB Control No. 2126–0051. This ICR applies to new registrants seeking initial operating authority from FMCSA. New registrants seeking operating authority must use online Form MCSA–1, accessible via the Unified Registration System (URS). FMCSA also seeks to declare an adjusted decrease in the estimate of response time and hence an adjusted decrease in the total burden hours calculated since the publication of the 60-day **Federal Register** (84 FR 48000) on September 11, 2019.

DATES: We must receive your comments on or before January 27, 2020.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2019–0204. Interested persons are invited to submit written comments

on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Secrist, Office of Registration and Safety Information, Chief, Registration, Licensing and Insurance Division, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202–385–2367; email: *jeff.secrist@dot.gov.* Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Unified Registration System, FMCSA Registration Updates.

OMB Control Number: 2126–0051.

Type of Request: Renewal of a currently approved collection.

Respondents: Carrier compliance officer or equivalent from transportation entities subject to FMCSA's licensing, registration and certification regulations.

Estimated Number of Respondents: 155,625 (51,875 per year, over 3 years).

Estimated Time per Response: 1.34 hours.

Expiration Date: January 31, 2020.

Frequency of Response: One-time information collection.

Estimated Total Annual Burden: 208,537.5 hours total (69,512.5 hours per year, over 3 years).

Background: FMCSA registers for-hire motor carriers of regulated commodities and of passengers, under 49 U.S.C. 13902(a); surface freight forwarders, under 49 U.S.C. 13903; property brokers, under 49 U.S.C. 13904; and certain Mexico-domiciled motor carriers, under 49 U.S.C. 13902(c). These motor carriers may conduct transportation services in the United States only if they are registered with FMCSA. Each registration is effective from the date specified and remains in effect for such period as the Secretary of Transportation (Secretary) determines by regulations.

The Final Rule titled ''Unified Registration System,'' (78 FR 52608) dated August 23, 2013, implemented statutory provisions for an online registration system for entities that are subject to FMCSA's licensing, registration, and certification regulations. URS streamlines the registration process and serves as a clearinghouse and repository of information on motor carriers, brokers, freight forwarders, intermodal equipment providers (IEPs), hazardous materials safety permit (HMSP) applicants, and cargo tank facilities required to register with FMCSA. When developing URS, FMCSA planned that the OP–1 series of forms (except for OP–1(MX)) would ultimately be folded into one overarching form (MCSA–1), which would be used by all motor carriers seeking authority.

FMCSA began a phased rollout of URS in 2015. The first phase, which became effective on December 12, 2015, impacts only first-time applicants seeking an FMCSA-issued registration. FMCSA had planned subsequent rollout phases for existing registrants; however, there have been substantial delays, and subsequent phases have not been rolled out to date.

On January 17, 2017, FMCSA issued a Final Rule titled ''Unified Registration System; Suspension of Effectiveness,'' which indefinitely suspended URS effectiveness dates for existing registrants only (82 FR 5292). Pursuant to this Final Rule, FMCSA is still accepting forms OP–1, OP–1(P), OP–1(FF), and OP–1(NNA) for existing registrants wishing to apply for additional authorities. Separately, FMCSA requires Form OP–1(MX) for Mexico-domiciled carriers that wish to operate beyond the U.S. municipalities on the U.S.-Mexico border and their commercial zones.

As described above, only first-time applicants seeking an FMCSA-issued registration must apply for authority via URS, using Form MCSA–1. Under URS, all forms described in the current ICR, except OP–1(MX), are folded into Form MCSA–1. Information collection activities associated with the OP–1 series of forms are covered under a different ICR, titled ''Licensing Applications for Motor Carrier Operating Authority,'' OMB Control No. 2126–0016.

Form MCSA–1 requests information to identify the applicant, the nature and scope of its proposed operations, safety-related details, and information regarding the drivers and vehicles it plans to use in U.S. operations. FMCSA and the States use registration information collected via Form MCSA–1 to track motor carriers, freight forwarders, brokers, and other entities they regulate. Registering motor carriers is essential to being able to identify carriers so that their safety performance can be tracked and evaluated. The data make it possible to link individual trucks to the responsible motor carrier, thus implementing the mandate under 49 U.S.C. 31136(a)(1); that is, ensuring that CMVs are maintained and operated safely. In general, registration information collected via Form MCSA–1 informs prioritization of the Agency's activities and aids in assessing and statistically analyzing the safety outcomes of those activities.

The current information collection supports the DOT Strategic Goal of Safety. It streamlines registration processes and ensures that FMCSA can more efficiently track motor carriers, freight forwarders, brokers, and other entities regulated by the Agency.

On September 11, 2019, FMCSA published a **Federal Register** (FR) notice and received one comment from Mr. Gary Porter. Mr. Porter states that he was charged with an accident in Shasta County California on 08/14/2017 for a crash he had nothing to do with and would like to have it removed from his record. The Agency attempted to contact Mr. Porter on November 25, 2019 but the contact number in our registration system was disconnected.

Changes From Previous Estimates

The adjustment in response time and burden hours since the publication of the 60-day FR (84 FR 48000) on September 11, 2019, was due to FMCSA being meticulous to recalculate estimates using more current data, that is, November 2019 data. The number of respondents in the 60-day FR did not change after the 60-day FR was published, however there is a decrease from 2 hours and 10 minutes per response to 1 hour and 20.4 minutes per response. This results in a calculated decrease from 112,396 burden hours to 69,512.5 burden hours, and a decrease from $4,758,447.58 in labor cost to $2,942,464.13 in labor costs. No comments were received in response to the 60-day FR concerning burden response, burden hours, or costs. Only one comment was received in response to the 60-day FR and it was not related to the ICR.

The previously approved version of this ICR included the following annual burden estimates: 635,418 respondents; 207,273 burden hours; and $6,066,345 in labor costs. Overall Federal Government costs associated with the previous iteration of this ICR were estimated to be $52,000,000, including staff, IT, and overhead costs.

The current ICR includes the following annual estimates: 51,875 respondents; 69,512.5 burden hours;

$2,942,464.13 in labor costs. Overall Federal Government costs associated with the current iteration of this ICR are $5,717,460.24, including labor costs and IT support.

As can be seen, there have been significant decreases in the number of respondents, burden hour estimates, labor costs to the industry, and costs to the Government. Reasons for these changes are described below.

First, the original iteration of this ICR included the Government's costs associated with the development, roll-out, and implementation of URS. Those costs are not reflected in this ICR. Instead, estimated costs for ongoing IT maintenance and support of the existing system are included.

Next, FMCSA has experienced delays in rolling out Phase II of URS (which applies to existing registrants) and has indefinitely suspended the effective date of URS requirements for such entities. Phase I of URS, which became effective on December 12, 2015, impacts only first-time (new) applicants seeking an FMCSA-issued registration. In the original iteration of this ICR, it was expected that Phase II of URS would move forward according to schedule, which would require all entities subject to FMCSA licensing and registration requirements (both new and existing registrants, an estimated 635,418 per year) to apply for additional authorities and submit biennial update information via URS. However, due to delays in rolling out Phase II of URS, existing registrants must still use the OP–1 series of forms (covered by OMB Control No. 2126–0016, ''Licensing Applications for Motor Carrier Operating Authority'') to apply for additional authorities and the MCS–150 (covered by OMB Control No. 2126–0013, ''Motor Carrier Identification Report'') to submit their biennial updates. Thus, only new registrants (an estimated 51,875 per year) are required to submit Form MCSA–1. FMCSA is assuming that this will be the case for the 3-year period covered by this ICR. This has resulted in a decrease in the estimated number of annual MCSA–1 responses of 583,543 (51,875 estimated annual responses in the current iteration of this ICR—635,418 estimated annual responses in the previous iteration of this ICR = − 583,543). The decrease in estimated burden hours is a direct result of the decreased estimate of annual responses.

Finally, the changes in labor cost to the industry reflect a) the decreased estimate of annual respondents, and b) a change in the methodology used to estimate hourly wages for carrier compliance officers, which resulted in an increase in hourly wage of $13.06 per hour.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87 on December 19, 2019.

Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2019–27899 Filed 12–26–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0347]

Commercial Driver's License Standards: Application for Exemption; Navistar, Inc. (Navistar)

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

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant an exemption to Navistar, Inc. (Navistar) and five engineers/drivers from the commercial driver's license (CDL) regulations for Jonas Hellström, Sofie Svanström, Erik Holma, Jonas Udd, and Mikael Öun. These Swedish project engineers who will test drive commercial motor vehicles (CMVs) for Navistar within the United States. All five engineers work for Scania AB in Sweden (part of the Volkswagen Group), which is partnering with Navistar to develop improved fuel economy and emissions reductions. The Scania drivers all hold valid Swedish commercial licenses and need to test drive Navistar vehicles on U.S. roads to better understand product requirements in ''real world'' environments and to verify results. FMCSA believes the requirements for a Swedish commercial license ensure that operation under the exemption will likely achieve a level of safety equivalent to or greater than the level that would be obtained in the absence of the exemption.

DATES: This exemption is effective December 27, 2019 and expires December 27, 2024.

ADDRESSES:

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, ''FMCSA–2018–0347'' in the ''Keyword'' box and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

Navistar has applied for an exemption for five drivers from 49 CFR 383.23, which prescribes licensing requirements for drivers operating CMVs in interstate or intrastate commerce. Navistar requests the exemption because these drivers are all citizens of Sweden and therefore cannot apply for a CDL in any of the U.S. States due to their lack of residency in this country. A copy of the individual applications is in Docket No. FMCSA–2018–0347.

The exemption allows these five drivers to operate CMVs in interstate or intrastate commerce as part of Navistar field tests designed to meet future vehicle safety and environmental requirements and to promote the development of new and advanced emissions reduction systems and fuel efficiency improvements. According to Navistar, the drivers will typically drive for no more than 8 hours per day for 2 consecutive days, and that 50 percent of the test driving will be on two-lane State highways, while 50 percent will be on interstate highways. Each engineer will drive no more than 300 miles per day, and in all cases the drivers will be accompanied by a holder of a U.S. CDL who is familiar with the routes to be traveled.

The drivers are Jonas Hellström, Sofie Svanström, Erik Holma, Jonas Udd, and Mikael Öun. The drivers hold valid Swedish commercial licenses and, as explained by Navistar in its exemption request, the requirements for that license ensure that, operating under the exemption, the drivers would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation. Navistar requests that the exemptions cover a five-year period for each driver.

IV. Method To Ensure an Equivalent or Greater Level of Safety

As for an equivalent level of safety, Navistar states that the process and requirements for obtaining a Swedish commercial license is comparable to, or as effective as, the requirements of part 383, and adequately assesses the driver's ability to operate CMVs in the U.S. The Agency recently granted one of Navistar's drivers a similar exemption [April 15, 2019 (84 FR 15283)]. Furthermore, the Agency has granted German drivers working for Daimler similar exemptions on December 7, 2015 (80 FR 76059); December 21, 2015 (80 FR 79410); July 12, 2016 (81 FR 45217); July 25, 2016 (81 FR 48496); August 17, 2017 (82 FR 39151); and September 10, 2018 (83 FR 45742). The Agency has not received any information or reports indicating there have been safety performance problems with individuals holding Swedish or German commercial licenses who operate CMVs on public roads in the United States.

V. Public Comments

On September 19, 2019, FMCSA published notice of this application and requested public comments (84 FR 49376). One comment was submitted. Mr. Zach Robinson wrote, ''I am a general member of the public with no known direct personal stake in this issue: The exemption request should definitely be approved. These drivers hold commercial licenses in their own country and will be accompanied by a U.S. CDL holder. This addresses both safety concerns and American worker-employment concerns. Plus, they are only driving for 2 days. I have no doubt they will be safer than most of the drivers on the road.''

VI. FMCSA Decision

Based upon the merits of this application, including the five Navistar drivers' extensive driving experience and safety records, FMCSA has concluded that the exemption will likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption, in accordance with § 381.305(a).

VII. Terms and Conditions for the Exemption

FMCSA grants Navistar and its five drivers, Jonas Hellström, Sofie Svanström, Erik Holma, Jonas Udd, and Mikael Öun, an exemption from the CDL requirement in 49 CFR 383.23 to allow these individuals to drive CMVs in this country without a State-issued CDL, subject to the following terms and conditions:

(1) The drivers and carrier must comply with all other applicable provisions of the FMCSRs (49 CFR parts 350–399);

(2) the drivers must be in possession of the exemption document and a valid Swedish commercial license;

(3) the drivers must be employed by and operate the CMV within the scope of their duties for Navistar;

(4) at all times while operating a CMV under this exemption, the drivers must be accompanied by a holder of a U.S. CDL who is familiar with the routes traveled;

(5) Navistar must notify FMCSA in writing within 5 business days of any accident, as defined in 49 CFR 390.5, involving any of these drivers; and

(6) Navistar must notify FMCSA in writing if any of these drivers are convicted of a disqualifying offense under § 383.51 or § 391.15 of the FMCSRs.

In accordance with 49 U.S.C. 31315 and 31136(e), the exemption will be valid for 5 years unless revoked earlier by the FMCSA. The exemption will be revoked if:

(1) These five drivers fail to comply with the terms and conditions of the exemption;

(2) the exemption results in a lower level of safety than was maintained before it was granted; or

(3) continuation of the exemption would be inconsistent with the goals and objectives of 49 U.S.C. 31315 and 31136.

VIII. Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate or intrastate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

Issued on: December 19, 2019.

Jim Mullen,

Acting Administrator.

[FR Doc. 2019–27901 Filed 12–26–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0191]

Agency Information Collection Activities; Renewal of a Currently-Approved Information Collection Request: Financial Responsibility for Motor Carriers of Passengers and Motor Carriers of Property

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The information collected will be used to help ensure that motor carriers of passengers and property maintain appropriate levels of financial responsibility.

DATES: We must receive your comments on or before January 27, 2020.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2019–0191. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503. In the 60-day **Federal Register** notice (84 FR 52164) published on October 1, 2019, FMCSA received two comments. One was from an anonymous commenter which was not relevant to the information collection. The National School Transportation Association submitted a letter supporting the Agency's proposal to renew the information collection.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Secrist, Office of Registration and Safety Information, Chief, Registration, Licensing and Insurance Division, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202–385–2367; email: *jeff.secrist@dot.gov.* Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Title: Financial Responsibility for Motor Carriers of Passengers and Motor Carriers of Property.

OMB Control Number: 2126–0008.

Type of Request: Renewal of a currently-approved information collection.

Respondents: Insurance underwriters for insurance and surety companies of motor carriers of property (Forms MCS–90 and MCS–82) and passengers (Forms MCS–90B and MCS–82B), motor carrier clerks employed by motor carriers (storing/maintaining insurance and/or surety bond documentation), and vehicle maintenance staff employed by Canadian and Mexican/non-North-American (NNA) domiciled motor carriers (placing copies of documentation in vehicles).

Estimated Number of Respondents: 202,458.

Estimated Time per Response: FMCSA estimates it takes 2 minutes to complete the Endorsement for Motor Carrier Policies of Insurances for Public Liability (Forms MCS–90 for property carriers and MCS–90B for passenger carriers) or the Motor Carrier Public Liability Surety Bond (Forms MCS–82 for property carriers and MCS–82B for passenger carriers); 1 minute to store/maintain documents at the motor carrier's place of business [49 CFR 387.7(d); 49 CFR 387.31(d)]; and 1 minute to place either document on board the vehicle, required for Canadian and Mexican/NNA carriers operating in the United States [49 CFR 387.7(f); 387.31(f)].

Expiration Date: January 31, 2020.

Frequency of Response: Upon creation, change, or replacement of an insurance policy or surety bond.

Estimated Total Annual Burden: 5,739 hours [4,931 annual burden hours for ICs 1–4 + 808 annual burden hours for IC–5 document placement in vehicles = 5,739].

Background: The Secretary of Transportation is responsible for implementing regulations which establish minimal levels of financial responsibility for: (1) For-hire motor carriers of property to cover public liability, property damage and environmental restoration, and (2) for-hire motor carriers of passengers to cover public liability and property damage. The Endorsement for Motor Carrier Policies of Insurance for Public Liability (Forms MCS–90/90B) and the Motor Carrier Public Liability Surety Bond (Forms MCS–82/82B) contain the minimum amount of information necessary to document that a motor carrier of property or passengers has obtained, and has in effect, the minimum levels of financial responsibility as set forth in applicable regulations (motor carriers of property—49 CFR 387.9; and motor carriers of passengers—49 CFR 387.33). FMCSA and the public can verify that a motor carrier of property or passengers has obtained, and has in effect, the required minimum levels of financial responsibility, by use of the information enclosed within these documents.

The 60-day **Federal Register** notice (84 FR 52164) published on October 1, 2019, announced FMCSA's intent to submit the Financial Responsibility of Motor Carriers of Passengers and Motor Carriers of Property clearance process to OMB for approval and requested comments from the public for 60 days. The FMCSA received two comments in response to the 60-day **Federal Register** notice. One was from an anonymous commenter which was not relevant to the information collection. The National School Transportation Association submitted a letter supporting the Agency's proposal to renew the information collection.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87 on December 19, 2019.

Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2019–27900 Filed 12–26–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Annual Random Controlled Substances Testing Percentage Rate for Calendar Year 2020

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

ACTION: Notice of program change.

SUMMARY: The FMCSA announces that it is increasing the minimum annual percentage rate for random controlled substances testing for drivers of commercial motor vehicles (CMVs) requiring a commercial driver's license (CDL) from the current rate of 25 percent of the average number of driver positions to 50 percent of the average number of driver positions, effective in calendar year 2020. The FMCSA Administrator must increase the minimum annual random testing percentage rate when the data received under the reporting requirements for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent. Based on the results of the 2018 FMCSA Drug and Alcohol Testing Survey, the positive rate for controlled substances random testing increased to 1.0 percent. Therefore, the Agency will increase the controlled substances minimum annual percentage rate for random controlled substances testing to 50 percent of the average number of driver positions.

DATES: Beginning January 1, 2020, the minimum annual percentage rate for random controlled substances testing, for drivers of commercial motor vehicles (CMVs) requiring a commercial driver's license (CDL), will be 50 percent.

FOR FURTHER INFORMATION CONTACT: Mr. Juan Moya, Drug and Alcohol Program Manager, Compliance Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, 202–366–4844 or *fmcsadrugandalcohol@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The final rule titled, ''Controlled Substances and Alcohol Use and Testing,'' published August 17, 2001, (66 FR 43097), established the process by which the Agency determines whether the minimum annual percentage rate for random controlled substances testing should be increased or decreased. The final rule included a provision indicating that the decision on whether to increase or decrease the percentage rate would be based upon the motor carrier industry's overall positive random controlled substance test rate, as reported by motor carrier employers to FMCSA, pursuant to 49 CFR 382.403. Under this performance-based system, when the minimum annual percentage rate for random controlled substances testing is 25 percent, and the data received under the reporting requirements for any calendar year indicate that the reported positive rate is equal to or greater than 1 percent, the FMCSA Administrator will increase the minimum annual percentage rate for random controlled substances to 50 percent for all driver positions (49 CFR 382.305(h)). The new annual random testing percentage rate would then apply starting January 1 of the following calendar year.

In accordance with 49 CFR 382.403, each calendar year FMCSA requires motor carriers selected for the survey to submit their DOT drug and alcohol testing program results. Selected motor carriers are responsible for ensuring the completeness, accuracy, and timeliness of the data submitted. The survey requires motor carriers to provide information to the Agency on the number of random tests conducted and the corresponding positive rates.

For the 2018 survey, forms were sent to 4,480 randomly selected motor carriers. Of these forms, 1,908 were completed and returned to FMCSA, resulting in usable data from 1,552 carriers (comprising of 300,635 CDL drivers) for random controlled substance testing. Respondents providing non-usable data represent entities that are out of business, exempt, have no testing program in place, or belong to consortia that did not test any drivers for the carrier during 2018.

The estimated positive random controlled substance test rate in 2018 is 1 percent. The 95-percent confidence interval for this estimate ranges from 0.9 to 1.1 percent. In other words, if the survey were to be replicated, it would be expected that the confidence interval derived from each replication would contain the true usage rate in 95 out of 100 surveys. For 2016 and 2017, the estimated positive usage rate for drugs was estimated to be 0.7 percent and 0.8 percent, respectively. A more detailed discussion of the 2018 drug and alcohol testing survey results can be found in the Analysis Brief included in the docket for this Notice.

Part 382 Compliance

Based on the 2018 survey results, the estimated percentage of subject motor carriers with random controlled substance and alcohol testing programs in place is 94 percent, and the estimated percentage of all CDL drivers participating in such programs is 99 percent. FMCSA estimates there are 3.2 million CDL holders operating in interstate commerce and 1 million CDL holders operating in intrastate commerce. With this population, at least 1.05 million random controlled substances tests would be conducted with an annual random testing rate of 25 percent of all driving positions. At a 50 percent annual random testing rate, approximately 2.1 million random controlled substances tests will need to be conducted in calendar year 2020.

The new minimum annual percentage rate for random drug testing will be effective January 1, 2020. This change reflects the increased positive test rate and will result in an estimated $50 to 70 million increase in costs to the industry by requiring that more drivers be tested.

Minimum Annual Percentage Rates for Random Controlled Substances Testing for 2020

Beginning January 1, 2020, the minimum annual percentage rate for random controlled substances testing is 50 percent of the average number of driver positions. The minimum annual percentage rate for random alcohol testing will remain at 10 percent.

Issued on: December 20, 2019.

Elaine L. Chao,

Secretary.

[FR Doc. 2019–28164 Filed 12–26–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for projects in Denver, Colorado, Portland, Oregon, and Las Vegas, Nevada. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject projects and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to 23 U.S.C. 139(l). A claim seeking judicial review of FTA actions announced herein for the listed public transportation projects will be barred unless the claim is filed on or before May 26, 2020.

FOR FURTHER INFORMATION CONTACT: Nancy-Ellen Zusman, Assistant Chief Counsel, Office of Chief Counsel, (312) 353–2577 or Juliet Bochicchio, Environmental Protection Specialist, Office of Environmental Programs, (202) 366–9348. FTA is located at 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 9:00 a.m.

to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation projects listed below. The actions on the projects, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the projects to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA environmental project file for the projects. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information. Contact information for FTA's Regional Offices may be found at *https://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321–4375], Section 4(f) requirements [23 U.S.C. 138, 49 U.S.C. 303], Section 106 of the National Historic Preservation Act [54 U.S.C. 306108], and the Clean Air Act [42 U.S.C. 7401–7671q]. This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register**. The projects and actions that are the subject of this notice follow:

1. Project name and location: The16th Street Mall Improvement Project in Denver, Colorado. *Project Sponsor:* The Regional Transportation District and the City and County of Denver. *Project description:* The 16th Street Mall Improvement Project will reconstruct the 16th Street Mall between Market Street and Broadway. The project will reconstruct 12.5 blocks of the historic 16th Street Mall to address infrastructure, mobility, safety and public use needs and install a new granite paver system with improved surface friction and proper drainage. The spatial reconfiguration will create wider pedestrian areas, transit lanes will be consolidated in the center of the Mall, and the Free MallRide shuttle bus service will continue. *Final agency action:* Section 4(f) determination of the historic 16th Street Mall, concurrence dated October 4, 2019; Section 106 finding of adverse effect to the historic 16th Street Mall, concurrence dated June 5, 2018, and executed Section 106 Programmatic Agreement, dated September 18, 2019; and the 16th Street Mall Alternatives Analysis and Environmental Clearance Finding of No Significant Impact, dated November 25, 2019. *Supporting Documentation:* the 16th Street Mall Alternatives Analysis and Environmental Assessment, April, 2019; and the 16th Street Mall Alternatives Analysis and Environmental Assessment Errata Sheet, November, 2019.

2. Project name and location: MAX Red Line Extension and Reliability Improvements Project, Portland, Oregon. *Project Sponsor:* The Tri-County Metropolitan Transportation District of Oregon. *Project description:* The MAX Red Line Extension and Reliability Improvements Project includes capital improvements of the MAX light rail system at four station locations to improve MAX systemwide reliability. The project will extend MAX Red Line service to ten existing MAX Blue Line stations from west of the Beaverton Transit Center to a terminus at the existing Fair Complex/Hillsboro Airport Station. *Final agency actions:* Section 4(f) exception and Section 4(f) *de minimis* impact determination; Section 106 finding of no adverse effect, concurrence dated August 16 and 19, 2019; and determination of the applicability of a Categorical Exclusion pursuant to 23 CFR 771.118(d), dated October 1, 2019. *Supporting documentation:* Documented Categorical Exclusion checklist and supporting materials, dated July 9, 2019.

3. Project name and location: Maryland Parkway High Capacity Transit Project, City of Las Vegas, Nevada. *Project Sponsor:* The Regional Transportation Commission of Southern Nevada. *Project description:* The project consists of an 8.7-mile-long route that will replace the existing local Route 109 bus service with an enhanced bus rapid transit system from Las Vegas Medical District to the Bonneville Transit Center and through downtown Las Vegas, along Maryland Parkway to Russell Road. The project encompasses the construction of 24 new bus stations, with accompanying 44 new platforms, spaced approximately 0.35-mile apart, and all associated bus rapid transit roadway and hard surface improvements. *Final agency action:* Section 4(f) *de minimis* impact determination; project-level air quality conformity; Section 106 finding of no adverse effect to historic properties, concurrence dated July 18, 2019; and Maryland Parkway High Capacity Transit Project Finding of No Significant Impact, dated December 16, 2019. *Supporting Documentation:* Maryland Parkway High Capacity Transit Environmental Assessment, November, 2019.

Authority: Authority: 23 U.S.C. 139(l)(1).

Felicia L. James,

Associate Administrator for Planning and Environment.

[FR Doc. 2019–27902 Filed 12–26–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST—2019–0184]

National Freight Strategic Plan: Request for Information

ACTION: Request for information (RFI).

SUMMARY: The safe and efficient movement of freight is vital to the Nation's economic growth and to the creation of well-paying jobs for millions of Americans. The Fixing America's Surface Transportation (FAST) Act required DOT to develop a National Freight Strategic Plan (NFSP) that includes eleven statutorily required components to address multimodal freight transportation. The Department of Transportation (DOT) seeks information from the public, including stakeholders (*e.g.,* State and local agencies, private owners and operators, industry trade groups, shippers and beneficial cargo owners, etc.) to aid development of the NFSP.

DATES: Comments must be received on or before February 10, 2020. DOT will consider comments filed after this date to the extent practicable.

ADDRESSES: You may submit comments identified by DOT Docket Number OST–2019–0184 by any of the following methods:

- *Electronic Submission:* Go to *http://www.regulations.gov.* Search by using the docket number (provided above). Follow the instructions for submitting comments on the electronic docket site.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 of the Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket numbers.

Note: All comments received, including any personal information, will be posted without change to the docket and is accessible via *http://www.regulations.gov.* Input submitted online via *www.regulations.gov* is not

immediately posted to the site. It may take several business days before your submission is posted.

FOR FURTHER INFORMATION CONTACT: Ryan Endorf at *ryan.endorf@dot.gov* or at 202–366–4835.

SUPPLEMENTARY INFORMATION:

Background

The nation's freight transportation system is a complex network of almost seven million miles of highways, railways, navigable waterways, and pipelines. The components of this network are linked through hundreds of seaports, airports, and intermodal facilities. This system accommodates the movement of raw materials and finished products from the entire spectrum of the agricultural, manufacturing, energy, retail, and other sectors of the United States' economy.

The Moving Ahead for Progress in the 21st Century Act (MAP–21; Pub. L. 112–141) required DOT to develop a National Freight Strategic Plan (NFSP). On October 18, 2015, DOT issued the draft NFSP (compliant with the MAP–21 requirements) for public comment, available at *www.transportation.gov/freight* and at *http://www.regulations.gov/#!docketDetail;D=DOT-OST-2015-0248.* On December 4, 2015, the President signed the FAST Act (Pub. L. 114–94) into law. Section 8001 of the FAST Act continues the requirement that the DOT develop an NFSP, expanding the focus to include a multimodal approach.

The FAST Act required DOT to develop a National Freight Strategic Plan (NFSP) that included (1) an assessment of the condition and performance of the National Multimodal Freight Network; (2) forecasts of freight volumes for the succeeding 5-, 10-, and 20-year periods; (3) an identification of major trade gateways and national freight corridors that connect major population centers, trade gateways, and other major freight generators; (4) an identification of bottlenecks on the National Multimodal Freight Network that create significant freight congestion, based on a quantitative methodology developed by the Under Secretary, which shall include at a minimum—(a) information from the Freight Analysis Framework (FAF); and (b) to the maximum extent practicable, an estimate of the cost of addressing each bottleneck and an operational improvements that could be implemented; (5) an assessment of statutory, regulatory, technological, institutional, financial, and other barriers to improved freight transportation performance, and a description of opportunities for overcoming those barriers; (6) a process for addressing multistate projects and encouraging jurisdictions to collaborate; (7) strategies to improve freight intermodal connectivity; (8) an identification of corridors providing access to energy exploration, development, installation, or production areas; (9) an identification of corridors providing access to major areas for manufacturing, agriculture, or natural resources; (10) an identification of best practices for improving the performance of the National Multimodal Freight Network, including critical commerce corridors and rural and urban access to critical freight corridors; and (11) an identification of best practices to mitigate the impacts of freight movement on communities.

A national freight strategy will be helpful to inform infrastructure planning and to support future freight efficiencies. The safe and efficient movement of freight is vital to the Nation's economic growth and to the creation of well-paying jobs for millions of Americans. In 2015, the U.S. transportation system moved approximately 49 million tons of freight per day worth more than $52 billion and DOT estimates 13.3 million people were employed in transportation or transportation-related industries in 2017. DOT estimates the net value of U.S. transportation capital to be $7.7 trillion in 2016 with the public sector owning $4.2 trillion and the private sector owning $3.5 trillion. DOT estimates that freight tonnage will increase by 44 percent between 2015 and 2045 which will place increasing strain on our Nation's freight system. Today, that freight system moves approximately 18 billion tons of freight every year across all the modes, but congestion has been increasing, particularly on our Nation's highways. The trucking industry experienced almost 1.2 billion hours of delay in 2016 because of traffic congestion on the National Highway System, at a cost of $34 billion in truck driver wages, not including wasted fuel and increased inventory carrying costs for affected shippers and beneficial cargo owners (BCOs). Prior to 2005, virtually all crude oil was moved via pipeline; however, by 2011, rail shipments of crude oil have increased substantially and increases in domestic energy production, including increased liquefied natural gas movements will require more interplay between pipelines, rail, and tanker/barge movements. Air cargo transportation is particularly important for high value commodities, such as electronics and pharmaceuticals, and the FAF projects air cargo to be the fastest growing freight mode with annual tonnage growth of 4.3 percent.

Rural and urban citizens and businesses depend on the safe and efficient movement of freight. Many agricultural, energy, raw inputs, and other natural resources to our manufacturing products originate in rural areas, such as farm commodities, coal and other fuel inputs, and raw materials. Approximately two-thirds of freight tonnage shipped by rail in the U.S. originates in rural areas. Urban areas drive domestic freight demand and depend on reliable deliveries from ports and railroads by trucks via freight intermodal connectors to meet that demand. To safely and efficiently deliver goods to consumers, freight supply chains have become increasingly complex and shippers and BCOs are reliant on the interplay between multiple transportation modes. More than ever, transportation planning and infrastructure investment, particularly for freight, must be considered within the broader systems context that accounts for all modes and both public- and private-sector actors to retain the United States' global competitive advantage.

DOT recognizes the importance of engaging with the public and private industry to develop a clear, national vision for freight transportation that is inclusive of both public- and private-sector perspectives. Through State Freight Plans, all fifty States and the District of Columbia have contemplated the importance and impacts of freight movement to their local and regional economy and have developed infrastructure investment plans to improve freight flows across their States. As daily users of the system, private sector and non-public perspectives are vital inputs for understanding operational challenges along the freight system.

DOT seeks information directly from the public and stakeholders to inform development of this national freight strategy. DOT seeks comments and relevant information on any of the eleven statutorily defined plan components (as noted above); in addition, DOT specifically requests comments and data in response to the following questions:

1. What are the three most important challenges facing the U.S. freight transportation system?

2. What should be long- and short-term national freight system goals? How can States, local agencies, and private stakeholders most effectively advance these national goals?

3. How should DOT measure freight transportation system performance? In your response, consider both safety and efficiency, as well as performance thresholds across multimodal metrics (*i.e.,* hours of delay, infrastructure conditions, planning time index) that represent untenable performance for the public or private sector. Consider how performance metrics could be employed to inform DOT's discretionary grant programs.

4. What industry freight-specific knowledge is critical to understanding supply chains and how economic trends impact freight logistics and cargo movements? How can such data and/or knowledge be procured or shared amongst public and private sector partners? Are there technological innovations, such as Blockchain and the Internet of Things (IoT), that DOT should know about?

5. What should be considered regarding vital operational or equipment innovations, emerging technology advances from research communities, as well as infrastructure or facility concepts in freight transportation?

6. What approach should the federal government use to invest in the multimodal freight system? How would this approach apply to each transportation mode, for freight in general, for specific industries, or for freight assets owned by the private sector (*i.e.,* rail, pipelines, maritime)? What are best practices for identifying projects that involve both public and private sector assets and for encouraging communication between the public and private sector to complete those projects?

7. What barriers (such as regulatory, technological, institutional, statutory) are critical to freight efficiency that DOT should better understand? Please consider which of these affect freight origination and/or destination areas, as well as intermodal transfers, and describe the root causes of the inefficiencies.

8. What information is critical to understanding the unique infrastructure and operational freight impacts faced by local communities? Please detail any best practices in economic development and planning processes that support freight intensive activity or innovative financing. Describe current and prospective infrastructure safety enhancements that should be considered.

9. How would you define a bottleneck in your industry? (Consider both surface and maritime transportation).

10. What else should DOT consider (including the eleven statutory criteria listed above) or do to improve freight transportation in the U.S.?

Public Comment

The DOT invites comments by all those interested in the draft National Freight Strategic Plan. Comments on the draft NFSP may be submitted and viewed at Docket Number DOT–OST–2019–0184. The web address is: *XXXXXX.* Comments must be received on or before [45 days from posting of this notice] to receive full consideration by DOT with respect to the final NFSP. After [45 days from posting of this notice], comments will continue to be available for viewing by the public.

Dated: December 19, 2019.

Joel Szabat,

Acting Under Secretary Transportation for Policy.

[FR Doc. 2019–27897 Filed 12–26–19; 8:45 am]

BILLINGCODE 4910–9X–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 27, 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: Form 8233—Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual.

OMB Control Number: 1545–0795.

Type of Review: Revision of a currently approved collection.

Description: Compensation paid to a nonresident alien (NRA) individual for independent personal services (self-employment) is generally subject to 30% withholding or graduated rates. However, compensation may be exempt from withholding because of a U.S. tax treaty. Form 8233 is used to request exemption from withholding.

Form: 8233.

Affected Public: Individuals and households.

Estimated Number of Respondents: 75,617.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 75,617.

Estimated Time per Response: 8 hours 57 minutes.

Estimated Total Annual Burden Hours: 676,773.

2. Title: Disclosure Statement (Form 8275), and Regulation Disclosure Statement (Form 8275–R).

OMB Control Number: 1545–0889.

Type of Review: Extension without change of a currently approved collection.

Description: IRC section 6662 imposes accuracy related penalties for substantial understatement of tax liability or negligence or disregard of rules and regulations. Section 6694 imposes similar penalties on return preparers. Regulations section 1.6662–4(e) and (f) provide for reduction of these penalties if adequate disclosure of the tax treatment is made on Form 8275 or, if the position is contrary to a regulation on Form 8275–R.

Form: 8275, 8275–R.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 666,666.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 666,666.

Estimated Time per Response: 5 hours 35 minutes.

Estimated Total Annual Burden Hours: 3,716,664.

3. Title: Interest Charge on DISC-Related Deferred Tax Liability.

OMB Control Number: 1545–0939.

Type of Review: Extension without change of a currently approved collection.

Description: Shareholders of Interest Charge Domestic International Sales Corporations (IC–DISCs) use Form 8404 to figure and report an interest charge on their DISC-related deferred tax liability. The interest charge is required by Internal Revenue Code section 995(f). IRS uses Form 8404 to determine whether the shareholder has correctly figured and paid the interest charge on a timely basis.

Form: 8404.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 2,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 2,000.

Estimated Time per Response: 7 hours 48 minutes.

Estimated Total Annual Burden Hours: 15,580.

4. Title: Regulations Governing the Performance of Actuarial Services under the Employee Retirement Income Security Act of 1974 (20 CFR 901).

OMB Control Number: 1545–0951.

Type of Review: Revision of a currently approved collection.

Description: The information relates to the granting of enrollment status to actuaries admitted (licensed) by the Joint Board for the Enrollment of Actuaries to perform actuarial services under the Employee Retirement Income Security Act of 1974. Form 5434 is used to apply for enrollment to perform actuarial services and Form 5434–A is used to renew enrollment every three years to perform actuarial services under (ERISA). The information is used by the Joint Board for the Enrollment of Actuaries to determine the eligibility of the applicant to perform actuarial services. The regulations require that records be kept that verify satisfaction of requirements, and certificates of completion education requirements.

Form: 5434, 5434–A.

Affected Public: Individuals and households.

Estimated Number of Respondents: 6,166.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 6,166.

Estimated Time per Response: 18 minutes.

Estimated Total Annual Burden Hours: 1,900.

5. Title: Generation-Skipping Transfer Tax Return for Distributions.

OMB Control Number: 1545–1144.

Type of Review: Extension without change of a currently approved collection.

Description: Form 706–GS(D) is used by distributees to compute and report the Federal Generation Skipping Transfer tax imposed by IRC section 2601. IRS uses the information to enforce this tax and to verify that the tax has been properly computed. The distributee will file a single Form 706 GS(D) annually and will report on it all taxable distributions from any trust received during the year. An individual will not file Form 706 GS(D) for any year in which he/she received no taxable distributions.

Form: 706 GS(D).

Affected Public: Individuals and households.

Estimated Number of Respondents: 1,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 1,000.

Estimated Time per Response: 59 minutes.

Estimated Total Annual Burden Hours: 980.

6. Title: TD 8459—Settlement Funds.

OMB Control Number: 1545–1299.

Type of Review: Extension without change of a currently approved collection.

Description: The reporting requirements affect taxpayers that are qualified settlement funds; they will be required to file income tax returns, estimated income tax returns, and withholding tax returns. The information will facilitate taxpayer examinations.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 1,500.

Frequency of Response: Annually, On occasion.

Estimated Total Number of Annual Responses: 2,750.

Estimated Time per Response: 1 hour 17 minutes.

Estimated Total Annual Burden Hours: 3,542.

7. Title: Environmental Taxes (26 CFR part 52).

OMB Control Number: 1545–1361.

Type of Review: Extension without change of a currently approved collection.

Description: Section 4681 imposes a tax on ozone-depleting chemicals sold or used by a manufacturer or importer thereof. Section 4681 also imposes a tax on ozone-depleting chemicals sold or used by a manufacturer or importer thereof and imported taxable products sold or used by an importer thereof. A floor stocks tax is also imposed. Section 4682 provides exemptions and reduced rates of tax for certain uses of ozone-depleting chemicals. These regulations provide reporting and recordkeeping rules and have been codified under 26 CFR part 52.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 150,350.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 150,350.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 75,265.

8. Title: Excise Taxes on Excess Inclusions of REMIC Residual Interests.

OMB Control Number: 1545–1379.

Type of Review: Extension without change of a currently approved collection.

Description: Form 8831 is used by a real estate mortgage investment conduit (REMIC) to figure its excise tax liability under Code sections 860E(e)(1), 860E(e)(6), and 860E–2(a)(7)(ii). IRS uses the information to determine the correct tax liability of the REMIC.

Form: 8831.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 31.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 31.

Estimated Time per Response: 7 hours 38 minutes.

Estimated Total Annual Burden Hours: 237.

9. Title: Form 1098 Mortgage Interest Statement; TD 8571 (Formerly IA–17–90) Reporting Requirements for Recipients of Points Paid on Residential Mortgages.

OMB Control Number: 1545–1380.

Type of Review: Revision of a currently approved collection.

Description: To encourage compliance with the tax laws relating to the mortgage interest deduction, the regulations require the reporting on Form 1098 of points paid on residential mortgage. Only businesses that receive mortgage interest in the course of a trade or business are affected by this reporting requirement.

Form: 1098.

Affected Public: Individuals and households, Businesses and other for-profits.

Estimated Number of Respondents: 37,644 businesses and 79,394,400 individuals.

Frequency of Response: Annually, On occasion.

Estimated Total Number of Annual Responses: 1,256,560 for businesses and 79,394,400 for individuals.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 20,131,656.

10. Title: Debt Instruments with OID; Contingent Payments; Anti-Abuse Rule.

OMB Control Number: 1545–1450.

Type of Review: Extension without change of a currently approved collection.

Description: The regulations provide definitions, general rules, and reporting requirements for debt instruments that provide for contingent payments. The regulations also provide definitions, general rules, and recordkeeping requirements for integrated debt instruments.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 180,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 180,000.

Estimated Time per Response: 29 minutes.

Estimated Total Annual Burden Hours: 89,000.

11. Title: Regulations Under Section 1258 of the Internal Revenue Code of 1986; Netting Rule for Certain Conversion Transactions (TD 8649).

OMB Control Number: 1545–1452.

Type of Review: Extension without change of a currently approved collection.

Description: Section 1258 recharacterizes capital gains from conversion transactions as ordinary income to the extent of the time value element. This regulation provides that certain gains and losses may be netted for purposes of determining the amount of gain recharacterized.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 50,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 50,000.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 5,000.

12. Title: LIFO Conformity Requirement.

OMB Control Number: 1545–1559.

Type of Review: Extension without change of a currently approved collection.

Description: Revenue Procedure 97–44 permits automobile dealers that comply with the terms of the revenue procedure to continue using the LIFO (Last-in first-out) inventory method despite previous violations of the LIFO conformity requirements of section 472(c) or (e)(2). Revenue Procedure 98–46 modifies Revenue Procedure 97–44 by allowing medium-and heavy-duty truck dealers to take advantage of the favorable relief provided in Revenue Procedure 97–44.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 5,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 5,000.

Estimated Time per Response: 20 hours.

Estimated Total Annual Burden Hours: 100,000.

13. Title: Source of Income from Certain Space and Ocean Activities; Source of Communications Income.

OMB Control Number: 1545–1718.

Type of Review: Extension without change of a currently approved collection.

Description: This document contains final regulations under section 863(d) governing the source of income from certain space and ocean activities. It also contains final regulations under section 863(a), (d), and (e) governing the source of income from certain communications activities. In addition, this document contains final regulations under section 863(a) and (b), amending the regulations in § 1.863–3 to conform those regulations to these final regulations. The final regulations primarily affect persons who derive income from activities conducted in space, or on or under water not within the jurisdiction of a foreign country, possession of the United States, or the United States (in international water). The final regulations also affect persons who derive income from transmission of communications.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 250.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 250.

Estimated Time per Response: 6 hours.

Estimated Total Annual Burden Hours: 1,500.

14. Title: Revenue Procedure 2001–29, Leveraged Leases.

OMB Control Number: 1545–1738.

Type of Review: Extension without change of a currently approved collection.

Description: Revenue Procedure 2001–29 sets forth the information and representations required to be furnished by taxpayers in requests for an advance ruling that a leveraged lease transaction is, in fact, a valid lease for federal income tax purposes.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 10.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 10.

Estimated Time per Response: 80 hours.

Estimated Total Annual Burden Hours: 800.

15. Title: Guidance Regarding Deduction and Capitalization of Expenditures.

OMB Control Number: 1545–1870.

Type of Review: Extension without change of a currently approved collection.

Description: Final regulations require that a taxpayer's nonaccrual-experience method must be self-tested against the taxpayer's experience to determine whether the nonaccrual-experience method clearly reflects the taxpayer's experience. The information required to be retained by taxpayers will constitute sufficient documentation for purposes of substantiating a deduction. The information will be used by the agency on audit to determine the taxpayer's entitlement to a deduction. The respondents include taxpayers who engage in certain transactions involving the acquisition of a trade or business or an ownership interest in a legal entity.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 3,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 3,000.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 3,000.

16. Title: Regulations Governing Practice Before the Internal Revenue Service.

OMB Control Number: 1545–1871.

Type of Review: Extension without change of a currently approved collection.

Description: This document contains final regulations revising the regulations governing practice before the Internal

Revenue Service (Circular 230). These regulations affect individuals who practice before the Internal Revenue Service. These final regulations set forth best practices for tax advisors providing advice to taxpayers relating to Federal tax issues or submissions to the IRS. These final regulations also provide standards for covered opinions and other written advice. These disclosures will ensure that taxpayers are provided with adequate information regarding the limits of tax shelter advice that they receive, and also ensure that practitioners properly advise of taxpayers of relevant information with respect to tax shelter opinions.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 100,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 100,000.

Estimated Time per Response: 8 minutes.

Estimated Total Annual Burden Hours: 13,333.

17. Title: Information Return of U.S. Persons With Respect To Foreign Disregarded Entities; and Transactions Between Foreign Disregarded Entity of a Foreign Tax Owner and the Filer.

OMB Control Number: 1545–1910.

Type of Review: Extension without change of a currently approved collection.

Description: Form 8858 and Schedule M (Form 8858) are used by certain U.S. persons that own a foreign disregarded entity (FDE) directly or, in certain circumstances, indirectly or constructively. The form and schedules are used to satisfy the reporting requirements of sections 6011, 6012, 6031, and 6038, and related regulations.

Form: Form 8858 and Schedule M.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 8,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 8,000.

Estimated Time per Response: 24 hours 45 minutes.

Estimated Total Annual Burden Hours: 198,800.

18. Title: Application to Participate in the Income Verification Express Service (IVES) Program.

OMB Control Number: 1545–2032.

Type of Review: Extension without change of a currently approved collection.

Description: Form 13803, Application to Participate in the Income Verification Express Service (IVES) Program, is used to submit the required information necessary to complete the e-services enrollment process for IVES users and to identify delegates receiving transcripts on behalf of the principle account user.

Form: 13803.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 200.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 200.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 100.

19. Title: Employment Tax Adjustments and Rules Relating to Additional Medicare Tax.

OMB Control Number: 1545–2097.

Type of Review: Extension without change of a currently approved collection.

Description: This information is required to verify compliance with return requirements under section 6011, employment tax adjustments under section 6205 and 6413, and claims for refund of overpayments of employment taxes under section 6402 and 6414.

Form: None.

Affected Public: Individuals and households, Businesses and other for-profits.

Estimated Number of Respondents: 3,400,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 3,400,000.

Estimated Time per Response: 10 hours for employment tax adjustments, 1 hour for other provisions.

Estimated Total Annual Burden Hours: 16,900,000.

20. Title: Elections for Certain Transactions Under Section 336(e).

OMB Control Number: 1545–2125.

Type of Review: Extension without change of a currently approved collection.

Description: This document contains regulations under section 336(e) regarding situations whereby a corporation can elect to treat certain sales, exchanges, or distributions of subsidiary stock as an asset sale. The information being collected relates to the making of the section 336(e) election. The collection of information will notify the IRS when as election under section 336(e) is made and will provide relevant information pertaining to the parties making the election.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 500.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 500.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 1,000.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: December 19, 2019.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2019–27888 Filed 12–26–19; 8:45 am]

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Part II

Nuclear Regulatory Commission

Privacy Act of 1974; Systems of Records; Notice

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0191]

Privacy Act of 1974; Systems of Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of modified system of records; request for comments.

SUMMARY: Pursuant to the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A–108, notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC), proposes to modify 28 and rescind 9 of its system of records notices. The proposed modifications would include incorporating, for the convenience of readers, the full text of routine uses previously described in a Prefatory Statement of General Routine Uses directly into each individual system notice to which they apply, incorporating system-breach notification routine uses into each system notice in accordance with OMB Memorandum M–17–12, narrowing the scope of one system notice to eliminate, in accordance with OMB Circular A–108, the partial duplication of a government-wide system of records notice, and eliminating a redundant routine use from one system notice. Of the proposed rescindments of system notices, six would eliminate, in accordance with OMB Circular A–108, notices that duplicate government-wide system of records notices, and three would eliminate notices that are no longer necessary because the records they cover do not qualify as Privacy Act records. Additional details are provided in the **SUPPLEMENTARY INFORMATION** section of this document.

DATES: Submit comments on revisions and changes by January 27, 2020. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

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

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0191. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Sally Hardy, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–5607; email: *Sally.Hardy@nrc.gov.*

SUPPLEMENTARY INFORMATION

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0191 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0191.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2019–0191 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to the Privacy Act of 1974 and OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' notice is hereby given that the NRC proposes to modify 28 and rescind 9 of its system of records notices.

First, the NRC is proposing revisions to eliminate its Prefatory Statement of General Routines Uses, in which the NRC has previously listed, as part of its periodic republication of all NRC system notices in the **Federal Register**, those routine uses that are common to many individual system of records notices. Individual system notices have then incorporated any applicable Prefatory Statement routine uses by reference, which has required readers to refer back to the Prefatory Statement earlier in the **Federal Register** notice to understand the full range of routine uses applicable to each system. Under new approach the NRC proposes here, each individual notice would now include the full text of each applicable routine use, including those that were previously included in the Prefatory Statement.

The NRC also proposes to add a new routine use and revise an existing routine use that will apply to all 28 remaining system of records notices, which were most recently published on November 17, 2016 (81 FR 81320), that would authorize the NRC to disclose information when reasonably necessary to respond to a suspected or confirmed breach of an NRC system of records or, as appropriate, to assist another agency in its own response to a suspected or confirmed breach. These changes are in accordance with OMB Memorandum, M–17–12, ''Preparing for and Responding to a Breach of Personally Identifiable Information,'' dated January 3, 2017.

The final proposed change involving routine uses involves removing a routine use addressing disclosures to the Congress from one NRC system notice, because that routine use is redundant in light of 5 U.S.C. 552a(b)(9), which already expressly permits disclosures of Privacy Act information to either House of Congress or to Congressional committees or subcommittees with jurisdiction. The

same system of records notice also has been incorporating a routine use from the Prefatory Statement of General Routine Uses that provides for disclosure of an individual's records to a Member of Congress who is inquiring at the individual's request. The system notice will continue to include that routine use.

In addition, based on a systematic review of its systems of records, the NRC proposes to rescind nine system of records notices. The NRC has determined that six of these notices are duplicative of government-wide systems of records notices. Consistent with guidance in OMB Circular A–108, the NRC proposes to rescind these six duplicative NRC notices. The information these duplicative notices have addressed would still be managed in accordance with the Privacy Act, consistent with the applicable government-wide system of records notices. As to the other three system of records notices the NRC proposes to rescind, the NRC has determined that none of those systems currently involves information about individuals intended for retrieval by agency personnel using the individual's name or other personal identifier. Accordingly, these notices are unnecessary to maintain, as they no longer address Privacy Act systems of records.

The NRC also proposes to narrow the scope of one system of records notice that partially duplicates a government-wide system notice and rename the NRC system to reflect the narrower set of records that the NRC notice will continue to cover. The records no longer addressed by the NRC system notice would still be managed in accordance with the Privacy Act, consistent with the applicable government-wide system of records notice.

The proposed changes to individual NRC system of records notices are as follows:

(1) The NRC proposes to rescind NRC 2, Biographical Information Records, because the information covered by the NRC 2 system notice is all publicly available and intended for informational use by the general public, rather than for retrieval and business use by NRC personnel. The NRC does not currently maintain, or anticipate maintaining, internal, non-publicly available records under this system notice. As such, the records addressed by NRC 2 no longer qualify as a Privacy Act system of records, rendering the system notice for these records unnecessary.

(2) The NRC proposes to remove a Congressional-disclosure routine use in NRC 3, Enforcement Actions Against Individuals. The Privacy Act already expressly permits disclosure of Privacy Act records to either House of Congress and to Congressional committees and subcommittees with jurisdiction, and NRC 3 already includes another routine use addressing disclosure to an individual Member of Congress inquiring on behalf of the individual. Accordingly, the routine use the NRC proposes to remove is unnecessary to retain, because it would allow uses of records that are already permitted by the Privacy Act itself or by another routine use in the same system notice.

(3) The NRC proposes to rescind NRC 4, Conflict of Interest Records, because those records are covered under the government-wide systems OGE/GOVT–1 (Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records) and OGE/GOVT–2 (Executive Branch Confidential Financial Disclosure Reports). Rescinding NRC 4 would avoid duplicative notices.

(4) The NRC proposes to rescind NRC 6, Department of Labor (DOL) Discrimination Cases, because these records are no longer retrieved by name or personal identifier.

(5) The NRC proposes to rescind NRC 9, Office of SBCR Discrimination Complaint Records, because those records are covered under the government-wide system EEOC/GOVT–1 (Equal Employment Opportunity in the Federal Government Complaint and Appeal Records). Rescinding NRC 9 would avoid duplicative notices.

(6) The NRC proposes to modify NRC 11, General Personnel Records (Official Personnel Folder and Related Records). NRC 11 is a partial duplicate of the government-wide system OPM/GOVT–1 (General Personal Records). The modification would narrow the scope of NRC 11 so that the system includes only those records that OPM/GOVT–1 does not also include: Specifically, reasonable accommodation records. This modification would therefore ensure that the NRC 11 notice does not duplicate the government-wide OPM/GOVT–1 notice. In connection with this modification, the NRC also proposes to rename NRC 11 to ''Reasonable Accommodations Records—NRC'' to better describe the records that would remain in the system.

(7) The NRC proposes to rescind NRC 17, Occupational Injury and Illness Records, because those records are covered under the government-wide system DOL/GOVT–1 (Office of Worker's Compensation Programs, Federal Employees' Compensation Act File). Rescinding NRC 17 would avoid duplicative notices.

(8) The NRC proposes to rescind NRC 20, Official Travel Records, because those records are covered under the government-wide system GSA/GOVT–4 (Contracted Travel Services Program). Rescinding NRC 20 would avoid duplicative notices.

(9) The NRC proposes to rescind NRC 22, Personnel Performance Appraisals, because those records are covered under the government-wide system OPM/GOVT–2 (Employee Performance File System Records). Rescinding NRC 22 would avoid duplicative notices.

(10) The NRC proposes to rescind NRC 28, Merit Selection Records, because those records are covered under the government-wide system OPM/GOVT–5 (Recruiting, Examining, and Placement Records). Rescinding NRC 28 would avoid duplicative notices.

(11) The NRC proposes to rescind NRC 42, Strategic Workforce Planning Records. Because of the purpose and functionality of the new database the NRC is using to manage the records involved, the records are no longer retrieved by name or personal identifier.

(12) The NRC proposes to update all remaining NRC system notices (that is, the system notices the NRC would not be rescinding) to include the full text of any applicable routine uses that previously have been contained in the Prefatory Statement of General Routine Uses. These revisions are not intended to modify the routine uses applicable to these systems. The purpose is solely for the convenience of the reader: To eliminate the need, when reviewing a particular system notice in the **Federal Register**, to refer back to a Prefatory Statement earlier in the **Federal Register** notice.

(13) The NRC proposes to update all remaining NRC system notices (that is, the system notices the NRC would not be rescinding) to include the routine use language associated with responding to system breaches in accordance with OMB Memorandum M–17–12.

The proposed revisions and rescindments to these systems require an advance period for public comment.

A report on these revisions and rescindments has been sent to OMB, the Committee on Homeland Security and Governmental Affairs of U.S. Senate, and the Committee on Oversight and Reform of the U.S. House of Representatives, as required by the Privacy Act.

If changes are made based on the NRC's review of comments received, the NRC will publish a subsequent notice.

The text of the report, in its entirety, is attached.

Dated at Rockville, Maryland, this 17th day of December, 2019.

For the Nuclear Regulatory Commission.

Scott C. Flanders,

Senior Agency Official for Privacy,

Office of the Chief Information Officer.

Attachment—Nuclear Regulatory Commission Privacy Act Systems of Records

NRC SYSTEMS OF RECORDS

1. Parking Permit Records—NRC.
2. (Rescinded.)
3. Enforcement Actions Against Individuals—NRC.
4. (Rescinded.)
5. Contracts Records—NRC.
6. (Rescinded.)
7. (Rescinded.)
8. Employee Disciplinary Actions, Appeals, Grievances, and Complaints Records—NRC.
9. (Rescinded.)
10. Freedom of Information Act (FOIA) and Privacy Act (PA) Request Records—NRC.
11. Reasonable Accommodations Records—NRC.
12. Child Care Subsidy Program Records—NRC.
13. (Rescinded.)
14. Employee Assistance Program Records—NRC.
15. (Rescinded.)
16. Facility Operator Licensees Records (10 CFR part 55)—NRC.
17. (Rescinded.)
18. Office of the Inspector General (OIG) Investigative Records—NRC and Defense Nuclear Facilities Safety Board (DNFSB).
19. Official Personnel Training Records—NRC.
20. (Rescinded.)
21. Payroll Accounting Records—NRC.
22. (Rescinded.)
23. Office of Investigations Indices, Files, and Associated Records—NRC.
24. (Rescinded.)
25. Oral History Program—NRC.
26. Transit Subsidy Benefits Program Records—NRC.
27. Radiation Exposure Information and Reporting System (REIRS) Records—NRC.
28. (Rescinded.)
29. (Rescinded.)
30. (Rescinded.)
31. (Rescinded.)
32. Office of the Chief Financial Officer Financial Transactions and Debt Collection Management Records—NRC.
33. Special Inquiry Records—NRC.
34. (Rescinded.)
35. Drug Testing Program Records—NRC.
36. Employee Locator Records—NRC.
37. Information Security Files and Associated Records—NRC.
38. Mailing Lists—NRC.
39. Personnel Security Files and Associated Records—NRC.
40. Facility Security Access Control Records—NRC.
41. Tort Claims and Personal Property Claims Records—NRC.
42. (Rescinded.)
43. Employee Health Center Records—NRC.
44. Employee Fitness Center Records—NRC.
45. Electronic Credentials for Personal Identity Verification—NRC.

These systems of records are those systems maintained by the NRC that contain personal information about individuals from which information is retrieved by an individual's name or identifier.

The notice for each system of records states the name and location of the record system, the authority for and manner of its operation, the categories of individuals that it covers, the types of records that it contains, the sources of information in those records, and the routine uses of each system of records. Each notice also includes the business address of the NRC official who will inform interested persons of the procedures whereby they may gain access to and request amendment of records pertaining to them.

The Privacy Act provides certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies to protect records contained in an agency system of records from unauthorized disclosure and to ensure that information is current and accurate for its intended use and that adequate safeguards are provided to prevent misuse of such information.

SYSTEM NAME AND NUMBER:

Parking Permit Records—NRC 1.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Facility Operations and Space Management Branch, Office of Administration, NRC, Two White Flint North, 11555 Rockville Pike, Rockville, Maryland, and current contractor facility.

SYSTEM MANAGER(S):

Chief, Facility Operations and Space Management Branch, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3511; 41 CFR 102–74.265 *et seq.,* Parking Facilities.

PURPOSE(S) OF THE SYSTEM:

The information contained in this system is used for the assignment of parking permits and NRC-controlled parking spaces.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees and contractors who apply for parking permits for NRC-controlled parking spaces.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records consist of the applications and the revenue collected for the Headquarters' parking facilities. The applications include, but are not limited to, the applicant's name, address, telephone number, length of service, vehicle, rideshare, and handicap information.

RECORD SOURCE CATEGORIES:

Applications submitted by NRC employees and contractors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To record amount paid and revenue collected for parking;

b. To contact permit holder;

c. To determine priority for issuance of permits;

d. To provide statistical reports to city, county, State, and Federal Government agencies;

e. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

f. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

g. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

h. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

i. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

j. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper in file folders and on electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Accessed by name, tag number, and/or permit number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained under the National Archives and Records Administration's General Records Schedule 5.6: Security Records, Item 130, Local facility identification and card access records. Records are destroyed upon immediate collection once the temporary credential or card is returned for potential reissuance due to nearing expiration or not to exceed 6 months from time of issuance or when individual no longer requires access, whichever is sooner, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records are maintained in locked file cabinets under visual control of the Facility Operations and Space Management Branch staff. Computer files are maintained on a hard drive, access to which is password protected. Access to and use of these records is limited to those persons whose official duties require access.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–2 (Rescinded.)

RESCINDMENT OF SYSTEM OF RECORDS NOTICE:

SYSTEM NAME AND NUMBER:

Biographical Information Records—NRC 2.

SYSTEM MANAGER:

Senior Advisor, Office of Public Affairs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

HISTORY:

These notices were last published in the **Federal Register** on November 17, 2016 (81 FR 81320).

SYSTEM NAME AND NUMBER:

Enforcement Actions Against Individuals—NRC 3.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system—Office of Enforcement, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems may exist, in whole or in part, at the NRC Regional Offices at the locations listed in Addendum I, Part 2, and in the Office of the General Counsel, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

SYSTEM MANAGER(S):

Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2073(e), 2113, 2114, 2167, 2168, 2201(i), 2231, 2282; 10 CFR 30.10, 40.10, 50.5, 50.110, 50.111, 50.120, 60.11, 61.9b, 70.10, 72.12, 110.7b, 110.50, and 110.53; 10 CFR part 2, subpart B; Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*); 10 CFR 19.16(a), 30.7, 40.7, 50.7, 60.9, 70.7, and 72.10; Energy Reorganization Act of 1974, as amended, section 211 (42 U.S.C. 5851); 5 U.S.C. 2302(a)(2)(A).

PURPOSE(S) OF THE SYSTEM:

The purpose of the system is to maintain information about individuals involved in NRC-licensed activities who have been subject to NRC enforcement actions or who have been the subject of correspondence indicating that they are being or have been considered for enforcement action.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in NRC-licensed activities who have been subject to NRC enforcement actions or who have been the subject of correspondence indicating that they are being, or have been, considered for enforcement action.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes, but is not limited to, individual enforcement actions, including Orders, Notices of Violations with and without Civil Penalties, Orders Imposing Civil Penalties, Letters of Reprimand, Demands for Information, and letters to individuals who are being or have been considered for enforcement action. Also included are responses to these actions and letters. In addition, the files may contain other relevant documents directly related to those actions and letters that have been issued. Files are arranged numerically by Individual Action (IA) numbers, which are assigned when individual enforcement actions are considered. In instances where only letters are issued, these

letters also receive IA numbers. The system includes a computerized database from which information is retrieved by names of the individuals subject to the action and IA numbers.

RECORD SOURCE CATEGORIES:

Information in the records is primarily obtained from NRC inspectors and investigators and other NRC employees, individuals to whom a record pertains, authorized representatives for these individuals, and NRC licensees, vendors, other individuals regulated by the NRC, and persons making allegations to the NRC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To deter future violations, certain information in this system of records may be routinely disseminated to the public by means such as publishing in the **Federal Register** certain enforcement actions issued to individuals and making the information available in the Public Document Room accessible through the NRC website, *www.nrc.gov;*

b. When considered appropriate for disciplinary purposes, information in this system of records, such as enforcement actions and hearing proceedings, may be disclosed to a bar association, or other professional organization performing similar functions, including certification of individuals licensed by NRC or Agreement States to perform specified licensing activities;

c. Where appropriate to ensure the public health and safety, information in this system of records, such as enforcement actions and hearing proceedings, may be disclosed to a Federal or State agency with licensing jurisdiction;

d. To respond to the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906;

e. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

f. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

g. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

h. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

i. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

j. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

k. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

l. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper in file folders and on computer media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are accessed by individual action file number or by the name of the individual.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Cut off files when case is closed. Hold 5 years and retire to Washington National Records Center (WNRC). Transfer to NARA with related indexes when 20 years old. (NUREG–0910, Rev. 4, 2.10.2.a(1)). Cut off electronic files when case is closed. Transfer to NARA 2 years after cutoff. Destroy NRC copy 18 years after transferring record to NARA (NUREG–0910, Rev. 4, 2.10.2.a(4)).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records are maintained in lockable file cabinets and are under visual control during duty hours. Access to computer records requires use of proper password and user identification codes. Access to and use of these records is limited to those NRC employees whose official duties require access.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear

Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–4 (Rescinded.)

RESCINDMENT OF SYSTEM OF RECORDS NOTICE:

SYSTEM NAME AND NUMBER:

Conflict of Interest Records—NRC 4.

SYSTEM MANAGER:

Assistant General Counsel for Legal Counsel, Legislation, and Special Projects, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

HISTORY:

These notices were last published in the **Federal Register** on November 17, 2016 (81 FR 81320).

SYSTEM NAME AND NUMBER:

Contracts Records—NRC 5.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system—Acquisition Management Division, Office of Administration, NRC, Two White Flint North, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in part, at the locations listed in Addendum I, Parts 1 and 2, in working files maintained by the assigned contracting office representative and in the NRC's Agencywide Documents Access and Management System (ADAMS).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 631, 644; 31 U.S.C. 3511; 13 CFR 124.501–520; 44 U.S.C. 3301; 48 CFR subpart 4.8; 48 CFR part 19.

PURPOSE(S) OF THE SYSTEM:

This system consists of contract file documentation as required by the Federal Acquisition Regulation (FAR) Subpart 4.8—Government Contract Files. The automated system assists with the generation of and maintenance of the file documentation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are employed as NRC contractors. NRC employees substantially involved with contracting, such as contracting office representatives and other acquisition officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain personal information (such as technical qualifications, education, rates of pay, employment history) of contractors and their employees, and other contracting records. They also contain evaluations, recommendations, and reports of NRC acquisition officials, assessment of contractor performance, invoice payment records, and related information.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the contractor or potential contractor or NRC employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To provide information to the Federal Procurement Data System—Next Generation, U.S. Department of Health and Human Services, U.S. Defense Contract Audit Agency, U.S. Government Accountability Office, and other Federal agencies for audits and reviews;

b. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

c. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

d. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

e. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

f. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

g. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

h. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

i. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper in file folders and on computer media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Paper records are accessed by contract number or purchase order number; and are cross-referenced to the automated system that contains the name of the contractor, vendor, contracting office representative, contracting officer, and taxpayer identification number (TIN).

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained under the National Archives and Records Administration's General Records Schedule 1.1: Financial Management and Reporting Records, Item 010, Financial transaction records related to procuring goods and services, paying bills, collecting debts, and accounting, as the official record held in the office of record. Destroy 6 years after final payment or cancellation, but longer retention is authorized if required for business use. Records are also retained under General Records Schedule 1.1: Financial Management and Reporting Records, Item 011, Financial transaction records related to procuring goods and services, paying bills, collecting debts, and accounting, all other copies. Destroy when business use ceases.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

File folders are maintained in unlocked conserver files in a key code locked room. Access to and use of these records is limited to those persons whose official duties require such access. Select individuals have access through use of their badges. Access to automated systems is protected by passwords and roles and responsibilities.

SYSTEM MANAGER(S):

Director, Acquisition Management Division, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.'' Some information was received in confidence and will not be disclosed to the extent that disclosure would reveal confidential business (proprietary) information.

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1) and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

NRC–6 (Rescinded.)

RESCINDMENT OF SYSTEM OF RECORDS NOTICE:

SYSTEM NAME AND NUMBER:

Department of Labor (DOL) Discrimination Cases—NRC 6.

SYSTEM MANAGER:

Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

HISTORY:

These notices were last published in the **Federal Register** on November 17, 2016 (81 FR 81320).

NRC–7 (Rescinded.)

SYSTEM NAME AND NUMBER:

Employee Disciplinary Actions, Appeals, Grievances, and Complaints Records—NRC 8.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system—Office of the Chief Human Capital Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

The Office of the Inspector General (OIG) employee files are located with the NRC's OIG, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—A duplicate system may be maintained, in whole or in part, in the Office of the General Counsel, NRC, One White Flint North, 1555 Rockville Pike, Rockville, Maryland, and at NRC's Regional Offices at locations listed in Addendum I, Part 2.

SYSTEM MANAGER(S):

Chief, Policy, Labor and Employee Relations Branch, Office of the Chief Human Capital Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For OIG employee records: Director, Resource Management and Operations Support, Office of the Inspector General, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3132(a); 5 U.S.C. 3521–3525; 5 U.S.C. 4303, as amended; 5 U.S.C. 7503; 29 U.S.C. 633a; 29 U.S.C. 791; 42 U.S.C. 2000e–16; 42 U.S.C. 2201(d), as amended.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to document all current and former NRC employees and annuitants who have filed complaints, grievances or appeals or the subject of proposed or final disciplinary action or have been suspected of misconduct.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees, and annuitants who have filed written complaints brought to the Office of the Chief Human Capital Officer's attention or initiated grievances or appeal proceedings as a result of a determination made by the NRC, Office of Personnel Management, and/or Merit Systems Protection Board, or a Board or other entity established to adjudicate such grievances and appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes all documents related to: Disciplinary actions; adverse actions; appeals; complaints, including but not limited to those raised under the agency's prevention of harassment program; grievances; arbitrations; and negative determinations regarding within-grade salary increases. It contains information relating to determinations affecting individuals made by the NRC, Office of Personnel Management, Merit Systems Protection Board, arbitrators or courts of law. The records may include the initial appeal or complaint, letters or notices to the individual, records of hearings when conducted, materials placed into the record to support the decision or determination, affidavits or statements, testimony of witnesses, investigative reports, instructions to an NRC office or division concerning action to be taken to comply with decisions, and related correspondence, opinions, and recommendations.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains, NRC, Office of Personnel Management and/or Merit Systems Protection Board officials; affidavits or statements from employees, union representatives, or other persons; testimony of witnesses; official documents relating to the appeal, grievance, or complaint, including but not limited to those raised under the agency's prevention of harassment

program; Official Personnel Folder; and other Federal agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To furnish information to the Office of Personnel Management and/or Merit Systems Protection Board under applicable requirements related to grievances and appeals;

b. To provide appropriate data to union representatives and third parties (that may include the Federal Services Impasses Panel and Federal Labor Relations Authority) in connection with grievances, arbitration actions, and appeals;

c. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

d. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

e. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

f. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

g. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

h. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

i. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

j. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper and computer media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by individual's name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained under the National Archives and Records Administration's General Records Schedule 2.3: Employee Relations Records, Administrative grievance, disciplinary, and adverse action files, Item 060, Administrative grievance files, Item 061, Adverse action files, and Item 062, Performance-based action files, respectively. Destroy no sooner than 4 years but no less than 7 years after case is closed.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in locked file cabinets and in a password-protected automated system. Access to and use of these records is limited to those persons whose official duties require such access.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.'' Some information was received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–9 (Rescinded.)

RESCINDMENT OF SYSTEM OF RECORDS NOTICE:

SYSTEM NAME AND NUMBER:

Office of SBCR Discrimination Complaint Records—NRC 9.

SYSTEM MANAGER:

Associate Director, Civil Rights and Diversity Directorate and Associate Director, Small Business, Outreach and Compliance Directorate, Office of Small Business and Civil Rights, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

HISTORY:

These notices were last published in the **Federal Register** on November 17, 2016 (81 FR 81320).

SYSTEM NAME AND NUMBER:

Freedom of Information Act (FOIA) and Privacy Act (PA) Request Records—NRC 10.

SECURITY CLASSIFICATION:

Classified and Unclassified.

SYSTEM LOCATION:

Primary system—FOIA, Privacy, Info Collections Branch, Customer Service Division, Office of the Chief Information Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems may exist, in part, at the locations listed in Addendum I, Parts 1 and 2.

SYSTEM MANAGER(S):

FOIA Officer, Information Services Branch, Governance & Enterprise Management Services Division, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552 and 552a; 42 U.S.C. 2201, as amended; 10 CFR part 9.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to support the processing of record access requests and administrative appeals under the FOIA, as well as access, notification, and amendment requests and administrative appeals under the Privacy Act, whether NRC receives such requests directly from the requester or via referral from another agency. In addition, this system is used to support agency participation in litigation arising from such requests and appeals, and to assist NRC in carrying out any other responsibilities under the FOIA or the access or amendment provisions of the Privacy Act.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals filing requests for access to information under the Freedom of Information Act (FOIA) or Privacy Act (PA); individual's names in the FOIA request; NRC staff assigned to help process, consider, and respond to such requests, including any appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains copies of the written requests from individuals or organizations made under the FOIA or PA, the NRC response letters, and related records.

RECORD SOURCE CATEGORIES:

Requests are made by individuals. The response to the request is based upon information contained in NRC records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. If an appeal or court suit is filed with respect to any records denied;

b. For preparation of reports required by 5 U.S.C. 552 and 5 U.S.C. 552a;

c. To another Federal agency when consultation or referral is required to process a request;

d. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

e. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

f. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

g. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

h. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

i. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

j. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

k. A record from this system of records may be disclosed as a routine use to respond to the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to allow OGIS to fulfill its responsibilities under 5 U.S.C. 552(h), to review administrative agency policies, procedures and compliance with the Freedom of Information Act (FOIA) and offer mediation services to resolve disputes between persons making FOIA requests and administrative agencies; and

l. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

m. FOIA records, which are publicly available in the Public Documents Room, are accessible through the NRC website, *http://www.nrc.gov.*

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper, audio and video tapes, and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are accessed by unique assigned number for each request and by requester's name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained under the National Archives and Records Administration's, General Records Schedule 4.2: Information Access and Protection Records, Item 020, Access and disclosure request files. Destroy 6 years after final agency action or 3 years after final adjudication by the courts, whichever is later, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in locked file cabinets that are kept in locked rooms. Electronic records are password protected. Access to and use of these records is limited to those persons whose official duties require such access.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained in this system that have been placed on the NRC public website are available upon request. Pursuant to 5 U.S.C. 552a(k)(2), records in this system, which reflect records that are contained in other systems of records that are designated as exempt, are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of 5 U.S.C. 552a.

SYSTEM NAME AND NUMBER:

Reasonable Accommodation Records—NRC 11.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system—For Headquarters and all Senior Executive Service (SES) personnel, Office of the Chief Human Capital Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. For Regional personnel, at Regional Offices I–IV listed in Addendum I, part 2.

SYSTEM MANAGER(S):

Associate Director for Human Resources Operations and Policy, Office of the Chief Human Capital Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order (E.O.) 13164, as amended by E.O. 13478.

PURPOSE(S) OF THE SYSTEM:

To allow the NRC to collect and maintain records on applicants for employment as well as employees with disabilities who requested or received reasonable accommodation by the Department as required by Sections 501, 504, and 701 of the Rehabilitation Act of 1973.This system will track and report the processing of requests for reasonable accommodation to comply with applicable law and regulations and to preserve and maintain confidentiality.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal employees requesting a reasonable accommodation.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system name, accommodation being requested, accommodation type, impairment, disability type, disability condition, 504/508 explanation, and case notes.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies; is derived from information supplied by that individual; employee's supervisor or private and Federal physicians, and medical institutions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. A record from this system of records may be disclosed as a routine use to a prospective employer of a Government employee. Upon transfer of the employee to another Federal agency, the information is transferred to such agency;

b. A record from this system of records may be disclosed as a routine use to provide information to the OPM and/or MSPB for review, audit, or reporting purposes;

c. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

d. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

e. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

f. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

g. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

h. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

i. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems,

programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

j. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper in file folders and on electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by employee name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained under the National Archives and Records Administration's General Records Schedule 2.3: Employee Relations Records, Item 020, Reasonable accommodation records, Reasonable accommodation program files, and Item 021, Reasonable accommodation employee case files. Destroy 3 years after being superseded, but longer retention is authorized if required for business use (Item 020). Destroy 3 years after employee separation from the agency or all appeals are concluded, whichever is later, but longer retention is authorized if required for business use (Item 021).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained on paper and electronically. Paper documents are maintained in lockable file cabinets. Electronic files are password protected.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SYSTEM NAME AND NUMBER:

Child Care Subsidy Program Records—NRC 12.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

DecisionPoint Corporation, 702 Russell Ave., Suite 312, Gaithersburg, MD 20877.

SYSTEM MANAGER(S):

Associate Director for Human Resources Operations and Policy, Office of the Chief Human Capital Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 590(g); 5 CFR 792.201–206; Executive Order (E.O.) 9397, as amended by E.O. 13478.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to administer NRC-sponsored childcare program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees who voluntarily apply for child care subsidy.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include application forms for child care subsidy containing personal information about the employee (parent), their spouse (if applicable), their child/children, and their child care provider, including name, social security number, employer, grade, home and work telephone numbers, home and work addresses, total family income, name of child on whose behalf the parent is applying for subsidy, child's date of birth; information on child care providers used, including name, address, provider license number and State where issued, child care cost, and provider tax identification number; and copies of IRS Form 1040 or 1040A for verification purposes.

RECORD SOURCE CATEGORIES:

Information is obtained from NRC employees who apply for child care subsidy and their child care provider.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. A record from this system of records may be disclosed as a routine use to the Office of Personnel Management to provide statistical reports;

b. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

c. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

d. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

e. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

f. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry

from the Congressional office made at the request of that individual;

g. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

h. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

i. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper and electronic media at the current contractor site.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information may be retrieved by employee name or social security number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained under the National Archives and Records Administration's General Records Schedule 2.4: Employee Compensation and Benefits Records, Item 120, Child care subsidy program administrative records. Destroy when 3 years old, but longer retention is authorized if required for business use. Child care subsidy program individual case files are retained under General Records Schedule 2.4, Item 121. Destroy 2 years after employee participation concludes, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

When not in use by an authorized person, paper records are stored in lockable file cabinets and computer records are protected by the use of passwords.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–13 (Rescinded.)

SYSTEM NAME AND NUMBER:

Employee Assistance Program Records—NRC 14.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of the Chief Human Capital Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, and current contractor facility.

RECORD SOURCE CATEGORIES:

Information compiled by the Employee Assistance Program Manager, and the Employee Assistance Program contractor during the course of counseling with an NRC employee or members of the employee's family.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901; 21 U.S.C. 1101–1181; 42 U.S.C. chapter 6A, Subchapter III–A; 44 U.S.C. 3101; 44 U.S.C. 3301; 5 CFR 792.101–105.

PURPOSE(S) OF THE SYSTEM:

This record system will maintain information gathered by and in the possession of the NRC EAP, an internal agency program designed to assist employees of NRC and, in certain instances, their families, in regard to a variety of personal and/or work-related issues.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees or family members who have been counseled by or referred to the Employee Assistance Program (EAP) for problems relating to alcoholism, drug abuse, job stress, chronic illness, family or relationship concerns, and emotional and other similar issues.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records of NRC employees or their families who have participated in the EAP and the results of any counseling or referrals which may have taken place. The records may contain information as to the nature of each individual's problem, subsequent treatment, and progress.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses: (*Note:* Any disclosure of information pertaining to an individual will be made in compliance with the Confidentiality of Alcohol and Drug Abuse Patient Records regulations, 42 CFR part 2, as authorized by 42 U.S.C. 290dd–2, as amended.)

a. For statistical reporting purposes;

b. To appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

c. To another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency

or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper in file folders and on electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information accessed by the EAP identification number and name of the individual.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained under the National Archives and Records Administration's General Records Schedule 2.7: Employee Health and Safety Records, Employee Assistance Program (EAP) counseling records, Item 091, Records not related to performance or conduct. Destroy 7 years after termination of counseling for adults or 3 years after a minor reaches the age of majority, or when the state-specific statute of limitations has expired for contract providers subject to state requirements, but longer retention is authorized if needed for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Files are maintained in a safe under the immediate control of the Employee Assistance Program Manager and the current EAP contractor. Case files are maintained in accordance with the confidentiality requirements of Public Law 93–282, any NRC-specific confidentiality regulations, and the Privacy Act of 1974.

SYSTEM MANAGER(S):

Employee Assistance Program Manager, Office of the Chief Human Capital Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–15 (Rescinded.)

SYSTEM NAME AND NUMBER:

Facility Operator Licensees Records (10 CFR part 55)—NRC 16.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

For power reactors, at the appropriate Regional Office at the address listed in Addendum I, Part 2; for non-power (test and research) reactor facilities, at the Operator Licensing Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The Reactor Program System—Operator Licensing (RPS–OL) is located at NRC Headquarters and is accessible by the four Regional Offices.

SYSTEM MANAGER(S):

Chief, Operator Licensing Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2131–2141; 10 CFR part 55.

PURPOSE(S) OF THE SYSTEM:

The purpose of the system is to record information associated with individual operator licenses; including initial applications, examination results, license issuance, license renewals, license expirations, and medical status.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals licensed under 10 CFR part 55, new applicants whose applications are being processed, and individuals whose licenses have expired.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information pertaining to 10 CFR part 55 applicants for a license, licensed operators, and individuals who previously held licenses. This includes applications for a license, license and denial letters, and related correspondence; correspondence relating to actions taken against a licensee; 10 CFR 50.74 notifications; certification of medical examination and related medical information; fitness for duty information; examination results and other docket information.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual applying for a license, the 10 CFR part 50 licensee, a licensed physician, and NRC and contractor staff.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To determine if the individual meets the requirements of 10 CFR part 55 to take an examination or to be issued an operator's license;

b. To provide researchers with information for reports and statistical evaluations related to selection, training, and examination of facility operators;

c. To provide examination, testing material, and results to facility management;

d. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

e. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

f. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

g. A record from this system of records may be disclosed as a routine use to a Congressional office from the

record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

h. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

i. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

j. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper in file folders and logs, and on electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are accessed by name and docket number and ADAMS accession number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained under the Nuclear Regulatory Commission's (NRC) NUREG 0910 Rev 4—(2.18.6.a, 2.25.9.a), Headquarters and Regional Operator Licensing Files, 10 CFR part 55 Docket Files. Cutoff files upon latest license expiration/revocation/termination, application denial or withdrawal, or issuance of denial letter. Destroy when 10 years old. Examination Package records are retained under NUREG 0910 Rev 4—(2.18.6.b(1), 2.18.6.b(4), 2.25.9.b(1), 2.25.9.b(4)). Cutoff upon receipt of next exam. Destroy 4 years after cutoff.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Maintained in locked file cabinets or an area that is locked. Computer files are password protected. Access to and use of these records is limited to those persons whose official duties require such access based on roles and responsibilities.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–17 (Rescinded.)

RESCINDMENT OF SYSTEM OF RECORDS NOTICE:

SYSTEM NAME AND NUMBER:

Occupational Injury and Illness Records—NRC 17.

SYSTEM MANAGER:

For Headquarters Part 1—Benefits Officer, Human Resources Operations and Policy, Office of the Chief Human Capital Officer, and Part 2—Safety and Occupational Health Manager, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For Region I–IV—The appropriate Human Resources Team Leader at the locations listed in Addendum I, Part 2.

HISTORY:

These notices were last published in the **Federal Register** on November 17, 2016 (81 FR 81320).

SYSTEM NAME AND NUMBER:

Office of the Inspector General (OIG) Investigative Records—NRC and Defense Nuclear Facilities Safety Board (DNFSB)—NRC 18.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of the Inspector General, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

SYSTEM MANAGER(S):

Assistant Inspector General for Investigations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended, 5 U.S.C. app. 3; and the Consolidated Appropriations Act, 2014.

PURPOSE(S) OF THE SYSTEM:

NRC OIG uses records and information collected and maintained in this system to receive and adjudicate allegations/complaints of violations of criminal, civil, and administrative laws and regulations relating to NRC programs, operations, and employees, as well as contractors and other individuals and entities associated with NRC; monitor complaint and investigation assignments, status, disposition, and results; manage investigations and information provided during the course of such investigations; track and assess actions taken by NRC management regarding employee misconduct and other allegations; support and assess legal actions taken following referrals for criminal prosecution or litigation; provide information relating to any adverse action or other proceeding that may occur as a result of the findings of an investigation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities referred to in complaints or actual investigative cases, reports, accompanying documents, and correspondence prepared by, compiled by, or referred to the OIG.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system comprises five parts: (1) An automated Investigative Database Program containing reports of investigations, inquiries, and other reports closed since 1989; (2) paper files of all OIG and predecessor Office of Inspector and Auditor (OIA) reports, correspondence, cases, matters, memoranda, materials, legal papers, evidence, exhibits, data, and work papers pertaining to all closed and pending investigations, inquiries, and other reports; (3) paper index card files of OIG and OIA cases closed from 1970 through 1989; (4) an automated Investigative Management System that

includes allegations referred to the OIG from 1985 forward, whether or not the allegation progressed to an investigation, inquiry or other report, and dates that an investigation, inquiry or other report was opened and closed and reports, correspondence, cases, matters, memoranda, materials, legal papers, evidence, exhibits, data and work papers pertaining to these cases.

RECORD SOURCE CATEGORIES:

The information is obtained from sources including, but not limited to, the individual record subject; NRC officials and employees; employees of Federal, State, local, and foreign agencies; and other persons.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, OIG may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To any Federal, State, local, tribal, or foreign agency, or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility of the receiving entity when records from this system of records, either by themselves or in combination with any other information, indicate a violation or potential violation of law, whether administrative, civil, criminal, or regulatory in nature;

b. To public or private sources to the extent necessary to obtain information from those sources relevant to an OIG investigation, audit, inspection, or other inquiry;

c. To a court, adjudicative body before which NRC or DNFSB is authorized to appear, Federal agency, individual or entity designated by NRC or DNFSB or otherwise empowered to resolve disputes, counsel or other representative, or witness or potential witness when it is relevant and necessary to the litigation if any of the parties listed below is involved in the litigation or has an interest in the litigation:

1. NRC or DNFSB, or any component of NRC or DNFSB;

2. Any employee of NRC or DNFSB where the NRC or DNFSB or the Department of Justice has agreed to represent the employee; or

3. The United States, where NRC or DNFSB determines that the litigation is likely to affect the NRC or DNFSB or any of their components;

d. To a private firm or other entity with which OIG or NRC or DNFSB contemplates it will contract or has contracted for the purpose of performing any functions or analyses that facilitate or are relevant to an investigation, audit, inspection, inquiry, or other activity related to this system of records, to include to contractors or entities who have a need for such information or records to resolve or support payment to the agency. The contractor, private firm, or entity needing access to the records to perform the activity shall maintain Privacy Act safeguards with respect to information. A contractor, private firm, or entity operating a system of records under 5 U.S.C. 552a(m) shall comply with the Privacy Act;

e. To another agency to the extent necessary for obtaining its advice on any matter relevant to an OIG investigation, audit, inspection, or other inquiry related to the responsibilities of the OIG;

f. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906;

g. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

h. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

i. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

j. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

k. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

l. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

m. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

n. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Information is maintained on index cards, in paper files, and on electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information is retrieved from the Investigative Database Program by the

name of an individual, by case number, or by subject matter. Information in the paper files backing up the Investigative Database Program and older cases closed by 1989 is retrieved by subject matter and/or case number, not by individual identifier. Information is retrieved from index card files for cases closed before 1989 by the name or numerical identifier of the individual or entity under investigation or by subject matter. Information in both the Allegations Tracking System and the Investigative Management System is retrieved by allegation number, case number, or name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained according to the National Archives and Records Administration's approved schedule for the Office of the Inspector General, N1–431–10–002, item 2.b, Investigation Case Files. Cut off at close of fiscal year in which the case is closed. Transfer to the Federal Records Center (FRC) 3 years after cutoff. Transfer to National Archives and Records Administration 20 years after cutoff. Retain an electronic copy until no longer needed. (Allegation records will be managed in the corresponding Investigation Case File).

Referred Allegations are retained under the National Archives and Records Administration's approved schedule, N1–431–10–002, item 2.a.ii. Cut off allegation file at the end of the fiscal year when the issue described in the Referral Letter is resolved. Hold allegation file in the OIG for a minimum of 2 years after cutoff. Destroy 10 years after cutoff.

Closed Allegations are retained under the National Archives and Records Administration's approved schedule, N1–431–10–002, item 2.a.iii. Cut off allegation files at the end if the fiscal year in which the allegation is closed. Destroy the allegation file 5 years after cutoff.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to the automated Investigative Database Program is password protected. Index card files for older cases (1970–1989) are maintained in secure office facilities. Both the Allegations Tracking System and the Investigative Management System are accessible from terminals that are double-password-protected. Paper files backing up the automated systems and older case reports and work papers are maintained in approved security containers and locked filing cabinets in a locked room; associated indices, records, diskettes, tapes, etc., are stored in locked metal filing cabinets, safes, storage rooms, or similar secure facilities. All records in this system are available only to authorized personnel who have a need to know and whose duties require access to the information.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.'' Information classified under Executive Order 12958 will not be disclosed. Information received in confidence will be maintained under the Inspector General Act, 5 U.S.C. app. 3, and the Commission's Policy Statement on Confidentiality, Management Directive 8.8, ''Management of Allegations.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Under 5 U.S.C. 552a(j)(2), the Commission has exempted this system of records from subsections (c)(3) and (4), (d)(1)–(4), (e)(1)–(3), (5), and (8), and (g) of the Act. This exemption applies to information in the system that relates to criminal law enforcement and meets the criteria of the (j)(2) exemption. Under 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), and (k)(6), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure Pursuant to 5 U.S.C. 552a(b)(12): Disclosure of information to a consumer reporting agency is not considered a routine use of records. Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3) (1996)).

SYSTEM NAME AND NUMBER:

Official Personnel Training Records—NRC 19.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system located at the NRC's current contractor facility on behalf of the Office of the Chief Human Capital Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

The Office of the Inspector General (OIG) employee files are located with the OIG at NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in part, at the Technical Training Center, Regional Offices, and within the organization where the NRC employee works, at the locations listed in Addendum I, Parts 1 and 2.

SYSTEM MANAGER(S):

Associate Director for Training and Development, Office of the Chief Human Capital Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For OIG employee records: Director, Resource Management and Operations Support, Office of the Inspector General, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3396; 5 U.S.C. 4103; Executive Order (E.O.) 9397, as amended by E.O. 13478; E.O. 11348, as amended by E.O. 12107; 5 CFR parts 410 and 412.

PURPOSE(S) OF THE SYSTEM:

This record system will collect, and document training given to NRC employees, contractors, and others who are provided NRC training. This system will provide NRC with a means to track the particular training that is provided, identify training trends, monitor and track the expenditure of training, schedule training classes and programs, schedule instructors, track training items issued to students, assess the effectiveness of training, identify patterns, respond to requests for information related to the training of NRC personnel and other individuals.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who applied or were selected for NRC, other Government, or non-Government training courses or programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to an individual's educational background and training courses including training requests and authorizations, evaluations, supporting documentation, and other related personnel information, including but not limited to, an individual's name,

address, telephone number, position title, organization, and grade.

RECORD SOURCE CATEGORIES:

Information is provided by the subject individual, the employee's supervisor, and training groups, agencies, or educational institutions and learning activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. Information may be extracted from the records and made available to the Office of Personnel Management; other Federal, State, and local government agencies; educational institutions and training facilities for purposes of enrollment and verification of employee attendance and performance;

b. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

c. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

d. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

e. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

f. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper in file folders and on electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information is accessed by name, user identification number, course number, or course session number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained under the National Archives and Records Administration's General Records Schedule 2.6: Employee Training Records, Item 010, Non-mission employees training program records. Destroy when 3 years old, or 3 years after superseded or obsolete, whichever is appropriate, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records are maintained in a password protected computer system. Paper is maintained in lockable file cabinets and file rooms. Access to and use of these records is limited to those persons whose official duties require such access, with the level of access controlled by roles and responsibilities.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–20 (Rescinded.)

RESCINDMENT OF SYSTEM OF RECORDS NOTICE:

SYSTEM NAME AND NUMBER:

Official Travel Records—NRC 20.

SYSTEM MANAGER:

Chief, Travel Operations Branch, Division of the Controller, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For passport and visa records: Chief, International Operations Branch, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

HISTORY:

These notices were last published in the **Federal Register** on November 17, 2016 (81 FR 81320).

SYSTEM NAME AND NUMBER:

Payroll Accounting Records—NRC 21.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system—Division of the Comptroller, Office of the Chief Financial Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. NRC has an interagency agreement with the Department of the Interior's Interior Business Center (DOI/IBC), Federal Personnel/Payroll System (FPPS), in Denver, Colorado, to maintain electronic personnel information and perform payroll processing activities for its employees as of November 2, 2003.

Duplicate system—Duplicate systems exist, in part, within the organization where the employee actually works for administrative purposes, at the locations listed in Addendum I, Parts 1 and 2.

SYSTEM MANAGER(S):

Chief, Financial Services and Operations Branch, Division of the Comptroller, Office of the Chief Financial Officer, U.S. Nuclear

Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

26 CFR 31.6011(b)–2, 31.6109–1; 5 U.S.C. 6334; 5 U.S.C. part III, subpart D; 31 U.S.C. 716; 31 U.S.C., subtitle III, chapters 35 and 37; Executive Order (E.O.) 9397, as amended by E.O. 13478.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to ensure proper payment of salary and benefits to NRC personnel, and to track time worked, leave, or other absences for reporting and compliance purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees, including special Government employees (*i.e.,* consultants).

CATEGORIES OF RECORDS IN THE SYSTEM:

Pay, leave, benefit enrollment and voluntary allowance deductions, and labor activities, which includes, but is not limited to, an individual's name and social security number.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from sources, including but not limited to, the individual to whom it pertains, the Office of the Chief Human Capital Officer and other NRC officials, and other agencies and entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In accordance with an interagency agreement the NRC may disclose records to the DOI/IBC FPPS in order to effect all financial transactions on behalf of the NRC related to employee pay. Specifically, the DOI/IBC's FPPS may affect employee pay or deposit funds on behalf of NRC employees, and/or it may withhold, collect or offset funds from employee salaries as required by law or as necessary to correct overpayment or amounts due.

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses; or, where determined to be appropriate and necessary, the NRC may authorize DOI/IBC to make the disclosure:

a. For transmittal of data to U.S. Treasury to effect issuance of paychecks to employees and consultants and distribution of pay according to employee directions for savings bonds, allotments, financial institutions, and other authorized purposes including the withholding and reporting of Thrift Savings Plan deductions to the Department of Agriculture's National Finance Center;

b. For reporting tax withholding to Internal Revenue Service and appropriate State and local taxing authorities;

c. For FICA and Medicare deductions to the Social Security Administration;

d. For dues deductions to labor unions;

e. For withholding for health insurance to the insurance carriers by the Office of Personnel Management;

f. For charity contribution deductions to agents of charitable institutions;

g. For annual W–2 statements to taxing authorities and the individual;

h. For transmittal to the Office of Management and Budget for financial reporting;

i. For withholding and reporting of retirement, tax levies, bankruptcies, garnishments, court orders, re-employed annuitants, and life insurance information to the Office of Personnel Management;

j. For transmittal of information to State agencies for unemployment purposes;

k. For transmittal to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support, and for enforcement action;

l. For transmittal to the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the Federal Parent Locator System by the Office of Child Support Enforcement;

m. For transmittal to the Office of Child Support Enforcement for release to the Department of Treasury for the purpose of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return;

n. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906;

o. Time and labor data are used by the NRC as a project management tool in various management records and reports (*i.e.,* work performed, work load projections, scheduling, project assignments, budget), and for identifying reimbursable and fee billable work performed by the NRC;

p. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

q. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

r. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

s. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

t. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

u. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

v. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a

breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

w. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Information is maintained on electronic media (stored in memory, on disk, and magnetic tape), on microfiche, and in paper copy.

Electronic payroll, time, and labor records prior to November 2, 2003, are maintained in the Human Resources Management System (HRMS), the PAY PERS Historical database reporting system, and on microfiche at NRC. Electronic payroll records from November 2, 2003, forward are maintained in the DOI/IBC's FPPS in Denver, Colorado. Time and labor records are maintained in the HRMS at NRC.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information is accessed by employee identification number, name and social security number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained under the National Archives and Records Administration's General Records Schedule 2.4: Employee Compensation and Benefits Records, Item 010, Records used to calculate payroll, arrange paycheck deposit, and change previously issued paychecks. Destroy 2 year after employee separation or retirement, but longer retention is authorized if required for business use. Records are also retained under General Records Schedule 2.4, item 020, Tax withholding and adjustment documents. Destroy 4 years after superseded or obsolete, but longer retention is authorized if required for business use. Records are also retained under General Records Schedule 2.4, item 030, Time and attendance records. Destroy after GAO audit or when 3 years old, whichever is sooner. Records are also retained under General Records Schedule 2.4, item 040, Agency payroll record for each pay period. Destroy when 56 years old. Records are also retained under General Records Schedule 2.4, item 050, Wage and tax statements. Destroy when 4 years old, but longer retention is authorized if required for business use. Payroll program administrative records are retained under General Records Schedule 2.4, item 060, Administrative correspondence between agency and payroll processor, and system reports used for agency workload and or personnel management purposes. Destroy when 2 years old, but longer retention is authorized if required for business use. Payroll system reports providing fiscal information on agency payroll are retained under General Records Schedule 2.4, item 061. Destroy when 3 years old or after GAO audit, whichever comes sooner, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in buildings where access is controlled by a security guard force. File folders, microfiche, tapes, and disks, including backup data, are maintained in secured locked rooms and file cabinets after working hours. All records are in areas where access is controlled by keycard and is limited to NRC and contractor personnel who need the information to perform their official duties. Access to computerized records requires use of proper passwords and user identification codes.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12): Disclosures of information to a consumer reporting agency are not considered a routine use of records. Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3) (1996)).

NRC–22 (Rescinded.)

RESCINDMENT OF SYSTEM OF RECORDS NOTICE:

SYSTEM NAME AND NUMBER:

Personnel Performance Appraisals—NRC 22.

SYSTEM MANAGER:

Associate Director for Human Resources Operations and Policy, Office of the Chief Human Capital Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For OIG employees: Director, Resource Management and Operations Support, Office of the Inspector General, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For Regional personnel: Regional Personnel Officers at the appropriate Regional Office I–IV listed in Addendum I, Part 2.

HISTORY:

These notices were last published in the **Federal Register** on November 17, 2016 (81 FR 81320).

SYSTEM NAME AND NUMBER:

Office of Investigations Indices, Files, and Associated Records—NRC 23.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system—Office of Investigations, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Records exist within the NRC Regional Office locations, listed in Addendum I, Part 2, during an active investigation.

SYSTEM MANAGER(S):

Director, Office of Investigations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2035(c); 42 U.S.C. 2201(c); and 42 U.S.C. 5841; 10 CFR 1.36.

PURPOSE(S) OF THE SYSTEM:

NRC OI uses records and information collected and maintained in this system to receive and adjudicate allegations of violations of criminal, civil, and administrative laws and regulations relating to NRC programs, operations, and employees, as well as contractors and other individuals and entities associated with NRC; monitor complaint and investigation assignments, status, disposition, and results; manage investigations and information provided during the course of such investigations; audit actions taken by NRC management regarding employee misconduct and other allegations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities referred to in potential or actual investigations and matters of concern to the Office of Investigations and correspondence on matters directed or referred to the Office of Investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Office of Investigations correspondence, cases, memoranda, materials including, but not limited to, investigative reports, confidential source information, correspondence to and from the Office of Investigations, memoranda, fiscal data, legal papers, evidence, exhibits, technical data, investigative data, work papers, and management information data.

RECORD SOURCE CATEGORIES:

Information is obtained from sources including, but not limited to, NRC officials, employees, and licensees; Federal, State, local, and foreign agencies; and other persons.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the persons or entities mentioned therein if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency or to an individual or organization if the disclosure is reasonably necessary to elicit information or to obtain the cooperation of a witness or an informant;

b. A record relating to an investigation or matter falling within the purview of the Office of Investigations may be disclosed as a routine use to the referring agency, group, organization, or individual;

c. A record relating to an individual held in custody pending arraignment, trial, or sentence, or after conviction, may be disclosed as a routine use to a Federal, State, local, or foreign prison, probation, parole, or pardon authority, to any agency or individual concerned with the maintenance, transportation, or release of such an individual;

d. A record in the system of records relating to an investigation or matter may be disclosed as a routine use to a foreign country under an international treaty or agreement;

e. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to the agency;

f. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

g. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

h. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

i. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

j. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

k. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

l. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

m. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Information maintained on paper, photographs, audio/video tapes, and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information retrieved by document text and/or case number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records for this system are scheduled using NRC's NUREG 0910 Revision 4 and the National Archives and Records Administration's approved scheduled N1–431–01–001 for the Office of Investigations.

Official investigation case files created by field investigators and maintained at regional field offices selected for permanent retention are scheduled under NUREG 0910, Revision 4, 2.16.4.a. Cut off files when case is closed. Hold in field office for 6 months then forward to headquarters (HQ) for processing. HQ will combine with its files, hold for 2 years. Transfer closed cases in 10 year blocks to the National Archives. Other case files that do not meet the criteria for permanent retention are scheduled under NUREG 0910, Revision 4, 2.16.4.b. Cut off files when case is closed. Hold in field office for 6 months then forward to HQ for processing. HQ will combine with its files, hold for 2 years. Destroy 20 years after cases are closed. HQ copy is scheduled under NUREG 0910, Revision 4, 2.16.4.c. Cut off files when case is closed. Combine with field office files and process in accordance with a and b above. Electronic input source records used to create paper records that are files in the investigation files are scheduled under NUREG 0910, Revision 4, 2.16.4.d. Create paper record of the electronic document on the day created or received or as soon as practical and file in appropriate official files. Destroy electronic version immediately after creating official record copy or when no longer needed for reference or updating, whichever is later.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Hard copy files maintained in approved security containers and locking filing cabinets. All records are under visual control during duty hours and are available only to authorized personnel who have a need to know and whose duties require access to the information. The electronic management information system is operated within the NRC's secure LAN/WAN system. Access rights to the system only available to authorized personnel.

RECORDS ACCESS PROCEDURES:

Same as ''Notification procedures.'' Information classified under Executive Order 12958 will not be disclosed. Information received in confidence will be maintained under the Commission's Policy Statement on Confidentiality, Management Directive 8.8, ''Management of Allegations,'' and the procedures covering confidentiality in Chapter 7 of the Office of Investigations Procedures Manual and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(6), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

NRC–24 (Rescinded.)

SYSTEM NAME AND NUMBER:

Oral History Program—NRC 25.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of the Secretary, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2161(b) and 44 U.S.C. 3301.

PURPOSE(S) OF THE SYSTEM:

Recorded interviews and transcribed scripts of interviews for providing a history of the nuclear regulatory program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who volunteer to be interviewed for the purpose of providing information for a history of the nuclear regulatory program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of recorded interviews and, as needed, transcribed scripts of the interviews.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from interviews granted on a voluntary basis to the Historian.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. For incorporation in publications on the history of the nuclear regulatory program;

b. To provide information to historians and other researchers;

c. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

d. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Maintained on electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information is accessed by the name of the interviewee.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Narrative Histories are retained under NRC's NUREG 0910 Revision 4—(2.22.7.a(1)). Transfer to the National Archives and Records Administration when 20 years old. ADAMS PDFs and TIFFs are retained under NRC's NUREG 0910 Revision 4—(2.22.7.a(4)). Cut off electronic files at close of fiscal year. Transfer to the National Archives and Records Administration 5 years after cutoff. Destroy NRC copy 20 years after transfer.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Maintained on an access restricted drive. Access to and use of these records is limited to those authorized by the Historian or a designee.

SYSTEM MANAGER(S):

NRC Historian, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SYSTEM NAME AND NUMBER:

Transit Subsidy Benefits Program Records—NRC 26.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Facility Operations and Space Management Branch, Office of Administration, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

SYSTEM MANAGER(S):

Chief, Facility Operations and Space Management Branch, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7905; 26 U.S.C. 132; 31 U.S.C. 3511; 41 CFR 102–74.210; 41 CFR subtitle F; 41 CFR 102–71.20; Executive Order (E.O.) 9397, as amended by E.O. 13478; E.O. 13150.

PURPOSE(S) OF THE SYSTEM:

The information contained in this system is used to enroll employees in the Transit Subsidy Program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees who apply for subsidized mass transit costs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records consist of an individual's application to participate in the program which includes, but is not limited to, the applicant's name, home address, office telephone number, and information regarding the employee's commuting schedule and mass transit system(s) used.

RECORD SOURCE CATEGORIES:

NRC employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To provide statistical reports to the city, county, State, and Federal government agencies;

b. To provide the basis for program approval and issue monthly subsidies;

c. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

d. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

e. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

f. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

g. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

h. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper in file folders and on electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Accessed by name and smart trip card.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained under the National Archives and Records Administration's General Records Schedule 2.4: Employee Compensation and Benefit Records, Item 130, Transportation subsidy program administrative records. Destroy when 3 years old, but longer retention is authorized if required for business use. Records are also retained under General Records Schedule 2.4, item 131, Transportation subsidy program individual case files. Destroy 2 years after employee participation concludes, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records are maintained in locked file cabinets under visual control of the Facility Operations and Space Management Branch staff. Computer files are maintained on a hard drive, access to which is password protected. Access to and use of these records is limited to those persons whose official duties require access.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SYSTEM NAME AND NUMBER:

Radiation Exposure Information and Reporting System (REIRS) Records—NRC 27.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system—Oak Ridge Associated Universities (ORAU), Oak Ridge, Tennessee (or current contractor facility).

Duplicate system—Duplicate systems exist, in part, regarding employee exposure records, with the NRC's Radiation Safety Officers at Regional office locations listed in Addendum 1, Part 2, in the Office of Nuclear Reactor Regulations (NRR), the Office of Nuclear Material Safety and Safeguards (NMSS). The Office of Administration (ADM), NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, maintains the employee dosimeter tracking system.

SYSTEM MANAGER(S):

REIRS Project Manager, Radiation Protection Branch, Division of Systems Analysis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7902; 29 U.S.C. 668; 42 U.S.C. 2051, 2073, 2093, 2095, 2111, 2133, 2134, and 2201(o); 10 CFR parts 20 and 34; Executive Order (E.O.) 9397, as amended by E.O. 13478; E.O. 12196, as amended; E.O.13708.

PURPOSE(S) OF THE SYSTEM:

REIRS serves as the central repository for all NRC radiation exposure monitoring records that are recorded and reported pursuant to Title 10 of the Code of Federal Regulations Part 20 (10 CFR 20) and Regulatory Guide 8.7. This central repository is used for the oversight of radiation protection policies and practices at NRC-licensed facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals monitored for radiation exposure while employed by or visiting or temporarily assigned to certain NRC-licensed facilities; individuals who are exposed to radiation or radioactive materials in incidents required to be reported under 10 CFR 20.2201–20.2204 and 20.2206 by all NRC licensees; individuals who may have been exposed to radiation or radioactive materials offsite from a facility, plant installation, or other place of use of licensed materials, or in unrestricted areas, as a result of an incident involving byproduct, source, or special nuclear material.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to an individual's name, sex, social security number, birth date, place and period date of exposure; name and license number of individual's employer; name and number of licensee reporting the information; radiation doses or estimates of exposure received during this period, type of radiation, part(s) or organ(s) exposed, and radionuclide(s) involved.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from licensees; the subject individual; the individual's employer; the person in charge of the facility where the individual has been assigned; NRC Form 5, ''Occupational Exposure Record for a Monitoring Period,'' or equivalent, contractor reports, and Radiation Safety Officers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To provide data to other Federal and State agencies involved in monitoring and/or evaluating radiation exposure received by individuals as enumerated in the paragraph ''Categories of individuals covered by the system;''

b. To return data provided by licensee upon request;

c. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

d. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

e. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

f. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

g. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

h. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only

after satisfactory justification has been provided to the system manager;

i. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

j. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper and electronic media. The electronic records maintained in Oak Ridge, TN, are in a centralized database management system that is password protected. Backup tapes of the database are generated and maintained at a secure, off site location for disaster recovery purposes. During the processing and data entry, paper records are temporarily stored in designated business offices that are locked when not in use and are accessible only to authorized personnel. Upon completion of data entry and processing, the paper records are stored in an offsite security storage facility accessible only to authorized personnel.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are accessed by individual name, social security number, date of birth, and/or by licensee name or number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records managed using REIRS are scheduled under NRC's NUREG–0910, Revision 4. Transfer a copy of REIRS data to the National Archives and Records Administration every 5 years (2.19.16). Retain Personnel monitoring reports and personnel overexposure reports entered into REIRS, Paper records, are retained under 2.19.14.a(1). Destroy 2 years after data are input into REIRS. ADAMS PDFs and TIFFs are retained under 2.19.14.a(4). Cut off electronic files at end of fiscal year. Destroy 2 years after cutoff. Personnel monitoring reports and personnel overexposure reports of which only selected data are entered into REIRS, Paper records, are retained under 2.19.14.b(1). Cut off at end of fiscal year. Transfer to NARA when 20 years old. ADAMS PDFs and TIFFs are retained under 2.19.14.b(4). Cut off electronic files at end of fiscal year. Transfer to the National Archives and Records Administration when 2 years old. Destroy NRC copy 18 years after transferring records.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Information maintained at ORAU is accessible by the Office of Nuclear Regulatory Research (RES) and individuals that have been authorized access by NRC, including all NRC Radiation Safety Officers and ORAU employees that are directly involved in the REIRS project. Reports received and reviewed by the NRC's RES, NRR, NMSS, and Regional offices are in lockable file cabinets and bookcases in secured buildings. A log is maintained of both telephone and written requests for information.

The data maintained in the REIRS database are protected from unauthorized access by several means. The database server resides in a protected environment with physical security barriers under key-card access control. Accounts authorizing access to the server and databases are maintained by the ORAU REIRS system administrator. In addition, ORAU maintains a computer security ''firewall'' that further restricts access to the ORAU computer network. Authorization for access must be approved by NRC, ORAU project management, and ORAU computer security. Transmittal of data via the internet is protected by data encryption.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–28 (Rescinded.)

RESCINDMENT OF SYSTEM OF RECORDS NOTICE:

SYSTEM NAME AND NUMBER:

Merit Selection Records—NRC 28.

SYSTEM MANAGER:

Associate Director for Human Resources Operations and Policy, Office of Chief Human Capital Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For Regional personnel: Regional Personnel Officer at the appropriate Regional Office I–IV listed in Addendum I, Part 2. For applicants to the Honor Law Graduate Program—Honor Law Graduate Program Coordinator, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For OIG personnel: Personnel Officer, Office of the Inspector General, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

HISTORY:

These notices were last published in the **Federal Register** on November 17, 2016 (81 FR 81320).

NRC–29 (Rescinded.)

NRC–30 (Rescinded.)

NRC–31 (Rescinded.)

SYSTEM NAME AND NUMBER:

Office of the Chief Financial Officer Financial Transactions and Debt Collection Management Records—NRC 32.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of the Chief Financial Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. NRC has an inter-agency agreement with the U.S. Treasury, Administrative Resource Center (ARC), Parkersburg, WV, as a Federal service provider for transactional services in the NRC core financial system since March 2018.

Other NRC systems of records contain information that may duplicate some of

the records in this system. These other systems include, but are not limited to:

NRC–5, Contracts Records—NRC;

NRC–10, Freedom of Information Act (FOIA) and Privacy Act (PA) Request Records—NRC;

NRC–18, Office of the Inspector General (OIG) Investigative Records—NRC;

NRC–19, Official Personnel Training Records—NRC;

NRC–21, Payroll Accounting Records—NRC; and

NRC–41, Tort Claims and Personal Property Claims Records—NRC.

SYSTEM MANAGER:

Comptroller, Division of the Comptroller, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a; 5 U.S.C. 5514; 15 U.S.C. 1681; 26 U.S.C. 6103; 31 U.S.C. chapter 37; 31 U.S.C. 6501–6508; 42 U.S.C. 2201; 42 U.S.C. 5841; 31 CFR 900–904; 10 CFR parts 15, 16, 170, 171; Executive Order (E.O.) 9397, as amended by E.O. 13478; and E.O. 12731.

PURPOSE(S) OF THE SYSTEM:

Financial Transactions and Debt Collection.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered are those to who the NRC owes/owed money, those who receive/received a payment from NRC, and those who owe/owed money to the United States. Individuals receiving payments include, but are not limited to, current and former employees, contractors, consultants, vendors, and others who travel or perform certain services for NRC. Individuals owing money include, but are not limited to, those who have received goods or services from NRC for which there is a charge or fee (NRC licensees, applicants for NRC licenses, Freedom of Information Act requesters, etc.) and those who have been overpaid and owe NRC a refund (current and former employees, contractors, consultants, vendors, etc.).

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in the system includes, but is not limited to, names, addresses, telephone numbers, Social Security Numbers (SSN), employee identification number (EIN), Taxpayer Identification Numbers (TIN), Individual Taxpayer Identification Numbers (ITIN), Data Universal Numbering System (DUNS) number, fee categories, application and license numbers, contract numbers, vendor numbers, amounts owed, background and supporting documentation, correspondence concerning claims and debts, credit reports, and billing and payment histories. The overall agency accounting system contains data and information integrating accounting functions such as general ledger, funds control, travel, accounts receivable, accounts payable, property, and appropriation of funds. Although this system of records contains information on corporations and other business entities, only those records that contain information about individuals that is retrieved by the individual's name or other personal identifier are subject to the Privacy Act.

RECORD SOURCE CATEGORIES:

Record source categories include, but are not limited to, individuals covered by the system, their attorneys, or other representatives; NRC; collection agencies or contractors; employing agencies of debtors; and Federal, State and local agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In accordance with an interagency agreement, the NRC may disclose records to Treasury ARC as a Federal service provider for transactional services in the NRC core financial system. In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses or, where determined to be appropriate and necessary, the NRC may authorize Treasury ARC to make the disclosure:

a. To debt collection contractors (31 U.S.C. 3718) or to other Federal agencies such as the Department of the Treasury (Treasury) and DOI for the purpose of collecting and reporting on delinquent debts as authorized by the Debt Collection Act of 1982 or the Debt Collection Improvement Act (DCIA) of 1996 and the Digital Accountability and Transparency Act (DATA) of 2014;

b. To Treasury; the Defense Manpower Data Center, Department of Defense; the United States Postal Service; government corporations; or any other Federal, State, or local agency to conduct an authorized computer matching program in compliance with the Privacy Act of 1974, as amended, to identify and locate individuals, including Federal employees, who are delinquent in their repayment of certain debts owed to the U.S. Government, including those incurred under certain programs or services administered by the NRC, in order to collect debts under common law or under the provisions of the Debt Collection Act of 1982 or the Debt Collection Improvement Act of 1996 and DATA of 2014 which include by voluntary repayment, administrative or salary offset, and referral to debt collection contractors;

c. To the Department of Justice, United States Attorney Treasury ARC, or other Federal agencies for further collection action on any delinquent account when circumstances warrant;

d. To credit reporting agencies/credit bureaus for the purpose of either adding to a credit history file or obtaining a credit history file or comparable credit information for use in the administration of debt collection. As authorized by the DCIA, NRC may report current (not delinquent) as well as delinquent consumer and commercial debt to these entities in order to aid in the collection of debts, typically by providing an incentive to the person to repay the debt timely;

e. To any Federal agency where the debtor is employed or receiving some form of remuneration for the purpose of enabling that agency to collect a debt owed the Federal Government on NRC's behalf by counseling the debtor for voluntary repayment or by initiating administrative or salary offset procedures, or other authorized debt collection methods under the provisions of the Debt Collection Act of 1982 or the DCIA of 1996. Under the DCIA, NRC may garnish non-Federal wages of certain delinquent debtors so long as required due process procedures are followed. In these instances, NRC's notice to the employer will disclose only the information that may be necessary for the employer to comply with the withholding order;

f. To the Internal Revenue Service (IRS) by computer matching to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim by NRC against the taxpayer under 26 U.S.C. 6103(m)(2) and under 31 U.S.C. 3711, 3717, and 3718 or common law. Re-disclosure of a mailing address obtained from the IRS may be made only for debt collection purposes, including to a debt collection agent to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982 or the DCIA of 1996, except that re-disclosure of a mailing address to a reporting agency is for the limited purpose of obtaining a credit report on the particular taxpayer.

Any mailing address information obtained from the IRS will not be used or shared for any other NRC purpose or disclosed by NRC to another Federal, State, or local agency which seeks to locate the same taxpayer for its own debt collection purposes;

g. To refer legally enforceable debts to the IRS or to Treasury's Debt Management Services to be offset against the debtor's tax refunds under the Federal Tax Refund Offset Program;

h. To prepare W–2, 1099, or other forms or electronic submittals, to forward to the IRS and applicable State and local governments for tax reporting purposes. Under the provisions of the DCIA, NRC is permitted to provide Treasury with Form 1099–C information on discharged debts so that Treasury may file the form on NRC's behalf with the IRS. W–2 and 1099 Forms contain information on items to be considered as income to an individual, including certain travel related payments to employees, payments made to persons not treated as employees (*e.g.,* fees to consultants and experts), and amounts written-off as legally or administratively uncollectible, in whole or in part;

i. To banks enrolled in the Treasury Credit Card Network to collect a payment or debt when the individual has given his or her credit card number for this purpose;

j. To another Federal agency that has asked the NRC to effect an administrative offset under common law or under 31 U.S.C. 3716 to help collect a debt owed the United States. Disclosure under this routine use is limited to name, address, SSN, EIN, TIN, ITIN, and other information necessary to identify the individual; information about the money payable to or held for the individual; and other information concerning the administrative offset;

k. To Treasury or other Federal agencies with whom NRC has entered into an agreement establishing the terms and conditions for debt collection cross servicing operations on behalf of the NRC to satisfy, in whole or in part, debts owed to the U.S. Government. Cross servicing includes the possible use of all debt collection tools such as administrative offset, tax refund offset, referral to debt collection contractors, salary offset, administrative wage garnishment, and referral to the Department of Justice. The DCIA of 2014 requires agencies to transfer to Treasury or Treasury-designated Debt Collection Centers for cross servicing certain nontax debt over 120 days delinquent. Treasury has the authority to act in the Federal Government's best interest to service, collect, compromise, suspend, or terminate collection action under existing laws under which the debts arise;

l. Information on past due, legally enforceable nontax debts more than 120 days delinquent will be referred to Treasury for the purpose of locating the debtor and/or effecting administrative offset against monies payable by the Government to the debtor, or held by the Government for the debtor under the DCIA's mandatory, Government-wide Treasury Offset Program (TOP). Under TOP, Treasury maintains a database of all qualified delinquent nontax debts and works with agencies to match by computer their payments against the delinquent debtor database in order to divert payments to pay the delinquent debt. Treasury has the authority to waive the computer matching requirement for NRC and other agencies upon written certification that administrative due process notice requirements have been complied with;

m. For debt collection purposes, NRC may publish or otherwise publicly disseminate information regarding the identity of delinquent nontax debtors and the existence of the nontax debts under the provisions of the DCIA of 1996;

n. To the Department of Labor (DOL) and the Department of Health and Human Services (HHS) to conduct an authorized computer matching program in compliance with the Privacy Act of 1974, as amended, to match NRC's debtor records with records of DOL and HHS to obtain names, name controls, names of employers, addresses, dates of birth, and TINs. The DCIA requires all Federal agencies to obtain taxpayer identification numbers from each individual or entity doing business with the agency, including applicants and recipients of licenses, grants, or benefit payments; contractors; and entities and individuals owing fines, fees, or penalties to the agency. NRC will use TINs in collecting and reporting any delinquent amounts resulting from the activity and in making payments;

o. If NRC decides or is required to sell a delinquent nontax debt under 31 U.S.C. 3711(I), information in this system of records may be disclosed to purchasers, potential purchasers, and contractors engaged to assist in the sale or to obtain information necessary for potential purchasers to formulate bids and information necessary for purchasers to pursue collection remedies;

p. If NRC has current and delinquent collateralized nontax debts under 31 U.S.C. 3711(i)(4)(A), certain information in this system of records on its portfolio of loans, notes and guarantees, and other collateralized debts will be reported to Congress based on standards developed by the Office of Management and Budget, in consultation with Treasury;

q. To Treasury in order to request a payment to individuals owed money by the NRC;

r. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906;

s. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

t. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

u. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

v. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

w. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

x. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an

NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

y. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

z. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Information in this system is stored on paper, microfiche, and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Automated information can be retrieved by name, SSN, TIN, DUNS number, license or application number, contract or purchase order number, invoice number, voucher number, and/or vendor code. Paper records are retrieved by invoice number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained under the National Archives and Records Administration's General Records Schedule 1.1: Financial Management and Reporting Records, Item 010, Financial transaction records related to procuring goods and services, paying bills, collecting debts, and accounting as the Official record held in the office of record. Destroy 6 years after final payment or cancellation, but longer retention is authorized if needed for business use. Records related to Administrative claims by or against the United States are retained under General Records Schedule 1.1: Financial Management and Reporting Records, item 080. Destroy 7 years after final action, but longer retention is authorized if required for business use. Records used to calculate payroll, arrange paycheck deposit, and change previously issued paychecks are scheduled under General Records Schedule 2.4: Employee Compensation and Benefits Records, item 010. Destroy 2 year after employee separation or retirement, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in the primary system are maintained in a building where access is controlled by a security guard force. Records are kept in lockable file rooms or at user's workstations in an area where access is controlled by keycard and is limited to NRC and contractor personnel who need the records to perform their official duties. The records are under visual control during duty hours. Access to automated data requires use of proper password and user identification codes by NRC or contractor personnel.

RECORDS ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures Pursuant to 5 U.S.C. 552a(b)(12): Disclosures of information to a consumer reporting agency are not considered a routine use of records. Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3) (1996)).

SYSTEM NAME AND NUMBER:

Special Inquiry Records—NRC 33.

SECURITY CLASSIFICATION:

Classified and Unclassified.

SYSTEM LOCATION:

Primary system—Special Inquiry Group, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

SYSTEM MANAGER(S):

Records Manager, Special Inquiry Group, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2051, 2052, 2201(c), (i) and (o).

PURPOSE(S) OF THE SYSTEM:

Investigation material for potential or actual concerns in connection with investigations of accidents or incidents at nuclear power plants or other nuclear facility, nuclear materials or an allegation regarding public health and safety.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals possessing information regarding or having knowledge of matters of potential or actual concern to the Commission in connection with the investigation of an accident or incident at a nuclear power plant or other nuclear facility, or an incident involving nuclear materials or an allegation regarding the public health and safety related to the NRC's mission responsibilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of an alphabetical index file bearing individual names. The index provides access to associated records which are arranged by subject matter, title, or identifying number(s) and/or letter(s). The system incorporates the records of all Commission correspondence, memoranda, audit reports and data, interviews, questionnaires, legal papers, exhibits, investigative reports and data, and other material relating to or developed as a result of the inquiry, study, or investigation of an accident or incident.

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from sources including, but not limited to, NRC officials and employees; Federal, State,

local, and foreign agencies; NRC licensees; nuclear reactor vendors and architectural engineering firms; other organizations or persons knowledgeable about the incident or activity under investigation; and relevant NRC records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To provide information relating to an item which has been referred to the Commission or Special Inquiry Group for investigation by an agency, group, organization, or individual and may be disclosed as a routine use to notify the referring agency, group, organization, or individual of the status of the matter or of any decision or determination that has been made;

b. To disclose a record as a routine use to a foreign country under an international treaty or convention entered into and ratified by the United States;

c. To provide records relating to the integrity and efficiency of the Commission's operations and management and may be disseminated outside the Commission as part of the Commission's responsibility to inform the Congress and the public about Commission operations;

d. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

e. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

f. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

g. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

h. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

i. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

j. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper in file folders and electronic media. Documents are maintained in secured vault facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Accessed by name (author or recipient), corporate source, title of document, subject matter, or other identifying document or control number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Permanent Records retained as General Program Correspondence Files (Subject Files) at the Office Director Level are scheduled under NUREG 0910 rev 4—2.18.5.a(1). Cut off at close of fiscal year. Hold for 2 years then retire to the Federal Records Center. Transfer to the National Archives and Records Administration when 20 years old. Permanent Nuclear Power Plant Docket Files are scheduled under NUREG 0910 Rev 4—2.18.11.a(1). Retain current fiscal year and last four years in NRC File Center. Closing date is the termination date following completion of decommissioning procedure. Transfer to the National Archives and Records Administration 20 years after termination of license.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

These records are located in locking filing cabinets or safes in a secured facility and are available only to authorized personnel whose duties require access.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.'' Information classified under Executive Order 12958 will not be disclosed. Information received in confidence will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

NRC–34 (Rescinded.)

SYSTEM NAME AND NUMBER:

Drug Testing Program Records—NRC 35.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system—Division of Facilities and Security, Office of Administration, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist in part at the NRC Regional office locations listed in Addendum I, Part 2 (for a temporary period of time); and at the current contractor testing laboratories, collection/evaluation facilities.

SYSTEM MANAGER(S):

Director, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C 7301; 5 U.S.C. 7361–7363; 42 U.S.C. 2165; 42 U.S.C. 290dd; Executive Order (E.O.) 12564; 9397, as amended by E.O. 13478.

PURPOSE(S) OF THE SYSTEM:

This record system will maintain information gathered by and in the possession of NRC Drug Testing Program, used in verifying positive test results for illegal use of controlled substance, as well as collecting and maintaining evidence of possession, distribution, or trafficking of controlled substances.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees, applicants, consultants, licensees, and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information regarding the drug testing program; requests for and results of initial, confirmatory and follow-up testing, if appropriate; additional information supplied by NRC employees, employment applicants, consultants, licensees, or contractors in challenge to positive test results; and written statements or medical evaluations of attending physicians and/or information regarding prescription or nonprescription drugs.

RECORD SOURCE CATEGORIES:

NRC employees, employment applicants, consultants, licensees, and contractors who have been identified for drug testing who have been tested; physicians making statements regarding medical evaluations and/or authorized prescriptions for drugs; NRC contractors for processing including, but not limited to, specimen collection, laboratories for analysis, and medical evaluations; and NRC staff administering the drug testing program to ensure the achievement of a drug-free workplace.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To identify substance abusers within the agency;

b. To initiate counseling and/or rehabilitation programs;

c. To take personnel actions;

d. To take personnel security actions;

e. For statistical reporting purposes. Statistical reporting will not include personally identifiable information;

f. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

g. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

h. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper and electronic media. Specimens are maintained in appropriate environments.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are indexed and accessed by name, social security number, testing position number, specimen number, drug testing laboratory accession number, or a combination thereof.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Employee drug test plans, procedures, and scheduling records are retained under the National Archives and Records Administration's General Records Schedule 2.7: Employee Health and Safety Records, item 100. Destroy when 3 years old or when superseded or obsolete. Employee drug test acknowledgement of notice forms are retained under General Records Schedule 2.7, item 110. Destroy when employee separates from testing-designated position. Employee drug testing specimen records are retained under General Records Schedule 2.7, item 120. Destroy 3 years after date of last entry or when 3 years old, whichever is later. Employee drug test results (Positive Results) are retained under General Records Schedule 2.7, item 130. Destroy when employee leaves agency or when 3 years old, whichever is later. Employee drug test results (Negative results) are retained under General Records Schedule 2.7, item 131. Destroy when 3 years old.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in use are protected to ensure that access is limited to those persons whose official duties require such access. Unattended records are maintained in NRC-controlled space in locked offices, locked desk drawers, or locked file cabinets. Stand-alone and network processing systems are password protected and removable media is stored in locked offices, locked desk drawers, or locked file cabinets when unattended. Network processing systems have roles and responsibilities protection and system security plans. Records at laboratory, collection, and evaluation facilities are stored with appropriate security measures to control and limit access to those persons whose official duties require such access.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

SYSTEM NAME AND NUMBER:

Employee Locator Records—NRC 36.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system—Part 1: For Headquarters personnel: Office of Chief Human Capital Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. For Regional personnel: Regional Offices I–IV at the locations listed in Addendum 1, Part 2.

Part 2: Operations Division, Office of the Chief Information Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Part 3: Division of Administrative Services, Office of Administration, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in part, for Incident Response Operations within the Office of Nuclear Security and Incident Response, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, and at the NRC's Regional Offices, at the locations listed in Addendum I, Part 2.

Duplicate system—Duplicate systems may exist, in part, within the organization where an individual actually works, at the locations listed in Addendum I, Parts 1 and 2.

SYSTEM MANAGER(S):

Part 1: For Headquarters personnel: Associate Director for Human Resources Operations and Policy, Office of the Chief Human Capital Officer, U.S. Nuclear Regulatory Commission (NRC), Washington, DC 20555–0001; and for Regional personnel: Regional Personnel Officer at the Regional Offices listed in Addendum I, Part 2; Part 2: IT Specialist, Network/Infrastructure Services Branch, IT Services Development & Operations Division, Office of the Chief Information Officer, NRC, Washington, DC 20555–0001; Part 3: Mail Services Team Leader, Administrative Services Center, Division of Administrative Services, Office of Administration, NRC, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 3301; Executive Order (E.O.) 9397, as amended by E.O. 13478; and E.O. 12656.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is for NRC employees and contractor's accountability, to support NRC emergency response, and to contact designated persons in the event of an emergency.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include, but are not limited to, an individual's name, home address, office organization and location (building, room number, mail stop), telephone number (home, business, and cell), person to be notified in case of emergency (name, address, telephone number), and other related records.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained; Employee Express; Enterprise Identity Hub (EIH), and other related records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To contact the subject individual's designated emergency contact in the case of an emergency;

b. To contact the subject individual regarding matters of official business;

c. To maintain the agency telephone directory (accessible from *www.nrc.gov*);

d. For internal agency mail services;

e. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

f. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

g. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

h. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information is accessed by name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Mail, printing, and telecommunication service control records are retained under the National Archives and Records Administration's

General Records Schedule 5.5: Mail, Printing, and Telecommunications Service Management Records, item 020. Destroy when 1 year old or when superseded or obsolete, whichever is applicable, but longer retention is authorized if required for business use. Custom/client records are retained under General Records Schedule 6.5: Public Customer Service Records, item 020. Destroy when superseded, obsolete, or when customer requests the agency to remove the records.

Administrative records maintained in any agency office are retained under General Records Schedule 5.1: Common Office Records, item 010. Destroy when business use ceases.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records are password protected. Access to and use of these records is limited to those persons whose official duties require such access.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SYSTEM NAME AND NUMBER:

Information Security Files and Associated Records—NRC 37.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Division of Security Operations, Office of Nuclear Security and Incident Response, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

SYSTEM MANAGER(S):

Director, Division of Security Operations, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2161–2169 and 2201(i); Executive Order 13526; 10 CFR part 95.

PURPOSE(S) OF THE SYSTEM:

Keep track of NRC employees, contractors, consultants, licensees, and other cleared persons who have been granted classification authority and the classification decisions that they make.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals include present and former NRC employees, contractors, consultants, licensees, and other cleared persons.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include information regarding:

a. Personnel who are authorized access to specified levels, categories and types of information, the approving authority, and related documents; and

b. Names of individuals who classify and/or declassify documents (*e.g.,* for the protection of Classified National Security Information and Restricted Data) as well as information identifying the document.

RECORD SOURCE CATEGORIES:

NRC employees, contractors, consultants, and licensees, as well as information furnished by other Government agencies or their contractors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To prepare statistical reports for the Information Security Oversight Office;

b. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

c. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

d. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

e. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

f. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

g. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

h. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

i. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or

entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper in file folders and on electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Accessed by name and/or assigned number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained under the National Archives and Records Administration's, General Records Schedule 4.2: Information Access and Protection Records. FOIA, Privacy Act, and classified administrative records are retained under General Records Schedule 4.2, item 001. Destroy when 3 years old, but longer retention is authorized if needed for business use. Information access and protection tracking and control records are retained under General Records Schedule 4.2, item 030. Destroy 2 years after last form entry, reply, or submission; or when associated documents are declassified or destroyed; or when authorization expires; whichever is appropriate. Longer retention is authorized if required for business use. Access control records are retained under General Records Schedule 4.2, item 031. Destroy when superseded or obsolete, but longer retention is authorized if required for business use. Accounting for and control of access to classified and controlled unclassified records and records requested under FOIA, PA and MDR are retained under General Records Schedule 4.2, item 040. Destroy or delete 5 years after date of last entry, final adjudication by courts, or final action by agency (such as downgrading, transfer or destruction of related classified documents, or release of information from controlled unclassified status), as may apply, whichever is later; but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Information maintained in locked buildings, containers, or security areas under guard and/or alarm protection, as appropriate. Records are processed only on systems approved for processing classified information or accessible through password protected systems for unclassified information. The classified systems are stand-alone systems located within secure facilities or with removable hard drives that are either stored in locked security containers or in alarmed vaults cleared for open storage of TOP SECRET information.

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedures.''

RECORD ACCESS PROCEDURE:

Same as ''Notification procedures.'' Some information is classified under Executive Order 13526 and will not be disclosed. Other information has been received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1) and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4), (G), (H), and (I), and (f).

SYSTEM NAME AND NUMBER:

Mailing Lists—NRC 38.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system—Multimedia, Graphics and Supply & Distribution Branch, Division of Facilities and Securities, Office of Administration, NRC, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist in whole or in part at the locations listed in Addendum I, Parts 1 and 2.

SYSTEM MANAGER(S):

Printing Services Specialist, Multimedia, Graphics and Supply & Distribution Branch, Division of Facilities and Securities, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 3301.

PURPOSE(S) OF THE SYSTEM:

The system is maintained for the purpose of mailing informational literature or responses to those who request it; maintaining lists of individuals who attend meetings; and for other purposes for which mailing or contact lists may be created.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, including NRC staff, with an interest in receiving information from the NRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Mailing lists include an individual's name and address; and title, occupation, and institutional affiliation, when applicable.

RECORD SOURCE CATEGORIES:

NRC staff, NRC licensees, and individuals expressing an interest in NRC activities and publications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. A record from this system of records may be disclosed as a routine use for distribution of documents to persons and organizations listed on the mailing list;

b. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

c. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

d. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are accessed by company name, individual name, or file code identification number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Customer/client records are retained under the National Archives and Records Administration's General Records Schedule 6.5: Public Customer Service Records, Item 020. Delete when superseded, obsolete, or when customer requests the agency to remove the records.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SYSTEM NAME AND NUMBER:

Personnel Security Files and Associated Records—NRC 39.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Division of Facilities and Security, Office of Administration, NRC, Two White Flint North, Rockville, Maryland.

SYSTEM MANAGER(S):

Director, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2011 *et seq.;* 42 U.S.C. 2165, 2201(i), 2201a, and 2284; 42 U.S.C. 5801 *et seq.;* Executive Order (E.O.) 9397, as amended by E.O. 13478; E.O. 10450, as amended; E.O. 10865, as amended; E.O. 13467; E.O. 13526; E.O. 13587; 10 CFR parts 10, 11, 14, 25, 50, 73, 95; OMB Circular No. A–130, Revised; 5 CFR parts 731, 732, and authorities cited therein.

PURPOSE(S) OF THE SYSTEM:

This record system will maintain information gathered by and in the possession of the NRC Division of Facilities and Security to maintain the NRC's Personnel Security and Insider Threat programs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons including NRC employees, employment applicants, consultants, contractors, and licensees; other Government agency personnel, other persons who have been considered for an access authorization, special nuclear material access authorization, unescorted access to NRC buildings or nuclear power plants, NRC building access, access to Federal automated information systems or data, or participants in the criminal history program; aliens who visit NRC's facilities; and actual or suspected violators of laws administered by NRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information about individuals, which includes, but is not limited to, their name(s), address, date and place of birth, social security number, identifying information, citizenship, residence history, employment history, military history, financial history, foreign travel, foreign contacts, education, spouse/cohabitant and relatives, personal references, organizational membership, medical, fingerprints, criminal record, and security clearance history. These records also contain copies of personnel security investigative reports from other Federal agencies, summaries of investigative reports, results of Federal agency indices and database checks, records necessary for participation in the criminal history program, reports of personnel security interviews, clearance actions information (*e.g.,* grants and terminations), access approval/disapproval actions related to NRC building access or unescorted access to nuclear plants, or access to Federal automated information systems or data, violations of laws, reports of security infraction, insider threat program inquiry records including analysis, results, referrals, and/or mitigation actions, and other related personnel security processing documents.

RECORD SOURCE CATEGORIES:

NRC applicants, employees, contractors, consultants, licensees, visitors and others, as well as information furnished by other Government agencies or their contractors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used by the Division of Facilities and Security and on a need-to-know basis by appropriate NRC officials, Hearing Examiners, Personnel Security Review Panel members, Office of Personnel Management, Central Intelligence Agency, Office of the Director of National intelligence, and other Federal agencies under the following routine uses:

a. To determine clearance or access authorization eligibility;

b. To determine eligibility for access to NRC buildings or access to Federal automated information systems or data;

c. To certify clearance or access authorization;

d. To maintain the NRC personnel security program, including the Insider Threat Program;

e. To provide licensees information needed for unescorted access or access to safeguards information determinations;

f. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

g. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or

retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

h. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

i. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

j. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

k. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

l. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

m. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records maintained on paper, tapes, and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Indexed and accessed by name, social security number, docket number, or a combination thereof.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Security administrative records are retained under the National Archives and Records Administration's General Records Schedule 5.6: Security Records, Item 010. Destroy when 3 years old, but longer retention is authorized if required for business use. Visitor processing records in areas requiring highest level security awareness are retained under General Records Schedule 5.6, item 110. Destroy when 5 years old, but longer retention is authorized if required for business use. Visitor processing records in all other facility security areas are retained under General Records Schedule 5.6, item 111. Destroy when 2 years old, but longer retention is authorized if required for business use. Personnel security and access clearance records of people issued clearances are retained under General Records Schedule 5.6, item 181. Destroy 5 years after employee or contractor relationship ends, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in use are protected to ensure that access is limited to those persons whose official duties require such access. Unattended records are maintained in NRC-controlled space in locked offices, locked desk drawers, or locked file cabinets. Mass storage of records is protected when unattended by a combination lock and alarm system. Unattended classified records are protected in appropriate security containers in accordance with Management Directive 12.1.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedures.'' Some information is classified under Executive Order 12958 and will not be disclosed. Other information has been received in confidence and will not be disclosed to the extent the disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedures.''

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

SYSTEM NAME AND NUMBER:

Facility Security Access Control Records—NRC 40.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system—Division of Facilities and Security, Office of Administration, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist in part at NRC Regional Offices and the NRC Technical Training Center at the locations listed in Addendum I, Part 2.

SYSTEM MANAGER(S):

Director, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2165–2169 and 2201; Executive Order (E.O.) 9397, as amended by E.O. 13478; E.O. 13462, as amended by E.O. 13516.

PURPOSE(S) OF THE SYSTEM:

Tracking issued NRC personal identification badges issued for access to NRC-controlled space and approved visitors to the NRC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees, consultants, contractors, other Government agency personnel, and approved visitors.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes information regarding: (1) NRC personal identification badges issued for

continued access to NRC-controlled space; and (2) records regarding visitors to NRC. The records include, but are not limited to, an individual's name, social security number, electronic image, badge number, citizenship, employer, purpose of visit, person visited, date and time of visit, and other information contained on Government issued credentials.

RECORD SOURCE CATEGORIES:

Sources of information include NRC employees, contractors, consultants, employees of other Government agencies, and visitors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To control access to NRC classified information and to NRC spaces by human or electronic means;

b. Information (identification badge) may also be used for tracking applications within the NRC for other than security access purposes;

c. The electronic image used for the NRC employee personal identification badge may be used for other than security purposes only with the written consent of the subject individual;

d. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

e. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

f. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

g. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

h. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

i. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

j. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

k. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information is indexed and accessed by individual's name, social security number, identification badge number, employer's name, date of visit, or sponsor's name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The National Archives and Records Administration's General Records Schedule 5.6 includes Security Records. Visitor processing records in areas requiring highest level security awareness, including areas designated by the interagency Security Committee as Facility Security Level V, are retained according to General Records Schedule 5.6, item 110. Destroy when 5 years old, but longer retention is authorized if required for business use. Visitor processing records in facility security areas not requiring highest level security awareness, including areas designated by the interagency Security Committee as Facility Security Levels I through IV, are retained under General Records Schedule 5.6, item 111. Destroy when 2 years old, but longer retention is authorized if required for business use. Indexes to personnel security case files are retained under General Records Schedule 5.6, item 190. Destroy when superseded or obsolete. Records of routine security operations are retained under General Records Schedule 5.6, item 090. Destroy when 30 days old, but longer retention is authorized if required for business use. Personal identification credentials and cards, including application and activation records, are retained according to General Records Schedule 5.6, item 120. Destroy mandatory and optional data elements housed in the agency identity management system and printed on the identification card 6 years after terminating an employee or contractor's employment, but longer retention is authorized if required for business use. Personnel suitability and eligibility investigative reports are retained according to General Records Schedule 5.6, item 170. Destroy in accordance with the investigating agency instruction. Reports and records created by agencies conducting investigations under delegated investigative authority are retained according to General Records Schedule 5.6, item 171. Destroy in accordance with delegated authority agreement or memorandum of understanding.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All records are maintained in NRC-controlled space that is secured after normal duty hours or a security area under guard presence in a locked security container/vault. There is an approved security plan which identifies the physical protective measures and access controls (*i.e.,* passwords and software design limiting access based on each individual's role and responsibilities relative to the system) specific to each system.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SYSTEM NAME AND NUMBER:

Tort Claims and Personal Property Claims Records—NRC 41.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system—Office of the General Counsel, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in whole or in part, in the Office of the Chief Financial Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, and at the locations listed in Addendum I, Parts 1 and 2. Other NRC systems of records, including but not limited to, NRC–18, ''Office of the Inspector General (OIG) Investigative Records—NRC and Defense Nuclear Facilities Safety Board (DNFSB), '' and NRC–32, ''Office of the Chief Financial Officer Financial Transactions and Debt Collection Management Records—NRC,'' may contain some of the information in this system of records.

SYSTEM MANAGER:

Assistant General Counsel for Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.;* Military Personnel and Civilian Employees' Claims Act, 31 U.S.C. 3721; 44 U.S.C. 3101.

PURPOSE(S) OF THE SYSTEM:

Claims with the NRC under the Federal Tort Claims Act or the Military Personnel and Civilian Employees' Claims Act.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed claims with NRC under the Federal Tort Claims Act or the Military Personnel and Civilian Employees' Claims Act and individuals who have matters pending before the NRC that may result in a claim being filed.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information relating to loss or damage to property and/or personal injury or death in which the U.S. Government may be liable. This information includes, but is not limited to, the individual's name, home address and phone number, work address and phone number, driver's license number, claim forms and supporting documentation, police reports, witness statements, medical records, insurance information, investigative reports, repair/replacement receipts and estimates, litigation documents, court decisions, and other information necessary for the evaluation and settlement of claims.

RECORD SOURCE CATEGORIES:

Information is obtained from a number of sources, including but not limited to, claimants, NRC employees involved in the incident, witnesses or others having knowledge of the matter, police reports, medical reports, investigative reports, insurance companies, and attorneys.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, NRC may disclose information contained in a record in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To third parties, including claimants' attorneys, insurance companies, witnesses, potential witnesses, local police authorities where an accident occurs, and others who may have knowledge of the matter to the extent necessary to obtain information that will be used to evaluate, settle, refer, pay, and/or adjudicate claims;

b. To the Department of Justice (DOJ) when the matter comes within their jurisdiction, such as to coordinate litigation or when NRC's authority is limited, and DOJ advice or approval is required before NRC can award, adjust, compromise, or settle certain claims;

c. To the appropriate Federal agency or agencies when a claim has been incorrectly filed with NRC or when more than one agency is involved, and NRC makes agreements with the other agencies as to which one will investigate the claim;

d. To the Department of the Treasury to request payment of an award, compromise, or settlement of a claim;

e. Information contained in litigation records is public to the extent that the documents have been filed in a court or public administrative proceeding, unless the court or other adjudicative body has ordered otherwise. This public information, including information concerning the nature, status, and disposition of the proceeding, may be disclosed to any person, unless it is determined that release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

f. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906;

g. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

h. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

i. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency

requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

j. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

k. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

l. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

m. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

n. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Information in this system of records is stored on paper and computer media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information is indexed and accessed by the claimant's name and/or claim number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records will be retained under the National Archives and Records Administration's General Records Schedules and the NRC NUREG 0910 Revision 4.

Financial transaction records related to procuring goods and services, paying bills, collecting debts, and accounting, are retained according to General Records Schedule 1.1: Financial Management and Reporting Records, item 010 (''Official record held in the office of record''). Destroy 6 years after final payment or cancellation, but longer retention is authorized if required for business use. Administrative claims by or against the United States are retained according to General Records Schedule 1.1, item 080. Destroy 7 years after final action, but longer retention is authorized if required for business use. Litigation Case Files including paper records created before April 1, 2000, are retained according to NRC's NUREG 0910, Revision 4, Part 2.12.7.a. Retire closed files 7 years after cases are closed. Transfer to the National Archives and Records Administration 20 years after cases are closed. ADAMS PDFs and TIFFs are retained according to NUREG 0910, Revision 4, Part 2.12.7.d. Cut off electronic files when case is closed. Transfer to the National Archives and Records Administration 2 years after cutoff. Destroy NRC copy 18 years after transferring records.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The paper records are stored in locked file cabinets or locked file rooms and access is restricted to those agency personnel whose official duties and responsibilities require access. Automated records are protected by password.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure Pursuant to 5 U.S.C. 552a(b)(12): Disclosure of information to a consumer reporting agency is not considered a routine use of records. Disclosures may be made from this system of records to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3) (1996)).

NRC–42 (Rescinded.)

RESCINDMENT OF SYSTEM OF RECORDS NOTICE:

SYSTEM NAME AND NUMBER:

Strategic Workforce Planning Records—NRC 42.

SYSTEM MANAGER:

Chief, Program Management, Human Capital Analysis Branch, Office of the Chief Human Capital Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

HISTORY:

These notices were last published in the **Federal Register** on November 17, 2016 (81 FR 81320).

SYSTEM NAME AND NUMBER:

Employee Health Center Records—NRC 43.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system—Employee Health Center, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in part, at health care facilities operating under a contract or agreement with NRC for health-related services in the vicinity of each of NRC's Regional offices listed in Addendum I, Part 2. NRC's Regional offices may also maintain copies of occupational health records for their employees.

This system may contain some of the information maintained in other systems of records, including NRC–11,

''Reasonable Accommodation Records—NRC,'' NRC–44, ''Employee Fitness Center Records—NRC, and DOL/GOVT–1 ''Office of Worker's Compensation Programs, Federal Employee's Compensation Act File.''

SYSTEM MANGERS(S):

Technical Assistance Project Manager, Office of the Chief Human Capital Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901; Executive Order 9397, as amended by E.O. 13478.

PURPOSE(S) OF THE SYSTEM:

Maintaining health records for current and former NRC employees, consultants, contractors, other Government personnel, and anyone who may require emergency or first-aid treatment on NRC premises.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees, consultants, contractors, other Government personnel, and anyone on NRC premises who requires emergency or first-aid treatment.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is comprised of records developed as a result of voluntary employee use of health services provided by the Health Center, and of emergency health services rendered by Health Center staff to individuals for injuries and illnesses suffered while on NRC premises. Specific information maintained on individuals may include, but is not limited to, their name, date of birth, and social security number; medical history and other biographical data; test reports and medical diagnoses based on employee health maintenance physical examinations or health screening programs (tests for single medical conditions or diseases); history of complaint, diagnosis, and treatment of injuries and illness rendered by the Health Center staff; immunization records; records of administration by Health Center staff of medications prescribed by personal physicians; medical consultation records; statistical records; daily log of patients; and medical documentation such as personal physician correspondence, test results submitted to the Health Center staff by the employee; and occupational health records. This system does not maintain records that are a result of a condition of employment, records and reports generated in relation to a Workers' Compensation claim, or records resulting from participation in an agency-sponsored health and wellness program. Such records are maintained in the government-wide system of records notice ''OPM/GOVT–10 Employee Medical File System Records.''

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from a number of sources including, but not limited to, the individual to whom it pertains; laboratory reports and test results; NRC Health Center physicians, nurses, and other medical technicians or personnel who have examined, tested, or treated the individual; the individual's coworkers or supervisors; other systems of records; the individual's personal physician(s); NRC Fitness Center staff; other Federal agencies; and other Federal employee health units.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To refer information required by applicable law to be disclosed to a Federal, State, or local public health service agency concerning individuals who have contracted certain communicable diseases or conditions in an effort to prevent further outbreak of the disease or condition;

b. To disclose information to the appropriate Federal, State, or local agency responsible for investigation of an accident, disease, medical condition, or injury as required by pertinent legal authority;

c. To disclose information to the Office of Workers' Compensation Programs in connection with a claim for benefits filed by an employee;

d. To Health Center staff and medical personnel under a contract or agreement with NRC who need the information in order to schedule, conduct, evaluate, or follow up on physical examinations, tests, emergency treatments, or other medical and health care services;

e. To refer information to private physicians designated by the individual when requested in writing;

f. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906;

g. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

h. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

i. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

j. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

k. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

l. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

m. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems,

programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

n. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in file folders, on electronic media, and on file cards, logs, x-rays, and other medical reports and forms.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the individual's name, date of birth, and social security number, or any combination of those identifiers.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Clinic Scheduling Records are retained under the National Archives and Records Administration's General Records Schedule 2.7: Employee Health and Safety Records, Item 010. Destroy when 3 years old, but longer retention is authorized if required for business use. Short-term occupational individual medical case files are retained under General Records Schedule 2.7, item 061. Destroy 1 year after employee separation or transfer. Individual employee health case files created prior to establishment of the Employee Medical File system in 1986 are retained under General Records Schedule 2.7, item 062. Destroy 60 years after retirement to the NARA records storage facility. Non-occupational individual medical case files are retained under General Records Schedule 2.7, item 070. Destroy 10 years after the most recent encounter, but longer retention is authorized if needed for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in the primary system are maintained in a building where access is controlled by a security guard force and entry to each floor is controlled by keycard. Records in the system are maintained in lockable file cabinets with access limited to agency or contractor personnel whose duties require access. The records are under visual control during duty hours. Access to automated data requires use of proper password and user identification codes by authorized personnel.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9; and provide their full name, any former name(s), date of birth, and Social Security number.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SYSTEM NAME AND NUMBER:

Employee Fitness Center Records—NRC 44.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system—Fitness Center, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Regional offices, listed in Addendum I, Part 2, only maintain lists of their employees who receive subsidy from NRC for off-site fitness center memberships.

SYSTEM MANAGER(S):

Office of Chief Human Capital Officer Contracting Officer Representative, Office of the Chief Human Capital Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901; Executive Order (E.O.) 9397, as amended by E.O. 13478.

PURPOSE(S) OF THE SYSTEM:

Maintaining membership for the NRC Fitness Center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees who apply for membership at the Fitness Center, including current and former members.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes applications to participate in NRC's Fitness Center, information on an individual's degree of physical fitness and their fitness activities and goals; and various forms, memoranda, and correspondence related to Fitness Facilities membership and financial/payment matters. Specific information contained in the application for membership includes the employee applicant's name, gender, age, badge id, height, weight, and medical information, including a history of certain medical conditions; the name of the individual's personal physician and any prescription or over-the-counter drugs taken on a regular basis; and the name and address of a person to be notified in case of emergency.

RECORD SOURCE CATEGORIES:

Information in this system of records is principally obtained from the subject individual. Other sources of information include, but are not limited to, the NRC Fitness Center Director, staff physicians retained by the NRC, and the individual's personal physicians.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To the individual listed as an emergency contact, in the event of an emergency;

b. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 or 2906;

c. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's

head or an official who has been delegated such authority;

d. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

e. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

f. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

g. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

h. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

i. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

j. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information is indexed and accessed by an individual's name and/or NRC Badge ID number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Fitness Center records are currently unscheduled and must be retained until the National Archives and Records Administration approves a records disposition schedule for this material. Non-occupational health and wellness program records are retained according to the National Archives and Records Administration's General Records Schedule 2.7: Employee Health and Safety Records, item 080. Destroy 3 years after the project/activity or transaction is completed or superseded, but longer retention is authorized if needed for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in a building where access is controlled by a security guard force. Access to the Fitness Center is controlled by keycard and bar code verification. Records in paper form are stored alphabetically by individuals' names in lockable file cabinets maintained in the NRC where access to the records is limited to agency and Fitness Center personnel whose duties require access. The records are under visual control during duty hours. Automated records are protected by screen saver. Access to automated data requires use of proper password and user identification codes. Only authorized personnel have access to areas in which information is stored.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures Pursuant to 5 U.S.C. 552a(b)(12): Disclosures of information to a consumer reporting agency are not considered a routine use of records. Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3) (1996)).

SYSTEM NAME AND NUMBER:

Electronic Credentials for Personal Identity Verification—NRC 45.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system—Office of the Chief Information Officer, NRC, White Flint North Complex, 11555 Rockville Pike, Rockville, Maryland, and current contractor facility.

Duplicate system—Duplicate systems may exist, in whole or in part, at the locations listed in Addendum I, Part 2.

SYSTEM MANAGER(S):

Director, Solutions Development and Operations Division, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 42 U.S.C. 2165 and 2201(i); 44 U.S.C. 3501, 3504; Electronic Government Act of 2002, 44 U.S.C. chapter 36; Homeland Security Presidential Directive 12 (HSPD–12), Policy for a Common Identification Standard for Federal Employees and Contractors, August 27, 2004; Executive Order (E.O.) 9397, as amended by E.O. 13478.

PURPOSE(S) OF THE SYSTEM:

Track and control PIV cards issued to persons entering and exiting the NRC facilities or using NRC systems; and Verify that all person entering federal

facilities, using Federal information resources, are authorized to do so;

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered are persons who have applied for the issuance of electronic credentials for signature, encryption, and/or authentication purposes; have had their credentials renewed, replaced, suspended, revoked, or denied; have used their credentials to electronically make contact with, retrieve information from, or submit information to an automated information system; or have corresponded with NRC or its contractor concerning digital services.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information needed to establish and verify the identity of users, to maintain the system, and to establish accountability and audit controls. System records may include: (a) Applications for the issuance, amendment, renewal, replacement, or revocation of electronic credentials, including evidence provided by applicants or proof of identity and authority, and sources used to verify an applicant's identity and authority; (b) credentials issued; (c) credentials denied, suspended, or revoked, including reasons for denial, suspension, or revocation; (d) a list of currently valid credentials; (e) a list of currently invalid credentials; (f) a record of validation transactions attempted with electronic credentials; and (g) a record of validation transactions completed with electronic credentials.

RECORD SOURCE CATEGORIES:

The sources for information are the individuals who apply for electronic credentials, the NRC and contractors using multiple sources to verify identities, and internal system transactions designed to gather and maintain data needed to manage and evaluate the electronic credentials program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To agency electronic credential program contractors to compile and maintain documentation on applicants for verifying applicants' identity and authority to access information system applications; to establish and maintain documentation on information sources for verifying applicants' identities; to ensure proper management, data accuracy, and evaluation of the system;

b. To Federal authorities to determine the validity of subscriber digital certificates and other identity attributes;

c. To the National Archives and Records Administration (NARA) for records management purposes;

d. To a public data repository (*only name, email address, organization, and public key*) to facilitate secure communications using digital certificates;

e. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority;

f. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract, or issuing a security clearance, license, grant or other benefit;

g. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit;

h. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations;

i. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

j. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager;

k. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) NRC suspects or has confirmed that there has been a breach of the system of records, (2) NRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NRC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NRC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

l. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the NRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored electronically or on paper.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by an individual's name, email address, certificate status, certificate number or credential number, certificate issuance date, or approval role.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained under the National Archives and Records Administration's, General Records Schedule 5.6: Security Records. Application and activation records for personal identification credentials and cards are retained under General Records Schedule 5.6, item 120. Destroy mandatory and optional data elements housed in the agency identity management system and printed on the identification card 6 years after

terminating an employee or contractor's employment, but longer retention is authorized if required for business use. Personnel identification cards are retained under General Records Schedule 5.6, item 121. Destroy after expiration, confiscation, or return. Local facility identification and card access records are retained under General Records Schedule 5.6, item 130. Destroy upon immediate collection once the temporary credential or card is returned for potential reissuance due to nearing expiration or not to exceed 6 months from time of issuance or when individual no longer requires access, whichever is sooner, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Technical, administrative, and personnel security measures are implemented to ensure confidentiality, integrity, and availability of the system data stored, processed, and transmitted. Hard copy documents are maintained in locking file cabinets. Electronic records are, at a minimum, password protected. Access to and use of these records is limited to those individuals whose official duties require access.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedures.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures.''

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act or Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

EXEMPTIONS CLAIMS FOR THE SYSTEM:

None.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure of system records to consumer reporting systems is not permitted.

Addendum I—List of U.S. Nuclear Regulatory Commission Locations

Part 1—NRC Headquarters Offices

1. One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

2. Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Part 2—NRC Regional Offices

1. NRC Region I, 2100 Renaissance Boulevard, Suite 100, King of Prussia, Pennsylvania.

2. NRC Region II, Marquis One Tower, 245 Peachtree Center Avenue NE, Suite 1200, Atlanta, Georgia.

3. NRC Region III, 2443 Warrenville Road, Suite 210, Lisle, Illinois.

4. NRC Region IV, 1600 East Lamar Boulevard, Arlington, Texas.

5. NRC Technical Training Center, Osborne Office Center, 5746 Marlin Road, Suite 200, Chattanooga, Tennessee.

[FR Doc. 2019–27584 Filed 12–26–19; 8:45 am]

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Part III

Securities and Exchange Commission

17 CFR Parts 202, 229, 230, et al.

Filing Fee Disclosure and Payment Methods Modernization; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 202, 229, 230, 232, 239, 240, 270, and 274

[Release Nos. 33–10720; 34–87395; IC–33676; File No. S7–20–19]

RIN 3235–AL96

Filing Fee Disclosure and Payment Methods Modernization

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing amendments that would modernize filing fee disclosure and payment methods. We are proposing to amend most fee-bearing forms, schedules, statements, and related rules to require each fee table and accompanying disclosure to include all required information for fee calculation in a structured format. The proposed amendments would add the option for fee payment via Automated Clearing House (''ACH'') and eliminate the option for fee payment via paper checks and money orders. The proposed amendments are intended to improve filing fee preparation and payment processing by facilitating both enhanced validation through fee structuring and lower-cost, easily routable payments through the ACH payment option. Finally, the Commission proposes other amendments to enhance the efficiency of the fee process.

DATES: Comments should be received on or before February 25, 2020.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use our internet comment form (*http:/www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–20–19 on the subject line.

Paper Comments

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–20–19. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. We will post all comments on our website (*http://www.sec.gov/rules/proposed.shtml*). Comments are also 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 a.m. and 3 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

We or the staff may add studies, memoranda, or other substantive items to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Luba Dinits, Senior Accountant, Office of Financial Management, at (202) 551–3839, Mark W. Green, Senior Special Counsel, Division of Corporation Finance, at (202) 551–3430; James Maclean, Senior Counsel, Division of Investment Management, at (202) 551–6792; or R. Michael Willis, Assistant Director, Office of Structured Disclosure, Division of Economic and Risk Analysis, at (202) 551–6600.

SUPPLEMENTARY INFORMATION:

We are proposing amendments to:

Commission reference		CFR citation (17 CFR)
Informal and other Procedures	Rule 3a	§ 202.3a.
Regulation S–K	Item 601	§ 229.601.
Regulation S–T	Rule 11	§ 232.11.
	Rule 13	§ 232.13.
	Rule 405	§ 232.405.
Securities Act of 1933 [1] (''Securities Act'')	Rule 111	§ 230.111.
	Rule 424	§ 230.424.
	Rule 456	§ 230.456.
	Rule 457	§ 230.457.
	Form S–1	§ 239.11.
	Form S–3	§ 239.13.
	Form S–8	§ 239.16b.
	Form S–11	§ 239.18.
	Form N–14	§ 239.23.
	Form S–4	§ 239.25.
	Form F–1	§ 239.31.
	Form F–3	§ 239.33.
	Form F–4	§ 239.34.
	Form F–10	§ 239.40.
Securities Exchange Act of 1934 [2] (''Exchange Act'')	Rule 0–9	§ 240.0–9.
	Rule 0–11	§ 240.0–11.
	§ 240.13e–1	§ 240.13e–1.
	Schedule 13E–3	§ 240.13e–100.
	Schedule 13E–4F	§ 240.13e–102.
	Schedule 14A	§ 240.14a–101.
	Schedule 14C	§ 240.14c–101.
	Schedule TO	§ 240.14d–100.
	Schedule 14D–1F	§ 240.14d–102.
Investment Company Act of 1940 [3] (''Investment Company Act'')	Rule 0–8	§ 270.0–8.

Commission reference		
Securities Act and Investment Company Act	Form 24F–2 Form N–2 Form N–5	§ 274.24. § 239.14 and § 274.11a–1. § 239.24 and § 274.5.

[1] 15 U.S.C. 77a *et seq.*
[2] 15 U.S.C. 78a *et seq.*
[3] 15 U.S.C. 80a–1 *et seq.*

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I. Introduction and Background

The Commission assesses filing fees pursuant to Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act. The fees are assessed on companies filing documents related to transactions, including registered securities offerings, tender offers and merger or acquisition transactions. The Commission also assesses registration fees for registered offerings by investment companies, with fees assessed on an annual basis for open-end funds and unit investment trusts (''UITs'').[1] Additionally, closed-end funds, including business development companies (''BDCs''),[2] as well as small business investment companies (''SBICs''),[3] pay registration fees at the time of filing a registration statement.[4]

The current methods by which filers and the Commission staff process and validate EDGAR[5] filing fee information within the filing are highly manual and labor-intensive.[6] Filing-fee related information is generally not machine-readable and the underlying components used for the calculation are not always required to be reported.[7] The complexity of some transactions or instances in which a filer is engaged in a number of transactions can make filing fee calculation difficult. Fee calculations can become complex when issuers attempt to claim fee offsets[8] without accurately keeping track of previous takedowns or changes in the price or amount of securities, or attempt to ''carry forward'' unsold securities from one registration statement to another.[9] Correcting errors or reconciling inconsistencies in fee calculations can increase burdens on both the filer and the Commission staff.

Other errors can occur because the filer must disclose certain data elements relevant to the fee calculation in multiple places. After calculating the required fee, a filer must manually enter certain data elements relevant to the fee calculation in the body of the relevant filing, typically on the cover page. Then, during the process of building the filing on EDGARLink,[10] the filer (or, more typically, its filing agent) must manually enter certain data elements into the EDGARLink web pages—including some information that is already contained in the body of the filing[11]—that becomes part of the filing's ''header.'' The fee-related data is thus

[1] Pursuant to Section 24(f)(2) of the Investment Company Act, open-end funds and UITs must file information about the computation of these registration fees and other information on Form 24F–2. We previously proposed to require reports on Form 24F–2 to be submitted in a structured eXtensible Markup Language (''XML'') format. *See Securities Offering Reform for Closed-End Investment Companies,* Investment Company Act Release No. 33427 (Mar. 20, 2019) [84 FR 14448 (Apr. 10, 2019)] ('' Offering Reform Proposing Release'').

[2] BDCs are a category of closed-end investment companies that do not register under the investment Company Act, but rather elect to be subject to the provisions of sections 55 through 65 of the Investment Company Act. *See* section 2(a)(48) of the Investment Company Act [15 U.S.C. 80a–2(a)(48)].

[3] SBICs are investment companies that operate differently, and are subject to a different regulatory regime, than other management investment companies. They are ''privately owned and managed investment funds, licensed and regulated by the Small Business Administration ('SBA'), that use their own capital plus funds borrowed with an SBA guarantee to make equity and debt investments in qualifying small businesses.'' *See* SBA, SBIC Program Overview, *available at https://www.sba.gov/content/sbic-program-overview.*

[4] *See* Section 6(b)(1) of the Securities Act.

[5] The Commission receives filings through its Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system.

[6] Validation is the process of checking for conformance with certain requirements. For example, we expect the EDGAR system to automatically validate a fee based on the number of shares registered and maximum offering price per share by multiplying those amounts by each other and the applicable fee rate.

[7] For example, as further discussed below, in connection with a business combination, fee-specific disclosures of the market value of securities to be received by a registrant or cash to be paid or received by the registrant are not expressly required to be disclosed even though they affect the fee calculation. *See, infra,* note 31.

[8] Filers may claim offsets, for example, under Securities Act Rule 457(p) for fees previously paid in connection with securities offered under a registration statement that remain unsold after the offering's completion or termination, or withdrawal of the registration statement subject to specified requirements.

[9] Rule 415(a)(6) provides, in general, that under specified circumstances an issuer may include on a new registration statement unsold securities covered by its earlier registration statement and the offering of securities on the earlier registration statement will be deemed terminated as of the effectiveness of the new registration statement.

[10] EDGARLink is an online tool, made available by the Commission, used to assemble, validate and submit filings on EDGAR. As part of submitting the filing, the registrant enters submission data that becomes part of that filing's header.

[11] Today, some fee-related information may be present in the body but not on the cover page of a filing.

present in the EDGAR header, the body of the document being filed, or both. The manual process of entering the same data elements in more than one place increases the possibility of filer errors, such as re-keying errors or errors where information is modified in one location but not the other.

Currently, the Commission staff conducts a manual review of the fee information for every fee-bearing filing that is filed with the Commission. When there are discrepancies between fee information appearing in the header and in the fee table on the cover page of the filing, the staff must resolve the discrepancy and often has to contact the filer to do so. If adopted, we expect the proposed amendments would make the fee payment validation process faster and more efficient by enabling the staff to use automated tools to help validate payment information with respect to complicated situations, such as when a registrant claims an offset of fees paid with one or more previous registration statements filed by the registrant or an affiliate. We also expect that improvements in the payment validation process made possible by the proposed tagging of the fee table and accompanying information with pre-submission validation by the filer would provide more certainty to registrants that the proper filing fee has been paid.

We propose to amend most fee-bearing forms, schedules and statements [12] to provide that each fee table, together with related explanatory notes to the fee table, include all required information for fee calculation in a structured format using Inline eXtensible Business Reporting Language (''XBRL'').[13] The primary benefits of presenting fee-related information in a structured format would be achieved by:

- Enabling efficient automated access to and processing of, information relevant to fee calculation; and
- Eliminating both the need to enter duplicate fee information in the header and the possibility of inconsistent fee information between the header and the body of the filing.

These amendments would improve the filing fee preparation, disclosure, validation, assessment, and collection processes.

We also propose to add an option for fee payment via ACH, which offers faster and more accurate fee payment processing through standardized fee payment identification fields, and to eliminate the option for fee payment via paper checks and money orders. These amendments are intended to modernize filing fee payment methods and increase efficiency in processing filing fee payments.

We welcome feedback and encourage interested parties to submit comments on any or all aspects of the proposed amendments. When commenting, it would be most helpful if you include the reasoning behind your position or recommendation.

II. Proposed Amendments

A. Fee-Bearing Form Content and Structuring

We propose to require filers to present all filing fee-related information in a structured format. This would include information that today is included in a text-only format, and some information prepared by filers but the disclosure of which is currently optional.[14] The preparation, disclosure, validation, assessment, and collection process would be more effectively automated by facilitating access to and processing of a broad range of fee calculation-related information, saving filers and the Commission resources by reducing the need to manually access the relevant data or confirm it with filers.[15]

We believe that structuring the relevant data would greatly enhance the ability of filers and Commission staff to quickly identify and correct errors, as EDGAR's validation functionality would automatically check the structured fee-related information for internal consistency, including prior to submission of a live filing. While EDGAR would automatically compute the filing fee due using the structured data and validate the information submitted by the filer, any validation failures caused by incorrect structured filing fee-related information would result in a warning to filers and a flag for staff follow-up, but not a suspension of the filing.[16]

The specific format we propose to require for the structured data is Inline XBRL.[17] This format would result in machine-readable data that could then be used to more effectively automate the filing fee preparation, disclosure, assessment, and verification processes. Inline XBRL would be a particularly useful method of structuring fee-related information because: It eliminates the need to tag a copy of the information in a separate document as under traditional XBRL; [18] Inline XBRL is consistent with the underlying format of all of the fee-bearing forms we propose to structure; and it enables automated analytical tools to extract the information sought wherever it may be located within a filing.[19]

The specific proposed form, schedule and related changes are discussed below.

1. Affected Forms

We propose to amend Forms S–1, S–3, S–8, S–11, S–4, F–1, F–3, F–4, and F–10 under the Securities Act [20] and

[12] *See* Section II.A.1 regarding the fee-bearing forms we propose to amend and Section II.A.4 regarding those we do not propose to amend.

[13] Structured data is data that is tagged to make it machine-readable, facilitating its use by investors and other market participants, such as data aggregators (*i.e.,* entities that, in general, collect, package, and resell data).

[14] *See infra* note 31.

[15] The EDGARLink program requires filers to manually enter a limited number of basic fee calculation components such as amount being registered, proposed maximum offering price per unit or in the aggregate and, where applicable, offset amount. It then performs a fee rate calculation based on that information. EDGAR's fee applications would perform similar calculations using the structured fee-related information that we are proposing. Eventually, if adopted, this structured information may be used in these fee applications to confirm that a claimed fee offset is available based on the amount of remaining unsold securities registered on a prior filing.

[16] Currently, if a filing's header discloses a fee due more than a dollar in excess of the amount available in the filer's fee account, the filing is suspended and the filer is notified of the shortage and given the opportunity to add funds to the fee account or otherwise resolve the issue (*e.g.,* where the header-disclosed fee due is in error). The system applicable to the structured information proposed to be required would function similarly.

[17] In 2009, the Commission adopted rules requiring operating company financial statements and mutual fund risk/return summaries to be submitted in an XBRL format entirely within an exhibit to a filing. *Interactive Data to Improve Financial Reporting,* Release No. 33–9002 (Jan. 30, 2009) [74 FR 6776 (Feb. 10, 2009)] as corrected by Release No. 33–9002A (Apr. 1, 2009) [74 FR 15666 (Apr. 7, 2009)] (''Operating Company Financial Statement Tagging Release''). In 2018, the Commission refined the requirement to provide information in an XBRL format by requiring that, on a phased-in basis, operating company and mutual fund filers begin to submit this information using the Inline XBRL format, which embeds the tagged information in the document itself, rather than in an exhibit. *See Inline XBRL Filing of Tagged Data,* Release No. 33–10514 (June 28, 2018) [83 FR 40846 (Aug. 16, 2018)] (''Inline XBRL Release'').

[18] Inline XBRL allows filers to embed XBRL data directly into a HyperText Markup Language (''HTML'') document, eliminating the need to tag a copy of the information in a separate XBRL exhibit.

[19] In connection with the proposed amendments, the use of the Inline XBRL format would be specified in the definition of the term ''General Interactive Data File'' in Regulation S–T and the EDGAR Filer Manual.

[20] These forms are used by operating companies to register offers and sales of securities under the Securities Act. They differ primarily in regard to issuer and transaction eligibility requirements, and location and nature of disclosure required.

Schedules 13E–3,[21] 13E–4F,[22] 14A,[23] 14C,[24] TO,[25] and 14D–1F [26] under the Exchange Act (collectively, the ''Affected Securities Act and Exchange Act Forms and Schedules'') to require disclosure, and structuring of all information necessary to calculate the fee.[27] We also propose to amend Forms N–2,[28] N–5,[29] and N–14 [30] (the ''Affected Investment Company Act Forms'') to require structuring of such information in Inline XBRL format. We propose to require filers to structure the fee-related information in the Affected Securities Act and Exchange Act Forms and Schedules and the Affected Investment Company Act Forms in Inline XBRL format.

2. Content and Location of Filing Fee Information

Currently, fee-related information is presented primarily on the cover page of fee-bearing filings but also appears in a submission header. Regardless of where it appears, however, the information currently required to be disclosed does not always include all components needed to calculate the fee and, as a result, the Commission staff may need to contact the filer for more information.[31] We propose to require the cover page of fee-bearing filings to include all of the information necessary to calculate the fee,[32] which would expedite staff review of fee calculations, provide more certainty to filers that the proper filing fee has been paid and reduce burdens on filers that otherwise would need to respond to staff inquiries. Specifically, the amendments would, as applicable,[33] do so by:

- Adding a ''Reliance on Rule(s)'' column to the fee table of the Affected Securities Act and Exchange Act Forms and Schedules where the filer would indicate through checkboxes whether it is planning to carry forward or include an equivalent amount of unsold securities, use a combined prospectus, offset a fee paid in connection with the same or a prior transaction or is calculating a fee based on maximum aggregate offering price by relying on Securities Act Rule 415(a)(6), 429,[34] or 457(b),[35] (o),[36] or (p) [37] or Exchange Act Rule 0–11(a)(2); [38]
- Adding a ''fee rate'' column to the fee table of the Affected Securities Act and Exchange Act Forms and Schedules, as well as to the Affected Investment Company Act Forms;
- Revising fee tables in Schedules 13E–3 and TO and adding fee tables to Schedules 13E–4F, 14A, 14C, and 14D–1F to require filers to present basic fee calculation information in a table; [39]
- Adding or clarifying instructions regarding fee table presentation, calculations and related disclosure

[21] Rule 13e–3 under the Exchange Act requires an issuer or affiliate to file a Schedule 13E–3 when either plans to engage in a transaction that could cause the loss of a reporting obligation under the Exchange Act or loss of a national securities exchange listing with respect to a class of the issuer's equity securities.

[22] Schedule 13E–4F may be filed instead of Schedule TO in order to comply with Rule 13e–4 under the Exchange Act where a Canadian operating company issuer meeting specified requirements is subject to Exchange Act reporting requirements and the issuer or, in limited circumstances, an affiliate makes a tender offer related to a class of the issuer's equity securities.

[23] Schedule 14A is required to be filed by an issuer or other person or entity that solicits proxy authority with respect to securities registered under Section 12 of the Exchange Act to comply with Rules 14a–3 and 14a–6 under the Exchange Act.

[24] Schedule 14C is required to be filed by operating companies to comply with Rules 14c–2 and 14c–5 under the Exchange Act in connection with corporate actions to be authorized by holders of securities registered under Section 12 of the Exchange Act where no proxy authorization or consent is solicited on behalf of the issuer for the corporate action to be taken.

[25] Schedule TO is required to be filed by Rules 13e–4 and 14d–3 under the Exchange Act in connection with a tender offer for a class of an operating company's equity securities registered under Section 12 of the Exchange Act (if the tender offer involves a going-private transaction, a combined Schedule TO and Schedule 13E–3 may be filed with the Commission under cover of Schedule TO).

[26] Schedule 14D–1F can be used to satisfy requirements otherwise applicable under Regulations 14D and 14E of the Exchange Act pursuant to Rule 14d–1(b) under the Exchange Act with respect to specified Canadian operating company tender offer subjects.

[27] We propose to similarly amend Exchange Act Rule 13e–1. Rule 13e–1 provides that an issuer that has received a notice that it is the subject of a tender offer is prohibited from purchasing any of its equity securities during the tender offer unless the issuer first files a statement with the Commission disclosing specified information related to the planned purchases and pays a specified fee.

[28] Form N–2 is used by all closed-end management investment companies, except SBICs, for filing registration statements under the Securities Act and under section 8(b) of the Investment Company Act.

[29] Form N–5 is used by SBICs for filing registration statements under the Securities Act and under section 8(b) of the Investment Company Act.

[30] Form N–14 is used by management investment companies and BDCs to register securities to be issued in certain types of transactions, including certain fund mergers. *See* General Instruction A to Form N–14 for a list of the transactions that are required to be registered on Form N–14.

[31] As previously noted, EDGARLink requires filers to manually enter basic fee calculation components and then performs a fee rate calculation on that basis. The basic fee calculation components, however, may themselves be based on calculations using information that is not disclosed. For example, current Securities Act Rule 457(f) generally requires a business combination transaction fee to be based on, as applicable, (1) the market value of the securities to be received by the registrant or canceled in the transaction as established by one of multiple specified methods; (2) cash to be received by the registrant in connection with the transaction (the amount to be added to the value of the securities to be received by the registrant or cancelled); and (3) cash to be paid by the registrant in connection with the exchange or transaction (the amount to be deducted from the value of the securities to be received by the registrant in connection with the transaction). Yet, neither Rule 457 nor, *e.g.,* Form S–4, commonly used for business combination transaction registration, expressly requires fee calculation-specific disclosure beyond the title of each class of securities to be registered, the amount to be registered, the proposed maximum offering price per unit, and the amount of the registration fee.

[32] We propose, however, to amend Rule 424 to permit this fee-related information to appear together anywhere within a filing made pursuant to the rule.

[33] Some of the amendments would not affect all of the fee-bearing filings this release addresses. For example, proposed amendments related to Rule 457(f) would not apply to Form S–8, which is used for employee benefit plan-related securities offerings, because this form does not involve business combination or other transactions, which Rule 457(f) addresses. Although fee-bearing filings under the Securities Act and Exchange Act are used for different types of offerings and transactions, we are proposing that they all contain the same or highly similar fee table categories to facilitate comparisons and structuring. Additional tailored disclosure would still be required as applicable.

[34] Rule 429 generally provides that where a registrant has filed two or more registration statements, it may file a single prospectus in its latest registration statement to satisfy applicable requirements for that offering and any other offering(s) registered on the earlier registration statement(s). Rule 429 also generally provides that where a registrant does so, the registration statement containing the combined prospectus becomes, upon effectiveness, a post-effective amendment to any earlier registration statement whose prospectus has been combined in the latest registration statement. Finally, Rule 429 states that the registrant must identify any earlier registration statement to which the combined prospectus relates by setting forth the Commission file number at the bottom of the facing page of the latest registration statement.

[35] Rule 457(b) relates to crediting fees paid under one fee provision against those due under another fee provision for the same transaction.

[36] Rule 457(o) states that a registration fee for a securities offering may be calculated on the basis of the maximum aggregate offering price of all the securities listed in the calculation of registration fee table and, in that case, the number of shares or units of securities need not be included in the table.

[37] Rule 457(p) provides that where all or some of the securities offered under a registration statement remain unsold after the offering's completion or termination, or withdrawal of the registration statement, the aggregate total dollar amount of the filing fee associated with those unsold securities may be offset against the total filing fee due for a later registration statement or registration statements subject to specified conditions.

[38] Rule 0–11(a)(2) also relates to crediting fees paid under one fee provision against those due under another fee provision for the same transaction.

[39] As proposed, the fee tables for Schedules 13E–3, 13E–4F, TO, and 14D–1F would have the column headings ''Title of each class of securities to which transaction applies'', ''Transaction valuation'', ''Fee rate'', ''Amount of filing fee'' and ''Reliance on Rule(s)''. Also as proposed, the fee tables for Schedules 14A and 14C would have similar column headings and headings for the number of securities to which the transaction applies and the per unit price or other underlying value of the transaction computed under Rule 0–11.

content and presentation [40] in general [41] and, in particular, associated with the proposed fee table checkbox provisions or involving business combination or employee benefit plan fee calculations related to Rule 415(a)(6), Rule 429, Rule 457(a), (b), (f), (h), (o), and (p), Rule 0–11(a)(2), and transaction valuation, as applicable, in regard to the Affected Securities Act and Exchange Act Forms and Schedules; [42]

- Adding fee table and calculation disclosure requirements to Exchange Act Rule 13e–1; [43]
- Revising Securities Act Rule 424(g) so that the form of prospectus that reflects filing fees for pay-as-you-go fee offerings under Rule 456(b) [44] also includes all fee information needed for fee calculation and not just the currently required registration fee table and to permit all of this information to be located on the prospectus cover page or anywhere else in the filing so long as it is kept together; [45]
- Revising the instructions to Forms S–3 [46] and F–3 [47] to provide that:
  - Information specified by the proposed term ''General Interactive Data File,'' described below, must appear in a prospectus filed under Rule 424(b) or post-effective amendment rather than a periodic report that is incorporated by reference into the registration statement; and
  - Each post-effective amendment or final prospectus filed pursuant to Rule 424(b) to provide required information about a specific transaction must include the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment or prospectus relates and each such prospectus must indicate that it is a final prospectus for the related offering to assist in calculation of the amount of securities sold; and
- Revising the instructions to Forms S–4 [48] and F–4 [49] to provide that each post-effective amendment or, if permitted, final prospectus supplement filed under Rule 424(b) to provide required information about a specific transaction and particular company being acquired, must include the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment or prospectus relates and each such prospectus must indicate that it is a final prospectus for the related offering.

A proposed instruction relating to Rule 429 reliance would require an issuer relying on that rule to check the related box in the fee table and also require it to disclose the file number(s) of the earlier effective registration statement(s), and the amount or maximum aggregate offering price of unsold securities registered on the earlier registration statement(s) that may be offered and sold using the combined prospectus. We believe that requiring this information, which would also be subject to structuring requirements, would enable filers and the Commission staff to better track the amount of securities sold for which fees have been paid.

For the same reason, we propose to amend the Affected Securities Act and Exchange Act Forms and Schedules for which Rule 415(a)(6) is potentially available to require that when the filer relies on that rule, it disclose the amount of securities being carried forward, expressed in terms of the number of securities, or, if the related filing fee was calculated in reliance on Rule 457(o), the maximum aggregate offering amount; the file number of the earlier registration statement; the initial effective date of the earlier registration statement; and the filing fee previously paid in connection with the unsold securities being carried forward.[50]

Also for the same reason, we propose to require those filing Affected Securities Act and Exchange Act Forms and Schedules or documents under Rule 13e–1 and relying on Rule 457(b) or Rule 0–11(a)(2) to disclose the dollar amount of the previously paid filing fee to be offset; the type of filing or form type, file number, and initial filing date of the earlier registration statement or Exchange Act filing with which the earlier fee was paid. If the filer is claiming an offset from an earlier Securities Act registration statement, we also propose to require the filer to provide a detailed explanation of the basis for the claimed offset.

Rule 457(p) generally requires that a filer claiming an offset from a previous registration statement add a note to the

[40] All of the Affected Securities Act and Exchange Act Forms and Schedules would include a proposed fee table instruction that would require all fee-related disclosure required by the fee table instructions but not included in the fee table to immediately follow the fee table. *See, e.g.,* proposed Instruction 10 to Calculation of Registration Fee table of Form S–1.

[41] For example, the proposed amendments would add two instructions to the Securities Act forms, as applicable, that address pre-effective amendments. One would provide that when a registrant increases the amount of securities of any class to be registered, it must disclose, for each such class, the number of securities previously registered or, if the filing fee previously paid with respect to that class was calculated in reliance on Rule 457(o), the maximum aggregate offering price previously registered. As further discussed in Section II.C, *infra,* the other would provide that when a registrant has filed a registration statement for two separate securities and then decides to increase the amount of one security and decrease the other, it may file a pre-effective amendment to reflect the increase and decrease in the fee table and reallocate the fees already paid under the registration statement between the two securities.

[42] All of the Affected Securities Act and Exchange Act Forms and Schedules other than Form F–10 currently are subject to Rule 457, in the case of forms under the Securities Act, or Rule 0–11, in the case of schedules under the Exchange Act. General Instruction II.B of Form F–10, provides, however, that the rules comprising Regulation C under the Securities Act, including Rule 457, do not apply to filings on the form unless expressly referenced. Form F–10 does not expressly reference Rule 457. Instead, it presents its own fee calculation provisions in General Instructions II.G–II.I. These instructions require payment at the same rate applicable under Rule 457 and set forth how to calculate the fee in connection with an exchange offer or business combination. From time to time filings on Form F–10 have raised fee issues that are not addressed by these instructions. In those cases, the staff generally has resolved these issues by applying principles derived from otherwise applicable provisions of Rule 457. Consistent with that historic approach, the proposed amendments would revise General Instruction II.G to make all but paragraph (f) of Rule 457 expressly applicable to filings on Form F–10. Consistent with the changes proposed to the other Securities Act forms that require specified information underlying a Rule 457(f) fee calculation, we propose to add Instructions 2 and 3 to the fee table to Form F–10 to require analogous information underlying a fee calculation under General Instructions II.H and II.I, respectively.

[43] As proposed, the fee table and related instructions to be added to Rule 13e–1 would be substantially similar to the fee table and related instructions proposed to be present in Schedules 13E–3, 13E–4F, TO, and 14D–1F.

[44] Rule 424 generally specifies when an issuer must file a form of prospectus in connection with a securities offering. Rule 424(g) states that when that filing requirement applies and the form of prospectus operates to reflect the payment of filing fees for an offering under Rule 456(b) [17 CFR 230.456(b)] of the Securities Act, the form of prospectus must include on its cover page the calculation of registration fee table reflecting the payment of those fees. Rule 456(b), in turn, generally provides that under specified conditions a well-known seasoned issuer that registers securities on an automatic shelf registration statement may defer a filing fee payment until it is required to file the related prospectus supplement under Rule 424(b).

[45] We also propose to revise Rule 456(b) to conform it to Rule 424(g) as proposed to be amended. Rule 456(b)(1)(ii) provides that in connection with a deferred fee payment, a filer must place an updated fee table in a post-effective amendment or on the cover of a prospectus filed under Rule 424(b). As proposed, Rule 456(b)(1)(ii) would instead require a filer placing the updated fee table in a prospectus to do so in the manner Rule 424(g) specifies.

[46] General Instruction II.F of Form S–3.

[47] General Instruction II.G of Form F–3.

[48] General Instruction H of Form S–4. We also propose to revise the first sentence of General Instruction H to conform it to the second sentence and General Instruction F of Form F–4 by replacing the word ''or'' with the word ''and'' where the sentence currently refers to ''required information about the type of contemplated transaction or the company to be acquired.''

[49] General Instruction F of Form F–4.

[50] Rule 415(a)(6) currently requires that a filer using the rule identify on the bottom of the facing page of the later registration statement the amount of unsold securities being included and any filing fee paid in connection with those securities,

later registration statement's fee table stating the dollar amount of the filing fee previously paid that is offset, the file number of the earlier registration statement from which the fee is offset, and the name of the registrant appearing on, and the initial filing date of, the earlier registration statement. To help assure that the amount of offset the filer seeks to apply is available from the earlier registration statement, we propose that, in addition, the note would have to disclose the amount of unsold securities or unsold aggregate offering amount from the prior registration statement associated with the claimed offset. Finally, we propose to require the note to state that the registrant has withdrawn the prior registration statement or terminated or completed any offering that included the unsold securities associated with the claimed offset under the earlier registration statement so that it is clear that these conditions have been met.[51] The requirement would appear in the fee instructions of the Affected Securities Act and Exchange Act Forms and Schedules and the resulting disclosure would have to be presented in the proposed structured format.

General Instructions II.F and II.G, of Forms S–3 and F–3, respectively, currently require that, when information is omitted from certain shelf registration statements at the time of initial effectiveness, the issuer must provide information about a specific transaction in a prospectus filed under Rule 424(b), post-effective amendment or periodic or current report incorporated by reference into the registration statement. The new term ''General Interactive Data File,'' that we propose to define in Rule 11 of Regulation S–T, would specify the information that a filer must structure.[52] We propose to revise Forms S–3 and F–3 to require that an issuer include any information specified by the term ''General Interactive Data File'' in a prospectus filed under Rule 424(b), or post-effective amendment to avoid extending the filing fee structured information requirements to periodic and current reports.[53]

We propose to revise the same instructions to Forms S–3 and F–3 to require each post-effective amendment or final prospectus filed pursuant to Rule 424(b) to provide required information about a specific transaction to include the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment or prospectus relates, and to require each such prospectus to indicate that it is a final prospectus for the related offering. We believe that requiring this information, which would also be subject to the proposed structuring requirements,[54] would help enable issuers and the Commission to better track the amount of securities sold under a registration statement. Such information would make it easier to determine amounts of unsold securities available to bring forward to a new registration statement under Rule 415(a)(6) and the amount of fees available for offsets under Rules 457(p) and 0–11. We also believe requiring registrants to indicate that a prospectus is final in a manner subject to the proposed structuring requirements would help issuers and the Commission identify the latest date by which filing fees deferred under Rule 456(b) could be paid in compliance with the rule.[55]

General Instructions H and F of Forms S–4 and F–4, respectively, currently require that when securities are offered in connection with a business combination under Rule 415(a)(1)(viii)[56] and information is omitted at the time of initial effectiveness because it is impractical to provide, the issuer must provide information about the specific transaction and company acquired in the prospectus through a post-effective amendment except that, in the case of Form S–4, under specified circumstances, the issuer could instead use a prospectus supplement. We propose to revise these instructions to provide that each post-effective amendment or final prospectus supplement filed to provide required information about a specific transaction and particular company being acquired must include the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment or prospectus relates, and each such prospectus must indicate that it is a final prospectus for the related offering. As with the analogous amendments proposed for Forms S–3 and F–3, we believe that requiring this information, which would also be subject to the proposed structuring requirements, would help issuers and the Commission better track the amount of securities sold under a registration statement.

Proposed instructions to each fee table required by Rule 424(g) may require the filer to disclose explanatory information to accompany the fee table, such as cash paid or received by a registrant in connection with a business combination transaction that is relevant to fee calculation. As a result, we propose to revise Rule 424(g) to require the filing to include the fee table and information required by the form instructions to the fee table, and to require all of this information in a structured format. This proposed requirement could cause more information to be required on the prospectus cover page and, as a result, displace information that is more appropriate for the cover page. For this reason, we also propose to revise Rule 424(g) to permit the fee-related information to appear anywhere within the prospectus as long as it appears together.

Request for Comment

1. Would the proposed amendments centralize all information needed to calculate fees on the cover page of a filing (other than a Rule 424(b) prospectus), as intended? If not, what other amendments would be needed to centralize that information? Is there other information that we should include in the proposed fee tables and accompanying disclosure?

2. Would centralizing all information needed to calculate fees facilitate the fee process for filers? For example, should we add a requirement to disclose the fee rate, as proposed? Are there additional

[51] The proposed changes to Rule 457(p) would not affect the Commission's position that asset-backed securities issuers could apply unused fees in connection with a preliminary prospectus filing toward a future takedown off the same registration statement. *See Asset-Backed Securities Disclosure and Registration,* Release No. 33–9638 (Sept. 4, 2014) [79 FR 57184 (Sept. 24, 2014)] as corrected by Release No. 33–9638A (Nov. 3, 2014) [79 FR 66607 (Nov. 10, 2014)].

[52] As discussed in more detail in Section II.A.3, *infra,* proposed Rule 11 of Regulation S–T would define the term ''General Interactive Data File'' as the machine-readable computer code that presents specified fee-related information in Inline XBRL format, as applicable, in the manner provided by the EDGAR Filer Manual.

[53] An issuer otherwise could continue to include transaction-specific information in a periodic or current report to the same extent it can do so under current provisions.

[54] Paragraph (3) of the proposed new term ''General Interactive Data File'' would expressly require this information to be structured. Consequently, even if a filer previously filed and structured fee-related information such as a full fee table and explanatory material in an initial filing, pre-effective amendment, or filing under paragraph (b) of Rule 424, as applicable, it still would need to structure this information in such a post-effective amendment or final prospectus.

[55] Rule 456(b) permits a well-known seasoned issuer that registers securities offerings on an automatic shelf registration statement, or registers additional securities or classes of securities thereon, to defer payment of all or any part of the registration fee to the Commission if the registrant satisfies the conditions specified in Rule 456(b)(1)(i) and (ii).

[56] Rule 415(a)(1)(viii) permits an issuer to register a delayed or continuous offering of securities to be issued in connection with business combination transactions.

ways in which we could facilitate the fee process?

3. Instead of making changes to individual forms, schedules, statements, and rules, as proposed, should we adopt a single rule for common fee requirements and cross-reference those provisions in the forms, schedules, statements, and rules?

4. Should we, as proposed, require information specified by the proposed term ''General Interactive Data File'' to appear in a prospectus filed under Rule 424(b) or post-effective amendment rather than in a periodic report incorporated by reference into Forms S–3 and F–3?

5. Should we revise, as proposed, the instructions to Forms S–3 and F–3 to require each post-effective amendment or final prospectus filed pursuant to Rule 424(b) to provide required information about a specific transaction to include the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment or prospectus relates and to require each such prospectus to indicate that it is a final prospectus for the related offering? Would requiring this information, which would also be subject to the proposed structuring requirements regardless of whether the document contains a fee table or other fee-related information, enable filers to better track the amount of securities sold pursuant to a registration statement? Would requiring registrants to indicate that a prospectus is final in a structured format help issuers and the Commission identify the latest date by which filing fees deferred pursuant to Rule 456(b) could be paid in compliance with the rule?

6. Should we similarly revise, as proposed, the instructions to Forms S–4 and F–4? Would these revisions enable filers and Commission staff to better track the amount of securities sold pursuant to a registration statement and to identify the latest date by which filing fees deferred pursuant to Rule 456(b) could be paid in compliance with the rule?

7. Is there additional information regarding any of the Affected Securities Act and Exchange Act Forms and Schedules or documents filed pursuant to Rule 13e-1 that we should require to be disclosed and presented in a structured format to enable better tracking of the amount of securities sold for which fees have been paid? For example, should we require an issuer at the time it seeks to carry forward securities or claim a fee offset to disclose the amount of sold securities or aggregate offering amount associated with the registration statement from which the carry forward or offset is claimed? If so, should we also require the issuer to disclose the fee associated with the amount sold? Do any of these forms, schedules or documents raise tracking issues that the proposed amendments would not address? Are there certain types of transactions such as shelf offerings that raise tracking issues that the proposed amendments would not already address?

8. Is the proposed revision to Rule 424(g) to clarify that certain information relevant to the fee calculation must accompany the fee table appropriate? Should we permit the fee table and related information required to be in a prospectus to appear anywhere in the prospectus so long as it is kept together as proposed?

9. Should we, as proposed, require the same fee table for business combination registration Forms S–4 and F–4 as we do for more generalized Forms S–1, S–3, F–1 and F–3? If not, what format would be preferable and why?

10. With respect to filings other than a Rule 424 prospectus, should we require or permit each fee table and its related disclosure to appear in a separate exhibit rather than on a cover page, as proposed? If this information is included in a separate exhibit, should we require it to be structured in traditional XBRL rather than the proposed Inline XBRL, or in a different structuring format such as XML?

3. Structuring of Filing Fee-Related Information

To facilitate the filing fee process, we propose to require structuring of all the fee-related information that would be required on the cover page of the Affected Securities Act and Exchange Act Forms and Schedules and statements under Rule 13e–1.[57] The structuring would be through Inline XBRL format for all of these filings.

The structured information would include each fee table in the Affected Securities Act and Exchange Act Forms and Schedules and statements under Rule 13e–1, together with accompanying explanatory disclosure as well as other information specified by the proposed Rule 11 definition of ''General Interactive Data File.'' That term would be defined as the machine-readable computer code that presents the following information, as required by the applicable rule provision or particular form, statement or schedule, in Inline XBRL in the manner provided by the EDGAR Filer Manual: Disclosure on the cover page or wherever else permitted related to the calculation of any fee required to be paid to the Commission in connection with the filing including, without limitation, disclosure

- Related to Securities Act Rule 415, 429, 456, 457, or 462 or Exchange Act Rule 0–11, 14a–6(i), or 14c–5(g);
- Provided pursuant to a fee table and related instructions under a heading such as ''Calculation of Registration Fee'' or any equivalent;
- Provided pursuant to proposed General Instruction II.F of Form S–3 or General Instruction II.G of Form F–3 of the maximum aggregate amount or maximum aggregate offering price of the securities to which a post-effective amendment or final prospectus filed pursuant to Rule 424(b) relates and, in the case of a final prospectus, the fact that it is a final prospectus;
- Provided pursuant to proposed General Instruction H of Form S–4 or General Instruction F of Form F–4 of the maximum aggregate amount or maximum aggregate offering price to which a post-effective amendment or, where permitted, a final prospectus filed pursuant to Rule 424(b) relates and, in the case of a final prospectus, the fact that it is a final prospectus.

Item 601(b)(107) of Regulation S–K, as proposed,[58] would require Forms S–1, S–3, S–4, S–8, S–11, F–1, F–3, and F–4 to include a General Interactive Data File in the manner provided by the EDGAR Filer Manual. As proposed, the same requirement would apply to the following by their terms or, in the case of prospectuses containing specified fee-related information, by proposed Rule 424(i):

- Form F–10;[59]
- Prospectuses filed pursuant to paragraph (b) of Rule 424 containing fee-related information specified by the proposed definition of General Interactive Data File such as the maximum aggregate amount or maximum aggregate offering price and final prospectus status information that we propose to require in connection with certain Forms S–3, F–3, S–4 and F–4 regardless of whether a fee payment

[57] Fee-related information in prospectuses filed under Rule 424 and related to a registration statement under the Securities Act also would be required to be structured in Inline XBRL regardless of where the fee-related information appears.

[58] As proposed a new row (107) would be added to the exhibit table in Item 601(a) of Regulation S–K and reference the General Interactive Data File and paragraph (b)(107) would be added to paragraph (b) of Item 601.

[59] See proposed paragraph (107) to Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10.

is due or the prospectus contains a fee table;[60]

- Statements under Rule 13e–1;[61]
- Schedules 13E–3,[62] 13E–4F,[63] TO,[64] and 14D–1F;[65] and
- Fee-bearing Schedules 14A[66] and 14C.[67]

Companies that file these documents often already will have experience structuring Commission documents in Inline XBRL. Issuers that file Forms S–1, S–3, S–4, S–8, S–11, F–1, F–3, F–4, and F–10 generally are or will, as a result of the phase-in of the Inline XBRL requirements or, in some cases, the need to file Exchange Act periodic and current reports, be required to file their financial statements in Inline XBRL format. Annual reports on Forms 10–K, 20–F, and 40–F, quarterly reports on Form 10–Q, current reports on Form 8–K, and reports on Form 6–K under the Exchange Act are or will be subject to financial statement Inline XBRL requirements.[68] All of these Exchange Act forms other than Form 6–K also are or will be subject to cover page structuring requirements.[69] In some instances, companies that file fee-bearing documents that do not currently require Inline XBRL, but would under the proposed amendments, already would have experience filing their financial statements and Exchange Act cover page information in Inline XBRL format.[70]

Additionally, we propose to structure the information in each fee table of the Affected Investment Company Act Forms. More specifically, we are proposing to structure in Inline XBRL format all of the data in the fee table of Forms N–2, N–5, and N–14, which is titled ''Calculation of Registration Fee Under the Securities Act of 1933'' in each form. This requirement would be implemented through our proposed amendments to Rule 405 of Regulation S–T,[71] as well as our proposed amendments to the General Instructions to Forms N–2, N–5, and N–14. Unlike most of the companies filing the Affected Securities Act and Exchange Act Forms and Schedules, some of the investment companies filing the Affected Investment Company Act Forms may not have experience structuring Commission documents in Inline XBRL.[72] We would therefore expect those investment companies to incur certain transition costs associated with preparing and reviewing their initial Inline XBRL submissions and we are requesting comment to elicit more information in this regard.

Request for Comment

11. Should filers be required to structure all filing fee-related information, as proposed? Should we instead require structuring of only a subset of filing fee information? If so, what subset should that be?

12. Would structuring all filing fee-related information affect the ease and accuracy of the filing fee process as we intend?

13. Should a filer, as proposed, be required to structure information in a non-fee bearing Form S–3, F–3, or S–4 final prospectus filed pursuant to Rule 424 when it omits a fee table but contains specified fee-related information such as maximum aggregate amount or maximum aggregate offering price that we propose to require?

14. Is Inline XBRL the most appropriate structuring format for all filing fee-related information? Is there another structuring format such as XML that would be better in general or particular circumstances? Are there changes we should consider making to the proposed amendments to provide additional flexibility to address future advances in related technology? For example, should our rules specify that information must be provided in a structured data format, but the type of structuring format would be specified by the Commission elsewhere, such as in a separate update to the EDGAR Filer Manual? Would such an approach provide additional flexibility to address future advances in technology?

15. Would it be valuable to filers, if we require filing fee information to appear in Inline XBRL or another format, to have a pilot program, or test period, before compliance is required? If so, how long should such a pilot program or test period last?

16. Should we require natural persons and private entities filing certain forms such as Schedule TO or Schedule 14A to structure filing fee-related information in Inline XBRL format, as proposed?

17. Is there any additional information in the Affected Investment Company Act Forms that should be structured to assist registrants and the Commission with the calculation of fees?

18. Should we instead allow or require information in the Affected Investment Company Act Forms to be structured in a format other than Inline XBRL since they may not have experience with Inline XBRL? For example, should we permit XML structuring, consistent with our separate proposal to structure Form 24F–2?

19. Rather than requiring funds to structure data in the Affected Investment Company Act Forms as proposed, should we require them to provide the structured data on another form, such as Form N–CEN?

4. Scope of Proposed Amendments

The proposed content and structuring amendments described in Sections II.A.2 and II.A.3 above would apply to the Affected Securities Act and Exchange Act Forms and Schedules and documents filed under Rule 13e–1. These amendments would not apply, however, to Forms SF–1,[73] SF–3,[74]

[60] Paragraphs (3) and (4) of the proposed defined term ''General Interactive Data File'' would expressly specify that such information is subject to the structuring requirements.

[61] See proposed paragraph (c) to Rule 13e–1.

[62] See proposed revision to paragraph B of the General Instructions of Schedule 13E–3.

[63] See proposed revision to paragraph A.(1) of Part II (Filing Instructions and Fees) of the General Instructions of Schedule 13E–4F.

[64] See proposed paragraph 6 to the Instructions Regarding the ''Calculation of Registration Fee'' Table (''Fee Table'') of Schedule TO.

[65] See proposed paragraph 6 to the Instructions Regarding the ''Calculation of Registration Fee'' Table (''Fee Table'') of Schedule 14D–1F.

[66] See proposed paragraph 6 to the Instructions Regarding the ''Calculation of Registration Fee'' Table (''Fee Table'') of Schedule 14A.

[67] See proposed paragraph 6 to the Instructions Regarding the ''Calculation of Registration Fee'' Table (''Fee Table'') of Schedule 14C.

[68] For a general discussion of the financial statement tagging requirements applicable to Securities Act and Exchange Act forms, *see* Operating Company Financial Statement Tagging Release and the Inline XBRL Release, *supra,* note 17.

[69] For a general discussion of the Exchange Act report cover page tagging requirements, *see FAST Act Modernization and Simplification of Regulation S–K,* Release No. 33–10618 (March 20, 2019) [84 FR 12674 (Apr. 2, 2019)] (''FAST Act Adopting Release'') as corrected at 84 FR 13796 (Apr. 8, 2019) and *FAST Act Modernization and Simplification of Regulation S–K; Correction,* Release No. 33–10618A (Aug. 6, 2019) [84 FR 39966 (Aug. 13, 2019)] (collectively, ''FAST Act Release'').

[70] For example, an issuer filing a Schedule 13E–3 with regard to itself already would be subject to reporting obligations under the Exchange Act and, as a result, very likely already be subject to Inline XBRL financial statement and cover page structuring requirements.

[71] *See* proposed Rules 405(b)(3), (4), and (5).

[72] The Commission also proposed structured data requirements for BDCs and registered closed-end investment companies, although that proposal did not include structuring the filing fee-related information contained in Form N–2. *See* Offering Reform Proposing Release, *supra,* note 1. We are currently proposing amendments to Rule 405 and General Instruction H to Form N–2 that parallel certain amendments proposed in the Offering Reform Proposing Release. Our current proposal includes only those parallel amendments necessary to implement the Inline XBRL framework for filing fee-related information.

[73] 17 CFR 239.44.

[74] 17 CFR 239.45.

S–20,[75] F–6,[76] F–7,[77] F–8,[78] and F–80[79] under the Securities Act or foreign government registration statements filed pursuant to Schedule B of the Securities Act[80] even though all of these are fee-bearing documents. Relatively few of these documents are filed with the Commission and the issuers that file them may not otherwise be subject to Commission structuring requirements.

Asset-backed securities (''ABS'') issuers are required to file on Forms SF–1 and SF–3 and, as a result, may be subject to Commission requirements to structure information in XML.[81] We estimate that during calendar year 2018, 21 of 51 unique filers of at least one Form SF–1 or SF–3 were subject to the XML requirement. ABS issuers are not subject to financial statement structuring requirements.[82]

Although some ABS issuers already are subject to XML structuring requirements, we are not proposing to require any ABS issuers to structure fee-related information in XML. A filer structuring fee-related information in XML must enter it twice—once in HTML and once in the XML document. As previously noted, the manual process of entering the same data elements in more than one place increases the possibility of filer errors, such as re-keying errors or errors where information is modified in one location but not the other. As also previously noted, the primary benefits of presenting fee-related information in a structured format would be achieved, in part, by eliminating both the need to enter duplicate fee information and the possibility of inconsistent fee information between different parts of the filing.[83]

Due to these factors, we believe that the potential gains from extending the content and structuring amendments to these documents would not warrant the burdens that would be required.

Request for Comment

20. Should we apply the proposed filing fee content and structuring requirements to the proposed filing types? Instead, should the proposed content requirements, structuring requirements or both apply to more or fewer types of filings? Which ones?

21. Specifically, should we apply the proposed content amendments, structuring amendments or both to any or all of Forms SF–1, SF–3, S–20, F–6, F–7, F–8, and F–80 and registration statements filed pursuant to Schedule B? Would the gains from extending these amendments to any of these documents warrant the effort that would be required of their filers?

22. In particular, should we require ABS issuers to structure fee-related information in Forms SF–1 and SF–3 and related prospectuses filed pursuant to Rule 424? If so, should we require ABS issuers to use the XML format, similar to the format of the Asset Data File some are required to file pursuant to Item 1111(h) of Regulation AB? Alternatively, should we require them to structure the information in Inline XBRL format so that a consistent format is used for fee-tagging across all fee-bearing forms? Would it be more or less burdensome on asset-backed issuers to structure the information in Inline XBRL rather than XML?

23. Are there other Investment Company Act forms, in addition to the Affected Investment Company Act Forms, that should include structured information to assist with the calculation of fees?

24. Should application of the proposed structuring requirements depend upon whether the filer already is or, as a result of a filing will be, required to comply with Inline XBRL, XML or other structuring requirements under our rules, such as those imposed on operating company financial statements under, for example, Item 601(b)(101) of Regulation S–K or fund risk/return summaries under, for example, Form N–1A and related rules under Regulation S–T?[84]

5. Transition Period

The proposed structuring requirements would be phased in over time as follows but compliance with the other proposed requirements would be mandatory upon the requirements' effectiveness:

Filer	Compliance date
Large accelerated filers	Filings submitted on or after 18 months after the requirements' effectiveness.
Accelerated filers	Filings submitted on or after 30 months after the requirements' effectiveness.
All other filers, including all investment companies filing reports on Forms N–2, N–5, and N–14.	Filings submitted on or after 42 months after the requirements' effectiveness.

We believe that this approach would facilitate the transition of filers to the structuring requirements that would apply to filing fees and related information. It is intended to ease the cost of transition for smaller filers and filers that have not previously been required to provide filings using Inline XBRL.[85] Because any fixed cost of initial transition would disproportionately burden smaller filers, this approach would give these filers time to develop related expertise, as well as the opportunity to benefit from the experience of larger filers with the structuring requirements. The proposed phase-in might also provide filing agents and software vendors whose main customers are smaller filers with additional time to develop the needed technology and related expertise. Filers would be permitted to file the structured information prior to the compliance date for their category.

[75] 17 CFR 239.20.

[76] 17 CFR 239.36.

[77] 17 CFR 239.37.

[78] 17 CFR 239.38.

[79] 17 CFR 239.41.

[80] 15 U.S.C. 77aa.

[81] Item 7(a) of Part I of each form requires the issuer to disclose the information required by Item 1111 of Regulation AB (17 CFR 229.1111). Item 1111(h) requires the issuer to file an ''Asset Data File'' when the offering is based on an asset pool including residential mortgages, commercial mortgages, automobile loans or leases, debt securities, or resecuritizations of ABS. Rule 11 of Regulation S–T defines the term ''Asset Data File'' as the machine-readable computer code that presents information in XML pursuant to Item 1111(h).

[82] *See* Inline XBRL Release, *supra* note 17, at n. 6 (In reference to the main discussion text statement that operating companies are required to provide financial statements in structured format, the release states that ''Operating companies do not include . . . asset-backed issuers [citation omitted].'').

[83] *See supra* Section I.

[84] *See* General Instruction C.3.(g) to Form N–1A; Rule 405 of Regulation S–T.

[85] All large accelerated and accelerated filers and, most likely, all other operating company filers subject to financial statement XBRL format requirements will be phased in to the Inline XBRL format requirements for this information by the time they would be required to comply with the proposed fee-related information structuring requirements. For the related phase-in schedule, see the Inline XBRL Release. Investment companies filing reports on Forms N–2, N–5 and N–14, however, have not been subject to Commission-based XBRL requirements.

Request for Comment

25. Should we adopt a phase-in schedule for the implementation of the structuring requirements for filing fee-related information, as proposed?

26. Would the proposed phase-in schedule allow sufficient time for vendors and filers to develop and efficiently apply the technology needed to comply? If not, what schedule would better provide the time needed?

27. Are there other factors besides filer size that we should use for purposes of a phase-in schedule? Which ones?

B. Fee Payment Process

We propose to amend Rule 202.3a of the Commission's Informal and other Procedures as well as Rule 111 under the Securities Act, Rule 0–9 under the Exchange Act and Rule 0–8 under the Investment Company Act to add the option for payment of filing fees via ACH.[86] We also propose to eliminate the option for payment of these fees via paper checks and money orders.

Currently, filing fees are paid through the U.S. Treasury designated lockbox depository and may be paid by wire transfer, paper check, or money order.[87] The amendments we are proposing would add the option for fee payment via ACH[88] and eliminate the option for fee payment via paper checks and money orders. Under the proposed amendments, filers would have two payment options: Wire transfer or ACH. Paying by ACH would not, for the most part, require a processing fee, as wire payments do, and thus, would typically provide a lower cost alternative to wire payment. At the same time, ACH payments would require fields—including the Central Index Key (or ''CIK'') field used to identify EDGAR filers—in the specified proper format and, as a result, reduce the need for manual re-routing of fee payments.[89] Eliminating the options for filers to pay fees by paper check or money order would impose very little burden on filers in the aggregate because these payment methods historically have represented less than one percent of the number and dollar value of fee payments the Commission receives.[90] Filers who switch from checks to wire or ACH payments would have faster settlement times. This switch also would lower Commission processing costs in part by eliminating the Commission's need to maintain a separate lockbox to process these payments.

We understand that foreign filers sometimes have difficulty paying by wire transfer and would not be able to pay by ACH unless they have a U.S. bank account. The main issues foreign filers encounter with wire transfers are lack of knowledge of some U.S.-specific processes and longer processing times. Foreign filers often use the ''SWIFT'' code transfer system but our bank does not accept it.[91] When that occurs, our bank does not receive the payment and it ultimately returns to the sender institution. In cases where foreign filers are unfamiliar with the U.S. American Bankers Association (''ABA'') routing number convention, our staff advises the filer to escalate the matter within its bank to a person more familiar with the international wire process.

Overall, these amendments would increase efficiency and reduce burdens in processing filing fee payments.

Request for Comment

28. Would adding the option for payment via ACH, as proposed, make the filing fee payment process more efficient and accurate and less costly for filers?

29. Are there other forms of payment we should provide as options? If so, which one(s) and why?

30. Would our proposal to eliminate the option to pay filing fees by paper check or money order create difficulties for any filers, particularly individuals and small entities? Should we instead retain the option to pay filing fees by paper check or money order?

31. Do foreign filers encounter filing fee payment difficulties in addition to those we have identified? If so, what are they? Are there changes we should consider making to the proposed amendments to better facilitate these payments?

32. Should we consider a transition period for these proposed amendments?

C. Fee Offset Amendment

The Commission proposes to permit registrants to reallocate previously paid fees between two or more classes of securities included on a registration statement, prior to effectiveness.[92] Specifically, the Commission proposes that, in cases where a registrant has not relied on Rule 457(o) to calculate a required filing fee and wishes to increase the amount registered of one or more classes of securities on the registration statement and decrease the amount registered of one or more other classes on the same registration statement, the registrant may, on the pre-effective amendment, calculate the total filing fee due based on the then-current expected offering amounts, offering prices, and fee rates, and rely on Rule 457(b) to apply, as a credit against the current total fee due, the amounts previously paid in connection with the registration statement.

Currently, registrants that rely on Rule 457(o) to calculate required filing fees need only pay a fee with any pre-effective amendment if there is an increase to the maximum aggregate offering price for all of the securities listed in the fee table combined. Rule 457(a), on the other hand, for example, requires a registrant to pay an additional filing fee with any pre-effective amendment in which the registrant seeks to increase the amount of any class of securities to be offered, and prohibits refunds once a registration

[86] The proposed amendments also would revise Rule 13 under Regulation S–T to reflect the fact that payments would be permitted via ACH. In addition, the proposed amendments would revise Item 9 of Form 24F–2 to replace ''Mail or other means'' with ''ACH'' as a registration fee delivery option.

[87] Rule 202.3a under the Commission's Informal and Other Procedures provides instructions for the payment of filing fees (*e.g.,* where to direct a wire transfer). As to checks and money orders, it provides that filers may use a certified check, bank cashier's check, United States postal money order, or bank money order pursuant to specified procedures.

[88] A fee is paid via ACH by electronically transmitting it through the ACH Network's ''batch processing system in which financial institutions accumulate ACH transactions throughout the day for later batch processing.'' *See* What is ACH? Quick Facts About the Automated Clearinghouse (ACH) Network at *https://www.nacha.org/news/what-ach-quick-facts-about-automated-clearing-house-ach-network* (retrieved October 22, 2019). For example, a consumer initiating a payment through a bank account to pay a debt is making a payment via ACH.

[89] The Commission would neither obtain nor retain any personally identifiable information (*i.e.,* banking or routing information) from filers using the ACH payment method.

[90] Filing fees paid by check constituted less than one percent of the number and dollar value of filing fee payments the Commission received during its fiscal year ended Sept. 30, 2018.

[91] The Society for Worldwide Interbank Financial Telecommunications (''SWIFT'') publishes business identifier codes that are an international standard for identification of institutions within the financial services industry. *See* BIC at *https://www2.swift.com/sitesearch/#/?q=BIC* (retrieved October 22, 2019).

[92] The proposed amendment is consistent with Securities Act Rules Compliance and Disclosure Interpretation (CDI) 640.01. The CDI provides that when a registrant has filed a registration statement for two separate securities and then wishes to increase the amount of one security and decrease the other, the registrant can file a pre-effective amendment to reflect such increase and decrease in the calculation of registration fee table and reallocate the fees already paid under the registration statement between the two securities. The CDI represents the views of the staff of the Division of Corporation Finance. It is not a rule, regulation, or statement of the Commission. Furthermore, the Commission has neither approved nor disapproved its content. The CDI, like all staff guidance, has no legal force or effect: It does not alter or amend applicable law, and it creates no new or additional obligations for any person.

statement is filed. Accordingly, Rule 457(a) would require a registrant increasing the amount of securities registered of one class and decreasing the amount of securities registered of another class, to pay an additional fee based on any increased offering amount for the first class even though it may have effectively overpaid for the decreased offering amount of the second class. Rule 457(b), however, provides that a ''required fee shall be reduced in an amount equal to any fee paid with respect to such transaction pursuant to . . . any applicable provision of this section.'' This provision allows registrants to offset fees paid with a class of securities where the offering amount has been reduced against additional fees due in connection with an increase in offering amount of another registered class.

To aid in administering the rule and to simplify the process for registrants, we propose to adopt form instructions that would permit a registrant claiming such an offset to recalculate the fee due for the registration statement in its entirety and claim an offset pursuant to Rule 457(b) in the amount of the filing fee previously paid in connection with the registration statement.[93] As fee calculations and tracking of available offsets can become complex depending on how many classes of securities are involved and how frequently the registrant changes the registered amount, we are proposing to require any registrant not relying on Rule 457(o) that seeks to offset fees based on concurrent increases and decreases in registered classes to recalculate the fee for the entire registration statement, including all registered classes, using the then-current offering amounts, price per unit and filing fee rates.

This fee offset procedure would be limited to situations where a registrant seeks to concurrently increase the amount of one class and decrease another. It would not be available in situations where a registrant seeks only to decrease or only to increase the amount of any class of registered securities, or to add a class of securities to the registration statement.

We propose to limit the availability of this instruction to registrants that have not previously calculated their required filing fee in reliance on Rule 457(o), as Rule 457(o) already provides registrants sufficient flexibility to pre-effectively reallocate the offering amounts of each registered class without incurring additional filing fees.[94]

Request for Comment

33. Should we add an instruction to provide that a registrant relying on Rule 457(a) to calculate a required filing fee that increases the amount of one or more classes of securities registered and decreases the amount registered of one or more other classes, may, on the pre-effective amendment, calculate the total filing fee due based on the then-current expected offering amounts, offering prices, and fee rates, and rely on Rule 457(b) to apply, as a credit against the total fee due, the amounts previously paid in connection with the registration statement?

34. Should we revise the proposed pre-effective reallocation instruction to also address the situation where a registrant switches from relying on Rule 457(a), for example, to Rule 457(o) or vice versa?

35. Should the pre-effective reallocation instruction, as proposed, require the registrant to recalculate the required fee for the entire registration statement at the then-current expected offering prices and using the then-current fee rate, even if the offering amount for one or more classes of securities included on the registration statement does not change?

36. Should we revise the proposed pre-effective reallocation instruction to permit its use regardless of whether the increase to the amount registered of one or more classes of securities on the registration statement and the decrease to the amount registered of one or more other classes on the same registration statement occur at the same time?

37. Should we revise Rule 457(b) to effectively duplicate the proposed pre-effective reallocation instruction instead of or in addition to that proposed instruction?

D. Technical and Other Clarifying Amendments

Finally, we propose to make certain technical, conforming changes and other clarifying amendments.

First, we are proposing amendments to consolidate fee-related instructions in the instructions to the fee tables as follows:

- Instructions 4 and 5 to the proposed fee table of Form S–3 would replace current General Instructions II.D and II.E, respectively;
- Instructions 4 and 5 to the proposed fee table of Form F–3 would replace current General Instructions II.C and II.F, respectively;
- Instruction 5 to the proposed fee table of Form S–4 would replace current General Instruction J; and
- Instruction 5 to the proposed fee table of Form F–4 would replace current General Instruction D.3.

In each case, the proposed instruction to the fee table would be substantively equivalent to the General Instruction it would replace except as described immediately below.[95]

Second, we are proposing to add to instruction 4 of the proposed fee table of Form S–3 (as the successor to General Instruction II.D) a reference to General Instruction I.B.6 and, similarly, amend Form S–3 General Instruction II.F to add a reference to General Instruction I.B.6. The proposed amendments would similarly add to instruction 4 of the proposed fee table of Form F–3 (as the successor to General Instruction II.C) a reference to General Instruction I.B.5 and revise Form F–3 General Instruction II.G by adding a reference to General Instruction I.B.5. The proposed amendments would clarify that offerings made pursuant to General Instruction I.B.6 on Form S–3 and General Instruction I.B.5 on Form F–3 are eligible for universal shelf registration.

Form S–3 General Instruction II.D generally addresses fee calculation and presentation where two or more classes of securities are registered on the form under General Instruction I.B.1[96] or I.B.2[97] to be offered on a continuous or delayed basis pursuant to Rule

[93] *See, e.g.,* proposed Instruction 4 to Calculation of Registration Fee table of Form S–1.

[94] We remind registrants that if they originally pay a fee under Rule 457(a) and file an amendment that increases the amount of securities to be offered but not the maximum aggregate offering price, they can recalculate the fee under Rule 457(o), but they cannot get a refund if the amount of fees paid under Rule 457(a) exceeds that due under Rule 457(o).

[95] Current General Instructions II.D and II.C of Forms S–3 and F–3, respectively, could apply to a well-known seasoned issuer regardless of whether it is filing an automatic shelf registration statement as long as it is not electing to defer payment of fees. Instruction 4 of the proposed fee tables to Forms S–3 and F–3 would so clarify.

[96] General Instruction I.B.1, in general, addresses offerings by an issuer of its own securities (primary offerings) and offerings of outstanding securities on behalf of others where the aggregate market value of the issuer's voting and non-voting equity securities held by non-affiliates (public float) is $75 million or more.

[97] General Instruction I.B.2 covers primary offerings of non-convertible securities other than common equity by an issuer meeting one of several specified requirements relating to its securities issued or outstanding or its relationship to a well-known seasoned issuer. Rule 405 under the Securities Act (17 CFR 230.405) defines a well-known seasoned issuer as, in general, a company that meets the requirements of General Instruction I.A of Form S–3 or its comparable foreign issuer-related counterpart Form F–3 and either has a public float over $700 million or has issued above a specified amount of non-convertible non-common equity securities. The rule also defines as a well-known seasoned issuer an issuer that has a specified relationship to an issuer meeting these requirements.

415(a)(1)(x)[98] under the Securities Act where the form does not go effective automatically.[99] The introductory text of General Instruction I.B provides that a registrant meeting the registrant requirements of General Instruction I.A may register on Form S–3 any of the security offerings described in General Instructions I.B.1 through I.B.6.[100]

Form S–3 General Instruction II.F basically provides that when securities are registered under General Instructions including, among others, I.B.1, that are eligible for offering under Rule 415(a)(1)(x), information need only be furnished as of the date of initial effectiveness of the registration statement to the extent required by Rules 430A and 430B under the Securities Act and that the issuer is permitted to provide the rest of the information later in a prospectus, post-effective amendment, or periodic or current report incorporated by reference into the registration statement.

The Commission adopted Form S–3 General Instruction I.B.6 to allow companies with less than $75 million in public float to register primary offerings of their securities on Form S–3 provided they meet the other registrant eligibility requirements of General Instruction I.A, have a class of common equity securities listed and registered on a national securities exchange, do not exceed specified securities sale volumes, and are not shell companies[101] nor have been shell companies for at least 12 months.[102] The Commission intended the instruction not only to enable eligible issuers to engage in primary offerings on Form S–3 but to enable them, in general, to offer securities on a continuous or delayed basis pursuant to Rule 415(a)(1)(x)[103] and register two or more classes of securities and specify the classes and terms on an as-offered basis (*i.e.,* a universal shelf registration statement).[104]

Because Form S–3 General Instruction I.B.6 is intended to operate in a manner similar to that of General Instruction I.B.1 regarding a registrant's eligibility to offer securities on a continuous or delayed basis pursuant to Rule 415(a)(1)(x) and to file a universal shelf registration statement, we propose to add to instruction 4 of the proposed fee table of Form S–3 (as the successor to General Instruction II.D) a reference to General Instruction I.B.6 and revise Form S–3 General Instruction II.F by adding a reference to General Instruction I.B.6. We similarly propose to add to instruction 4 of the proposed fee table of Form F–3 (as the successor to General Instruction II.C) a reference to General Instruction I.B.5 and revise Form F–3 General Instruction II.G by adding a reference to General Instruction I.B.5 because these instructions are analogous to Form S–3 General Instructions II.D, II.F and I.B.6, respectively.

Third, the proposed amendments would revise Rule 0–11 under the Exchange Act to clarify and update it. Questions have arisen from time to time about the interplay between paragraph (a)(2) of Rule 0–11, providing that ''[o]nly one fee per transaction is required to be paid,'' and paragraph (a)(3), providing that if, after an initial fee payment, the aggregate consideration offered is increased, an additional fee based on the increase is due. Some have misunderstood the ''one fee'' language to mean that no additional fee can be required under paragraph (a)(3) once an initial fee has been paid.[105] We propose to clarify paragraph (a)(2) by removing the sentence containing the ''one fee'' language. The proposed amendment would also have the effect of making paragraph (a)(2) consistent with Rule 457(b), which does not have the ''one fee'' language and is essentially the Securities Act fee rule analogue to paragraph (a)(2).[106]

To help avoid confusion and erroneous fee calculations, the proposed amendments also would replace the superseded fee rates listed in Rule 0–11 with references to rates determined under Sections 13(e) and 14(g) of the Exchange Act,[107] which the Commission sets and announces yearly.[108] For the same reasons, the proposed amendments also would add the term ''aggregate of'' to clarify where

[98] Offerings under Rule 415(a)(1)(x) are sometimes referred to as ''shelf offerings'' because securities can be offered (*i.e.,* taken down from the shelf) over time and from time to time. Such offerings typically involve the initial filing of a registration statement that goes effective with what is generally known as a base prospectus that provides certain general information and omits detailed information up to the extent permitted by Rules 430A and 430B under the Securities Act. 17 CFR 230.430A and 430B. Rule 430A permits operating company registration statements to initially omit certain information related to pricing and underwriting subject to meeting specified conditions including providing the information later through a form of prospectus filed under Rule 424(b) or in a post-effective amendment. Rule 430B permits operating company registration statements for offerings under Rule 415(a)(1)(x) that do not go effective automatically to initially omit information that is unknown or not reasonably available to the issuer subject to specified conditions including providing the information later through a prospectus filed under Rule 424(b), post-effective amendment or, if permitted by the applicable form, a periodic or current report that is incorporated by reference. The registrant typically provides details of a particular offering (takedown) later in a prospectus filed under Rule 424(b), post-effective amendment or periodic or current report that is incorporated by reference.

[99] 17 CFR 230.415(a)(1)(x).

[100] General Instruction I.A generally requires a registrant to have been subject to Exchange Act reporting requirements for at least 12 months, timely filed required reports during that period, made required dividend and material debt and lease payments over a specified period and satisfied its electronic filing and tagging requirements.

[101] Rule 405 defines a shell company, in general, as a registrant that has no more than nominal operations and either no more than nominal assets; only cash and cash equivalent assets; or only nominal assets in addition to cash and cash equivalent assets.

[102] *See Revisions to the Eligibility Requirements for Primary Securities Offerings on Forms S–3 and F–3,* Release No. 33–8878 (Dec. 19, 2007) [72 FR 73534 (Dec. 27, 2007)] (the ''Expanded S–3/F–3 Eligibility Release'').

[103] Securities may be registered for an offering to be made on a continuous or delayed basis in the future under Rule 415(a)(1)(x) if, in general, they are registered or qualified to be registered on Form S–3 or F–3. Note 6 to General Instruction I.B.6 states that ''A registrant's eligibility to register a primary offering on Form S–3 pursuant to General Instruction I.B.6 does not mean that the registrant meets the requirements of Form S–3 for purposes of any other rule or regulation apart from Rule 415(a)(1)(x).''

[104] *See* the Expanded S–3/F–3 Eligibility Release, *supra,* note 102, at Section I.B.2 Example D (The example begins ''Pursuant to new General Instruction I.B.6, a registrant with a public float of $48 million files a Form S–3, which the registrant intends to use as a universal shelf registration statement to sell up to $100 million of debt or equity securities, or a combination of both at any time or from time to time.'')

[105] The two provisions, however, operate in harmony and one does not nullify the other. The ''one fee'' language is followed in paragraph (a)(2) by language to the general effect that a required fee under Rule 0–11 is reduced by any fee paid in regard to the same transaction under the Securities Act or Exchange Act and any fee due under the Securities Act is reduced by any payment in regard to the transaction under the Exchange Act. The ''one fee'' language means that only one fee applies to a given transaction amount but portions of the total fee due may be assessed, depending on the facts and circumstances, on different but related flings. The language does not prevent an additional fee from being due to the extent of an increase in the transaction amount consistent with paragraph (a)(3). *See Filing Fees for Certain Proxy and Information Filings Tender Offers, Mergers and Similar Transactions,* Release No. 33–6617 (Jan. 9, 1986) [51 FR 2472 (Jan. 17, 1986)] (''Paragraph (a)(3) of Rule 0–11 provides that an increase in the aggregate consideration offered triggers an additional filing fee based upon the amount of the increased consideration. This additional fee is applicable whether the increased consideration is the result of an increase in the amount of securities sought or an increase in the per share consideration.'' (footnote omitted)).

[106] Similarly, we propose to amend Rule 13e–1(b) to clarify that the filer must pay the fee required by Rule 0–11 not only when it files the initial statement, but when it files an amendment for which an additional fee is due. Neither of these of these proposed amendments would affect a filer's ability to claim a fee offset based on earlier fee payments in connection with the same transaction.

[107] *See* proposed Rule 0–11(b), (c)(1) and (2), and (d).

[108] *See e.g., Order Making Fiscal Year 2020 Annual Adjustments to Registration Fee Rates,* Release No. 33–10675 (Aug.23, 2019) [84 FR 45601 (Aug. 29, 2019)].

a sum is required,[109] replace ''or'' with ''and'' where two or more types of consideration could be involved at the same time [110] and add the term ''as applicable'' where appropriate consistent with the fact that not all types of consideration referenced may be involved.[111]

Request for Comment

38. Should we consolidate in the instructions to the fee tables the specified current fee-related General Instructions in Forms S–3, F–3, S–4 and F–4 as proposed?

39. Should we replace specified fee rates with the reference to the fee rates the Commission sets annually and otherwise revise Rule 0–11, as proposed?

40. Would the proposed technical and clarifying amendments help make compliance easier? Are there other ways we could better achieve the same result?

E. Request for Comment

We request and encourage any interested person to submit comments on any aspect of the proposal, other matters that might have an impact on the amendments and any suggestions for additional changes. Comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis, particularly quantitative information as to the costs and benefits, and by alternatives to the proposals where appropriate. Where alternatives to the proposals are suggested, please include information as to the costs and benefits of those alternatives.

III. Economic Analysis

This section analyzes the expected economic effects of the proposed amendments relative to the current baseline, which consists of the existing fee assessment and collection practices and the related regulatory framework and disclosure requirements. As discussed above, the current process by which issuers submit—and the Commission reviews, verifies, and processes—filing fees is highly manual and labor-intensive. We propose to require that all information needed for fee calculation be disclosed in the body of the filing and that these disclosures be structured in the Inline XBRL format. This would allow greater automation of the fee calculation and payment process, thereby saving filer resources and facilitating the Commission's assessing and collecting fees.

In addition, we propose to update filer payment options by adding ACH as a new payment option and eliminating the paper check and money order options. The introduction of ACH might be beneficial for filers since this electronic payment option does not require filers to pay a processing fee, decreases the possibility of a payment error, and has a faster settlement time than paper checks.

Finally, we propose to permit filers to reallocate previously paid fees across security classes in case they seek to increase the amount of one class and decrease another in the same registration statement. Specifically, the filers may calculate the total fee due based on the then-current expected offering amounts, offering prices, and fee rates and rely on Rule 457(b) to apply the previously paid fees against the total fee due. Filers should benefit from the additional flexibility.

Upon effectiveness, the efficacy of the proposed amendments may be discernable by considering the number of fee-bearing filings that are received with errors, the number of fee-bearing filings that are paid with the new ACH option, and the number of fee-bearing filings in which filers pre-effectively reallocate previously paid fees across security classes.

We are sensitive to the costs and benefits of these amendments. The discussion below addresses the potential economic effects of the proposal, including the likely benefits and costs, as well as the likely effects of the proposal on efficiency, competition, and capital formation. At the outset, we note that, where possible, we have attempted to quantify the benefits, costs, and effects on efficiency, competition, and capital formation expected to result from the proposed amendments. In many cases, however, we are unable to quantify the economic effects because we lack the information necessary to provide a reasonable estimate.

A. Economic Baseline

Our baseline includes the Commission's current filing fee assessment and collection practices and the regulatory framework and disclosure requirements pertaining to the fee-bearing filings. Our baseline also includes existing requirements for those filers subject to the proposed amendments to structure other disclosures, as well as related industry practices involving structured disclosure. The main parties that are likely to be affected by the proposal include the filers of fee-bearing forms and their investors.

The Commission assesses and collects fees for certain corporate filings, including those related to registered securities offerings, tender offers, and merger or acquisition transactions. The Commission also assesses and collects fees for registered offerings by investment companies. The Commission staff conducts a manual review of the fee information for every fee-bearing filing that is submitted to the Commission. Where there are discrepancies, the staff has to resolve the discrepancy and often has to contact the filer to do so. During the 2018 fiscal year, we estimate that approximately 700 fee-bearing filings (representing approximately 1.4 percent of all fee-bearing filings) contained filer errors requiring manual correction by Commission staff.[112] Common types of fee calculation errors involve improper use of offsets, improper use of carryforwards, improper reference to previously paid amounts, and incorrect rule references. When an error occurs, filers must expend additional effort to work with the staff to correct the errors.

Currently, a filer must deposit into its EDGAR account funds sufficient to cover the fee via wire transfer, checks, or money orders. Over 99 percent of the payments for filing fees are via wire transfer. For wire transfer, check, and money order processing, Commission staff is unable to verify whether appropriate routing information is included to allow for posting payment to the correct filer account. We estimate that approximately 10 percent of payments received are initially suspended due to incomplete or inaccurate payment reference information.

The proposed amendments would affect filers of fee-bearing filings. Based on the analysis of EDGAR filings during calendar year 2018,[113] we estimate that there were 7,785 unique filers of fee-bearing filings subject to the proposed amendments, including:

- 149 unique filers of at least one Form N–2 or Form N–14, which are not otherwise subject to Inline XBRL requirements; [114]

[109] *See* proposed Rule 0–11(c)(1).

[110] *See* proposed Rule 0–11(c)(1) and (d).

[111] *See* proposed Rule 0–11(c)(1), (c)(2) and (d).

[112] Semiannually, the Commission also performs an independent review of a sampling of filings (approximately 5 percent of the filings received) to ensure the process is accurate and thorough. A small number of additional filing fee adjustments are identified in this process.

[113] Unless otherwise specified, all references to 2018 refer to calendar year 2018 (*i.e.,* January 1, 2018 through December 31, 2018). This estimate considers unique filers of forms or amendments to them based on CIK and does not exclude co-registrants. Each filer may make multiple fee-bearing filings.

[114] In 2018 there were no filers of Form N–5, which is filed exclusively by small business

• 7,249 unique filers of at least one registration statement on Form S–1, S–3, S–4, S–8, S–11, F–1, F–3, F–4, or F–10, prospectus filed under Rule 424(b), or statement filed under Rule 13e–1,[115] all of which are filed exclusively by filers that are either already required to file other disclosures in Inline XBRL or would be required to file other disclosures in Inline XBRL upon the effectiveness of the registration statement;[116]

• 387 unique filers that did not file forms listed above but that filed at least one fee-bearing[117] Schedule 14A, 14C, TO, 13E–3, 13E–4F, or 14D–1F, of which an estimated 280 unique filers were subject to Inline XBRL requirements in periodic reports.[118]

B. Economic Impacts, Including Effects on Efficiency, Competition, and Capital Formation

The section discusses the anticipated economic benefits and costs, as well as the likely effects of the proposal on efficiency, competition, and capital formation.

1. Structuring Fee-Related Information

The proposed amendments would require fee-related disclosures to be structured in the Inline XBRL format for the affected forms listed above. This would include information that today is included in the body of the filing and some information prepared by filers but the disclosure of which is currently optional.[119] As this information is already either required to be disclosed elsewhere in the filing, or must already be gathered to complete the fee calculation, we believe that any new cost for filers from this disclosure requirement would be minimal.

Structuring fee-related data under the proposed amendments would enable significantly greater automation and more accurate and comprehensive validation of fee calculations that appear in the body of a filing document, which currently is manually performed. When structured fee-related information is received by EDGAR, the EDGAR system would be able, as part of its validation process, to determine automatically in many cases whether the fee calculations have been performed correctly. Filings that do not pass specific validation tests would be flagged before they are filed, allowing filers to correct any fee calculation errors without needing to wait for Commission staff to verify the calculations manually, and subsequently revise an already-filed document and pay any additional fees owed due to an erroneous calculation.

Greater automation of filing fee calculation and elimination of duplicate entry is expected to benefit filers and the Commission by making the filing process more efficient. Structuring fee-related information under the proposal also would enable such information to be integrated into filing preparation software, thus yielding savings of time required to calculate fees.

In addition, filers are expected to benefit from the reduced likelihood of filing fee errors and the savings of time required to correct such errors. While in some situations, the effort required to address a fee adjustment is minor (*e.g.,* if additional funds need to be wired to the Commission), other situations might require a filer to submit a new or amended filing (*e.g.,* if the filer attempts to use a non-fee bearing filing to register the offer and sale of securities). Filers may need to update their records regarding total offsets used, total carryforwards registered, and other changes to their securities registrations. While the Commission does not impose any fines or other penalties for unintended fee calculation adjustments, a filer might incur additional costs to coordinate with internal or external filer preparation support. For example, under the proposed amendments, potential errors (such as calculation or tagging errors) would likely be identified through the prior submission of a test filing to EDGAR. Refiling a corrected version of a filing that has been filed with errors might require additional work by in-house counsel or filing agents. While we expect these benefits would be realized by most filers, we recognize that the magnitude of these benefits might depend on the particular filer's current filing practices and error rates.

Filers may incur costs to structure fee-related disclosures under the proposed amendments.[120] The cost for filers to implement this change will vary as a function of their current processes related to the preparation of fee-bearing filings, as well as the internal processes and software that filers employ to prepare other filings required to be in the Inline XBRL format.

We recognize that the costs incurred to structure fee-related disclosures in the Inline XBRL format will vary across filers. For filings that already require some information to be structured in Inline XBRL format,[121] requiring additional Inline XBRL data elements (some that would no longer be required to be entered into the submission header as they are today) is straightforward and is not expected to result in a significant incremental cost for filers.[122] In other cases, while the affected filings themselves may not presently require Inline XBRL structuring, most or all filers of those affected filings already are or would otherwise become subject to Inline XBRL requirements, as applicable, with respect to other filings, and can therefore leverage existing structuring processes and software used for other filings to structure fee-related information with minimal incremental costs.[123] Based on the analysis of

investment companies. As previously noted, the Commission has recently proposed Inline XBRL requirements for Form N–2.

[115] This count does not include filers who filed only an amendment to one of these forms or statements in 2018.

[116] Filers which have yet to incur a periodic reporting obligation under Section 13(a) of the Securities Exchange Act when initially filing these forms will necessarily incur a periodic reporting obligation after the filing's effectiveness pursuant to Section 15(d) of the Exchange Act, and would subsequently be required to comply with the Inline XBRL structuring requirements set forth in Rules 405 and 406 of Regulation S–T. We recognize that, in some instances, a non-reporting filer will initially file one of these forms (and thus be required to structure fee-related information under the proposed amendments), but the form may not always be declared effective (thus the filer might not incur any other Inline XBRL structuring obligations). In addition, a small number—fewer than 10—foreign issuers that prepare their financial statements in accordance with an accounting standard other than U.S. GAAP or IFRS as issued by the IASB would not otherwise be subject to any XBRL requirements.

[117] Of the multiple submission type variants of these schedules, only submission types PREM14A/PRER14A and PREM14C/PRER14C are fee-bearing and thus subject to the proposed amendments.

[118] Reporting companies were identified based on the analysis of filings on Form 10–K, 10–Q, 20–F, or 40–F or amendments to them during calendar year 2018. In addition, filers of Schedules 13E–3 and 13E–4F that are not themselves reporting companies must be affiliates of reporting companies (and would thus presumably benefit from their affiliates' experiences with Inline XBRL structuring).

[119] *See infra* note 31 regarding 457(f) information required for calculation of fee but not expressly required to be disclosed.

[120] Software vendors and filing agents may pass through the costs of implementing technology changes to structure fee-related disclosures to filers.

[121] For example, operating company filers generally are required to provide interactive data for financial statements and periodic and current report cover pages under Rules 405 and 406 of Regulation S–T, respectively.

[122] *See infra* Section IV for a discussion of the estimated increase in paperwork burden as a result of the requirement to tag fee-related information. See also FAST Act Adopting Release, *supra* note 69, at 12711 (stating that the cover page tagging requirement would not result in significant additional burdens for registrants and estimating that the requirement to tag additional cover page items will impose an increased paperwork burden of one hour for each affected form).

[123] For example, issuers that file Forms S–1, S–3, S–4, S–8, S–11, F–1, F–3, F–4, and F–10 generally are or will, upon the effectiveness of the registration statement, become subject to Exchange Act reporting requirements and associated Inline

Continued

EDGAR filings during calendar year 2018, we estimate that 266 filers would be subject to Inline XBRL requirements solely as a result of the proposed amendments and would therefore incur costs to develop processes and potentially license software or engage a third party to comply with the proposed requirements.[124]

The proposed rule includes a phased compliance date schedule for the requirements to tag fee-related information.[125] The proposed compliance date schedule is expected to mitigate the potential impact of transition for smaller filers and those filers that will be newly subject to Inline XBRL requirements and would not otherwise be required to use Inline XBRL, giving those filers additional time to develop related expertise, as well as the opportunity to benefit from the experience of larger filers with the structuring requirements. Further, almost all operating companies that will be subject to Inline XBRL requirements pursuant to the proposed amendments would be required to file financial statement and cover page information in Inline XBRL prior to the compliance date of the proposed fee tagging requirements and thus would incur minimal incremental costs to comply with the fee tagging requirements under the proposed compliance date schedule. Overall, the proposed compliance schedule is expected to give a reasonable amount of time to implement Inline XBRL for tagging this limited subset of fee-related information.

2. Updating Payment Options

The proposed amendments would permit the use of ACH payments, which would provide filers with an additional option for the electronic deposit of funds. We expect that the introduction of the ACH option would be beneficial to filers since this new electronic payment option does not require filers to pay a processing fee. We also propose to eliminate the option to pay filing fees via paper checks and money orders.

Although the vast majority of filers (99 percent) currently use wire transfers rather than checks or money orders to make fee payments, we recognize that eliminating checks and money orders as an option for the payment of filing fees may impose an incremental burden on certain filers. However, such burden would be mitigated by the proposed option to use ACH. Thus, filers that currently use paper checks or money orders for cost savings would be able to switch to ACH payments and likely would not experience an increase in burden resulting from the elimination of paper checks and money orders. By contrast, filers who use paper checks or money orders for a different reason (*e.g.,* a lack of familiarity with electronic payments) could incur a cost to switch to an electronic payment option. Conversely, some of the 99 percent of filers who currently use wire transfer may do so because they prefer to use an electronic means of payment, and wire transfer is the sole permitted electronic payment method. Some of these filers may prefer to use ACH (whether for cost savings or otherwise), and thus would benefit from the proposed option to use ACH.

In addition, the proposed ACH option may save filer resources through a reduction in payment posting errors, compared to the current options. An ACH payment would be submitted along with the filer's properly formatted CIK number to ensure that the deposit posts to the correct account. This would reduce the necessity for manual re-routing of fee payments by Commission staff, which currently must be done with respect to 10 percent of all filing fee payments. Since the ACH option would reduce the risk of payments not being posted promptly to their accounts, filers may be able to spend fewer resources to check their accounts after initiating a payment to the Commission.

3. Fee Offset Amendments

We propose to permit filers to reallocate previously paid fees across security classes in case they seek to increase the amount of securities of one class and decrease the amount of securities of another class pursuant to the same registration statement. Specifically, the filers that have not relied on Rule 457(o) to calculate a required filing fee may calculate the total fee due based on the then-current expected offering amounts, offering prices, and fee rates and rely on Rule 457(b) to apply the previously paid fees against the total fee due. Currently, filers seeking to increase the amount of one class and decrease another may have to pay additional fees based on any increased offering amount for the first class even though they may have overpaid for the decreased offering amount of the second class. Filers should benefit from the additional flexibility to reallocate previously paid fees across security classes.

As discussed above,[126] this proposed provision codifies existing staff guidance on pre-effective reallocation of previously paid fees across security classes. Thus, the economic effects of the proposed provision are reduced to the extent that some filers may already take advantage of pre-effective reallocation of fees under the existing guidance. However, codification of guidance with respect to pre-effective reallocation might reduce the uncertainty some filers may have given the reallocation position's status as staff guidance.

The proposed amendments also would require filers to disclose several additional items in connection with claiming a fee offset under Rule 457(p), including the amount of unsold securities or unsold aggregate offering amount from the prior registration statement associated with the claimed offset and a statement that the registrant has withdrawn the prior registration statement or terminated or completed any offering that included the unsold securities associated with the claimed offset under the earlier registration statement. As this information is already required to determine the filer's eligibility for the offset (and can otherwise be inferred from other public disclosures), we believe that any new cost for filers from this disclosure requirement would be minimal.

4. Anticipated Effects on Efficiency, Competition, and Capital Formation

Structuring fee-related information in the Inline XBRL format would enable greater automation of fee calculation and verification. This would result in a more efficient filing and payment

XBRL requirements for financial statement and cover page information, which would generally be phased in prior to the compliance dates of the proposed requirements for tagging fee-related information. *See supra* Section II.A.3 for a detailed discussion.

[124] These 266 filers are estimated to consist of (i) 149 unique filers of at least one Form N–2 or N–14, which are not otherwise subject to Inline XBRL requirements; (ii) 107 unique filers that did not file a Form N–2, N–14 or form only filed by a filer that is either already required to file other disclosures in Inline XBRL or would be required to file other disclosures in Inline XBRL upon the effectiveness of a Securities Act registration statement; and (iii) up to 10 unique filers that would not otherwise become subject to the Inline XBRL financial statement requirements because they prepare their financial statement in accordance with generally accepted accounting principles other than United States generally accepted accounting principles or International Financial Reporting Standards as issued by the International Accounting Standards Board. *See, supra,* Section III.A for a more detailed discussion of these estimates and *infra* Section IV for a discussion of the estimated increase in paperwork burden as a result of the requirement to tag fee-related information.

[125] Large accelerated filers would be subject to the fee tagging requirements for filings submitted on or after 1.5 years after the requirements' effectiveness; accelerated filers–for filings submitted on or after 2.5 years after the requirements' effectiveness; and all other filers, including non-accelerated filers, BDCs, and registered investment companies subject to the proposed amendments–for filings submitted 3.5 years after the requirements' effectiveness.

[126] *See supra* note 92 and accompanying and following text.

process, saving filer resources and in turn benefiting their investors. In addition, by saving staff time and resources and increasing the accuracy of filing fee payments, the proposal is also expected to facilitate the Commission's exercise of its regulatory functions associated with fee-bearing filings.

To the extent that the requirements under the proposed amendments impose incremental costs on some filers, such filers might be at an incremental competitive disadvantage, and their investors could potentially be adversely affected. However, because the significant majority (97 percent) of filers subject to the proposed amendments would already be subject to requirements to structure other disclosures in Inline XBRL format and would therefore likely have incurred costs to implement process and technology changes required to prepare Inline XBRL disclosures, we do not believe that the proposed amendments would result in significant competitive effects on smaller filers or adverse effects on their investors.

Updating payment options to introduce ACH and eliminate paper checks and money orders could increase the efficiency of processing of fee-related payments and reduce the burden of tracking payments for filers.

Finally, providing flexibility in reallocating previously paid fees across classes of securities should increase efficiency and lower registration costs and could potentially encourage capital formation through registered offerings among eligible registrants.

C. Reasonable Alternatives

The proposed amendments require certain fee-related information to be disclosed in the Inline XBRL format in most fee-bearing forms. Alternatively, we could have proposed requiring the structuring of fee-related information for only a subset of filers or smaller subset of forms. Compared to the proposed amendments, allowing fee-related information to be structured on a voluntary basis or for only a subset of filers or smaller subset of forms would lower costs for those filers that do not find submitting such information in a structured format to be cost-efficient or who would not be subject to the amendments.

However, a voluntary program or one that captures only a subset of affected filers or smaller subset of forms would also reduce potential data accuracy and efficiency benefits compared to the mandatory use of the structured format for affected fee-bearing filings. In particular, a voluntary program would decrease the validation of fee-related information, thereby likely increasing the incidence of errors in fee-related information and submitted payments and the time and cost for filers, as well as Commission staff.

We are proposing to require the use of the Inline XBRL format for fee-related information in all affected forms. As an alternative to Inline XBRL, we could propose that fee-related disclosures in all or some affected forms appear in a separate XML or XBRL attachment, in addition to appearing in the body of the filing. With respect to XBRL, most filers who are or would otherwise be subject to Inline XBRL requirements prior to the compliance dates of the proposed amendments have previously been subject to XBRL requirements and have therefore likely developed familiarity with structuring disclosures in XBRL format. However, compared to XBRL, the Inline XBRL format is expected to reduce the time and effort associated with preparing filings and simplify the review process for filers.[127]

Compared to the proposed requirement to use Inline XBRL, the alternative of requiring fee-related information in all affected forms to be structured in an XML attachment could result in lower costs for filers that do not presently use Inline XBRL or any structured format for any disclosures. However, unlike under the proposed amendments, these filers would be entering the data twice: Once in a structured form, once in the body of the disclosure. Given the importance of the accuracy of the fee-related information required to be structured and its consistency throughout a filing, we believe the benefits from the use of Inline XBRL would justify any potential incremental costs compared to XML for those filers. Furthermore, for the significant majority of filers that would already be required to use Inline XBRL as part of complying with other structured disclosure requirements, the alternative of requiring a different format for structuring fee-related filings could result in inefficiencies and costs.

The proposed amendments would require filers to structure fee-related information using the Inline XBRL format in most, but not all, fee-bearing filings. As an alternative, we could have proposed to require all filers with fee-bearing filings to structure fee-related information using the Inline XBRL format.[128] Filers that are not otherwise required to file other disclosures in Inline XBRL would incur greater initial costs to adopt Inline XBRL. However, over time, such filers may realize greater efficiencies from filing in Inline XBRL. Because Inline XBRL is both machine-readable and human-readable, filers would have greater ease of reviewing the filing. They may more easily identify errors and submit a correct filing, rather than spend time after submission to reconcile and submit amendments and amended fees. In addition, filers may also realize efficiencies from automating some of their internal processes because Inline XBRL is machine-readable. In addition, to the extent that data users access fee information across all forms, or across some of the forms not proposed to be filed in Inline XBRL, this alternative would yield greater benefits in making the fee data available to such users so that it can be instantly aggregated, compared, and analyzed.

However, those fee-bearing filings that are outside the scope of the proposed amendments are either filed relatively rarely or are filed by filers that may not otherwise be subject to Inline XBRL requirements and thus would incur relatively higher incremental costs under this alternative (*e.g.,* foreign government registration statements filed pursuant to Schedule B of the Securities Act).

As another alternative, we could narrow the scope of filings subject to the proposed amendments so as to include only those fee-bearing filings which are filed exclusively by entities that are or would otherwise become subject to Inline XBRL requirements with respect to other filings.[129] This alternative would further reduce filer costs associated with the amendments. However, these cost savings are likely to be minimal. Further, this alternative would limit the magnitude of the benefits for filers and other market participants that would result from the rule as currently proposed.

The proposed amendments would have a phased compliance schedule for the requirements to tag fee-related information. As an alternative, we could

[127] *See Inline XBRL Release, supra* note 17.

[128] Forms SF–1, SF–3, S–20, F–6, F–7, F–8, and F–80 under the Securities Act and foreign government registration statements filed pursuant to Schedule B of the Securities Act are fee-bearing filings that would not be subject to the proposed amendments. *See supra* Section II.A.4.

[129] The filings would be Forms S–1, S–3, S–4, S–8, S–11, F–1, F–3, F–4, and F–10, prospectuses filed under Rule 424(b), and statements filed under Rule 13e–1. We recognize that, in some instances, a non-reporting filer will initially file one of these forms (and thus would be required to structure fee-related information under the proposed amendments), but the form may not always be declared effective (thus the filer might not incur any other Inline XBRL structuring obligations). In addition, as noted above, a small number—fewer than 10—foreign issuers that prepare their financial statements in accordance with an accounting standard other than U.S. GAAP or IFRS as issued by the IASB would not otherwise be subject to any XBRL requirements.

employ a single compliance date or either accelerate or postpone compliance for particular filer categories or form types. Compared to the proposed compliance schedule, accelerating (postponing) compliance would provide filers less (more) time to implement Inline XBRL for tagging fee-related information and accelerate (postpone) the benefits of tagging fee-related information for users of this data. In particular, accelerating the compliance date schedule so as to require the tagging of fee-related information before most filers of affected forms have been required to tag financial statement and cover page information in Inline XBRL might result in additional transition challenges for those filers.

D. Request for Comment

We request comment on all aspects of our economic analysis of the proposed amendments. We request comment from the point of view of filers, investors, and other market participants. We are interested in comments on the analyses of the costs and benefits and any effects the proposed amendments may have on efficiency, competition, and capital formation. We also request comment on the reasonable alternatives presented in this release as well as any additional alternatives to the proposed amendments that should be considered. We appreciate any data or analysis that may help quantify the potential economic effects, including the costs and benefits. In particular, we request comments as well as data or analyses regarding the following questions:

41. How much would it cost filers to structure the fee-related information, as proposed? What are the benefits of structuring these disclosures for filers and investors? What are the benefits and costs of structuring fee-related disclosures in additional types of fee-bearing forms, such as forms filed by ABS issuers?

42. What are the costs and benefits of structuring fee-related disclosures in Inline XBRL format, as proposed? How do those costs and benefits vary depending on whether the filer is smaller or already required to make other disclosures using Inline XBRL?

43. Should fee-related disclosures in forms with proposed Inline XBRL requirements be structured in a different format? What would be the costs and benefits of any alternative formats?

44. Some of the fee-related information proposed to be structured in the body of fee-bearing filings is not currently required to be disclosed. What are the costs and benefits to filers of this proposed requirement?

45. Does the proposed compliance date schedule provide filers sufficient time to comply with the requirement to structure fee-related information?

46. What are the costs and benefits of the proposed changes to the payment options, including the introduction of ACH and the elimination of the paper check and money order payment options? In particular, what is the time/cost burden to set up an ACH payment? Would filers switch from wire transfer to ACH and why?

47. Would filers benefit from the proposed additional flexibility in reallocating previously paid fees across security classes?

IV. Paperwork Reduction Act

A. Background

Certain provisions of our rules, schedules, and forms that would be affected by the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[130] The Commission is submitting the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[131] The hours and costs associated with preparing, filing, and sending the schedules and forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number. Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the information disclosed. The titles for the collections of information are:

1. Regulation S–K (OMB Control No. 3235–0071);[132]
2. Regulation S–T (OMB Control No. 3235–0424);
3. Regulation C (OMB Control No. 3235–0074);
4. Form S–1 (OMB Control No. 3235–0065);
5. Form S–3 (OMB Control No. 3235-0073);
6. Form S–4 (OMB Control No. 3235–0324);
7. Form S–8 (OMB Control No. 3235–0066);
8. Form S–11 (OMB Control No. 3235–0067);
9. Form F–1 (OMB Control No. 3235–0258);
10. Form F–3 (OMB Control No. 3235–0256);
11. Form F–4 (OMB Control No. 3235–0325);
12. Form F–10 (OMB Control No. 3235–0380);
13. Schedule 13E–3 (OMB Control No. 3235–0007);
14. Schedule 13E–4F (OMB Control No. 3235–0375);
15. Schedule 14A (OMB Control No. 3235–0059);
16. Schedule 14C (OMB Control No. 3235–0057);
17. Schedule TO (OMB Control No. 3235–0515);
18. Schedule 14D–1F (OMB Control No. 3235–0376);
19. Rule 13e–1 (OMB Control No. 3235–0305); and
20. Mutual Fund Interactive Data (for Forms N–2, N–5, and N–14) (OMB No. 3235–0642).

The forms, schedules, rule and regulations listed above were adopted under the Securities Act, the Exchange Act, and/or the Investment Company Act. They set forth disclosure requirements related to registration statements, periodic reports, going private transactions, tender offers and proxy and information statements filed to help investors make informed investment and voting decisions.

The Mutual Fund Interactive Data collection of information references current requirements for certain registered investment companies to submit to the Commission information included in their registration statements, or information included in or amended by any post-effective amendments to such registration statements, in response to certain items of Form N–1A in interactive data format. It also references the requirement for funds to submit an Interactive Data File[133] to the Commission for any form of prospectus filed pursuant to Rule 497(c) or (e) that includes information in response to same items of Form N–1A. The proposed amendments would include fee-related structured data requirements for closed-end management investment companies, including SBICs, and BDCs. Although the proposed interactive data filing requirements would be included

[130] 44 U.S.C. 3501 *et seq.*

[131] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[132] The paperwork burdens for Regulation S–K, Regulation S–T and Regulation C are imposed through the forms, schedules and reports that are subject to the requirements in these regulations and are reflected in the analysis of those documents. To avoid a PRA inventory reflecting duplicative burdens and for administrative convenience, we assign a one-hour burden to Regulations S–K, S–T and C.

[133] Rule 11 of Regulation S–T defines ''Interactive Data File'' as the machine-readable computer code that presents information in XBRL pursuant to Rule 405 of Regulation S–T and as specified by the EDGAR Filer Manual.

in the proposed Form N–2, Form N–5, and Form N–14 instructions, as well as amendments Regulation S–T,[134] we are separately reflecting the hour and cost burdens for these requirements in the burden estimate for Mutual Fund Interactive Data and not in the estimates for each of Form N–2, Form N–5, and Form N–14.[135]

A description of the proposed amendments, including the need for the information and its proposed use, as well as a description of the likely respondents, can be found in Section II above, and a discussion of the economic effects of the proposed amendments can be found in Section III above.

B. Summary of the Proposed Amendments' Effects on the Collections of Information

The following table summarizes the estimated burden change of the proposed amendments on the paperwork burdens associated with the affected forms listed above.[136]

PRA TABLE 1—ESTIMATED PAPERWORK BURDEN CHANGES DUE TO THE PROPOSED AMENDMENTS

Proposed amendments	Affected forms, schedules, and documents	Estimated burden change
Disclosure of Fee-Related Information:		
• Adding a new "fee rate" column to the fee table of the Affected Securities Act and Exchange Act Forms and Schedules, as well as to the Affected Investment Company Act Forms.	• Forms S–1, S–3, S–8, S–11, S–4, F–1, F–3, F–4, and F–10.	• 0.25 hour net increase in compliance burden.
• Adding or revising instructions regarding presentation, calculations and related disclosure in general and, in particular, associated with Rule 415(a)(6), Rule 424(g), Rule 429, Rule 457(a), (b), (f), (h), (o), and (p) and Rule 0–11(a)(2), as applicable, in regard to the Affected Securities Act and Exchange Act Forms and Schedules.	• Schedules 13E–3, 13E–4F, 14A, 14C, TO and 14D–1F.	
• Adding a new checkbox column to the fee table of the Affected Securities Act and Exchange Act Forms and Schedules to indicate whether the filer is relying on, as applicable, Securities Act Rule 415(a)(6), Rule 429, or Rule 457(b), (o), or (p); or Exchange Act Rule 0–11(a)(2).		
• Adding a fee table and related instructions to Rule 13e–1 to conform its requirements to those proposed for the Affected Securities Act and Exchange Act Forms to the extent applicable.	• Documents filed under Rule 13e–1 ...	• 0.25 hour net increase in compliance burden.
Structuring of Fee-Related Information:		
• Require structuring, in an Inline XBRL format, of all the fee-related information that would be required in the body of the Affected Securities Act and Exchange Act Forms and Schedules and documents filed under Rule 13e–1. The structured information would include each fee table in the Affected Securities Act and Exchange Act Forms and Schedules and documents filed under Rule 13e–1, together with a related explanatory section.	• Forms S–1, S–3, S–8, S–11, S–4, F–1, F–3, F–4, and F–10. • Schedules 13E–3, 13E–4F, 14A, 14C, TO and 14D–1F. • Documents filed under Rule 13e–1 ...	• 1 hour net increase in compliance burden per form/schedule.
• Require structuring, in an Inline XBRL format, of all of the information in each fee table of the Affected Investment Company Forms.	• Forms N–2, N–5, and N–14	• 1 hour net increase in compliance burden per form.

C. Incremental and Aggregate Burden and Cost Estimates for the Proposed Amendments

Below we estimate the incremental change in internal burden and outside professional cost as a result of the proposed amendments. These estimates represent the average burden for all registrants, both large and small. In deriving our estimates, we recognize that the burdens will likely vary among individual registrants based on a number of factors, including the nature of their business. We do not believe that the proposed amendments would change the frequency of responses to the existing collections of information; rather, we estimate that the proposed amendments would change only the burden per response.

The burden estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take a registrant to prepare and review the disclosures required under the proposed amendments. For purposes of the PRA, the burden is allocated between internal burden hours and outside professional costs. The table below sets forth the percentage estimates the Commission typically uses for the burden allocation for each form. We also estimate that the average cost of retaining an outside professional is $400 per hour.[137]

[134] 17 CFR 232.10 *et seq.* [OMB Control No. 3235–0424] (which specifies the requirements that govern the electronic submission of documents). Specifically, we are proposing to amend Rule 405 of Regulation S–T.

[135] Recently, we issued a release that, among other things, proposed to retitle this information collection as "Investment Company Interactive Data." *See* Offering Reform Proposing Release, *supra* note 1. If adopted, the proposed amendments to require closed-end management investment companies, including SBICs and BDCs, to provide fee-related structured data would be included in this information collection.

[136] We believe the payment method option and fee offset changes discussed above would not affect the paperwork burdens associated with these forms.

[137] We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of $400 per hour. This estimate is based on consultations with several registrants, law firms, and other entities that regularly assist registrants in preparing and filing documents with the Commission.

PRA TABLE 2—STANDARD ESTIMATED BURDEN ALLOCATION FOR SPECIFIED FORMS AND SCHEDULES

Form/schedule type	Internal (percent)	Outside professionals (percent)
Schedules 14A and 14C	75	25
Forms S–1, S–3, S–11, S–4, F–1, F–3, F–4, F–10, N–2, N–5, and N–14. Schedule 13E–3, Rule 13e–1.	25	75
Form S–8 and Schedule TO	50	50
Schedules 13E–4F and 14D–1F	100	

As discussed above, we are proposing to amend Form N–2, Form N–5, and Form N–14, as well as Regulation S–T, to require closed-end management investment companies, including SBICs, and BDCs to provide fee-related structured data using Inline XBRL. Because these registrants have not previously been subject to Inline XBRL requirements, we estimate that these registrants would experience an additional burden of 10 hours related to one-time costs associated with becoming familiarized with Inline XBRL reporting. These costs would include, for example, the acquisition of new software or the services of consultants, and the training of staff. The table below illustrates the estimated one-time burden of structuring the Affected Investment Company Act Forms, in hours and in costs, as a result of the proposed amendments. This additional one-time burden represents a 3.33 hour annual burden amortized over a three-year period for each of these three forms.

PRA TABLE 3—CALCULATION OF THE ONE-TIME BURDEN ESTIMATES FOR AFFECTED INVESTMENT COMPANY ACT FORMS RESULTING FROM THE PROPOSED AMENDMENTS [1]

Form	Estimated number of affected responses (A) [2]	Estimated one-time burden hours/form (B)	Total one-time burden hours (C) = (A) × (B)	Estimated internal one-time burden hours (D) = (C) × (allocation %)	Estimated outside one-time professional hours (E) = (C) × (allocation %)	Estimated outside one-time professional costs/affected responses (F) = (E) × $400
N–2	166	10	1,660	415	1,245	$498,000
N–5	1	10	10	3	8	3,200
N–14	253	10	2,530	633	1,898	759,200

[1] For convenience, the estimated hour and cost burdens in the table have been rounded to the nearest whole number. Although structured data would be required in the proposed Form N–2, Form N–5, and Form N–14 instructions, we are separately reflecting the hour and cost burdens for these requirements in the burden estimate for Mutual Fund Interactive Data. The estimates for each of Form N–2, Form N–5, and Form N–14 are reflected in the PRA Table 4. The aggregated estimate for these forms is reflected in the Mutual Fund Interactive data in the PRA Table 5.

[2] The number of estimated affected responses is based on the number of responses in the Commission's current OMB PRA filing inventory. The OMB PRA filing inventory. The OMB PRA filing inventory represents a three-year average. We do not expect that the proposed amendments will change the number of responses in the current OMB PRA filing inventory.

The tables below illustrate the estimated incremental change to the total annual compliance burden of the affected forms, in hours and in costs, as a result of the proposed amendments.

PRA TABLE 4—CALCULATION OF THE INCREMENTAL CHANGE IN ANNUAL BURDEN ESTIMATES OF AFFECTED RESPONSES RESULTING FROM THE PROPOSED AMENDMENTS

Form	Estimated number of affected responses (A)	Estimated incremental burden hours/form (B)	Total incremental burden hours (C) = (A) × (B)	Estimated internal burden hours (D) = (C) × (allocation %)	Estimated outside professional hours (E) = (C) × (allocation %)	Estimated outside professional costs/affected responses (F) = (E) × $400
S–1	901	1.25	1,126	282	844	337,600
S–3	1,657	1.25	2,071	518	1,553	621,200
S–4	551	1.25	689	172	517	206,800
S–8	2,140	1.25	2,675	1,338	1,337	534,800
S–11	64	1.25	80	20	60	24,000
F–1	63	1.25	79	20	59	23,600
F–3	112	1.25	140	35	105	42,000
F–4	39	1.25	49	12	37	14,800
F–10	77	1.25	96	24	72	28,800
Sch. 14A	362	1.25	453	340	113	45,200
Sch. 14C	78	1.25	98	74	24	9,600

PRA TABLE 4—CALCULATION OF THE INCREMENTAL CHANGE IN ANNUAL BURDEN ESTIMATES OF AFFECTED RESPONSES RESULTING FROM THE PROPOSED AMENDMENTS—Continued

Form	Estimated number of affected responses (A)	Estimated incremental burden hours/form (B)	Total incremental burden hours (C) = (A) × (B)	Estimated internal burden hours (D) = (C) × (allocation %)	Estimated outside professional hours (E) = (C) × (allocation %)	Estimated outside professional costs/affected responses (F) = (E) × $400
Sch. 13E–3	77	1.25	96	24	72	28,800
Sch. 13E–4F	3	1.25	4	4	0	0
Sch. TO	1,378	1.25	1,723	862	861	344,400
Sch. 14D–1F	2	1.25	3	3	0	0
Rule 13e–1	10	1.25	13	3	10	4,000
N–2	166	4.33 (1 + 3.33)	719	180	539	215,600
N–5	1	4.33 (1 + 3.33)	4	1	3	1,200
N–14	253	4.33 (1 + 3.33)	1,095	274	821	328,500
Totals	7,934	.....	11,213	4,186	7,027	2,810,900

PRA TABLE 5—REQUESTED PAPERWORK BURDEN UNDER THE PROPOSED AMENDMENTS

Form/collection	Current burden			Program change			Requested change in burden		
	Current annual responses (A)	Current burden hours (B)	Current cost burden (C)	Number of affected responses or new responses (D)	Increase in company hours (E) [1]	Increase in professional costs (F) [2]	Annual responses (G) = (A) or (for mutual fund interactive data) (A) + (D)	Burden hours (H) = (B) + (E)	Cost burden (I) = (C) + (F)
S–1	901	148,556	$182,048,700	901	282	$337,600	901	148,838	$182,386,300
S–3	1,657	193,970	236,322,036	1,657	518	621,200	1657	194,248	236,943,236
S–4	551	563,216	678,291,204	551	172	206,800	551	563,388	678,498,004
S–8	2,140	28,890	11,556,000	2,140	1,338	534,800	2,140	30,228	12,090,800
S–11	64	12,290	15,016,968	64	20	24,000	64	12,310	15,040,968
F–1	63	26,815	32,445,300	63	20	23,600	63	26,835	32,468,900
F–3	112	4,448	5,712,000	112	35	42,000	112	4,483	5,754,000
F–4	39	14,076	17,106,000	39	12	14,800	39	14,088	17,120,800
F–10	77	558	669,900	77	24	28,800	77	582	698,700
Sch. 14A	5,586	551,101	73,480,012	362	340	45,200	5,586	551,441	73,525,212
Sch. 14C	569	56,356	7,514,944	78	74	9,600	569	56,430	7,524,544
Sch. 13E–3	77	2,646	3,174,248	77	24	28,800	77	2670	3,203,048
Sch. 13E–4F	3	6	0	3	4	0	3	10	0
Sch. TO	1,378	29,972	17,988,600	1378	862	344,400	1,378	30,834	12,333,000
Sch. 14D–1F	2	4	0	2	3	0	2	7	0
Rule 13e–1	10	25	30,000	10	3	4,000	10	28	34,000
Mutual Fund Interactive Data (Forms N–2, N–5, and N–14)	15,206	178,803	10,000,647	420 (166 + 1 + 253)	455 (180 + 1 + 274)	545,300 (215,600 + 1,200 + 328,500)	15,626	179,258	10,545,947

[1] From Column (D) in PRA Table 3.
[2] From Column (F) in PRA Table 3.

D. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(A), the Commission solicits comments to: (1) Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the collection of information; (3) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (4) evaluate whether there are ways to minimize the burden of the collection of information on those who are required to respond, including through the use of automated collection techniques or other forms of information technology.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct their comments to the Office of Management and Budget, Attention: Desk Officer for the U.S. Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy to, Vanessa A. Countryman, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File No. S7–20–19. Requests for materials submitted to OMB by the Commission with regard to the collection of information should be in writing, refer to File No. S7–20–19 and be submitted to the U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington DC 20549–2736. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this proposed rule. Consequently, a comment to OMB is best assured of having its full effect if the OMB receives it within 30 days of publication.

V. Initial Regulatory Flexibility Act Analysis

This Initial Regulatory Flexibility Act Analysis has been prepared in accordance with the Regulatory Flexibility Act.[138] It relates to proposed amendments to modernize and simplify filing fee disclosure and the fee payment process for most fee-bearing forms, schedules, and reports filed with the Commission. The proposed amendments would add an ACH option for filing fee payments and eliminate the option for fee payment via paper checks and money orders. The proposed amendments would also modernize the filing fee disclosure and payment rules by requiring fee filing information to be structured in Inline XBRL format. Finally, the proposed amendments would enable certain registrants to reallocate fees previously paid in connection with the same registration statement.

A. Reasons for, and Objectives of, the Proposed Action

The purpose of the proposed amendments is to improve the accuracy and efficiency and reduce the costs and burdens of filing fee preparation, payments and processing.

B. Legal Basis for the Proposed Action

We are proposing the rule and form amendments contained in this document under the authority set forth in Sections 7, 10 and 19(a) of the Securities Act; Sections 3, 12, 13, 15(d), 23(a), and 35A of the Exchange Act; and Sections 8, 24, 30, and 38 of the Investment Company Act.

C. Small Entities Subject to the Proposed Rules

The proposed amendments would affect registrants that are small entities. The Regulatory Flexibility Act defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.'' [139] For purposes of the Regulatory Flexibility Act, under our rules, an issuer, other than an investment company or an investment adviser, is a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities that does not exceed $5 million.[140] An investment company, including a BDC, is considered to be a ''small business'' if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[141] We estimate that there are 1,171 issuers that file with the Commission, other than investment companies, that may be considered small entities and are potentially subject to the proposed amendments.[142] An investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of $50 million or less as of the end of its most recent fiscal year. We estimate that there are 7 investment companies that make filings with the Commission on the Affected Investment Company Act Forms that may be considered small entities and are potentially subject to the proposed amendments.[143]

D. Reporting, Recordkeeping, and Other Compliance Requirements

As noted above, the purpose of the proposed amendments is to modernize and simplify the Commission's filing fee-related disclosure requirements and fee payment process. If adopted, the proposed amendments are expected to have a small incremental effect on existing reporting, recordkeeping and other compliance burdens for all issuers, including small entities. Many of the proposed amendments would simplify and streamline existing disclosure requirements and payment alternatives in ways that are expected to reduce compliance burdens. Some of the proposed amendments, like those that would require the structuring of filing fee disclosures and related information,[144] would increase compliance costs for registrants, although we do not expect that these additional costs would be significant. Compliance with certain provisions affected by the proposed amendments would require the use of professional skills, including accounting and legal skills. The proposed amendments are discussed in detail in Section II above. We discuss the economic impact, including the estimated compliance costs and burdens, of the proposed amendments in Sections III and IV above.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The proposed amendments would not duplicate, overlap, or conflict with other Federal rules.

[138] 5 U.S.C. 601 *et seq.*

[139] 5 U.S.C. 601(6).

[140] *See* Securities Act Rule 157 [17 CFR 230.157] and Exchange Act Rule 0–10(a) [17 CFR 240.0–10(a)].

[141] *See* Investment Company Act Rule 0–10(a) [17 CFR 270.0–10(a)].

[142] This estimate is based on staff analysis of issuers, excluding co-registrants, with EDGAR filings of Form 10–K, 20–F, and 40–F, or amendments, filed during the calendar year of January 1, 2018, to December 31, 2018. Analysis is based on data from XBRL filings, Compustat, and Ives Group Audit Analytics.

[143] This estimate is based on staff analysis of investment companies with EDGAR filings on Form N–2, Form N–5, and Form N–14, or amendments, filed during the calendar year of January 1, 2018, to December 31, 2018. Analysis is based on data from Form 10–Q, Form 10–K, Form N–PORT, Form N–CSR, and Morningstar Direct.

[144] *See, e.g., supra* Section II.A.3.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements that take into account the resources available to small entities;
- Clarifying, consolidating, or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

We believe the proposed amendments would clarify, consolidate and simplify compliance and reporting requirements for small entities and other registrants. As discussed above, the proposed amendments would modernize and streamline the filing fee payment process and filing fee disclosures by requiring more complete disclosure of filing fee-related information and requiring the filing fee information to be presented in a structured format. The proposed amendments should make it easier to validate filing fee calculations and payments made by small entities and other registrants.

We do not believe that the proposed amendments would impose any significant new compliance obligations on small entities or other registrants. Most registrants that file the affected forms will have experience structuring information in Inline XBRL format. Registrants that file Forms S–1, S–3, S–4, S–8, S–11, F–1, F–3, F–4, and F–10 generally are or will, as a result of the phase-in of the Inline XBRL requirements or, in some cases, the need to file Exchange Act periodic and current reports, be required to file their financial statements in Inline XBRL format. Annual reports on Forms 10–K, 20–F, and 40–F, quarterly reports on Form 10–Q, current reports on Form 8–K, and reports on Form 6–K under the Exchange Act are subject to financial statement Inline XBRL requirements.[145] In addition, we recently adopted rule and form amendments that will, over a period of time, require registrants to structure information on the cover page of Forms 10–K, 10–Q, 8–K, 20–F, and 40–F using Inline XBRL format.[146] We are proposing a transition period for the fee-related information structuring requirements under the proposed amendments for all registrants. Small entities would be in the last group phased in under the proposed transition and it would occur after they already have experience with the financial statement and cover page Inline XBRL structuring requirements. Accordingly, we do not believe it is necessary to establish different compliance and reporting requirements or timetables, beyond their proposed transition period treatment, or to exempt small entities from all or part of the proposed amendments.

Some investment company small entities and other investment companies filing the Affected Investment Company Act Forms may not have experience structuring Commission documents in Inline XBRL. We would therefore expect those investment companies to incur certain transition costs associated with preparing and reviewing their initial Inline XBRL submissions. Nonetheless, we do not believe that these transition costs impose any significant new compliance obligations. We therefore do not believe it is necessary to establish different compliance and reporting requirements or timetables or to exempt investment company small entities from all or part of the proposed amendments.

Finally, with respect to using performance rather than design standards, the proposed amendments generally use design rather than performance standards in order to promote uniform filing fee payment and disclosure requirements for all registrants. In some instances, the proposed amendments would modernize and simplify existing design standards. For example, the proposed amendments would add ACH as a new filing fee payment option and eliminate paper check and money order payment options. While the use of ACH is a design standard, under the proposed rules it would be an option that is available, not a mandatory format. The filer still would have the flexibility to use another option (wire transfer).

G. Request for Comment

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding:

- How the proposed rule and form amendments can achieve their objective while lowering the burden on small entities;
- The number of small entities that may be affected by the proposed rule and form amendments;
- The existence or nature of the potential effects of the proposed amendments on small entities discussed in the analysis; and
- How to quantify the effects of the proposed amendments.

Commenters are asked to describe the nature of any effect and provide empirical data supporting the extent of that effect. Comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments on the proposed rules themselves.

VI. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)[241] the Commission must advise the OMB as to whether a proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on whether our proposed amendments would be a ''major rule'' for purposes of SBREFA. We solicit comment and empirical data on

- The potential annual effect on the U.S. economy;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment, or innovation.

We request those submitting comments to provide empirical data and other factual support for their views to the extent possible.

VII. Statutory Basis

The amendments contained in this document are being proposed under the authority set forth in Sections 7, 10, and19(a) of the Securities Act, Sections 3, 12, 13, 15(d), 23(a), and 35A of the Exchange Act and Sections 8, 24, 30, and 38 of the Investment Company Act.

List of Subjects in 17 CFR Parts 202, 229, 230, 232, 239, 240, 270, and 274

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

[145] *See supra* footnote 17 discussing tagging requirements applicable to Securities Act and Exchange Act forms.

[146] *See* FAST Act Release, *supra,* note 69.

[241] 5 U.S.C. 801 *et seq.*

Text of Proposed Rule and Form Amendments

In accordance with the foregoing, we are proposing to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 202—INFORMAL AND OTHER PROCEDURES

■ 1. The general authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 77s, 77t, 77sss, 77uuu, 78d–1, 78u, 78w, 78*ll*(d), 80a–37, 80a–41, 80b–9, 80b–11, 7201 *et seq.,* unless otherwise noted.

* * * * *

■ 2. Amend § 202.3a by:

■ a. Revising paragraphs (a), (b) introductory text, (b)(1) introductory text, (b)(1)(i)(A), (b)(1)(ii), and (b)(2);

■ b. Revising the Note to paragraph (b);

■ c. Revising paragraph (c) heading and introductory text; and

■ d. Revising paragraph (d).

The revisions read as follows:

§ 202.3a Instructions for filing fees.

(a) *General instructions for remittance of filing fees.* Payment of filing fees specified by the following sections shall be made according to the directions listed in this section: § 230.111 of this chapter, § 240.0–9 of this chapter, and § 270.0–8 of this chapter. All such fees are to be paid through the U.S. Treasury designated lockbox depository or system and may be paid by wire transfer or via the Automated Clearing House Network (''ACH'') pursuant to the specific instructions set forth in paragraph (b) of this section. Checks will not be accepted for payment of fees. To ensure proper posting, all filers must include their Commission-assigned Central Index Key (CIK) number (also known as the Commission-assigned registrant or payor account number) on fee payments. If a third party submits a fee payment, the fee payment must specify the account number to which the fee is to be applied.

(b) *Instructions for payment of filing fees.* Except as provided in paragraph (c) of this section, these instructions provide direction for remitting fees specified in paragraph (a) of this section. You may contact the Filing Fees Branch in the Office of Financial Management at (202) 551–8900 or go to *http://www.sec.gov/paymentoptions* for additional information if you have questions.

(1) *Instructions for payment of fees by wire transfer (FEDWIRE).* U.S. Bank, N.A. in St. Louis, Missouri is the U.S. Treasury designated financial agent for Commission filing fee payments. The hours of operation at U.S. Bank for wire transfers are each day, except Saturdays, Sundays, and Federal holidays, 8:30 a.m. to 6:30 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect. Any bank or wire transfer service may initiate wire transfers of filing fee payments through the FEDWIRE system to U.S. Bank. A filing entity does not need to establish an account at U.S. Bank in order to remit filing fee payments.

(i) * * *

(A) The Commission's account number at U.S. Bank (850000001001); and

* * * * *

(ii) You may refer to the examples found on the Commission's website at *http://www.sec.gov/paymentoptions* for the proper format.

(2) *Instructions for payment of fees via the Automated Clearing House Network (ACH).* To remit a filing fee payment by ACH, please go to *https://pay.gov/public/home* and under ''Find an Agency,'' find ''Securities and Exchange Commission'' and find the form related to Commission filing fee payments. Follow the instructions on that form to submit the ACH payment.

Note 1 to paragraph (b): Wire transfers and ACH payments are not instantaneous. The time required to process a wire transfer through the FEDWIRE system, from origination to receipt by U.S. Bank, varies substantially. ACH payments generally are eligible for same day settlement except when they involve amounts above $25,000 or international transactions. Specified filings, such as registration statements pursuant to section 6(b) of the Securities Act of 1933 that provide for the registration of securities and mandate the receipt of the appropriate fee payment upon filing, and transactional filings pursuant to the Securities Exchange Act of 1934, such as many proxy statements involving extraordinary business transactions, will not be accepted if sufficient funds have not been received by the Commission at the time of filing.

Note 2 to paragraph (b): You should obtain the reference number of the wire transfer from your bank or wire transfer service. Having this number can greatly facilitate tracing the funds if any problems occur. If a wire transfer of filing fees does not contain the required information in the proper format, the Commission may not be able to identify the payor and the acceptance of filings may be delayed. To ensure proper credit, you must provide all required information to the sending bank or wire transfer service. Commission data must be inserted in the proper fields. The most critical data are the Commission's account number at U.S. Bank and the payor CIK, the Commission-assigned account number identified as the CIK number.

(c) *Special instructions for § 230.462(b) of this chapter.* Notwithstanding paragraphs (a) and (b) of this section, for registration statements filed pursuant to § 230.462(b) of this chapter, payment of filing fees for the purposes of this section may be made by:

* * * * *

(d) *Filing fee accounts.* A filing fee account is maintained for each filer who submits a filing requiring a fee on the Commission's EDGAR system or who submits funds to the U.S. Treasury designated depository or system in anticipation of paying a filing fee. Account statements are regularly prepared and provided to account holders. Account holders must maintain a current account address with the Commission to ensure timely access to these statements.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 3. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78*l,* 78m, 78n, 78n–1, 78*o,* 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.;* 18 U.S.C. 1350; sec. 953(b), Pub. L. 111–203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012).

■ 4. Amend § 229.601 by:

■ a. In the exhibit table in paragraph (a), adding an entry for ''(107)''; and

■ b. Adding paragraph (b)(107).

The revisions and addition read as follows:

§ 229.601 (Item 601) Exhibits.

(a) * * *

EXHIBIT TABLE

	Securities act forms										Exchange act forms					
	S–1	*S–3*	*SF–1*	*SF–3*	*S–4*[1]	*S–8*	*S–11*	*F–1*	*F–3*	*F–4*[1]	*10*	*8–K*[2]	*10–D*	*10–Q*	*10–K*	*ABS–EE*
*		*			*		*		*		*		*			
(107) General Interactive Data File	X	X	X	X	X	X	X	X	X	X	.....	.....	.....	.....	.....	.....

[1] An exhibit need not be provided about a company if: (1) With respect to such company an election has been made under Form S–4 or F–4 to provide information about such company at a level prescribed by Form S–3 or F–3; and (2) the form, the level of which has been elected under Form S–4 or F–4, would not require such company to provide such exhibit if it were registering a primary offering.

[2] A Form 8–K exhibit is required only if relevant to the subject matter reported on the Form 8–K report. For example, if the Form 8–K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of this section need be filed. A required exhibit may be incorporated by reference from a previous filing.

* * * * *

(b) * * *

(107) *General Interactive Data File.* A General Interactive Data File (as defined in § 232.11 of this chapter) presented in the manner provided by the EDGAR Filer Manual.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 5. The general authority citation for part 230 continues to read as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78*o,* 78*o*-7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

■ 6. Revise § 230.111 to read as follows:

§ 230.111 Payment of filing fees.

All payments of filing fees for registration statements under the Act shall be made by wire transfer, or via the Automated Clearing House Network. There will be no refunds. Payment of filing fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter.

■ 7. Amend § 230.424 by revising paragraph (g) and adding paragraph (i) to read as follows:

§ 230.424 Filing of Prospectuses, number of copies.

* * * * *

(g) A form of prospectus filed pursuant to this section that operates to reflect the payment of filing fees for an offering or offerings pursuant to Rule 456(b) (§ 230.456(b)) must include the calculation of registration fee table immediately followed by the information required by the form instructions to the fee table reflecting the payment of such filing fees for the securities that are the subject of the payment.

* * * * *

(i) A General Interactive Data File (as defined in § 232.11 of this chapter) is required to be submitted to the Commission in the manner provided by the EDGAR Filer Manual for any form of prospectus filed pursuant to paragraph (b) of this Rule 424 (§ 230.424 of this chapter) that includes registration fee, filing fee or other information described by the definition of General Interactive Data File. The General Interactive Data File must be submitted with the filing made pursuant to paragraph (b) of this section.

■ 8. Amend § 230.456 by revising paragraph (b)(1)(ii) to read as follows:

§ 230.456 Date of filing; timing of fee payment.

* * * * *

(b) * * *

(1) * * *

(ii) The issuer reflects the amount of the pay-as-you-go registration fee paid or to be paid in accordance with paragraph (b)(1)(i) of this section by updating the ''Calculation of Registration Fee'' table to indicate the class and aggregate offering price of securities offered and the amount of registration fee paid or to be paid in connection with the offering or offerings either in a post-effective amendment filed at the time of the fee payment or in the manner specified by Rule 424(g) (§ 230.424(g)) in a prospectus filed pursuant to Rule 424(b) (§ 230.424(b)).

* * * * *

■ 9. Amend § 230.457 by revising paragraph (p) to read as follows:

§ 230.457 Computation of fee.

* * * * *

(p) Where all or a portion of the securities offered under a registration statement remain unsold after the offering's completion or termination, or withdrawal of the registration statement, the aggregate total dollar amount of the filing fee associated with those unsold securities (whether computed under § 230.457(a) or (o)) may be offset against the total filing fee due for a subsequent registration statement or registration statements. The subsequent registration statement(s) must be filed within five years of the initial filing date of the earlier registration statement, and must be filed by the same registrant (including a successor within the meaning of § 230.405), a majority-owned subsidiary of that registrant, or a parent that owns more than 50 percent of the registrant's outstanding voting securities. A note should be added to the ''Calculation of Registration Fee'' table in the subsequent registration statement(s) providing the following information:

(1) The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

(2) The amount of unsold securities or unsold aggregate offering amount from the prior registration statement associated with the claimed offset;

(3) The file number of, and the name of the registrant that filed, the earlier registration statement from which the filing fee is offset;

(4) The initial filing date of the earlier registration statement; and

(5) A statement that the registrant has:

(i) Withdrawn the prior registration statement; or

(ii) Terminated or completed any offering that included the unsold securities associated with the claimed offset under the prior registration statement.

* * * * *

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 10. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78*o*(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 11. Amend § 232.11 by adding a definition for ''General Interactive Data File'' in alphabetical order to read as follows:

§ 232.11 Definition of terms used in part 232.

* * * * *

General Interactive Data File. The term *General Interactive Data File* means the machine-readable computer code that presents the following information, as required by the applicable rule provision or the particular form, statement or schedule

being filed, in Inline eXtensible Business Reporting Language (XBRL) electronic format in the manner provided by the EDGAR Filer Manual: Disclosure on the cover page or, if permitted, elsewhere in the body of the filing, related to the calculation of any registration or filing fee required to be paid to the Commission in connection with the filing including, without limitation, disclosure—

(1) Related to §§ 230.415, 230.429, 230.456, 230.457, 230.462, 240.0–11, 240.14a–6(i), or 14c–5(g) of this chapter;

(2) Provided pursuant to a fee table and related instructions under a heading ''Calculation of Registration Fee'', ''Calculation of Filing Fee'', ''Payment of Filing Fee'' or any equivalent;

(3) Provided pursuant to General Instruction II.F of Form S–3 (§ 239.13 of this chapter) or General Instruction II.G of Form F–3 (§ 239.33 of this chapter) of the maximum aggregate amount or maximum aggregate offering price of the securities to which a post-effective amendment or final prospectus filed pursuant to § 230.424(b) of this chapter relates and, in the case of a final prospectus, the fact that it is a final prospectus filed pursuant to § 230.424(b); and

(4) Provided pursuant to General Instruction H of Form S–4 (§ 239.25 of this chapter) or General Instruction F of Form F–4 (§ 239.34 of this chapter) of the maximum aggregate amount or maximum aggregate offering price to which a post-effective amendment or, where permitted, a final prospectus filed pursuant to § 230.424(b) of this chapter relates and, in the case of a final prospectus, the fact that it is a final prospectus filed pursuant to § 230.424(b).

Note to definition of *General Interactive Data File:* When a filing is submitted using Inline XBRL if permitted or required and as provided by the EDGAR Filer Manual, a portion of the General Interactive Data File is embedded into a form, statement, or schedule with the remainder submitted as an exhibit to the form, statement or schedule, respectively.

* * * * *

■ 12. Amend § 232.13 by revising paragraph (a)(3) and the note to paragraph (c) to read as follows:

§ 232.13 Date of filing; adjustment of filing date.

(a) * * *

(3) Notwithstanding paragraph (a)(2) of this section, any registration statement or any post-effective amendment thereto filed pursuant to Rule 462(b) (§ 230.462(b) of this chapter) by direct transmission commencing on or before 10 p.m. Eastern Standard Time or Eastern Daylight Savings Time whichever is currently in effect, shall be deemed filed on the same business day.

* * * * *

(c) * * *

Note 1 to paragraph (c): All filing fees paid by electronic filers must be submitted to the lockbox depository or system, as provided in Rule 3a, including those pertaining to documents filed in paper pursuant to a hardship exemption.

* * * * *

■ 13. Amend § 232.405 by:

■ a. Revising the introductory text;

■ b. Revising paragraph (a)(2);

■ c. Revising paragraph (a)(3)(i) introductory text;

■ d. Revising paragraph (a)(3)(ii);

■ e. Revising paragraph (a)(4);

■ f. Adding paragraphs (b)(3) through (5);

■ g. Revising paragraphs (f)(1)(i) introductory text and (f)(1)(ii) introductory text; and

■ h. Revising the last sentence of the note to § 232.405.

The revisions and additions read as follows:

§ 232.405 Interactive Data File submissions.

This section applies to electronic filers that submit Interactive Data Files. Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction H.2 of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction H of Form N–5 (§§ 239.24 and 274.5 of this chapter), and General Instruction F.2 of Form N–14 (§ 239.34 of this chapter) specify when electronic filers are required or permitted to submit an Interactive Data File (§ 232.11), as further described in the note to this section. This section imposes content, format and submission requirements for an Interactive Data File, but does not change the substantive content requirements for the financial and other disclosures in the Related Official Filing (§ 232.11).

(a) * * *

(2) Be submitted only by an electronic filer either required or permitted to submit an Interactive Data File as specified by § 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction H.2 of Form N–2 (§§ 239.14 and 274.11a-1 of this chapter), General Instruction H of Form N–5 (§§ 239.24 and 274.5 of this chapter), or General Instruction F.2 of Form N–14 (§ 239.34 of this chapter), as applicable;

(3) * * *

(i) If the electronic filer is not a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a small business investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), and is not within one of the categories specified in paragraph (f)(1)(i) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to:

* * * * *

(ii) If the electronic filer is a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a small business investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), and is not within one of the categories specified in paragraph (f)(1)(ii) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to a filing that contains the disclosure this section requires to be tagged; and

(4) Be submitted in accordance with the EDGAR Filer Manual and, as applicable, either § 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter),

paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction H.2 of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction H of Form N–5 (§§ 239.24 and 274.5 of this chapter), or General Instruction F.2 of Form N–14 (§ 239.34 of this chapter).

(b) * * *

(3) If the electronic filer is a closed-end management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), an Interactive Data File must consist only of a complete set of information for all periods required to be presented in the corresponding data in the Related Official Filing, no more and no less, from all of the information provided by the electronic filer in the Calculation of the Registration Fee table contained on the cover page of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter).

(4) If the electronic filer is a small business investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), an Interactive Data File must consist of only a complete set of information required to be presented in the corresponding data in the Related Official Filing, no more and no less, from all of the information provided by the electronic filer in the Calculation of the Registration Fee table contained on the cover page of Form N–5 (§§ 239.24 and 274.5 of this chapter).

(5) If the electronic filer is a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)) with registered securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), an Interactive Data File must consist of only a complete set of information required to be presented in the corresponding data in the Related Official Filing, no more and no less, from all of the information provided by the electronic filer in the Calculation of the Registration Fee table contained on the cover page of Form N–14 (§ 239.34 of this chapter).

* * * * *

(f) * * *

(1) * * *

(i) In the manner specified in paragraph (f)(2) of this section rather than as specified by paragraph (a)(3)(i) of this section: Any electronic filer that is not a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a small business investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48)) if it is within one of the following categories, provided, however, that an Interactive Data File first is required to be submitted in the manner specified by paragraph (a)(3)(i) of this section for a periodic report on Form 10–Q (§ 249.308a of this chapter) if the filer reports on Form 10–Q:

* * * * *

(ii) In the manner specified in paragraph (f)(3) of this section rather than as specified by paragraph (a)(3)(ii) of this section: Any electronic filer that is a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a small business investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48)) that, together with other investment companies in the same ''group of related investment companies,'' as such term is defined in § 270.0–10 of this chapter, has assets of:

* * * * *

Note to § 232.405: * * * For an issuer that is a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), or a small business investment company which is registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction H.2 of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction H of Form N–5 (§§ 239.24 and 274.5 of this chapter), or General Instruction F.2 of Form N–14 (§ 239.34 of this chapter), as applicable, specifies the circumstances under which an Interactive Data File must be submitted.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 14. The general authority citation for part 239 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78*l*, 78m,78n, 78*o*(d), 78*o*-7 note, 78u-5, 78w(a), 78*ll*, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37; and sec. 107, Pub. L. 112–106, 126 Stat. 312, unless otherwise noted.

* * * * *

■ 15. Amend Form S–1 (referenced in § 239.11) by revising the ''Calculation of Registration Fee'' table and the note that immediately follows it to read as follows:

Note: The text of Form S–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

FORM S–1

Registration Statement Under the Securities Act of 1933

* * * * *

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Fee rate	Amount of registration fee	Reliance on rule(s) (check all that apply)
						Rule 415(a)(6) ☐ Rule 429 ☐ Rule 457(b) or Rule 0–11(a)(2) ☐ Rule 457(o) ☐ Rule 457(p) ☐

Instructions to the ''Calculation of Registration Fee'' Table (''Fee Table'') and Related Disclosure:

1. For a fee calculated as specified in Rule 457(f) (§ 230.457(f) of this chapter), disclose the amount and value of securities to be received by the registrant or cancelled upon the issuance of securities registered on this Form, and explain how the value was calculated in accordance with Rule 457(f)(1) and (2), as applicable. The explanation must include the value per share of the securities received by the registrant or cancelled upon the issuance of securities registered on this Form. Also disclose any amount of cash to be paid by the registrant in connection with the exchange or other transaction, and any amount of cash to be received by the registrant in connection with the exchange or other transaction. In accordance with Rule 457(f)(3), to determine the maximum aggregate offering price for such a transaction, the registrant should deduct any amount of cash to be paid by the registrant in connection with the exchange or other transaction from, and add any amount of cash to be received by the registrant in connection with the exchange or other transaction to, the value of the securities to be received or cancelled as calculated in accordance with Rule 457(f)(1) and (2), as applicable. Omit from the fee table the maximum aggregate offering price per unit.

2. If relying on Rule 457(o) under the Securities Act (§ 230.457(o) of this chapter) to register securities on this Form by maximum aggregate offering price, check the appropriate box in the Fee Table and you may omit from the Fee Table the amount of securities to be registered and the proposed maximum offering price per unit.

3. When filing a pre-effective amendment that increases the amount of securities of any class to be registered, disclose, for each such class, the number of securities previously registered or, if the filing fee previously paid with respect to that class was calculated in reliance on Rule 457(o), the maximum aggregate offering price previously registered.

4. If you have filed a registration statement for two separate securities and then decide to increase the amount of one security and decrease the other, you may file a pre-effective amendment to reflect such increase and decrease in the Fee Table and reallocate the fees already paid under the registration statement between the two securities. If a pre-effective amendment is filed to increase the amount of securities of one or more registered classes and decrease the amount of securities of one or more registered classes, a registrant that did not rely on Rule 457(o) to calculate the filing fee due for the initial filing or latest pre-effective amendment to such filing may recalculate the total filing fee due for the registration statement in its entirety and claim an offset pursuant to Rule 457(b) in the amount of the filing fee previously paid in connection with the registration statement.

5. If relying on Rule 415(a)(6) under the Securities Act (§ 230.415(a)(6) of this chapter) to carry forward to this registration statement unsold securities covered by an earlier registration statement, check the appropriate box in the Fee Table and provide the following information:

i. The amount of securities being carried forward, expressed in terms of the number of securities, or, if the related filing fee was calculated in reliance on Rule 457(o), the maximum aggregate offering amount;

ii. The file number of the earlier registration statement;

iii. The initial effective date of the earlier registration statement; and

iv. The filing fee previously paid in connection with the unsold securities being carried forward.

The fee table for the new registration statement should not include the securities that have been carried forward or the filing fee previously paid in connection with those securities, which will continue to be applied to those securities.

6. If relying on Rule 457(p) under the Securities Act (§ 230.457(p) of this chapter) to offset some or all of the filing fee due on this registration statement with the filing fee previously paid for unsold securities under an earlier effective registration statement, check the appropriate box in the Fee Table and provide the following information:

i. The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

ii. The amount of unsold securities or aggregate offering amount from the prior registration statement associated with the claimed offset;

iii. The file number of, and the name of the registrant that filed, the earlier registration statement from which the filing fee is offset;

iv. The initial filing date of the earlier registration statement; and

v. A statement that the registrant has either withdrawn the prior registration statement or has terminated or completed any offering that included the unsold securities under the prior registration statement.

If you were not the registrant under that earlier registration statement, checking the box affirms that you are that registrant's successor, majority-owned subsidiary, or parent owning more than 50% of the registrant's outstanding voting securities eligible to claim a filing fee offset. See the definitions of ''successor'' and ''majority-owned subsidiary'' in Rule 405 under the Securities Act.

7. If relying on Rule 457(b) under the Securities Act (§ 230.457(b) of this chapter) or Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to offset some or all of the filing fee due on this registration statement by amounts paid in connection with earlier filings relating to the same transaction, check the appropriate box in the Fee Table and provide the following information:

i. The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

ii. The type of filing or form type, file number, and initial filing date of the earlier registration statement or Exchange Act filing with which the earlier fee was paid; and

iii. If claiming an offset from an earlier Securities Act registration statement, a detailed explanation of the basis for the claimed offset.

8. If this Form includes a combined prospectus pursuant to Rule 429 under the Securities Act of 1933 (§ 230.429 of this chapter), check the appropriate box in the Fee Table and provide the following information outside the fee table: The file number(s) of the earlier effective registration statement(s), and the amount or maximum aggregate offering price of unsold securities registered on the earlier registration statement(s) that may be offered and sold using the combined prospectus.

9. If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in the Fee Table, including references to the provisions of Rule 457 (§ 230.457 of this chapter) relied upon.

10. Disclosure provided in response to these instructions must immediately follow the Fee Table.

* * * * *

■ 16. Amend Form S–3 (referenced in § 239.13) by:

■ a. Revising the ''Calculation of Registration Fee'' table and the notes that immediately follow it;

■ b. Removing and reserving paragraphs D and E of ''II. Application of General Rules and Regulations'' under the General Instructions; and

■ c. Revising paragraph F of ''II. Application of General Rules and

Regulations'' under the General Instructions.

The revisions read as follows:

Note: The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form S–3

Registration Statement Under the Securities Act of 1933

* * * * *

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Fee rate	Amount of registration fee	Reliance on Rule(s) (check all that apply)
						415(a)(6) ☐ Rule 429 ☐ Rule 457(b) or Rule 0–11(a)(2) ☐ Rule 457(o) ☐ Rule 457(p) ☐

Instructions to the ''Calculation of Registration Fee'' Table (''Fee Table'') and Related Disclosure:

1. If relying on Rule 457(o) under the Securities Act (§ 230.457(o) of this chapter) to register securities on this Form by maximum aggregate offering price, check the appropriate box in the Fee Table and you may omit from the Fee Table the amount of securities to be registered and the proposed maximum offering price per unit.

2. When filing a pre-effective amendment that increases the amount of securities of any class to be registered, disclose, for each such class, the number of securities previously registered or, if the filing fee previously paid with respect to that class was calculated in reliance on Rule 457(o), the maximum aggregate offering price previously registered.

3. If you have filed a registration statement for two separate securities and then decide to increase the amount of one security and decrease the other, you may file a pre-effective amendment to reflect such increase and decrease in the Fee Table and reallocate the fees already paid under the registration statement between the two securities. If a pre-effective amendment is filed to increase the amount of securities of one or more registered classes and decrease the amount of securities of one or more registered classes, a registrant that did not rely on Rule 457(o) to calculate the filing fee due for the initial filing or latest pre-effective amendment to such filing may recalculate the total filing fee due for the registration statement in its entirety and claim an offset pursuant to Rule 457(b) in the amount of the filing fee previously paid in connection with the registration statement.

4. When registering two or more classes of securities pursuant to General Instruction I.B.1., I.B.2., I.B.6., or I.D. of this Form for an offering pursuant to Securities Act Rule 415(a)(1)(x) (§ 230.415(a)(1)(x) of this chapter) and where this form is not filed by a well-known seasoned issuer that elects to defer payment of fees as permitted by Rule 456(b), Rule 457(o) permits the calculation of the registration fee to be based on the maximum offering price of all the securities listed in the Fee Table. In this event, the Fee Table must list each of the classes of securities being registered and state the maximum aggregate offering price for all of the classes of securities on a combined basis, but may omit the proposed maximum aggregate offering price for each class.

5. A well-known seasoned issuer registering securities on an automatic shelf registration statement pursuant to General Instruction I.D. of this Form may, at its option, defer payment of registration fees as permitted by Rule 456(b) (§ 230.456(b) of this chapter). If a registrant elects to pay all or any portion of the registration fees on a deferred basis, the Fee Table in the initial filing must identify the classes of securities being registered and the registrant must state, in response to this instruction, that it elects to rely on Securities Act Rules 456(b) and 457(r), but the Fee Table does not need to specify any other information. When the issuer files a post-effective amendment or a prospectus in accordance with Rule 456(b)(1)(ii) (§ 230.456(b)(1)(ii) of this chapter) to pay a deferred fee, the amended Fee Table must specify either the dollar amount of securities being registered if paid in advance of or in connection with an offering or offerings or the aggregate offering price for all classes of securities in the referenced offering or offerings and the applicable registration fee, which shall be calculated based on the fee payment rate in effect on the date of the fee payment.

6. If relying on Rule 415(a)(6) under the Securities Act (§ 230.415(a)(6) of this chapter) to carry forward to this registration statement unsold securities covered by an earlier registration statement, check the appropriate box in the Fee Table and provide the following information:

i. The amount of securities being carried forward, expressed in terms of the number of securities, or, if the related filing fee was calculated in reliance on Rule 457(o), the maximum aggregate offering amount;

ii. The file number of the earlier registration statement;

iii. The initial effective date of the earlier registration statement; and

iv. The filing fee previously paid in connection with the unsold securities being carried forward.

The fee table for the new registration statement should not include the securities that have been carried forward or the filing fee previously paid in connection with those securities, which will continue to be applied to those securities.

7. If relying on Rule 457(p) under the Securities Act (§ 230.457(p) of this chapter) to offset some or all of the filing fee due on this registration statement with the filing fee previously paid for unsold securities under an earlier effective registration statement, check the appropriate box in the Fee Table and provide the following information:

i. The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

ii. The amount of unsold securities or aggregate offering amount from the prior registration statement associated with the claimed offset;

iii. The file number of, and the name of the registrant that filed, the earlier registration statement from which the filing fee is offset;

iv. The initial filing date of the earlier registration statement; and

v. A statement that the registrant has either withdrawn the prior registration statement or has terminated or completed any offering that included the unsold securities under the prior registration statement.

If you were not the registrant under that earlier registration statement, checking the box affirms that you are that registrant's successor, majority-owned subsidiary, or parent owning more than 50% of the registrant's outstanding voting securities eligible to claim a filing fee offset. See the definitions of ''successor'' and ''majority-owned subsidiary'' in Rule 405 under the Securities Act.

8. If relying on Rule 457(b) under the Securities Act (§ 230.457(b) of this chapter) or Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to offset some or all of the filing fee due on this registration statement by amounts paid in connection with earlier filings relating to the same transaction, check the appropriate box in the Fee Table and provide the following information:

i. The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

ii. The type of filing or form type, file number, and initial filing date of the earlier registration statement or Exchange Act filing with which the earlier fee was paid; and

iii. If claiming an offset from an earlier Securities Act registration statement, a detailed explanation of the basis for the claimed offset.

9. If this Form includes a combined prospectus pursuant to Rule 429 under the Securities Act of 1933 (§ 230.429 of this chapter), check the appropriate box in the Fee Table and provide the following information outside the fee table: The file number(s) of the earlier effective registration statement(s), and the amount or maximum aggregate offering price of unsold securities registered on the earlier registration statement(s) that may be offered and sold using the combined prospectus.

10. If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in the Fee Table, including references to the provisions of Rule 457 (§ 230.457 of this chapter) relied upon.

11. Disclosure provided in response to these instructions must immediately follow the Fee Table.

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

D. [Reserved]

E. [Reserved]

F. Information in Automatic and Non-Automatic Shelf Registration Statements. Where securities are being registered on this Form pursuant to General Instruction I.B.1, I.B.2, I.B.6, I.C., or I.D., information is only required to be furnished as of the date of initial effectiveness of the registration statement to the extent required by Rule 430A or Rule 430B. Required information about a specific transaction must be included in the prospectus in the registration statement by means of a prospectus that is deemed to be part of and included in the registration statement pursuant to Rule 430A or Rule 430B, a post-effective amendment to the registration statement, or a periodic or current report under the Exchange Act incorporated by reference into the registration statement and the prospectus and identified in a prospectus filed, as required by Rule 430B, pursuant to Rule 424(b) (§ 230.424(b) of this chapter), *provided, however,* that information specified in the definition of the term ''General Interactive Data File'' (§ 232.11 of this chapter) shall be placed in one of these documents other than a periodic or current report under the Exchange Act incorporated by reference into the registration statement. Each post-effective amendment or final prospectus filed pursuant to Rule 424(b), in either case filed to provide required information about a specific transaction, must include the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment or prospectus relates and each such prospectus must indicate that it is a final prospectus for the related offering.

* * * * *

■ 17. Amend Form S–8 (referenced in § 239.16b) by:

■ a. Revising the ''Calculation of Registration Fee'' table;

■ b. Removing paragraph 2 of the Notes to the ''Calculation of Registration Fee'' Table; and

■ c. Adding text immediately after the Notes to the ''Calculation of Registration Fee Table''.

The revisions and additions read as follows:

Note: The text of Form S–8 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form S–8

Registration Statement Under the Securities Act of 1933

* * * * *

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Fee rate	Amount of registration fee	Reliance on Rule(s) (check all that apply)
						Rule 457(o) ☐ Rule 457(p) ☐

Notes:

1. If plan interests are being registered, include the following: In addition, pursuant to Rule 416(c) under the Securities Act of 1933, this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the employee benefit plan(s) described herein.

Instructions to the ''Calculation of Registration Fee'' Table (''Fee Table'') and Related Disclosure:

1. If relying on Rule 457(a) and (h) under the Securities Act (§ 230.457(a)

and (h) of this chapter) to calculate the fee due for this registration statement and the offering price of the securities is not known, disclose the basis of the price of the securities to be registered as determined pursuant to Securities Act Rule 457(h).

2. If relying on Rule 457(o) under the Securities Act (§ 230.457(o) of this chapter) to register securities on this Form by maximum aggregate offering price, check the appropriate box in the Fee Table and you may omit from the Fee Table the amount of securities to be registered and the proposed maximum offering price per unit.

3. If relying on Rule 457(p) under the Securities Act (§ 230.457(p) of this chapter) to offset some or all of the filing fee due on this registration statement with the filing fee previously paid for unsold securities under an earlier effective registration statement, check the appropriate box in the Fee Table and provide the following information:

i. The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

ii. The amount of unsold securities or aggregate offering amount from the prior registration statement associated with the claimed offset;

iii. The file number of, and the name of the registrant that filed, the earlier registration statement from which the filing fee is offset;

iv. The initial filing date of the earlier registration statement; and

v. A statement that the registrant has either withdrawn the prior registration statement or has terminated or completed any offering that included the unsold securities under the prior registration statement.

If you were not the registrant under that earlier registration statement, checking the box affirms that you are that registrant's successor, majority-owned subsidiary, or parent owning more than 50% of the registrant's outstanding voting securities eligible to claim a filing fee offset. See the definitions of ''successor'' and ''majority-owned subsidiary'' in Rule 405 under the Securities Act.

4. If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in the Fee Table, including references to the provisions of Rule 457 (§ 230.457 of this chapter) relied upon.

5. Disclosure provided in response to these instructions must immediately follow the Fee Table.

* * * * *

■ 18. Amend Form S–11 (referenced in § 239.18) by:

■ a. Revising the ''Calculation of Registration Fee'' table; and

■ b. Revising the note immediately beneath the revised ''Calculation of Registration Fee'' table and immediately above the paragraph that begins ''The registrant hereby amends this registration statement''.

The revisions read as follows:

Note: The text of Form S–11 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form S–11

Registration Statement Under the Securities Act of 1933

* * * * *

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Fee rate	Amount of registration fee	Reliance on Rule(s) (check all that apply)
						Rule 415(a)(6) ☐ Rule 429 ☐ Rule 457(b) or Rule 0–11(a)(2) ☐ Rule 457(o) ☐ Rule 457(p) ☐

Instructions to the ''Calculation of Registration Fee'' Table (''Fee Table'') and Related Disclosure:

1. For a fee calculated as specified in Rule 457(f) (§ 230.457(f) of this chapter), disclose the amount and value of securities to be received by the registrant or cancelled upon the issuance of securities registered on this Form, and explain how the value was calculated in accordance with Rule 457(f)(1) and (2), as applicable. The explanation must include the value per share of the securities received by the registrant or cancelled upon the issuance of securities registered on this Form. Also disclose any amount of cash to be paid by the registrant and any amount of cash to be received by the registrant in connection with the exchange or other transaction. In accordance with Rule 457(f)(3), to determine the maximum aggregate offering price for such a transaction, the registrant should deduct any amount of cash to be paid by the registrant in connection with the exchange or other transaction from, and add any amount of cash to be received by the registrant in connection with the exchange or other transaction to, the value of the securities to be received or cancelled as calculated in accordance with Rule 457(f)(1) and (2), as applicable. Omit from the fee table the maximum aggregate offering price per unit.

2. If relying on Rule 457(o) under the Securities Act (§ 230.457(o) of this chapter) to register securities on this Form by maximum aggregate offering price, check the appropriate box in the Fee Table and you may omit from the Fee Table the amount of securities to be registered and the proposed maximum offering price per unit.

3. When filing a pre-effective amendment that increases the amount of securities of any class to be registered, disclose, for each such class, the number of securities previously registered or, if the filing fee previously paid with respect to that class was calculated in reliance on Rule 457(o), the maximum aggregate offering price previously registered.

4. If you have filed a registration statement for two separate securities and then decide to increase the amount of one security and decrease the other, you may file a pre-effective amendment to reflect such increase and decrease in the Fee Table and reallocate the fees already paid under the registration statement between the two securities. If a pre-effective amendment is filed to increase the amount of securities of one or more registered classes and decrease the amount of securities of one or more

registered classes, a registrant that did not rely on Rule 457(o) to calculate the filing fee due for the initial filing or latest pre-effective amendment to such filing may recalculate the total filing fee due for the registration statement in its entirety and claim an offset pursuant to Rule 457(b) in the amount of the filing fee previously paid in connection with the registration statement.

5. If relying on Rule 415(a)(6) under the Securities Act (§ 230.415(a)(6) of this chapter) to carry forward to this registration statement unsold securities covered by an earlier registration statement, check the appropriate box in the Fee Table and provide the following information:

i. The amount of securities being carried forward, expressed in terms of the number of securities or, if the related filing fee was calculated in reliance on Rule 457(o), the maximum aggregate offering amount;

ii. The file number of the earlier registration statement;

iii. The initial effective date of the earlier registration statement; and

iv. The filing fee previously paid in connection with the unsold securities being carried forward.

The fee table for the new registration statement should not include the securities that have been carried forward or the filing fee previously paid in connection with those securities, which will continue to be applied to those securities.

6. If relying on Rule 457(p) under the Securities Act (§ 230.457(p) of this chapter) to offset some or all of the filing fee due on this registration statement with the filing fee previously paid for unsold securities under an earlier effective registration statement, check the appropriate box in the Fee Table and provide the following information:

i. The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

ii. The amount of unsold securities or aggregate offering amount from the prior registration statement associated with the claimed offset;

iii. The file number of, and the name of the registrant that filed, the earlier registration statement from which the filing fee is offset;

iv. The initial filing date of the earlier registration statement; and

v. A statement that the registrant has either withdrawn the prior registration statement or has terminated or completed any offering that included the unsold securities under the prior registration statement.

If you were not the registrant under that earlier registration statement, checking the box affirms that you are that registrant's successor, majority-owned subsidiary, or parent owning more than 50% of the registrant's outstanding voting securities eligible to claim a filing fee offset. See the definitions of ''successor'' and ''majority-owned subsidiary'' in Rule 405 under the Securities Act.

7. If relying on Rule 457(b) under the Securities Act (§ 230.457(b) of this chapter) or Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to offset some or all of the filing fee due on this registration statement by amounts paid in connection with earlier filings relating to the same transaction, check the appropriate box in the Fee Table and provide the following information:

i. The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

ii. The type of filing or form type, file number, and initial filing date of the earlier registration statement or Exchange Act filing with which the earlier fee was paid; and

iii. If claiming an offset from an earlier Securities Act registration statement, a detailed explanation of the basis for the claimed offset.

8. If this Form includes a combined prospectus pursuant to Rule 429 under the Securities Act of 1933 (§ 230.429 of this chapter), check the appropriate box in the Fee Table and provide the following information outside the fee table: The file number(s) of the earlier effective registration statement(s), and the amount or maximum aggregate offering price of unsold securities registered on the earlier registration statement(s) that may be offered and sold using the combined prospectus.

9. If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in the Fee Table, including references to the provisions of Rule 457 (§ 230.457 of this chapter) relied upon.

10. Disclosure provided in response to these instructions must immediately follow the Fee Table.

* * * * *

■ 19. Amend Form N–14 (referenced in § 239.23) by

■ a. Revising the ''Calculation of Registration Fee under the Securities Act of 1933'' table; and

■ b. Revising General Instruction F.

The revisions read as follows:

Note: The text of Form N–14 does not, and this amendment will not, appear in the Code of Federal Regulations.

* * * * *

CALCULATION OF REGISTRATION FEE UNDER THE SECURITIES ACT OF 1933

Title of securities being registered	Amount being registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Fee rate	Amount of registration fee

* * * * *

F. Preparation of the Registration Statement

1. The following instructions for completing Form N–14 are divided into three parts. Part A relates to the prospectus required by Section 10(a) of the Securities Act. Part B relates to the SAI that must be provided upon request to recipients of the prospectus. Part C relates to other information that is required to be in the registration statement.

2. Interactive Data Files.

a. An Interactive Data File as defined in Rule 11 of Regulation S–T is required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T for any registration statement or post-effective amendment thereto on Form N–14 containing the cover page information specified in Rule 405 of Regulation S–T. The Interactive Data File must be submitted either with the filing, or as an amendment to the registration statement to which it relates that is submitted on or before the date the registration statement or post-effective amendment that contains the related information becomes effective.

b. The Interactive Data File must be submitted in accordance with the specifications in the EDGAR Filer Manual.

* * * * *

■ 20. Amend Form S–4 (referenced in § 239.25) by:
■ a. Revising the ''Calculation of Registration Fee'' table and the note that immediately follows it;
■ b. Revising General Instruction H; and
■ c. Removing and reserving General Instruction J.

The revisions read as follows:

Note: The text of Form S–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form S–4

Registration Statement Under the Securities Act of 1933

* * * * *

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Fee rate	Amount of registration fee	Reliance on rule(s) (check all that apply)
						Rule 415(a)(6) ☐ Rule 429 ☐ Rule 457(b) or Rule 0–11(a)(2) ☐ Rule 457(o) ☐ Rule 457(p) ☐

Instructions to the ''Calculation of Registration Fee'' Table (''Fee Table'') and Related Disclosure:

1. For a fee calculated as specified in Rule 457(f) (§ 230.457(f) of this chapter), disclose the amount and value of securities to be received by the registrant or cancelled upon the issuance of securities registered on this Form, and explain how the value was calculated in accordance with Rule 457(f)(1) and (2), as applicable. The explanation must include the value per share of the securities received by the registrant or cancelled upon the issuance of securities registered on this Form. Also disclose any amount of cash to be paid by the registrant in connection with the exchange or other transaction, and any amount of cash to be received by the registrant in connection with the exchange or other transaction. In accordance with Rule 457(f)(3), to determine the maximum aggregate offering price for such a transaction, the registrant should deduct any amount of cash to be paid by the registrant in connection with the exchange or other transaction from, and add any amount of cash to be received by the registrant in connection with the exchange or other transaction to, the value of the securities to be received or cancelled as calculated in accordance with Rule 457(f)(1) and (2), as applicable. Omit from the fee table the maximum aggregate offering price per unit.

2. If relying on Rule 457(o) under the Securities Act (§ 230.457(o) of this chapter) to register securities on this Form by maximum aggregate offering price, check the appropriate box in the Fee Table and you may omit from the Fee Table the amount of securities to be registered and the proposed maximum offering price per unit.

3. When filing a pre-effective amendment that increases the amount of securities of any class to be registered, disclose, for each such class, the number of securities previously registered or, if the filing fee previously paid with respect to that class was calculated in reliance on Rule 457(o), the maximum aggregate offering price previously registered.

4. If you have filed a registration statement for two separate securities and then decide to increase the amount of one security and decrease the other, you may file a pre-effective amendment to reflect such increase and decrease in the Fee Table and reallocate the fees already paid under the registration statement between the two securities. If a pre-effective amendment is filed to increase the amount of securities of one or more registered classes and decrease the amount of securities of one or more registered classes, a registrant that did not rely on Rule 457(o) to calculate the filing fee due for the initial filing or latest pre-effective amendment to such filing may recalculate the total filing fee due for the registration statement in its entirety and claim an offset pursuant to Rule 457(b) in the amount of the filing fee previously paid in connection with the registration statement.

5. When registering two or more classes of securities on this Form to be offered on a delayed or continuous basis pursuant to § 230.415(a)(1)(viii), Rule 457(o) permits the calculation of the registration fee to be based on the maximum offering price of all the securities listed in the Fee Table if the registrant is eligible to use Form S–3 for a primary offering. In this event, the Fee Table must list each of the classes of securities being registered and state the maximum aggregate offering price for all of the classes of securities on a combined basis, but may omit the proposed maximum aggregate offering price for each class.

6. If relying on Rule 415(a)(6) under the Securities Act (§ 230.415(a)(6) of this chapter) to carry forward to this registration statement unsold securities covered by an earlier registration statement, check the appropriate box in the Fee Table and provide the following information:

i. The amount of securities being carried forward, expressed in terms of the number of securities or, if the related filing fee was calculated in reliance on Rule 457(o), the maximum aggregate offering amount;

ii. The file number of the earlier registration statement;

iii. The initial effective date of the earlier registration statement; and

iv. The filing fee previously paid in connection with the unsold securities being carried forward.

The fee table for the new registration statement should not include the securities that have been carried forward or the filing fee previously paid in connection with those securities, which will continue to be applied to those securities.

7. If relying on Rule 457(p) under the Securities Act (§ 230.457(p) of this chapter) to offset some or all of the filing fee due on this registration statement with the filing fee previously paid for unsold securities under an earlier effective registration statement, check

the appropriate box in the Fee Table and provide the following information:

i. The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

ii. The amount of unsold securities or aggregate offering amount from the prior registration statement associated with the claimed offset;

iii. The file number of, and the name of the registrant that filed, the earlier registration statement from which the filing fee is offset;

iv. The initial filing date of the earlier registration statement; and

v. A statement that the registrant has either withdrawn the prior registration statement or has terminated or completed any offering that included the unsold securities under the prior registration statement.

If you were not the registrant under that earlier registration statement, checking the box affirms that you are that registrant's successor, majority-owned subsidiary, or parent owning more than 50% of the registrant's outstanding voting securities eligible to claim a filing fee offset. See the definitions of ''successor'' and ''majority-owned subsidiary'' in Rule 405 under the Securities Act.

8. If you are relying on Rule 457(b) under the Securities Act (§ 230.457(b) of this chapter) or Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to offset some or all of the filing fee due on this registration statement by amounts paid in connection with earlier filings relating to the same transaction, check the appropriate box in the Fee Table and provide the following information:

i. The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

ii. The type of filing or form type, file number, and initial filing date of the earlier registration statement or Exchange Act filing with which the earlier fee was paid; and

iii. If claiming an offset from an earlier Securities Act registration statement, a detailed explanation of the basis for the claimed offset.

9. If this Form includes a combined prospectus pursuant to Rule 429 under the Securities Act of 1933 (§ 230.429 of this chapter), check the appropriate box in the Fee Table and provide the following information outside the fee table: the file number(s) of the earlier effective registration statement(s), and the amount or maximum aggregate offering price of unsold securities registered on the earlier registration statement(s) that may be offered and sold using the combined prospectus.

10. If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in the Fee Table, including references to the provisions of Rule 457 (§ 230.457 of this chapter) relied upon.

11. Disclosure provided in response to these instructions must immediately follow the Fee Table.

General Instructions

* * * * *

H. Registration Statements Subject to Rule 415(a)(1)(viii) (§ 230.415(a)(1)(viii) of This Chapter)

If the registration statement relates to offerings of securities pursuant to Rule 415(a)(1)(viii), required information about the type of contemplated transaction and the company to be acquired only need be furnished as of the date of initial effectiveness of the registration statement to the extent practicable. The required information about the specific transaction and the particular company being acquired, however, must be included in the prospectus by means of a post-effective amendment; *Provided, however,* that where the transaction in which the securities are being offered pursuant to a registration statement under the Securities Act of 1933 would itself qualify for an exemption from Section 5 of the Act, absent the existence of other similar (prior or subsequent) transactions, a prospectus supplement could be used to furnish the information necessary in connection with such transaction. Each post-effective amendment or final prospectus supplement filed to provide required information about a specific transaction and particular company being acquired must include the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment or prospectus relates, and each such prospectus must indicate that it is a final prospectus for the related offering.

* * * * *

J. [Reserved]

* * * * *

■ 21. Amend Form F–1 (referenced in § 239.31) by revising the ''Calculation of Registration Fee'' table and the Note immediately below it to read as follows:

Note: The text of Form F–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form F–1

Registration Statement Under the Securities Act of 1933

* * * * *

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Fee rate	Amount of registration fee	Reliance on rule(s) (check all that apply)
						Rule 415(a)(6) ☐ Rule 429 ☐ Rule 457(b) or Rule 0–11(a)(2) ☐ Rule 457(o) ☐ Rule 457(p) ☐

Instructions to the ''Calculation of Registration Fee'' Table (''Fee Table'') and Related Disclosure:

1. For a fee calculated as specified in Rule 457(f) (§ 230.457(f) of this chapter), disclose the amount and value of securities to be received by the registrant or cancelled upon the issuance of securities registered on this Form, and explain how the value was calculated in accordance with Rule 457(f)(1) and (2), as applicable. The explanation must include the value per share of the securities received by the registrant or cancelled upon the

issuance of securities registered on this Form. Also disclose any amount of cash to be paid by the registrant and any amount of cash to be received by the registrant in connection with the exchange or other transaction. In accordance with Rule 457(f)(3), to determine the maximum aggregate offering price for such a transaction, the registrant should deduct any amount of cash to be paid by the registrant in connection with the exchange or other transaction from, and add any amount of cash to be received by the registrant in connection with the exchange or other transaction to, the value of the securities to be received or cancelled as calculated in accordance with Rule 457(f)(1) and (2), as applicable. Omit from the fee table the maximum aggregate offering price per unit.

2. If relying on Rule 457(o) under the Securities Act (§ 230.457(o) of this chapter) to register securities on this Form by maximum aggregate offering price, check the appropriate box in the Fee Table and you may omit from the Fee Table the amount of securities to be registered and the proposed maximum offering price per unit.

3. When filing a pre-effective amendment that increases the amount of securities of any class to be registered, disclose, for each such class, the number of securities previously registered or, if the filing fee previously paid with respect to that class was calculated in reliance on Rule 457(o), the maximum aggregate offering price previously registered.

4. If you have filed a registration statement for two separate securities and then decide to increase the amount of one security and decrease the other, you may file a pre-effective amendment to reflect such increase and decrease in the Fee Table and reallocate the fees already paid under the registration statement between the two securities. If a pre-effective amendment is filed to increase the amount of securities of one or more registered classes and decrease the amount of securities of one or more registered classes, a registrant that did not rely on Rule 457(o) to calculate the filing fee due for the initial filing or latest pre-effective amendment to such filing may recalculate the total filing fee due for the registration statement in its entirety and claim an offset pursuant to Rule 457(b) in the amount of the filing fee previously paid in connection with the registration statement.

5. If relying on Rule 415(a)(6) under the Securities Act (§ 230.415(a)(6) of this chapter) to carry forward to this registration statement unsold securities covered by an earlier registration statement, check the appropriate box in the Fee Table and provide the following information:

i. The amount of securities being carried forward, expressed in terms of the number of securities or, if the related filing fee was calculated in reliance on Rule 457(o), the maximum aggregate offering amount;

ii. The file number of the earlier registration statement;

iii. The initial effective date of the earlier registration statement; and

iv. The filing fee previously paid in connection with the unsold securities being carried forward.

The fee table for the new registration statement should not include the securities that have been carried forward or the filing fee previously paid in connection with those securities, which will continue to be applied to those securities.

6. If relying on Rule 457(p) under the Securities Act (§ 230.457(p) of this chapter) to offset some or all of the filing fee due on this registration statement with the filing fee previously paid for unsold securities under an earlier effective registration statement, check the appropriate box in the Fee Table and provide the following information:

i. The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

ii. The amount of unsold securities or aggregate offering amount from the prior registration statement associated with the claimed offset;

iii. The file number of, and the name of the registrant that filed, the earlier registration statement from which the filing fee is offset;

iv. The initial filing date of the earlier registration statement; and

v. A statement that the registrant has either withdrawn the prior registration statement or has terminated or completed any offering that included the unsold securities under the prior registration statement.

If you were not the registrant under that earlier registration statement, checking the box affirms that you are that registrant's successor, majority-owned subsidiary, or parent owning more than 50% of the registrant's outstanding voting securities eligible to claim a filing fee offset. See the definitions of ''successor'' and ''majority-owned subsidiary'' in Rule 405 under the Securities Act.

7. If relying on Rule 457(b) under the Securities Act (§ 230.457(b) of this chapter) or Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to offset some or all of the filing fee due on this registration statement by amounts paid in connection with earlier filings relating to the same transaction, check the appropriate box in the Fee Table and provide the following information:

i. The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

ii. The type of filing or form type, file number, and initial filing date of the earlier registration statement or Exchange Act filing with which the earlier fee was paid; and

iii. If claiming an offset from an earlier Securities Act registration statement, a detailed explanation of the basis for the claimed offset.

8. If this Form includes a combined prospectus pursuant to Rule 429 under the Securities Act of 1933 (§ 230.429 of this chapter), check the appropriate box in the Fee Table and provide the following information outside the fee table: The file number(s) of the earlier effective registration statement(s), and the amount or maximum aggregate offering price of unsold securities registered on the earlier registration statement(s) that may be offered and sold using the combined prospectus.

9. If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in the Fee Table, including references to the provisions of Rule 457 (§ 230.457 of this chapter) relied upon.

10. Disclosure provided in response to these instructions must immediately follow the Fee Table.

* * * * *

■ 22. Amend Form F–3 (referenced in § 239.33) by:

■ a. Revising the ''Calculation of Registration Fee'' table and the Notes to the Calculation of Registration Fee Table;

■ b. Removing and reserving paragraphs C and F of ''II. Application of General Rules and Regulations'' under the General Instructions; and

■ c. Revising paragraph G of ''II. Application of General Rules and Regulations'' under the General Instructions.

The revisions read as follows:

Note: The text of Form F–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form F–3

Registration Statement Under the Securities Act of 1933

* * * * *

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Fee rate	Amount of registration fee	Reliance on rule(s) (check all that apply)
						Rule 415(a)(6) ☐ Rule 429 ☐ Rule 457(b) or Rule 0–11(a)(2) ☐ Rule 457(o) ☐ Rule 457(p) ☐

Instructions to the ''Calculation of Registration Fee'' Table (''Fee Table'') and Related Disclosure:

1. If relying on Rule 457(o) under the Securities Act (§ 230.457(o) of this chapter) to register securities on this Form by maximum aggregate offering price, check the appropriate box in the Fee Table and you may omit from the Fee Table the amount of securities to be registered and the proposed maximum offering price per unit.

2. When filing a pre-effective amendment that increases the amount of securities of any class to be registered, disclose, for each such class, the number of securities previously registered or, if the filing fee previously paid with respect to that class was calculated in reliance on Rule 457(o), the maximum aggregate offering price previously registered.

3. If you have filed a registration statement for two separate securities and then decide to increase the amount of one security and decrease the other, you may file a pre-effective amendment to reflect such increase and decrease in the Fee Table and reallocate the fees already paid under the registration statement between the two securities. If a pre-effective amendment is filed to increase the amount of securities of one or more registered classes and decrease the amount of securities of one or more registered classes, a registrant that did not rely on Rule 457(o) to calculate the filing fee due for the initial filing or latest pre-effective amendment to such filing may recalculate the total filing fee due for the registration statement in its entirety and claim an offset pursuant to Rule 457(b) in the amount of the filing fee previously paid in connection with the registration statement.

4. When registering two or more classes of securities pursuant to General Instruction I.B.1., I.B.2., I.B.5., or I.C of this Form for an offering pursuant to Securities Act Rule 415(a)(1)(x) (§ 230.415(a)(1)(x) of this chapter), and where this form is not filed by a well-known seasoned issuer that elects to defer payment of fees as permitted by Rule 456(b), Rule 457(o) permits the calculation of the registration fee to be based on the maximum offering price of all the securities listed in the Fee Table. In this event, the Fee Table must list each of the classes of securities being registered and state the maximum aggregate offering price for all of the classes of securities on a combined basis, but may omit the proposed maximum aggregate offering price for each class.

5. A well-known seasoned issuer registering securities on an automatic shelf registration statement pursuant to General Instruction I.C. of this Form may, at its option, defer payment of registration fees as permitted by Rule 456(b) (§ 230.456(b) of this chapter). If a registrant elects to pay all or any portion of the registration fees on a deferred basis, the Fee Table in the initial filing must identify the classes of securities being registered and the registrant must state, in response to this instruction, that it elects to rely on Securities Act Rules 456(b) and 457(r), but the Fee Table does not need to specify any other information. When the issuer files a post-effective amendment or a prospectus in accordance with Rule 456(b)(1)(ii) (§ 230.456(b)(1)(ii) of this chapter) to pay a deferred fee, the amended Fee Table must specify either the dollar amount of securities being registered if paid in advance of or in connection with an offering or offerings or the aggregate offering price for all classes of securities in the referenced offering or offerings and the applicable registration fee, which shall be calculated based on the fee payment rate in effect on the date of the fee payment.

6. If relying on Rule 415(a)(6) under the Securities Act (§ 230.415(a)(6) of this chapter) to carry forward to this registration statement unsold securities covered by an earlier registration statement, check the appropriate box in the Fee Table and provide the following information:

i. The amount of securities being carried forward, expressed in terms of the number of securities, or, if the related filing fee was calculated in reliance on Rule 457(o), the maximum aggregate offering amount;

ii. The file number of the earlier registration statement;

iii. The initial effective date of the earlier registration statement; and

iv. The filing fee previously paid in connection with the unsold securities being carried forward.

The fee table for the new registration statement should not include the securities that have been carried forward or the filing fee previously paid in connection with those securities, which will continue to be applied to those securities.

7. If relying on Rule 457(p) under the Securities Act (§ 230.457(p) of this chapter) to offset some or all of the filing fee due on this registration statement with the filing fee previously paid for unsold securities under an earlier effective registration statement, check the appropriate box in the Fee Table and provide the following information:

i. The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

ii. The amount of unsold securities or aggregate offering amount from the prior registration statement associated with the claimed offset;

iii. The file number of, and the name of the registrant that filed, the earlier registration statement from which the filing fee is offset;

iv. The initial filing date of the earlier registration statement; and

v. A statement that the registrant has either withdrawn the prior registration statement or has terminated or completed any offering that included the unsold securities under the prior registration statement.

If you were not the registrant under that earlier registration statement, checking the box affirms that you are that registrant's successor, majority-owned subsidiary, or parent owning more than 50% of the registrant's outstanding voting securities eligible to claim a filing fee offset. See the definitions of ''successor'' and

''majority-owned subsidiary'' in Rule 405 under the Securities Act.

8. If relying on Rule 457(b) under the Securities Act (§ 230.457(b) of this chapter) or Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to offset some or all of the filing fee due on this registration statement by amounts paid in connection with earlier filings relating to the same transaction, check the appropriate box in the Fee Table and provide the following information:

i. The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

ii. The type of filing or form type, file number, and initial filing date of the earlier registration statement or Exchange Act filing with which the earlier fee was paid; and

iii. If claiming an offset from an earlier Securities Act registration statement, a detailed explanation of the basis for the claimed offset.

9. If this Form includes a combined prospectus pursuant to Rule 429 under the Securities Act of 1933 (§ 230.429 of this chapter), check the appropriate box in the Fee Table and provide the following information outside the fee table: the file number(s) of the earlier effective registration statement(s), and the amount or maximum aggregate offering price of unsold securities registered on the earlier registration statement(s) that may be offered and sold using the combined prospectus.

10. If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in the Fee Table, including references to the provisions of Rule 457 (§ 230.457 of this chapter) relied upon.

11. Disclosure provided in response to these instructions must immediately follow the Fee Table.

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

C. [Reserved]

* * * * *

F. [Reserved]

G. Information in Automatic and Non-Automatic Shelf Registration Statements

Where securities are being registered on this Form pursuant to General Instruction I.A.5, I.B.1, I.B.2, I.B.5, or I.C., information is only required to be furnished as of the date of initial effectiveness of the registration statement to the extent required by Rule 430A or Rule 430B. Required information about a specific transaction must be included in the prospectus in the registration statement by means of a prospectus that is deemed to be part of and included in the registration statement pursuant to Rule 430A or Rule 430B, a post-effective amendment to the registration statement, or an Exchange Act report incorporated by reference into the registration statement and the prospectus and identified in a prospectus filed, as required by Rule 430B, pursuant to Rule 424(b) (§ 230.424 (b) of this chapter), *provided, however,* that information specified in the definition of the term ''General Interactive Data File'' (§ 232.11 of this chapter) shall be placed in one of these documents other than an Exchange Act report incorporated by reference into the registration statement. Each post-effective amendment or final prospectus filed pursuant to Rule 424(b), in either case filed to provide required information about a specific transaction, must include the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment or prospectus relates and each such prospectus must indicate that it is a final prospectus for the related offering.

* * * * *

■ 23. Amend Form F–4 (referenced in § 239.34) by:

■ a. Revising the ''Calculation of Registration Fee'' table and note immediately below it;

■ b. Removing and reserving paragraph D.3 of the General Instructions; and

■ c. Revising paragraph F of the General Instructions.

The revisions read as follows:

Note: The text of Form F–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form F–4

Registration Statement Under the Securities Act of 1933

* * * * *

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Fee rate	Amount of registration fee	Reliance on rule(s) (check all that apply)
						Rule 415(a)(6) ☐ Rule 429 ☐ Rule 457(b) or Rule 0–11(a)(2) ☐ Rule 457(o) ☐ Rule 457(p) ☐

Instructions to the ''Calculation of Registration Fee'' Table (''Fee Table'') and Related Disclosure:

1. For a fee calculated as specified in Rule 457(f) (§ 230.457(f) of this chapter), disclose the amount and value of securities to be received by the registrant or cancelled upon the issuance of securities registered on this Form, and explain how the value was calculated in accordance with Rule 457(f)(1) and (2), as applicable. The explanation must include the value per share of the securities received by the registrant or cancelled upon the issuance of securities registered on this Form. Also disclose any amount of cash to be paid by the registrant and any amount of cash to be received by the registrant in connection with the exchange or other transaction. In accordance with Rule 457(f)(3), to determine the maximum aggregate offering price for such a transaction, the registrant should deduct any amount of cash to be paid by the registrant in connection with the exchange or other transaction from, and add any amount of cash to be received by the registrant in connection with the exchange or

other transaction to, the value of the securities to be received or cancelled as calculated in accordance with Rule 457(f)(1) and (2), as applicable. Omit from the fee table the maximum aggregate offering price per unit.

2. If relying on Rule 457(o) under the Securities Act (§ 230.457(o) of this chapter) to register securities on this Form by maximum aggregate offering price, check the appropriate box in the Fee Table and you may omit from the Fee Table the amount of securities to be registered and the proposed maximum offering price per unit.

3. When filing a pre-effective amendment that increases the amount of securities of any class to be registered, disclose, for each such class, the number of securities previously registered or, if the filing fee previously paid with respect to that class was calculated in reliance on Rule 457(o), the maximum aggregate offering price previously registered.

4. If you have filed a registration statement for two separate securities and then decide to increase the amount of one security and decrease the other, you may file a pre-effective amendment to reflect such increase and decrease in the Fee Table and reallocate the fees already paid under the registration statement between the two securities. If a pre-effective amendment is filed to increase the amount of securities of one or more registered classes and decrease the amount of securities of one or more registered classes, a registrant that did not rely on Rule 457(o) to calculate the filing fee due for the initial filing or latest pre-effective amendment to such filing may recalculate the total filing fee due for the registration statement in its entirety and claim an offset pursuant to Rule 457(b) in the amount of the filing fee previously paid in connection with the registration statement.

5. When registering two or more classes of securities on this Form to be offered on a delayed or continuous basis pursuant to § 230.415(a)(1)(viii), Rule 457(o) permits the calculation of the registration fee to be based on the maximum offering price of all the securities listed in the Fee Table if the registrant is eligible to use Form F–3 for a primary offering. In this event, the Fee Table must list each of the classes of securities being registered and state the maximum aggregate offering price for all of the classes of securities on a combined basis, but may omit the proposed maximum aggregate offering price for each class.

6. If relying on Rule 415(a)(6) under the Securities Act (§ 230.415(a)(6) of this chapter) to carry forward to this registration statement unsold securities covered by an earlier registration statement, check the appropriate box in the Fee Table and provide the following information:

i. The amount of securities being carried forward, expressed in terms of the number of securities, or, if the related filing fee was calculated in reliance on Rule 457(o), the maximum aggregate offering amount;

ii. The file number of the earlier registration statement;

iii. The initial effective date of the earlier registration statement; and

iv. The filing fee previously paid in connection with the unsold securities being carried forward.

The fee table for the new registration statement should not include the securities that have been carried forward or the filing fee previously paid in connection with those securities, which will continue to be applied to those securities.

7. If relying on Rule 457(p) under the Securities Act (§ 230.457(p) of this chapter) to offset some or all of the filing fee due on this registration statement with the filing fee previously paid for unsold securities under an earlier effective registration statement, check the appropriate box in the Fee Table and provide the following information:

i. The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

ii. The amount of unsold securities or aggregate offering amount from the prior registration statement associated with the claimed offset;

iii. The file number of, and the name of the registrant that filed, the earlier registration statement from which the filing fee is offset;

iv. The initial filing date of the earlier registration statement; and

v. A statement that the registrant has either withdrawn the prior registration statement or has terminated or completed any offering that included the unsold securities under the prior registration statement.

If you were not the registrant under that earlier registration statement, checking the box affirms that you are that registrant's successor, majority-owned subsidiary, or parent owning more than 50% of the registrant's outstanding voting securities eligible to claim a filing fee offset. See the definitions of ''successor'' and ''majority-owned subsidiary'' in Rule 405 under the Securities Act.

8. If relying on Rule 457(b) under the Securities Act (§ 230.457(b) of this chapter) or Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to offset some or all of the filing fee due on this registration statement by amounts paid in connection with earlier filings relating to the same transaction, check the appropriate box in the Fee Table and provide the following information:

i. The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

ii. The type of filing or form type, file number, and initial filing date of the earlier registration statement or Exchange Act filing with which the earlier fee was paid; and

iii. If claiming an offset from an earlier Securities Act registration statement, a detailed explanation of the basis for the claimed offset.

9. If this Form includes a combined prospectus pursuant to Rule 429 under the Securities Act of 1933 (§ 230.429 of this chapter), check the appropriate box in the Fee Table and provide the following information outside the fee table: The file number(s) of the earlier effective registration statement(s), and the amount or maximum aggregate offering price of unsold securities registered on the earlier registration statement(s) that may be offered and sold using the combined prospectus.

10. If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in the Fee Table, including references to the provisions of Rule 457 (§ 230.457 of this chapter) relied upon.

11. Disclosure provided in response to these instructions must immediately follow the Fee Table.

General Instructions

* * * * *

D. Application of General Rules and Regulations

* * * * *

3. [Reserved]

* * * * *

F. Registration Statements Subject to Rule 415(a)(1)(viii) (§ 230.415(a)(1)(viii) of This Chapter)

If the registration statement relates to offerings of securities pursuant to Rule 415(a)(1)(viii), required information about the type of contemplated transaction (and the company being acquired) need only be furnished as of the date of initial effectiveness of the registration statement to the extent practicable. The required information about the specific transaction and the particular company being acquired must be included in the prospectus by means of a post-effective amendment. Each post-effective amendment filed to

provide required information about a specific transaction and particular company being acquired must include the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment relates.

* * * * *

■ 24. Amend Form F–10 (referenced in § 239.40) by:

■ a. Revising the ''Calculation of Registration Fee'' table;

■ b. Removing from immediately below the ''Calculation of Registration Fee'' table the text that begins with an asterisk and the text that begins with the phrase ''If as a result of stock splits, stock dividends or similar transactions,'';

■ c. Adding instructions immediately beneath the revised ''Calculation of Registration Fee'' table;

■ d. Revising paragraph G of General Instruction II;

■ e. Reserving paragraphs (102) through (106) of Part II—Information Not Required to be Delivered to Offerees or Purchasers; and

■ f. Adding paragraph (107) to Part II—Information Not Required to be Delivered to Offerees or Purchasers;

The additions and revisions read as follows:

Note: The text of Form F–10 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form F–10

Registration Statement Under the Securities Act of 1933

* * * * *

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Fee rate	Amount of registration fee	Reliance on rule(s) (check all that apply)
						Rule 429 ☐ Rule 457(b) or Rule 0–11(a)(2) ☐ Rule 457(o) ☐ Rule 457(p) ☐

Instructions to the ''Calculation of Registration Fee'' Table (''Fee Table'') and Related Disclosure:

1. If, as a result of stock splits, stock dividends, or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this registration statement.

2. For a fee calculated as specified in General Instruction II.H for an exchange offer, disclose the amount and value of securities that may be received by the registrant or cancelled upon the issuance of securities registered on this Form from United States residents, and explain how the value was calculated in accordance with General Instruction II.H.(1) or II.H.(2). Also disclose any amount of cash paid by the registrant in connection with the exchange, and any amount of cash received from United States residents by the registrant in connection with the exchange. In accordance with General Instruction II.H.(3), to determine the maximum aggregate offering price for such a transaction, the registrant should deduct any amount of cash paid by the registrant in connection with the exchange from, and add any amount of cash received from United States residents by the registrant in connection with the exchange to, the value of the securities to be received or cancelled as calculated in accordance with General Instruction II.H.(1) or II.H.(2). Omit from the fee table the maximum aggregate offering price per unit.

3. For a fee calculated as specified in General Instruction II.I for a business combination, disclose the amount and value of the equity securities of the predecessor companies held by United States residents being offered the registrant's securities, and explain how the value was calculated in accordance with General Instruction II.I.(1) or II.I.(2). Also disclose any amount of cash paid by the registrant in connection with the business combination, and any amount of cash received from United States residents by the registrant in connection with the business combination. In accordance with General Instruction II.H.(3), to determine the maximum aggregate offering price for such a transaction, the registrant should deduct any amount of cash paid by the registrant in connection with the business combination from, and add any amount of cash received from United States residents by the registrant in connection with the business combination to, the value of the equity securities of the predecessor companies held by United States residents being offered the registrant's securities as calculated in accordance with General Instruction II.I.(1) or II.I.(2). Omit from the fee table the maximum aggregate offering price per unit.

4. If relying on Rule 457(o) under the Securities Act (§ 230.457(o) of this chapter) to register securities on this Form by maximum aggregate offering price, check the appropriate box in the Fee Table and you may omit from the Fee Table the amount of securities to be registered and the proposed maximum offering price per unit.

5. When filing a pre-effective amendment that increases the amount of securities of any class to be registered, disclose, for each such class, the number of securities previously registered or, if the filing fee previously paid with respect to that class was calculated in reliance on Rule 457(o), the maximum aggregate offering price previously registered.

6. If you have filed a registration statement for two separate securities and then decide to increase the amount of one security and decrease the other, you may file a pre-effective amendment to reflect such increase and decrease in the Fee Table and reallocate the fees already paid under the registration statement between the two securities. If a pre-effective amendment is filed to increase the amount of securities of one or more registered classes and decrease the amount of securities of one or more registered classes, a registrant that did not rely on Rule 457(o) to calculate the filing fee due for the initial filing or latest pre-effective amendment to such filing may recalculate the total filing fee due for the registration statement in its entirety and claim an offset pursuant to Rule 457(b) in the amount of the filing fee previously paid in connection with the registration statement.

7. If relying on Rule 457(p) under the Securities Act (§ 230.457(p) of this chapter) to offset some or all of the filing fee due on this registration statement with the filing fee previously paid for unsold securities under an earlier effective registration statement, check the appropriate box in the Fee Table and provide the following information:

i. The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

ii. The amount of unsold securities or aggregate offering amount from the prior registration statement associated with the claimed offset;

iii. The file number of, and the name of the registrant that filed, the earlier registration statement from which the filing fee is offset;

iv. The initial filing date of the earlier registration statement; and

v. A statement that the registrant has either withdrawn the prior registration statement or has terminated or completed any offering that included the unsold securities under the prior registration statement.

If you were not the registrant under that earlier registration statement, checking the box affirms that you are that registrant's successor, majority-owned subsidiary, or parent owning more than 50% of the registrant's outstanding voting securities eligible to claim a filing fee offset. See the definitions of ''successor'' and ''majority-owned subsidiary'' in Rule 405 under the Securities Act.

8. If relying on Rule 457(b) under the Securities Act (§ 230.457(b) of this chapter) or Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to offset some or all of the filing fee due on this registration statement by amounts paid in connection with earlier filings relating to the same transaction, check the appropriate box in the Fee Table and provide the following information:

i. The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

ii. The type of filing or form type, file number, and initial filing date of the earlier registration statement or Exchange Act filing with which the earlier fee was paid; and

iii. If claiming an offset from an earlier Securities Act registration statement, a detailed explanation of the basis for the claimed offset.

9. If this Form includes a combined prospectus pursuant to Rule 429 under the Securities Act of 1933 (§ 230.429 of this chapter), check the appropriate box in the Fee Table and provide the following information outside the fee table: The file number(s) of the earlier effective registration statement(s), and the amount or maximum aggregate offering price of unsold securities registered on the earlier registration statement(s) that may be offered and sold using the combined prospectus.

10. If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in the Fee Table, including references to General Instructions II.G. through II.I. of this Form and the provisions of Rule 457 (§ 230.457 of this chapter) relied upon.

11. Disclosure provided in response to these instructions must immediately follow the Fee Table.

If it is proposed that this filing become effective pursuant to Rule 467(b), the following legend shall appear on the cover page of this Form:

''The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registration statement shall become effective as provided in Rule 467 under the Securities Act of 1933 or on such date as the Commission, acting pursuant to Section 8(a) of the Act, may determine.''

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

G. At the time of filing this registration statement, the Registrant shall pay to the Commission in accordance with the instructions to this Form and Rule 111 under the Securities Act a fee in U.S. dollars in the amount prescribed by Section 6 of the Securities Act. The amount of securities to be registered on this Form need not exceed the amount to be offered in the United States as part of the offering. The filing fee shall be computed in accordance with Rule 457 except that Rule 457(f) shall not apply.

* * * * *

Part II—Information Not Required To Be Delivered to Offerees or Purchasers

* * * * *

(102) through (106) [*Reserved*].

(107) A General Interactive Data File (as defined in § 232.11 of this chapter) presented in the manner provided by the EDGAR Filer Manual.

* * * * *

Part 240—General Rules and Regulations, Securities Exchange Act of 1934

■ 25. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.;* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111–203, 939A, 124 Stat. 1887 (2010); sec. 503 and 602, and Pub. L. 112–106, 126 Stat. 326 (2012), unless otherwise noted.

■ 26. Revise § 240.0–9 to read as follows:

§ 240.0–9 Payment of filing fees.

All payment of filing fees shall be made by wire transfer, or via the Automated Clearing House Network. Payment of filing fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter.

■ 27. Amend § 240.0–11 by revising paragraphs (a)(2), (b) introductory text, (c)(1) introductory text, (c)(2) introductory text, and (d) to read as follows:

§ 240.0–11 Filing fees for certain acquisitions, dispositions and similar transactions.

(a) * * *

(2) A required fee shall be reduced in an amount equal to any fee paid with respect to such transaction pursuant to either section 6(b) of the Securities Act of 1933 or any applicable provision of this rule; the fee requirements under section 6(b) shall be reduced in an amount equal to the fee paid the Commission with respect to a transaction under this regulation. No part of a filing fee is refundable.

* * * * *

(b) *Section 13(e)(1) filings.* At the time of filing such statement as the Commission may require pursuant to section 13(e)(1) of the Exchange Act, a fee equal to the product of the rate applicable under section 13(e) of the Exchange Act multiplied by the value of the securities proposed to be acquired by the acquiring person. The value of the securities proposed to be acquired shall be determined as follows:

* * * * *

(c) * * *

(1) For preliminary material involving a vote upon a merger, consolidation or acquisition of a company, a fee equal to the product of the rate applicable under section 14(g) of the Exchange Act

multiplied by the aggregate of, as applicable, the proposed cash payment and the value of the securities and other property to be transferred to security holders in the transaction. The fee is payable whether the registrant is acquiring another company or being acquired.

* * * * *

(2) For preliminary material involving a vote upon a proposed sale or other disposition of substantially all the assets of the registrant, a fee equal to the product of the rate applicable under section 14(g) of the Exchange Act multiplied by the aggregate of, as applicable, the cash and the value of the securities (other than its own) and other property to be received by the registrant. In the case of a disposition in which the registrant will not receive any property, such as at liquidation or spin-off, the fee shall be equal to the product of the rate applicable under section 14(g) of the Exchange Act multiplied by the aggregate of, as applicable, the cash and the value of the securities and other property to be distributed to security holders.

* * * * *

(d) *Section 14(d)(1) filings.* At the time of filing such statement as the Commission may require pursuant to section 14(d)(1) of the Act, a fee equal to the product of the rate applicable under section 14(g) of the Exchange Act multiplied by the aggregate of, as applicable, the cash and the value of the securities and other property offered by the bidder. Where the bidder is offering securities or other non-cash consideration for some or all of the securities to be acquired, whether or not in combination with a cash payment for the same securities, the value of the consideration to be offered for such securities shall be based upon the market value of the securities to be received by the bidder as established in accordance with paragraph (a)(4) of this section.

■ 28. Amend § 240.13e–1 by:

■ a. Adding paragraph (a)(7);

■ b. Revising paragraph (b);

■ c. Redesignating paragraph (c) as paragraph (d); and

■ d. Adding a new paragraph (c).

The additions and revisions read as follows:

§ 240.13e–1 Purchase of securities by the issuer during a third-party tender offer.

* * * * *

(a) * * *

(7) The title of each class of securities to which the transaction applies, transaction value, fee rate, amount of filing fee and, as applicable, reliance on § 240.0–11(a)(2) in the tabular form indicated.

CALCULATION OF FILING FEE

(i) Title of each class of securities to which transaction applies	(ii) Transaction valuation	(iii) Fee rate	(iv) Amount of filing fee	(v) Reliance on Rule 0–11(a)(2) ☐

Instructions to paragraph (a)(7). 1. State the amount of the transaction valuation on which the filing fee is calculated and explain how the transaction valuation was determined.

2. When filing an amendment that increases the transaction valuation, disclose the previous transaction valuation.

3. If relying on Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to offset some or all of the filing fee due on this statement by amounts paid in connection with earlier filings relating to the same transaction, check the box in the Fee Table and provide the following information:

i. The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

ii. The type of filing or form type, file number, and initial filing date of the earlier registration statement or Exchange Act filing with which the earlier fee was paid; and

iii. If claiming an offset from an earlier Securities Act registration statement, a detailed explanation of the basis for the claimed offset.

4. If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in the Fee Table, including references to the provisions of Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) relied upon.

5. Disclosure provided in response to these instructions must immediately follow the Fee Table.

(b) Pays the fee required by § 240.0–11 when it files the initial statement and any amendment with respect to which an additional fee is due.

(c) Submits to the Commission a General Interactive Data File (as defined in § 232.11) in the manner provided by the EDGAR Filer Manual. The General Interactive Data File must be submitted with the statement filed pursuant to paragraph (a) of this rule.

* * * * *

■ 29. Amend § 240.13e-100 by:

■ a. Revising the text between ''Calculation of Filing Fee'' and the heading ''General Instructions''; and

■ b. Revising paragraph B of the General Instructions.

The revisions read as follows:

§ 240.13e–100 Schedule 13E–3, Transaction statement under section 13(e) of the Securities Exchange Act of 1934 and Rule 13e–3 (§ 240.13e–3) thereunder.

* * * * *

CALCULATION OF FILING FEE

Title of each class of securities to which transaction applies	Transaction valuation	Fee rate	Amount of filing fee	Reliance on Rule 0–11(a)(2) ☐

Instructions to the ''Calculation of Filing Fee'' Table (''Fee Table''): Instruction 1 to the Fee Table. State the amount of the transaction valuation on which the filing fee is calculated and explain how the transaction valuation was determined.

Instruction 2 to the Fee Table. When filing an amendment that increases the transaction valuation, disclose the previous transaction valuation.

Instruction 3 to the Fee Table. If relying on Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to offset some or all of the filing fee due on this transaction statement by amounts paid in connection with earlier filings relating to the same transaction, check the box in the Fee Table and provide the following information:

i. The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

ii. The type of filing or form type, file number, and initial filing date of the earlier registration statement or Exchange Act filing with which the earlier fee was paid; and

iii. If claiming an offset from an earlier Securities Act registration statement, a detailed explanation of the basis for the claimed offset.

Instruction 4 to the Fee Table. If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in the Fee Table, including references to the provisions of Rule 0–11 under the Exchange Act (§ 240.0–11 of this chapter) relied upon.

Instruction 5 to the Fee Table. Disclosure provided in response to these instructions must immediately follow the Fee Table.

General Instructions:

* * * * *

B. This filing must be accompanied by a fee payable to the Commission as required by § 240.0–11(b). A General Interactive Data File (as defined in § 232.11) is required to be submitted in the manner provided by the EDGAR Filer Manual. The General Interactive Data File must be submitted with this filing.

* * * * *

■ 30. Amend § 240.13e–102 by:

■ a. Revising the text between ''(Date tender offer first published, sent or given to securityholders)'' and ''General Instructions''; and

■ b. Revising paragraph A.(1) under ''II. Filing Instructions and Fees''.

The revisions read as follows:

§ 240.13e–102 Schedule 13E–4F. Tender offer statement pursuant to section 13(e)(1) of the Securities Exchange Act of 1934 and § 240.13e–4 thereunder.

* * * * *

(Date tender offer first published, sent or given to securityholders)

CALCULATION OF FILING FEE

Title of each class of securities to which transaction applies	Transaction valuation	Fee rate	Amount of filing fee	Reliance on Rule 0–11(a)(2) ☐

Instructions to the ''Calculation of Filing Fee'' Table (''Fee Table''):

1. State the amount of the transaction valuation on which the filing fee is calculated and explain how the transaction valuation was determined.

2. When filing an amendment that increases the transaction valuation, disclose the previous transaction valuation.

3. If relying on Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to offset some or all of the filing fee due on this transaction statement by amounts paid in connection with earlier filings relating to the same transaction, check the box in the Fee Table and provide the following information:

i. The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

ii. The type of filing or form type, file number, and initial filing date of the earlier registration statement or Exchange Act filing with which the earlier fee was paid; and

iii. If claiming an offset from an earlier Securities Act registration statement, a detailed explanation of the basis for the claimed offset.

4. See General Instruction II. C. of this Schedule for additional rules governing the calculation of the filing fee.

5. If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in the Fee Table, including references to the provisions of Rule 0–11 under the Exchange Act (§ 240.0–11 of this chapter) relied upon.

6. Disclosure provided in response to these instructions must immediately follow the Fee Table.

General Instructions

* * * * *

II. Filing Instructions and Fees

A.(1) The issuer must file this Schedule and any amendment to the Schedule (see Part I, Item 1.(b)), including all exhibits and other documents filed as part of the Schedule or amendment, in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR part 232). A General Interactive Data File (as defined in § 232.11) is required to be submitted in the manner provided by the EDGAR Filer Manual. The General Interactive Data File must be submitted with this Schedule. For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 551–8900. For assistance with the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 551–3610.

* * * * *

■ 31. Amend § 240.14a–101 by revising the text between ''(Name of Person(s) Filing Proxy Statement, if other than the Registrant)'' and ''Notes'' to read as follows:

§ 14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)
Payment of Filing Fee (Check all boxes that apply):

[ ] No fee required

[ ] Fee paid previously with preliminary materials

[ ] Fee computed on table below per Exchange Act Rules 14a–6(i)(1) and 0–11

CALCULATION OF FILING FEE

Title of each class of securities to which transaction applies	Aggregate number of securities to which transaction applies	Per unit price or other underlying value of trans-action computed pursuant to Exchange Act Rule 0–11	Proposed maximum aggregate value of transaction	Fee rate	Amount of filing fee	Reliance on Rule 0–11(a)(2) ☐

Instructions to the ''Calculation of Filing Fee'' Table (''Fee Table''):

1. State the amount of the transaction valuation on which the filing fee is calculated and explain how the transaction valuation was determined.

2. When filing an amendment that increases the transaction valuation, disclose the previous transaction valuation.

3. If relying on Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to offset some or all of the filing fee due on this proxy statement by amounts paid in connection with earlier filings relating to the same transaction, check the box in the Fee Table and provide the following information:

i. The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

ii. The type of filing or form type, file number, and initial filing date of the earlier registration statement or Exchange Act filing with which the earlier fee was paid; and

iii. If claiming an offset from an earlier Securities Act registration statement, a detailed explanation of the basis for the claimed offset.

4. If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in the Fee Table, including references to the provisions of Rule 0–11 under the Exchange Act (§ 240.0–11 of this chapter) relied upon.

5. Disclosure provided in response to these instructions must immediately follow the Fee Table.

6. If filing fee information is required to be provided, a General Interactive Data File (as defined in § 232.11 of this chapter) is required to be submitted to the Commission in the manner provided by the EDGAR Filer Manual. The General Interactive Data File must be submitted with this schedule.

Notes

* * * * *

■ 32. Amend § 240.14c–101 by revising the text between ''(Name of Registrant As Specified In Its Charter)'' and ''Note'' to read as follows:

§ 14c–101 Schedule 14C. Information required in information statement

* * * * *

(Name of Registrant As Specified In Its Charter)

Payment of Filing Fee (Check all boxes that apply):

[ ] No fee required

[ ] Fee paid previously with preliminary materials

[ ] Fee computed on table below per Exchange Act Rules 14c–5(g) and 0–11

CALCULATION OF FILING FEE

Title of each class of securities to which transaction applies	Aggregate number of securities to which transaction applies	Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0–11	Proposed maximum aggregate value of transaction	Fee rate	Amount of filing fee	Reliance on Rule 0–11(a)(2) ☐

Instructions to the ''Calculation of Filing Fee'' Table (''Fee Table''):

1. State the amount of the transaction valuation on which the filing fee is calculated and explain how the transaction valuation was determined.

2. When filing an amendment that increases the transaction valuation, disclose the previous transaction valuation.

3. If relying on Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to offset some or all of the filing fee due on this information statement by amounts paid in connection with earlier filings relating to the same transaction, check the box in the Fee Table and provide the following information:

i. The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

ii. The type of filing or form type, file number, and initial filing date of the earlier registration statement or Exchange Act filing with which the earlier fee was paid; and

iii. If claiming an offset from an earlier Securities Act registration statement, a detailed explanation of the basis for the claimed offset.

4. If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in the Fee Table, including references to the provisions of Rule 0–11 under the Exchange Act (§ 240.0–11 of this chapter) relied upon.

5. Disclosure provided in response to these instructions must immediately follow the Fee Table.

6. If filing fee information is required to be provided, a General Interactive Data File (as defined in § 232.11 of this chapter) is required to be submitted to the Commission in the manner provided by the EDGAR Filer Manual. The General Interactive Data File must be submitted with this schedule.

Note

* * * * *

■ 33. Amend § 240.14d–100 by:
■ a. Revising the ''Calculation of Filing Fee'' table; and
■ b. Revising the text between the ''Calculation of Filing Fee'' table and the text ''Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.''

The revisions read as follows:

§ 240.14d–100 Schedule TO. Tender offer statement under section 14(d)(1) or 13(e)(1) of the Securities Exchange Act of 1934.

* * * * *

CALCULATION OF FILING FEE

Title of each class of securities to which transaction applies	Transaction valuation	Fee rate	Amount of filing fee	Reliance on Rule 0–11(a)(2) ☐

Instructions to the ''Calculation of Filing Fee'' Table (''Fee Table''):

1. State the amount of the transaction valuation on which the filing fee is calculated and explain how the transaction valuation was determined.

2. When filing an amendment that increases the transaction valuation, disclose the previous transaction valuation.

3. If relying on Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to offset some or all of the filing fee due on this transaction statement by amounts paid in connection with earlier filings relating to the same transaction, check the box in the Fee Table and provide the following information:

i. The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

ii. The type of filing or form type, file number, and initial filing date of the earlier registration statement or Exchange Act filing with which the earlier fee was paid; and

iii. If claiming an offset from an earlier Securities Act registration statement, a detailed explanation of the basis for the claimed offset.

4. If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in the Fee Table, including references to the provisions of Rule 0–11 under the Exchange Act (§ 240.0–11 of this chapter) relied upon.

5. Disclosure provided in response to these instructions must immediately follow the Fee Table.

6. If filing fee information is required to be provided, a General Interactive Data File (as defined in § 232.11 of this chapter) is required to be submitted to the Commission in the manner provided by the EDGAR Filer Manual. The General Interactive Data File must be submitted with this schedule.

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

* * * * *

■ 34. Amend § 240.14d-102 by revising the text between ''(Date tender offer first published, sent or given to securityholders)'' and ''General Instructions'' to read as follows:

§ 14d–102 Schedule 14D–1F. Tender offer statement pursuant to rule 14d–1(b) under the Securities Exchange Act of 1934.

* * * * *

CALCULATION OF FILING FEE

Title of each class of securities to which transaction applies	Transaction valuation	Fee rate	Amount of filing fee	Reliance on Rule 0–11(a)(2) ☐

Instructions to the ''Calculation of Filing Fee'' Table (''Fee Table''):

1. State the amount of the transaction valuation on which the filing fee is calculated and explain how the transaction valuation was determined. See General Instruction II.C regarding the calculation of the filing fee.

2. When filing an amendment that increases the transaction valuation, disclose the previous transaction valuation. See General Instruction II.D regarding increases in aggregate consideration offered and filing fees.

3. If relying on Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to offset some or all of the filing fee due on this transaction statement by amounts paid in connection with earlier filings relating to the same transaction, check the box in the Fee Table and provide the following information:

i. The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

ii. The type of filing or form type, file number, and initial filing date of the earlier registration statement or Exchange Act filing with which the earlier fee was paid; and

iii. If claiming an offset from an earlier Securities Act registration statement, a detailed explanation of the basis for the claimed offset.

4. If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in the Fee Table, including references to the provisions of Rule 0–11 under the Exchange Act (§ 240.0–11 of this chapter) relied upon.

5. Disclosure provided in response to these instructions must immediately follow the Fee Table.

6. A General Interactive Data File (as defined in § 232.11 of this chapter) is required to be submitted to the Commission in the manner provided by the EDGAR Filer Manual. The General Interactive Data File must be submitted with this Schedule.

General Instructions

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 35. The general authority citation for part 270 continues to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

■ 36. Revise § 270.0–8 to read as follows:

§ 270.0–8 Payment of fees.

All payment of fees shall be made by wire transfer, or via the Automated Clearing House Network. Payment of fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 37. The authority citation for part 274 is revised to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78*o*(d), 80a–8, 80a–24, 80a–26, 80a–29, Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), and sec. 803(b), Pub. L. 115–141, 132 Stat. 348 (2018), unless otherwise noted.

■ 38. Amend Form N–2 (referenced in §§ 239.14 and 274.11a–1) by:

■ a. Revising the ''Calculation of Registration Fee Under the Securities Act of 1933'' table; and

■ b. Revising General Instruction H.

The revisions read as follows:

Note: The text of Form N–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

* * * * *

CALCULATIONS OF REGISTRATION FEE UNDER THE SECURITIES ACT OF 1933

Title of securities being registered	Amount being registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Fee rate	Amount of registration fee

* * * * *

H. Preparation of the Registration Statement or Amendment

1. The following instructions for completing Form N–2 are divided into three parts. Part A relates to the prospectus required by Section 10(a) of the Securities Act. Part B relates to the SAI that must be provided upon request to recipients of the prospectus. Part C relates to other information that is required to be in the registration statement.

2. Interactive Data Files

a. An Interactive Data File as defined in Rule 11 of Regulation S–T is required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T for any registration statement or post-effective amendment thereto on Form N–2 containing the cover page information specified in Rule 405 of Regulation S–T. The Interactive Data File must be submitted either with the filing, or as an amendment to the registration statement to which it relates that is submitted on or before the date the registration statement or post-effective amendment that contains the related information becomes effective.

b. The Interactive Data File must be submitted in accordance with the specifications in the EDGAR Filer Manual.

* * * * *

■ 39. Amend Form N–5 (referenced in §§ 239.24 and 274.5) by:

■ a. Revising the ''Calculation of Registration Fee Under the Securities Act of 1933'' table; and

■ b. Adding General Instruction H.

The revisions and additions read as follows:

Note: The text of Form N–5 does not, and this amendment will not, appear in the Code of Federal Regulations.

* * * * *

CALCULATION OF REGISTRATION FEE UNDER THE SECURITIES ACT OF 1933

Title of securities being registered	Amount being registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Fee rate	Amount of registration fee

* * * * *

H. Interactive Data File

(a) An Interactive Data File as defined in Rule 11 of Regulation S–T is required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T for any registration statement or post-effective amendment thereto on Form N–5 containing the cover page information specified in Rule 405 of Regulation S–T. The Interactive Data File must be submitted either with the filing, or as an amendment to the registration statement to which it relates that is submitted on or before the date the registration statement or post-effective amendment that contains the related information becomes effective.

(b) The Interactive Data File must be submitted in accordance with the specifications in the EDGAR Filer Manual.

* * * * *

■ 40. Amend Form 24F–2 (referenced in § 274.24 of this chapter) by revising Item 9 to read as follows:

Note: The text of Form 24F–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

* * * * *

9. Date the registration fee and any interest payment was sent to the Commission:

Method of Delivery:

☐ Wire Transfer

☐ ACH

* * * * *

By the Commission.

Dated: October 24, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–23594 Filed 12–26–19; 8:45 am]

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Part IV

Department of Energy

10 CFR Part 430

Energy Conservation Program: Energy Conservation Standards for General Service Incandescent Lamps; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2019–BT–STD–0022]

RIN 1904–AE76

Energy Conservation Program: Energy Conservation Standards for General Service Incandescent Lamps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final determination.

SUMMARY: The Energy Policy and Conservation Act, as amended (''EPCA''), directs DOE to initiate a rulemaking for general service lamps (''GSLs'') that, among other requirements, determines whether standards in effect for general service incandescent lamps (''GSILs,'' a subset of GSLs) should be amended. On September 5, 2019, the U.S. Department of Energy (''DOE'') published a notice of proposed determination (''NOPD'') in which DOE initially determined that energy conservation standards for GSILs do not need to be amended. In this final determination, DOE responds to comments received on the September 2019 GSIL NOPD and does not adopt amended energy conservation standards for GSILs. DOE has determined that amended energy conservation standards for GSILs would not be economically justified.

DATES: The effective date of this rule is December 27, 2019.

ADDRESSES: The docket for this rulemaking, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *https://www.regulations.gov.* All documents in the docket are listed in the *https://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *https://www.regulations.gov/docket?D=EERE-2019-BT-STD-0022.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov.*

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I. Synopsis of the Final Determination

Title III, Part B [1] of the Energy Policy and Conservation Act, as amended (''EPCA''),[2] established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include GSILs, the subject of this rulemaking.

DOE is issuing this final determination pursuant to the EPCA requirement that DOE must initiate a rulemaking for GSLs and, among other requirements, determine whether standards in effect for GSILs should be amended. (42 U.S.C. 6295(i)(6)(A)) DOE has concluded that energy conservation standards for GSILs do not need to be amended because more stringent standards are not economically justified. For ease of reference, the following provides a list of acronyms used in this final determination.

Term(s)	Reference in this final determination
Administrative Procedure Act	APA
Annual Energy Outlook	AEO
Capital Asset Pricing Model	CAPM
Code of Federal Regulations	CFR
Color Rendering Index	CRI
Commercial Building Stock Assessment	CBSA
Commercial Buildings Energy Consumption Survey	CBECS
Compact Fluorescent Lamp	CFL
Compliance Certification Management System	CCMS
Correlated Color Temperature	CCT
Direct Heating Equipment	DHE
Efficiency Level	EL
Energy Independence and Security Act of 2007	EISA
Energy Information Association	EIA
Energy Policy Conservation Act	EPCA
Environmental Assessment	EA
Environmental Impact Statement	EIS
Executive Order	EO
Final Information Quality Bulletin for Peer Review	Bulletin
Final Regulatory Flexibility Analysis	FRFA
Full-Fuel-Cycle	FFC
General Service Incandescent Lamp	GSIL
General Service Lamp	GSL
Government Regulatory Impact Model	GRIM
Halogen Infrared	HIR
Hours of Use	HOU
Incandescent Reflector Lamp	IRL
Industry Net Present Value	INPV
Infrared	IR
Initial Regulatory Flexibility Analysis	IRFA
Life-Cycle Cost	LCC
Light-Emitting Diode	LED
Lighting Market Characterization	LMC
Manufacturer Impact Analysis	MIA
Manufacturer Production Cost	MPC
Manufacturer Selling Price	MSP
Massachusetts Institute of Technology	MIT
Medium Screw Base	MSB
National Energy Modeling System	NEMS
National Energy Savings	NES
National Environmental Policy Act of 1969	NEPA
National Impact Analysis	NIA
Net Present Value	NPV
Notice of Data Availability	NODA
Notice of Proposed Definition and Data Availability	NOPDDA
Notice of Proposed Determination	NOPD
Notice of Proposed Rulemaking	NOPR
Office of Management and Budget	OMB
Office of Science and Technology Policy	OSTP
Organic Light-Emitting Diode	OLED
Out-of-Scope Substitute Lamps	LCC with Substitution
Parabolic Reflector	PAR
Payback Period	PBP
Regulatory Reform Officer	RRO
Request for Information	RFI
Research and Development	R&D
Residential Building Stock Assessment Metering Study	RBSAM
Residential Energy Consumption Survey	RECS
Secretary of Energy	Secretary
Selling, General, and Administrative	SG&A

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (October 23, 2018).

Term(s)	Reference in this final determination
Small Business Administration	SBA
Survey of Consumer Finances	SCF
Technical Support Document	TSD
Trial Standard Level	TSL
U.S. Department of Energy	DOE
U.S. Securities and Exchange Commission	SEC
Unfunded Mandates Reform Act of 1995	UMRA
Volts	V

II. Introduction

The following section briefly discusses the statutory authority underlying this final determination, as well as some of the relevant historical background related to the establishment of standards for GSILs.

A. Authority

Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which includes GSILs (a subset of GSLs) as covered products. (42 U.S.C. 6292(a)(14)) Amendments to EPCA in the Energy Independence and Security Act of 2007 (''EISA'') directed DOE to conduct two rulemaking cycles to evaluate energy conservation standards for GSLs. (42 U.S.C. 6295(i)(6)(A)–(B)) GSLs are currently defined in EPCA to include GSILs, compact fluorescent lamps (CFLs), general service light-emitting diode (LED) lamps and organic light-emitting diode (OLED) lamps, and any other lamps that the Secretary of Energy (''Secretary'') determines are used to satisfy lighting applications traditionally served by GSILs. (42 U.S.C. 6291(30)(BB))

For the first rulemaking cycle, Congress instructed DOE to initiate a rulemaking process prior to January 1, 2014, to consider two questions: (1) Whether to amend energy conservation standards for general service lamps and (2) whether ''the exemptions for certain incandescent lamps should be maintained or discontinued.'' (42 U.S.C. 6295(i)(6)(A)(i)) Further, if the Secretary determines that the standards in effect for GSILs should be amended, EPCA provides that a final rule must be published by January 1, 2017, with a compliance date at least 3 years after the date on which the final rule is published. (42 U.S.C. 6295(i)(6)(A)(iii)) If DOE fails to complete a rulemaking in accordance with 42 U.S.C. 6295(i)(6)(A)(i)–(iv) or if a final rule from the first rulemaking cycle does not produce savings greater than or equal to the savings from a minimum efficacy standard of 45 lumens per watt, the statute provides a ''backstop'' under which DOE must prohibit sales of GSLs that do not meet a minimum 45 lumens per watt standard beginning on January 1, 2020. (42 U.S.C. 6295(i)(6)(A)(v))

The EISA-prescribed amendments further directed DOE to initiate a second rulemaking cycle by January 1, 2020, to determine whether standards in effect for GSILs should be amended with more-stringent requirements and if the exemptions for certain incandescent lamps should be maintained or discontinued. (42 U.S.C. 6295(i)(6)(B)(i)) For the second review of energy conservation standards, the scope is not limited to incandescent lamp technologies. (42 U.S.C. 6295(i)(6)(B)(ii))

The energy conservation program for covered products under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. The Federal Trade Commission (FTC) is primarily responsible for labeling, and DOE implements the remainder of the program.

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(o)(3)(A) and (r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedure for GSILs appears at Title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendix R.

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) Absent limited exceptions, states generally are precluded from adopting energy conservation standards for covered products both before and after an energy conservation standard becomes effective. (42 U.S.C. 6297(b) and (c)) However, the statute contains three narrow exceptions to this general preemption provision specific to GSLs in 42 U.S.C. 6295(i)(6)(A)(vi). Under the limited exceptions from preemption specific to GSLs that Congress included in EPCA, only California and Nevada have authority to adopt, with an effective date beginning January 1, 2018 or after, either: (1) A final rule adopted by the Secretary in accordance with 42 U.S.C. 6295(i)(6)(A)(i)–(iv); (2) if a final rule has not been adopted in accordance with 42 U.S.C. 6295(i)(6)(A)(i)–(iv), the backstop requirement under 42 U.S.C. 6295(i)(6)(A)(v); or (3) in the case of California only, if a final rule has not been adopted in accordance with 42 U.S.C. 6295(i)(6)(A)(i)–(iv), any California regulations related to ''these covered products'' adopted pursuant to state statute in effect as of the date of enactment of EISA. (42 U.S.C. 6295(i)(6)(A)(vi)) Because none of these narrow exceptions from preemption are available to California and Nevada, all states, including California and Nevada, are prohibited from adopting energy conservation standards for GSLs.[3]

Pursuant to the amendments contained in EISA, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt

[3] DOE has provided a more detailed explanation as to why the preemption exceptions are not available to California and Nevada in its General Service Lamps definition final rule published on September 5, 2019. 84 FR 46661, as well as in section V.E. of this document.

a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedure for GSILs does not address standby mode and off mode energy use because DOE concluded in a 2009 final rule that these modes of energy consumption were not applicable to the lamps. 74 FR 31829, 31833 (July 6, 2009). In this analysis, DOE considers only active mode energy use in its determination of whether energy conservation standards for GSILs need to be amended.

DOE is prohibited from prescribing an amended standard that DOE determines will not result in significant conservation of energy, is not technologically feasible, or is not economically justified. (42 U.S.C. 6295(o)(3)) An evaluation of economic justification requires that DOE determine whether the benefits of a standard exceed its burdens through consideration, to the greatest extent practicable, of the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

DOE is publishing this final determination in satisfaction of EPCA's requirement to determine whether the standards in effect for GSILs should be amended. (42 U.S.C. 6295(i)(6)(A)(i) and (iii))

B. Background

1. Current Standards

In a final rule published on March 23, 2009, DOE codified the current energy conservation standards, prescribed by EISA, for GSILs manufactured after January 1, 2012; January 1, 2013; or January 1, 2014. 74 FR 12058. These standards require a color rendering index (''CRI'') greater than or equal to 80 for standard spectrum lamps (or greater than or equal to 75 for modified spectrum lamps) and, for four specified lumen ranges, a rated wattage no greater than and a rated lifetime no less than the values set forth in DOE's regulations at 10 CFR 430.32(x)(1) and repeated in Table II.1 and Table II.2 of this document.

TABLE II.1—FEDERAL ENERGY EFFICIENCY STANDARDS FOR STANDARD SPECTRUM GSILS

Rated lumen ranges	Maximum rate wattage	Minimum rate life-time (hrs)	Effective date
1490–2600	72	1,000	1/1/2012
1050–1489	53	1,000	1/1/2013
750–1049	43	1,000	1/1/2014
310–749	29	1,000	1/1/2014

TABLE II.2—FEDERAL ENERGY CONSERVATION STANDARDS FOR MODIFIED SPECTRUM GSILS

Rated lumen ranges	Maximum rate wattage	Minimum rate life-time (hrs)	Effective date
1118–1950	72	1,000	1/1/2012
788–1117	53	1,000	1/1/2013
563–787	43	1,000	1/1/2014
232–562	29	1,000	1/1/2014

2. History of Standards Rulemaking for GSILs

GSILs are a subset of GSLs. As described in section II.A, EPCA directed DOE to conduct two rulemaking cycles to evaluate energy conservation standards for GSLs and outlined several specific criteria for each rulemaking cycle. DOE initiated the first GSL standards rulemaking process by publishing in the **Federal Register** a notice of a public meeting and availability of a framework document. 78 FR 73737 (December 9, 2013); see also 79 FR 73503 (December 11, 2014) (notice of public meeting and availability of preliminary analysis). DOE later issued a notice of proposed rulemaking (NOPR) to propose amended energy conservation standards for GSLs. 81 FR 14528, 14629–14630 (March 17, 2016) (the March 2016 GSL NOPR). The March 2016 GSL NOPR focused on the first question that Congress directed DOE to consider—whether to amend energy conservation standards for general service lamps. (42 U.S.C. 6295(i)(6)(A)(i)(I)) In the March 2016 GSL NOPR proposing energy conservation standards for GSLs, DOE stated that it would be unable to undertake any analysis regarding GSILs and other incandescent lamps because of a then applicable congressional restriction (the Appropriations Rider [4]) on the use of appropriated funds to implement or enforce 10 CFR 430.32(x). 81 FR 14528, 14540–14541 (March 17, 2016). Notably, the applicability of this Appropriations Rider, which had been

[4] Section 312 of the Consolidated and Further Continuing Appropriations Act, 2016 (Pub. L. 114–113, 129 Stat. 2419) prohibits expenditure of funds appropriated by that law to implement or enforce: (1) 10 CFR 430.32(x), which includes maximum wattage and minimum rated lifetime requirements for GSILs; and (2) standards set forth in section 325(i)(1)(B) of EPCA (42 U.S.C. 6295(i)(1)(B)), which sets minimum lamp efficiency ratings for incandescent reflector lamps.

extended in multiple appropriations through 2017, is no longer in effect.[5]

In response to comments on the March 2016 GSL NOPR, DOE published a notice of proposed definition and data availability (''NOPDDA''), which proposed to amend the definitions of GSIL, GSL, and other supporting terms. 81 FR 71794, 71815 (Oct. 18, 2016). DOE explained that the October 2016 NOPDDA related to the second question that Congress directed DOE to consider—whether ''the exemptions for certain incandescent lamps should be maintained or discontinued,'' and stated explicitly that the NOPDDA was not a rulemaking to establish an energy conservation standard for GSLs. (42 U.S.C. 6295(i)(6)(A)(i)(II)); see also 81 FR 71798. The relevant ''exemptions,'' DOE explained, referred to the 22 categories of incandescent lamps that are statutorily excluded from the definitions of GSIL and GSL. 81 FR 71798. In the October 2016 NOPDDA, DOE clarified that it was defining what lamps constitute GSLs so that manufacturers could understand how any potential energy conservation standards might apply to the market. *Id.*

On January 19, 2017, DOE published two final rules concerning the definition of GSL and related terms. 82 FR 7276; 82 FR 7322. The January 2017 definition final rules amended the definitions of GSIL and GSL by bringing certain categories of lamps that had been excluded by statute from the definition of GSIL within the definitions of GSIL and GSL. Like the October 2016 NOPDDA, DOE stated that the January 2017 definition final rules related only to the second question that Congress directed DOE to consider, regarding whether to maintain or discontinue certain ''exemptions.'' (42 U.S.C. 6295(i)(6)(A)(i)(II)). That is, neither of the two final rules issued on January 19, 2017, purported to establish energy conservation standards applicable to GSLs.

With the removal of the Appropriations Rider in the Consolidated Appropriations Act, 2017, DOE is no longer restricted from undertaking analysis and decision making required by the first question presented by Congress, *i.e.,* whether to amend energy conservation standards for general service lamps, including GSILs. Thus, on August 15, 2017, DOE published a notice of data availability (NODA) and request for information seeking data for GSILs and other incandescent lamps. 82 FR 38613 (August 2017 NODA). The purpose of this NODA was to assist DOE in making a decision on the first question posed to DOE by Congress; *i.e.,* a determination regarding whether standards for GSILs should be amended. Comments submitted in response to the NODA also led DOE to re-consider the decisions it had already made with respect to the second question presented to DOE; *i.e.,* whether the exemptions for certain incandescent lamps should be maintained or discontinued. As a result of the comments received in response to the August 2017 NODA, DOE re-assessed the legal interpretations underlying certain decisions made in the January 2017 definition final rules and issued a NOPR on February 11, 2019 to withdraw the revised definitions of GSL, GSIL, and the supporting definitions established in the January 2017 definition rules (the February 2019 NOPR). 84 FR 3120. DOE held a public meeting on February 28, 2019 to hear oral comments and solicit information and data relevant to the February 2019 NOPR. Representatives for manufacturers, trade associations, environmental and energy efficiency advocates, and other interested parties attended the meeting. On September 5, 2019, DOE published a final rule withdrawing the revised definitions of GSL, GSIL, and supplemental terms established in the January 2017 definition final rules and maintaining the existing definitions of GSL and GSIL currently found in DOE's regulations (the 2019 GSL Definition Rule). 84 FR 46661.

DOE used the data and comments received in response to the August 2017 NODA and any relevant data and comments received in response to the February 2019 NOPR to conduct an analysis of whether energy conservation standards for GSILs need to be amended. DOE published a notice of proposed determination on September 5, 2019 that proposed not to amend standards for GSILs because more stringent standards were not economically justified. 84 FR 46830. DOE considers comments received in response to the September 2019 GSIL NOPD in this final determination.

In addition to comments received at the public meeting, DOE received 24,166 written comments in response to the September 2019 GSIL NOPD contained in 105 documents posted in the docket at *https://www.regulations.gov/docket?D=EERE-2019-BT-STD-0022.* The organizations that submitted written comments or commented at the public meeting are listed in Table II.3.

TABLE II.3—SEPTEMBER 2019 GSIL NOPD WRITTEN COMMENTS FROM ORGANIZATIONS

Organization(s)	Reference in this final determination	Organization Type
Alliance to Save Energy	ASE	Efficiency Organization.
American Institute of Architects	AIA	Trade Association.
Appliance Standards Awareness Project	ASAP	Efficiency Organization.
Appliance Standards Awareness Project, American Council for an Energy Efficient Economy, Natural Resources Defense Fund, and National Consumer Law Center.	Joint Advocates	Efficiency Organizations.
Attorneys General of NY, CA, CO, CT, DC, IL, MA, MD, ME, MI, MN, NJ, NV, OR, VE, WA, New York City.	State Attorneys General	State/Federal Official or Agency.
California Energy Commission	CEC	State/Federal Official or Agency.
Colorado Energy Office and Colorado Department of Health and the Environment	State of Colorado	State/Federal Official or Agency.
Competitive Enterprise Institute, The Heritage Foundation, Eagle Forum, FreedomWorks Foundation, Thomas Jefferson Institute for Public Policy, Rio Grande Foundation, Nevada Policy Research Institute, Tradition Family Property Inc., Committee for a Constructive Tomorrow, Americans for Prosperity, Ethan Allen Institute, National Center for Public Policy Research and Project 21, and The Heartland Institute, 60 Plus Association (CEI et al).	Free Market Organizations	Free Market Organizations.

[5] See, the Consolidated Appropriations Act of 2017 (Pub. L. 115–31, div. D, tit. III); See also, Consolidated Appropriations Act, 2018 (Pub. L. 115–141); Continuing Appropriations Act, 2019 (Pub. L. 115–245).

TABLE II.3—SEPTEMBER 2019 GSIL NOPD WRITTEN COMMENTS FROM ORGANIZATIONS—Continued

Organization(s)	Reference in this final determination	Organization Type
Consumer Federation of America	CFA	Consumer Advocate.
Fourteen U.S. Senators (Edward J. Markey, Jeanne Shaheen, Maria Cantwell, Patty Murray, Tina Smith, Sheldon Whitehouse, Richard Blumenthal, Mazie K. Hirono, Jeffrey A. Merkley, Jack Reed, Bernard Sanders, Ron Wyden, Chris Van Hollen, and Catherine Cortez Masto).	U.S. Senators	State/Federal Official or Agency.
Edison Electric Institute	EEI	Utility Association.
General Electric Lighting	GE	Manufacturer.
Institute for Policy Integrity	IPI	Think Tank.
National Electrical Manufacturers Association	NEMA	Trade Association.
Natural Resources Defense Council	NRDC	Efficiency Organization.
Northwest Power and Conservation Council	NPCC	Regional Agency/Association.
Pacific Gas and Electric, Southern California Edison, San Diego Gas and Electric	CA IOUs	Utilities.
Pennsylvania Department of Environmental Protection	PA DEP	State/Federal Official or Agency.
Sierra Club and Earthjustice	Sierra Club and Earthjustice.	Efficiency Organizations.
Westinghouse Lighting	Westinghouse	Manufacturer.

In addition to the comments from organizations listed in Table II.3, DOE received over 80 comments from individuals and 24,060 comments submitted by individuals via form letter. A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[6]

III. General Discussion

A. Product Classes and Scope of Coverage

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justify differing standards. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors that DOE determines are appropriate. (42 U.S.C. 6295(q)) The product classes for this final determination are discussed in further detail in section VI.A.5 of this document. This final determination covers GSILs as currently defined in 10 CFR 430.2, which is the same as the statutory definition for GSIL. The scope of coverage is discussed in further detail in section VI.A.1 of this document.

B. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6293) Manufacturers of covered products must use these test procedures to certify to DOE that their product complies with energy conservation standards and to quantify the efficiency of their product. DOE's current energy conservation standards for GSILs are expressed in terms of a maximum rated wattage and a minimum rated lifetime. (See 10 CFR 430.32(x))

A final rule published on July 6, 2009, revised the test procedure for GSILs to reflect the energy conservation standards prescribed by EISA. The July 2009 final rule concluded that GSILs do not operate in standby or off mode. 74 FR 31829. DOE published a test procedure final rule on January 27, 2012, establishing a revised active mode test procedure for GSILs. 77 FR 4203. The test procedure for GSILs is codified in appendix R to subpart B of 10 CFR part 430.

DOE has since published a request for information (''RFI'') to initiate a data collection process to consider whether to amend DOE's test procedures for general service fluorescent lamps, GSILs, and incandescent reflector lamps (''IRLs''). 82 FR 37031 (August 8, 2017).

C. Technological Feasibility

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially available products or in working prototypes to be technologically feasible. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i)

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; and (3) adverse impacts on health or safety. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(ii)–(iv) Additionally, it is DOE policy not to include in its analysis any proprietary technology that is a unique pathway to achieving a certain efficiency level. Section VI.A.4 of this document discusses the results of the screening analysis for GSILs, particularly the designs that DOE considered, those that DOE screened out, and those that are the basis for the standards considered in this final determination. For further details on the screening analysis for this rulemaking, see chapter 4 of the final determination technical support document (''TSD'').

2. Maximum Technologically Feasible Levels

When DOE evaluates an amended standard for a type or class of covered

[6] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to evaluate energy conservation standards for GSILs. (Docket No. EERE-2019-BT-STD-0022, which is maintained at *https://www.regulations.gov/#!docketDetail;D=EERE-2019-BT-STD-0022*). The references are arranged as follows: (Commenter name, comment docket ID number at page of that document).

product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for GSILs, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section VI.B.3 of this final determination and in chapter 5 of the final determination TSD.

D. Energy Savings

1. Determination of Savings

For each trial standard level (''TSL''), DOE projected energy savings from application of a TSL to GSILs purchased in the 30-year period that begins in the year of compliance with the potential amended standards (2023–2052).[7] The savings are measured over the entire lifetime of the GSILs and substitute lamps purchased in the 30-year analysis period. DOE quantified the energy savings attributable to a TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of amended energy conservation standards. In this case, the standards case represents energy savings not from the technology outlined in a TSL, but from product substitution as consumers are priced out of the market for GSILs.

DOE used its national impact analysis (''NIA'') spreadsheet model to estimate national energy savings (''NES'') from potential amended standards for GSILs. The NIA spreadsheet model (described in section VI.G of this document) calculates energy savings in terms of site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports national energy savings in terms of site energy savings and source energy savings, the latter of which is the savings in the energy that is used to generate and transmit the site electricity. DOE also calculates NES in terms of full-fuel-cycle (''FFC'') energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards.[8] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section VI.G.1 of this document.

2. Significance of Savings

In determining whether amended standards are needed, DOE must consider whether such action would result in significant energy savings. (42 U.S.C. 6295(m)(1)(A)) Congress did not define the statutory term ''significant conservation of energy,'' and heretofore DOE's approach to this criteria has been inconsistent. To address this gap, DOE recently proposed to define a significant energy savings threshold in the ''Process Rule''. 84 FR 3910 (February 13, 2019). Specifically, DOE stated that it is considering using a two-step approach that would consider both a quad threshold value (over a 30-year period) and a percentage threshold value to ascertain whether a potential standard satisfies 42 U.S.C. 6295(o)(3)(B) to ensure that DOE avoids setting a standard that ''will not result in significant conservation of energy.'' 84 FR 3901, 3924. DOE's updates to the Process Rule have not yet been finalized and thus DOE is not applying the threshold proposed in the Process Rule update at this time.

E. Economic Justification

1. Specific Criteria

EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I)(VII)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of potential amended standards on manufacturers, DOE conducts a manufacturer impact analysis (''MIA''), as discussed in section VI.H of this document. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include (1) industry net present value (''INPV''), which values the industry on the basis of expected future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in life-cycle cost (''LCC'') and payback period (''PBP'') associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the consumer costs and benefits expected to result from particular standards. DOE also evaluates the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard. However, because DOE has concluded that amended standards for GSILs would not be economically justified for the potential standard levels evaluated based on the PBP analysis, DOE did not conduct an LCC subgroup analysis for this notice.

b. Savings in Operating Costs Compared to Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product compared to any increase in the price of the covered product that is likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating cost (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value. For its LCC analysis, DOE assumes that any purchases of the covered product occur

[7] DOE also presents a sensitivity analysis that considers impacts for products shipped in a 9-year period.

[8] The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (Aug. 18, 2011), as amended at 77 FR 49701 (Aug. 17, 2012).

in the first year of compliance with potential amended standards.

As described previously, the statutory factor addressed in this analysis is the savings in operating costs throughout the estimated average life of the *covered product* in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the *covered products* which are likely to result from the imposition of the standard (emphasis added). DOE's determination regarding economic justification must be based on LCC savings occurring as a result of the imposition of an amended standard for the covered product, *i.e.,* GSILs. Separately, EPCA prohibits DOE from prescribing an amended or new standard if doing so is likely to result in the unavailability in the United States in any *covered product* type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding (emphasis added). Accordingly, while DOE presents the LCC savings under a substitution scenario,[9] DOE cannot, in this determination, consider those LCC savings in making a determination as to whether amended standards for the covered product are economically justified because those LCC savings result from the unavailability of the covered product.

The LCC savings for the considered standard levels are calculated relative to the no-new-standards case and the PBP for the considered efficacy levels are calculated relative to the baseline. DOE's LCC and PBP analysis is discussed in further detail in section VI.E of this document.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section VI.G, DOE uses the NIA spreadsheet models to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing product classes, and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) The Secretary may not prescribe an amended or new standard if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially similar in the United States at the time of the Secretary's finding. (42 U.S.C. 6295(o)(4))

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) Because DOE is not amending a standard, DOE did not transmit its rulemaking to the Attorney General under this provision.

f. Need for National Energy Conservation

In evaluating the need for national energy conservation, DOE expects that energy savings from amended standards would likely provide improvements to the security and reliability of the nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the nation's electricity system. Energy savings from amended standards also would likely result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases primarily associated with fossil-fuel based energy production. Consistent with its past approach,[10] because DOE has concluded amended standards for GSILs would not be economically justified for potential standard levels evaluated based on the PBP analysis, DOE did not conduct a utility impact analysis or emissions analysis for this notice.

g. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) In this final determination, DOE based its analysis of economic justification on the second factor in 42 U.S.C. 6295(o)(2)(B)(i), namely, that the energy savings in operating costs of the covered product are insufficient to recover the upfront cost.

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effect potential amended energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section VII.B.2 of this final determination.

IV. DOE's Proposal and Discussion of Related Comments

Section V of this final rule addresses legal issues, section VI addresses comments on DOE's methodology, section VII contains the results of DOE's analysis, and section VII.E contains DOE's conclusion. DOE received several general comments expressing agreement or disagreement with DOE's proposed determination. NEMA, GE, Westinghouse, the Free Market Organizations, and one individual supported DOE's determination to not set more stringent standards for GSILs. (GE, No. 78 at p. 1; Westinghouse, No. 112 at p. 1–2; Free Market Organizations, No. 111 at p. 2–3, 6–7; NEMA, No. 88 at p. 2, 6; Strauch, No. 69 at p. 1) Additionally, several individuals stated that the incandescent lamp should not be banned.[11]

[9] Throughout this document, when DOE refers to the LCC savings for the substitution scenario, DOE is referring to the projected savings that could be achieved in a substitution scenario.

[10] *See* 81 FR 71325 (Oct. 17, 2016).

[11] See Smith, No. 31 at p. 1; Anonymous, No. 71 at p. 1; Brian, No. 72 at p. 1; Gazoobie, No. 75 at p. 1; Young, No. 99 at p. 1; Oates, No. 20 at p. 1; Berry, No. 67 at p. 1; Baker, No. 34 at p. 1, Baker,

Continued

Conversely, fourteen U.S. Senators, the attorneys general of sixteen U.S. States, State agencies, energy efficiency organizations, utilities, a think tank, and many individuals disagreed with DOE's proposal to not set more stringent standards for GSILs.[12] Additionally, fourteen U.S. Senators and other stakeholders stated that the Federal government should be acting to increase the use of energy efficient lighting products rather than back tracking or relaxing energy efficiency standards.[13] There were also over 24,060 comments submitted by individuals via form letter that disagreed with DOE's proposal. (NRDC, No. 92 at spreadsheet attachment)

NEMA and several individuals stated that consumer energy savings resulting from amending conservation standards for incandescent lamps will not be substantial enough to significantly impact consumers. (NEMA, No. 88 at pp. 4–5; Strauch, No. 69 at p. 1; Anonymous, No. 98 at p. 7; Anonymous, No. 98 at pp. 15–16) NEMA further explained that the additional average annual cost for using GSILs in 2021 is minimal. (NEMA, No. 88 at p. 19) The Free Market Organizations stated that DOE analysis indicates a more stringent GSIL standard would make incandescent lamps prohibitively expensive and for all practical purposes would be an outright ban making LED lamps the only viable choice. (Free Market Organizations, No. 111 at p. 4) An individual noted that banning lamps is an indirect way of targeting energy consumption and emissions. (Anonymous, No. 98 at pp. 8–9, 10, 17)

In contrast, other commenters suggested that DOE's proposal to not amend standards would harm the environment and result in high energy costs for consumers due to continued sales of inefficient lamps.[14] Several commenters indicated that continued manufacturing of incandescent lamps will lead to increases in waste resources.[15] Other individuals said that continued use and manufacturing of incandescent lamps leads to increases in greenhouse gas emissions, and therefore increases the risk of health issues such as respiratory and cardiovascular effects. (Anonymous, No. 70 at p. 2; Miller, No. 79 at p. 1; Indivisible Ventura, No. 100 at p. 1; Knight, No. 105 at p. 1; Warren, No. 108 at p. 1) NPCC stated that DOE's proposal to not amend GSIL standards could significantly increase Northwest electricity loads that will need to be offset through utility energy efficiency programs, which could result in higher costs and less equitable distribution of savings. (NPCC, No. 58 at p. 2) The 24,060 individual commenters stated that DOE's proposal is in conflict with the intent of legislation passed 12 years ago to ensure improved efficiency standards for light bulbs starting in January 1, 2020. (NRDC, No. 92 at spreadsheet attachment)

Many stakeholders commented on the economic benefit for consumers of the 45 lumens per watt backstop requirement applying to all lamps included in the January 2017 GSL definition. 82 FR 7276 (January 19, 2017) and 82 FR 7322 (January 19, 2017). Specifically, several commenters indicated that lighting standards for efficient lamps such as CFLs and LED lamps would allow consumers to realize energy savings of as much as $20 (CFA, No. 76 at p. 3, 17–18) to $55 (NRDC, No. 97 at p. 2) per lamp over a 10-year period or $100 (NRDC, No. 97 at p. 3) by 2025 to $180 (ASE, No. 95 at p. 2) per average household per year. One commenter indicated that cumulatively, consumers would save as much as $1.7 billion on bulb purchases in 2025 if such standards are in place. (Vondrasek, No. 101 at p. 4) The 24,060 individual commenters and many other stakeholders stated that withdrawing the January 2017 GSL definition and not adopting the 45 lumen per watt backstop would cost Americans up to $14 billion in electricity bills as of 2025 and would increase electricity usage by as much as 25 power plants annually, thereby increasing carbon emissions.[16]

Several individuals submitted comments stating that more efficient lamps save consumers money and reduce greenhouse gas emissions.[17] Specifically, several commenters stated that applying the 45 lumens per watt backstop requirement to the lamps in the January 2017 GSL definition would save an estimated 38 million tons of carbon emissions annually and generate approximately $1.9 billion per year in climate benefits. (NRDC, Public Meeting Transcript, No. 56 at p. 14; ASE, No. 95 at p. 2; IPI, No. 96 at p. 4)

The Joint Advocates asserted that DOE's proposal to not amend GSIL

No. 30 at p. 1; Anonymous, No. 68 at p. 1; Anonymous, No. 98 at p. 1.

[12] To improve readability, the citation was moved to a footnote: (Morgan, No. 55 at p. 1; NRDC, Public Meeting Transcript, No. 56 at p. 15; NPCC, No. 58 at p. 1; State of Colorado, No. 62 at p. 1; CFA, No. 76 at p. 1; PA DEP, No. 77 at p. 2; Covell, No. 94 at p. 1; State Attorneys General, No. 110 at p. 1; Coconut Moon, No. 35 at p. 1; Goldman, No. 36 at p. 1; Simpson, No. 38 at p. 1; LeRoy, No. 40 at p. 1; Meadow, No. 41 at p. 1; Caswell, No. 44 at p. 1; H, No. 47 at p. 1; Kodama, No. 49 at p. 1; Schnapp, No. 14 at p. 1; Anonymous, No. 17 at p. 1; United States Senate, No. 60 at p. 1; ASAP, Public Meeting Transcript, No. 56 at pp. 17–18; CA IOUs, No. 83 at p. 1; The Joint Advocates, No. 113 at p. 1–2; Rothenhaus, No. 16 at p. 1; IPI, No. 96 at p. 8; Energy Solutions, Public Meeting Transcript, No. 56 at pp. 11–12).

[13] To improve readability, the citation was moved to a footnote: (Behl, No. 3 at p. 1; Katz, No. 26 at p. 1; AIA, No. 29 at pp. 1–2; Dufford, No. 32 at p. 1; Werner, No. 37 at p. 1; Gancarz-Davies, No. 63 at p. 1; Masson, No. 73 at p. 1; Wodkowski, No. 91 at p. 1; IPI, No. 96 at p. 8; Indivisible Ventura, No. 100 at p. 1; Warren, No. 108 at p. 1; Blancq, No. 10 at p. 1; Sorkin, No. 13 at p. 1; Ting, No. 21 at p. 1; Das, No. 24 at p. 1; Knipe, No. 28 at p. 1; Datz, No. 39 at p. 1; Galayda, No. 42 at p. 1; HS, No. 45 at p. 1; Sorkin, No. 53 at p. 1; Dawes, No. 57 at p. 1; United States Senate, No. 60 at p. 1; Gsell, No. 64 at p. 1; Waller, No. 74 at p. 1; Miller, No. 79 at p. 1; Waltman, No. 80 at p. 1; Murphy, No. 81 at p. 1; Craven, No. 82 at p. 1; Combs, No. 84 at p. 1; Guttman, No. 85 at p. 1; Bibito, No. 86 at p. 1; Bowe, No. 87 at p. 1; Anonymous, No. 89 at p. 1; Posakony, No. 90 at p. 1; Wodkowski, No. 91 at p. 1; Puckett, No. 93 at p. 1; Hemm, No. 103 at p. 1; Knight, No. 105 at p. 1; Anonymous, No. 107 at p. 1; MacKenzie, No. 109 at p. 1; Zimmerman, No. 50 at p. 1; Parker, No. 51 at p. 1; Rosenberg, No. 52 at p. 1; Coyne, No. 54 at p. 1; Energy Solutions, Public Meeting Transcript, No. 56 at p. 10; Dashe, No. 61 at p. 1; Anonymous, No. 70 at p. 1).

[14] To improve readability, the citation was moved to a footnote: (CFA, No. 76 at pp. 2–4; NRDC, No. 97 at pp. 1–2; MacKenzie, No. 109 at p. 1; Plano, No. 7 at p. 1; Kimble, No. 8 at p. 1; CFA, Public Meeting Transcript, No. 56 at p. 25; PA DEP, No. 77 at p. 2; Warren, No. 108 at p. 1; Joint Advocates, No. 113 at p. 1–2; State Attorneys General, No. 110 at p. 1–2, 12, 28; Morgan, No. 55 at p. 1).

[15] To improve readability, the citation was moved to a footnote: (Barrett, No. 15 at p. 1; Das, No. 24 at p. 1; Hill, No. 25 at p. 1; AIA, No. 29 at p. 1–2; Baker, No. 30 at p. 1; Dufford, No. 32 at p. 1; Werner, No. 37 at p. 1; Datz, No. 39 at p. 1; Kodama, No. 48 at p. 1; Zimmerman, No. 50 at p. 1; Rosenberg, No. 52 at p. 1; Sorkin, No. 53 at p. 1; Coyne, No. 54 at p. 1; Morgan, No. 55 at p. 1; Energy Solutions, Public Meeting Transcript, No. 56 at p. 12; Dawes, No. 57 at p. 1; United States Senate, No. 60 at p. 1; Dashe, No. 61 at p. 1; Gsell, No. 64 at p. 1; Anonymous, No. 66 at p. 1; Anonymous, No. 70 at p. 1; Anonymous, No. 70 at p. 2; Craven, No. 82 at p. 1; Combs, No. 84 at p. 1; Anonymous, No. 89 at p. 1; CFA, No. 76 at p. 13; PA DEP, No. 77 at p. 2; IPI, No. 96 at p. 8; NRDC, No. 97 at pp. 1–3; Indivisible Ventura, No. 100 at p. 1; Knight, No. 105 at p. 1; Warren, No. 106 at p. 1; MacKenzie, No. 109 at p. 1; Joint Advocates, No. 113 at p. 1; NEMA, No. 88 at p. 20; State Attorneys General, No. 110 at p. 1, 23, 25, 27, 28; Anonymous, No. 98 at p. 25; Behl, No. 3 at p. 1; Sorkin, No. 13 at p. 1; Parker, No. 51 at p. 1; State of Colorado, No. 62 at p. 1; NRDC, No. 92 at p. 1; Coconut Moon, No. 35 at p. 1; Greacen, No. 6 at p. 1; Solutions by Design, No. 2 at p. 1; Guttman, No. 85 at p. 1; CFA, No. 76 at p. 3).

[16] To improve readability, the citation was moved to a footnote: (NRDC, No. 92 at spreadsheet attachment; AIA, No. 29 at p. 2; NRDC, Public Meeting Transcript, No. 56 at p. 14; Dawes, No. 57 at p. 1; CFA, No. 76 at p. 13; United States Senate, No. 60 at p. 1; Indivisible Ventura, No. 100 at p. 1; State of Colorado, No. 62 at p. 1; Energy Solutions, Public Meeting Transcript, No. 56 at p. 12; PA DEP, No. 77 at p. 2; IPI, No. 96 at p. 8; CFA, No. 76 at p. 22).

[17] To improve readability, the citation was moved to a footnote: (Coconut Moon, No. 35 at p. 1; Goldman, No. 36 at p. 1; Werner, No. 37 at p. 1; Simpson, No. 38 at p. 1; Datz, No. 39 at p. 1; LeRoy, No. 40 at p. 1; Meadow, No. 41 at p. 1; Caswell, No. 44 at p. 1; H, No. 47 at p. 1; Kodama, No. 49 at p. 1; Rosenberg, No. 52 at p. 1; Dashe, No. 61 at p. 1).

standards is an attempt to slow the transition to LED lamps and that it will waste energy and dollars and damage the environment. ASE stated that DOE's decision to publish this proposal will cause needless market uncertainty less than one year before new standards are set to take effect. (ASE, No. 95 at p. 3) The State Attorneys General stated that the backstop has already made an impact in the industry where manufacturers, retailers, consumers, and regulators have already anticipated the backstop standard going into effect. (State Attorneys General, No. 110 at pp. 9–10) CFA argued that DOE's proposal could lead to less shelf space for efficient light bulbs, making it more difficult for consumers to locate the efficient products that best meet their needs. (CFA, No. 76 at p. 7) The Joint Advocates strongly urged DOE to withdraw and redo its analysis. (Joint Advocates, No. 113 at XX.)

NEMA commented that further regulation is unnecessary because the market will achieve energy conservation goals for GSLs as effectively as a regulatory approach and without unnecessary, incremental regulatory burden. NEMA noted that consumers have historically voluntarily chosen more efficient lamps without requirements of Federal energy conservation standards. NEMA submitted data to argue that more efficient GSL designs have had success in the market, and that the acceptance of such designs and actual (not ''potential'') market penetration warrant adoption of a non-regulatory approach in this case. (NEMA, No. 88 at pp. 3, 21–31) p. 1)

DOE appreciates, and has considered, the comments that DOE has received regarding its proposal in the September 2019 GSIL NOPD.

V. Legal Issues and Discussion of Related Comments

A. Imposition of the Backstop

By law, the Secretary was required to initiate a rulemaking by January 1, 2014 to determine whether standards in effect for GSLs should be amended and whether exemptions for certain incandescent lamps should be maintained or discontinued based, in part, on exempted lamp sales. (42 U.S.C. 6295(i)(6)(A)(i)) If the Secretary determined that standards in effect for GSILs should be amended, the Secretary was obligated to publish a final rule establishing such standards no later than January 1, 2017. (42 U.S.C. 6295(i)(6)(A)(iii)) If the Secretary made a determination that standards in effect for GSILs should be amended, failure by the Secretary to publish a final rule by January 1, 2017, in accordance with the criteria in the law, would have resulted in the imposition of the backstop provision in 42 U.S.C. 6295(i)(6)(A)(v). That backstop requirement would have required that the Secretary prohibit the sale of any GSL that does not meet a minimum efficacy standard of 45 lm/W.

DOE received numerous comments asserting that the 45 lm/W backstop standard applicable to GSLs in 42 U.S.C. 6295(i)(6)(A)(v) has been triggered and is to go into effect on January 1, 2020. Such commenters include the Sierra Club and Earthjustice, NRDC, the Joint Advocates, CA IOUs, CEC, the Attorneys General, U.S. Senators, ASE, CFA, and the PA DEP. These commenters contend that the backstop standard was triggered by DOE's failure to complete a rulemaking in accordance with 42 U.S.C. 6295(i)(6)(A)(i)–(iv) and applies to all GSLs, including GSILs. Thus, commenters argued that DOE's proposed determination is not authorized by EPCA and that any final determination would be without legal effect. (*See* the State Attorneys General, No. 110 at p. 7; CEC, No. 102 at 3; Sierra Club and Earthjustice, No. 104 at 1; Joint Advocates, No. 113 at 3) The State Attorneys General argued against DOE's assertion in the 2019 GSL Definition Rule that the backstop has not yet been triggered because 42 U.S.C. 6295(i)(6)(A)(iii) requires a final GSIL standards rule by January 1, 2017, only if DOE determines that standards for GSILs should be amended. (the State Attorneys General, No. 110 at p. 9) The State Attorneys General disagree with the notion that because DOE has yet to decide whether to amend the standard, it is not obliged to issue a final standard by any deadline and the backstop provision is not triggered. *Id.* The State Attorneys General believe that this interpretation of EPCA is inconsistent with the statutory language establishing the backstop and would render its inclusion in the statute meaningless. *Id.* The CA IOUs disagreed with DOE's assertion in the 2019 GSL Definition Rule that it was unable to meet the statutory deadlines due to the limitations imposed by the Appropriations Rider, arguing that the Rider does not negate the reality that the backstop has been triggered. (CA IOUs, No. 83 at p. 2) Along these lines, the State Attorneys General argued that there is no basis to infer that Congress intended the Rider to suspend or repeal the schedule set forth in 42 U.S.C. 6295(i)(6)(A), and as a result the Rider is irrelevant as to whether the backstop was triggered. (the State Attorneys General, No. 110 at p. 10)

DOE received many comments relying on DOE's alleged failure to complete the deadlines set forth in 42 U.S.C. 6295(i)(6)(A) as evidence that DOE has triggered the backstop provision. As discussed in the 2019 GSL Definition Rule, DOE initiated the first GSL standards rulemaking process by publishing a notice of availability of a framework document in December 2013, which satisfied the requirements in 42 U.S.C. 6295(i)(6)(A)(i) to initiate a rulemaking by January 1, 2014. DOE subsequently issued the March 2016 NOPR proposing energy conservation standards for GSLs, but was unable to undertake any analysis regarding GSILs and other incandescent lamps in the NOPR because of a then-applicable Appropriations Rider. Once the Appropriations Rider was removed, DOE was able to undertake the analysis to determine whether standards for GSLs, including GSILs, should be amended per the requirements in 42 U.S.C. 6295(i)(6)(A)(i) and thus issued the September 2019 GSIL NOPD. This final rule completes DOE's obligation under the statute to determine whether standards for GSILs should be amended. There is no explicit deadline in 42 U.S.C. 6295(i)(6)(A)(iii) for making this negative determination, and Congress, through the Appropriations Rider, removed DOE's authority to make the required statutory determination regarding GSILs during the period the Rider was in effect. DOE did not regain the authority to make the determination regarding GSILs until the Rider was removed. Upon the removal of the Rider in 2017, DOE has worked swiftly to make the required determinations regarding incandescent lamps in 42 U.S.C. 6295(i)(6)(A). DOE is continuing to evaluate energy conservation standards for LEDs and CFLs and is working toward completing that task.

With regard to comments on the January 1, 2017, statutory deadline for the Secretary to complete a rulemaking for GSILs in 42 U.S.C. 6295(i)(6)(A)(iii), this deadline is premised on the Secretary's first making a determination that standards for GSILs should be amended. The Secretary fails to meet the requirement in 42 U.S.C. 6295(i)(6)(A)(iii) only if he (1) determines that standards for GSILs should be amended; and then (2) fails to publish a rule prescribing standards by January 1, 2017. That is, 42 U.S.C. 6295(i)(6)(A)(iii) does not establish an absolute obligation on the Secretary to publish a rule by a date certain, as is the case in numerous other provisions in EPCA. *See* 42 U.S.C. 6295(e)(4); 42

U.S.C. 6295(u)(1)(A); and 42 U.S.C. 6295(v)(1). Rather, the obligation to issue a final rule prescribing standards by a date certain applies if, and only if, the Secretary makes a determination that standards in effect for GSILs need to be amended. Interpreting the statute otherwise would suggest that, if the Secretary were to make a determination that standards in effect for GSILs do not need to be amended, the Secretary nonetheless would have an obligation to issue a final rule setting standards for those lamps that he determined did not necessitate amended standards. Although different readings of the statutory language have been suggested, it is DOE's conclusion that the best reading of the statute, is that Congress intended for the Secretary to make a predicate determination about whether the standards for GSILs should be amended, otherwise it could result in a situation where a prohibition is automatically imposed for a category of lamps for which no new standards, much less prohibition, are necessary. Since DOE now makes the predicate determination in this final rule that standards for GSILs do not need to be amended, the obligation to issue a final rule by a date certain does not exist and, as a result, the condition precedent to the potential imposition of the backstop requirement does not exist and no backstop requirement has been imposed.

B. EPCA's Anti-Backsliding Provision and Congressional Intent

Commenters asserted that even if DOE were authorized to amend standards for GSILs per 42 U.S.C. 6295(i)(6)(A), EPCA's prohibition against backsliding at 42 U.S.C. 6295(o)(1) limits DOE's authority to determine whether standards should be increased from a baseline efficacy level of 45 lm/W established by the backstop. (the State Attorneys General, No. 110 at p. 8) Because, the commenters asserted, the proposed determination would increase the maximum allowable energy use for GSILs, a subset of GSLs, commenters argue that EPCA's anti-backsliding provision forbids DOE from undertaking that action. (*See* the State Attorneys General, No. 110 at p. 8; Sierra Club and Earthjustice, No. 104 at p. 5; ASE, No. 95 at p. 3) The State Attorneys General noted that the anti-backsliding provision was intended to ensure progress toward higher efficiency standards and stability. Against this backdrop, these commenters stated that it defies credulity that Congress would have granted DOE unfettered discretion to avoid the backstop by issuing a determination not to amend nearly three years after the deadline Congress set for DOE to carry out its rulemaking responsibilities. (the State Attorneys General, No. 110 at p. 11) The State Attorneys General pointed to the Energy Independence and Security Act of 2007's (EISA's) legislative history as revealing clear congressional intent to rapidly transition the nation to more energy efficient lighting through, among other things, the elimination of inefficient, incandescent bulbs by 2020. (*Id.* at p. 10.) Along these lines, the Sierra Club and Earthjustice commented that Congress did not authorize DOE to issue a finding that standards in effect for GSILs should not be amended, because Congress designed the backstop to take effect unless displaced by a DOE rulemaking that would achieve greater energy savings. (Sierra Club and Earthjustice, No. 104 at p. 6)

The anti-backsliding provision at 42 U.S.C. 6295(o)(1) precludes DOE from amending an existing energy conservation standard to permit greater energy use or a lesser amount of energy efficiency. This provision is inapplicable to the current rulemaking because DOE has not established an energy conservation standard for GSLs from which to backslide. Commenters' assertions that the anti-backsliding provision has been violated hinge on the assumption that the backstop requirement for GSLs in 42 U.S.C 6295(i)(6)(A)(v) has been triggered and is currently in effect. However, DOE makes clear in this rule that because it has made the predicate determination not to amend standards for GSILs, there is no obligation to issue a final rule by January 1, 2017, and thus the backstop sales prohibition has not been triggered and is not in effect. Any discussion of backsliding is therefore misplaced. Furthermore, the determination DOE makes in this rulemaking is that the existing standards applicable to GSILs should remain as they are, *i.e.,* that those standards do not need to be amended. As a result, this rulemaking is in no way reducing the standards applicable to the subject lamps.

Additionally, as discussed in the 2019 GSL Definition Rule, even if the backstop requirement at 42 U.S.C. 6295(i)(6)(A)(v) were to apply, it would operate as a sales prohibition for any GSL that does not meet a minimum efficacy standard of 45 lm/W. The anti-backsliding provision states that the Secretary cannot prescribe any amended *standard* that would allow greater energy use or less efficiency. EPCA defines an energy conservation standard for consumer products as a performance standard that prescribes a minimum efficiency level or maximum quantity of energy usage for a covered product or, in certain circumstances, a design requirement. (42 U.S.C. 6291(6)) In contrast, a sales prohibition in EPCA is tied to whether a transaction in commerce can occur with respect to a covered product, but the prohibition is not itself a standard.[18] Because the scope of a sales prohibition is not the same as a standard, the minimum efficacy of 45 lm/W mandated by the backstop's sales prohibition is unchanged by this final rule. The anti-backsliding provision in 42 U.S.C. 6295(o) limits the Secretary's discretion only in prescribing standards, not sales prohibitions, and thus is inapplicable to the backstop requirement for GSLs in 42 U.S.C 6295(i)(6)(A)(v).

With regard to comments on congressional intent underlying EISA, general service LEDs did not exist in any commercially viable sense in 2007. It is therefore unlikely that Congress' intent in enacting EISA was to regulate incandescent lamps out of existence thirteen years in the future on the hope that such general service LEDs would be available. Moreover, the statutory text does not evidence such intent. In fact, the words of the statute suggest just the opposite. Specifically, in 42 U.S.C. 6295(i)(6)(B)(i)(I),[19] Congress required that DOE undertake, not later than January 1, 2020, a second, similar rulemaking to decide whether to amend standards applicable to the same incandescent lamps at issue in this rulemaking. The fact that Congress directed DOE to undertake this rulemaking, which is to be initiated not later than the first day of 2020, suggests that Congress did not intend such lamps to be regulated out of existence beginning on that very same day. The existence of subparagraph (B) suggests that the Secretary was not limited in his discretion under subparagraph (A) to imposition of either the 45 lm/W backstop standard or a DOE-promulgated standard for GSLs that was more stringent than 45 lm/W. Congress was open to the possibility that something less than a 45 lm/W standard for GSLs could be adopted, as evidenced by the statute's direction to DOE in 42 U.S.C. 6295(i)(6)(A)(ii)(II) to consider, but not require, a minimum standard of 45 lm/W for GSLs. Otherwise, subparagraph (B) would be mere

[18] *See* 42 U.S.C. 6302(a)(5) for another example of a sales prohibition.

[19] This provision provides that, not later than January 1, 2020, the Secretary shall initiate a rulemaking procedure to determine whether standards in effect for general service incandescent lamps should be amended to reflect lumen ranges with more stringent maximum wattage than the standards specified in paragraph (1)(A).

surplusage as there would be no GSILs to evaluate at the time mandated for the subparagraph (B) rulemaking. Thus, Congress did not require DOE to establish an energy conservation standard in this present rulemaking that would eliminate GSILs from the market.

C. Product Substitutes

In the September 2019 GSIL NOPD, DOE preliminarily determined that any energy savings that might result from establishing a standard at the maximum technologically feasible level (referred to elsewhere in this document as ''TSL 1'', which denotes ''trial standard level 1'') are the result of product shifting as consumers abandon GSILs utilizing halogen infrared technology (''GSIL–HIR'') in favor of different product types having different performance characteristics or features. 84 FR 46857. DOE noted that EPCA prohibits DOE from prescribing an amended or new standard if that standard is likely to result in the unavailability in the United States of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. 42 U.S.C. 6295(o)(4). Accordingly, DOE stated that it could not set a standard applicable to GSILs that results in consumers being left with no choice but an alternative lamp that is a different product type or has different performance characteristics or features than GSILs. 84 FR 46841. DOE concluded that it could not find economic justification in a standard the purpose of which is to force the unavailability of a product type, performance characteristic or feature in contravention of EPCA. *Id.* at 84 FR 46858.

Comments from the State Attorneys General, Sierra Club and Earthjustice, CA IOUs, CEC, the Joint Advocates, NRDC and the IPI disagreed with DOE's application of the features provision in 42 U.S.C. 6295(o)(4). (the State Attorneys General, No. 110 at p. 12; Sierra Club and Earthjustice, No. 104 at p. 10; CA IOUS, No. 83 at p. 2; CEC, No. 102 at p. 3; the Joint Advocates, No. 113 at p. 3; NRDC, No. 97 at p. 2; IPI, No. 96 at p. 4) In particular, the Sierra Club and Earthjustice stated that the text of the features provision, its legislative history, and other requirements in the statute make clear that for the features provision to block DOE from adopting a standard, not only must the standard result in the unavailability of the product performance characteristics, features, sizes, capacities, or volumes that are presently available, but the standard must leave the market with no alternative performance characteristics, features, sizes capacities, or volumes that are ''substantially the same'' as those that would be eliminated from the market. (the Sierra Club and Earthjustice, No. 104 at p. 11.) Additionally, the State Attorneys General asserted that DOE has employed the features provision to preserve incandescent lighting, a legacy technology that offers consumers no distinct performance-related utility. (the State Attorneys General, No. 110 at p. 12; see also CEC, No. 102 at p. 3). The State Attorneys General further stated that DOE's past refusal to treat lamp technology as a unique performance feature for product classification purposes highlights the arbitrary nature of DOE's September 2019 GSIL NOPD and its preferential treatment for incandescent lamp technology. *Id.* at 14. Further, CEC argued that DOE has neither made nor published any findings establishing by a preponderance of the evidence that GSILs provide performance characteristics that should be protected under 42 U.S.C. 6295(o)(4); the mere existence of GSILs as a covered product is inadequate. (CEC, No. 102 at 3). CEC also noted that DOE acknowledged in the September 2019 GSIL NOPD that CFLs and LEDs can be used to satisfy lighting applications traditionally served by incandescent general service lamps. *Id.* at 4. Lastly, the Joint Advocates asserted that DOE cannot use the possibility that manufacturers may choose to no longer offer GSILs to justify the application of an unavailability scenario, or as an excuse to avoid full rulemaking analysis. These commenters stated that EPCA cannot reasonably be read to ensure the availability of a particular technology in perpetuity. (Joint Advocates, No. 113 at p. 3)

Other commenters, including Free Market Organizations, GE, Westinghouse, and NEMA, supported DOE's conclusion in the September 2019 GSIL NOPD that the elimination of the GSIL from the market by an amended standard is foreclosed by 42 U.S.C. 6295(o)(4). (*See* Free Market Organizations, No. 111 at p. 4; *see also* NEMA, No. 88 at p. 14) NEMA commented that the GSIL has a significant performance characteristic or feature for a significant group of consumers of this product that is not replicated by the CFL or general service LED (yet): The incandescent lamp's ability to deep-dim light output to below 0.1% of maximum output. NEMA stated that the CFL and LED cannot achieve the deep-dimming capability of the incandescent lamp. (NEMA, No. 88 at p. 14) Further, NEMA stated that this performance and consumer utility are desirable to residential consumers for ambience effects in dining rooms, living rooms, bedrooms and other rooms of the home, as well as for safety in navigation in the middle of the night, and both are easily achieved with halogen technology. (*Id.* at 15.)

DOE also received comments describing other features that are unique to incandescent lamps. An individual stated that compared with CFLs and LED lamps, the incandescent lamp requires much fewer raw materials and is basically just a wire and glass. The individual added that incandescent technology produces natural warm light, has a 100 percent CRI, has a smooth spectrum with all colors, is omnidirectional, and is easy to use in control systems. The individual stated that the heat wasted by incandescent technology, typically 90–95 percent, can be used to provide warmth when useful (*i.e.,* building codes recommend not using the technology in the summer or warmer climates). (Anonymous, No. 98 at p. 10) Another individual stated that despite their higher operating costs and shorter lifetimes, incandescent lamps provide the highest CRI and ability to work on any type of dimmer or sensor, which is not true for other lighting technologies. (Gazoobie, No. 75 at p. 1)

Compared to incandescent lamps, several individuals expressed safety concerns about CFLs and LED lamps. Specifically, one individual noted potentially undesirable features of CFLs include flicker, mercury, and electromagnetic wave radiation issues (*e.g.*, UV light). Another individual noted that LED lamps contain chemicals. A separate individual commented that LED lamps or fixtures are not suitable for trouble lights—that is lights that are likely to break in the application they are used (*e.g.*, construction sites). (Anonymous, No. 27 at p. 1; Anonymous, No. 98 at p. 2; Anonymous, No. 98 at pp. 2, 25; Baker, No. 34 at p. 1)

Several individuals stated that certain performance characteristics of LED lamps, primarily brightness, flicker, and emittance of blue light wavelengths can cause eye damage, loss of sleep, and headaches among other health issues.[20]

[20] To improve readability, the citation was moved to a footnote: (Baker, No. 30 at p. 1; Smith, No. 31 at p. 1; McAra, No. 33 at p. 1; Baker, No. 34 at p. 1; Berry, No. 67 at p. 1; Anonymous, No. 68 at p. 1; Anonymous, No. 71 at p. 1; Brian, No. 72 at p. 1; Young, No. 99 at p. 1; Anonymous, No. 98 at p. 25; Anonymous, No. 98 at p. 3; McAra, No. 33 at p. 1).

An individual commented that not all LED lamps flicker, but that the general public does not necessarily know how to choose an LED bulb that does not flicker; flicker may cause headaches and irritability. This individual stated that LED lamps do not have any flicker information on the package, as there is no easy way to measure flicker; modulation and rate are key in determining how flicker may affect a person. Additionally, the individual commented that the general public is unaware of the importance of reducing harsh blue light in the evenings. The individual added that per DOE documentation, LEDs may emit more blue light as they age, although this varies between lamps. The individual asserted that blue light emitted by LEDs has been linked to health issues such as disturbing circadian rhythms, muscular degeneration, and various cancers. The commenter added that only those with money and knowledge can install smarter LED lamps that can change color spectrum at different times of the day. (McAra, No. 33 at p. 1; Anonymous, No. 71 at p. 1; Anonymous, No. 98 at p. 2)

42 U.S.C. 6295(o)(4) provides that the Secretary may not prescribe an amended or new standard under this section if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. The language in this provision prohibits DOE from setting a standard that would result in the unavailability of the product performance characteristics, features, sizes, capacities, or volumes that are presently available in the market.

Historically, DOE has determined whether a technology constitutes a performance characteristic (including reliability), feature, size, capacity, and volume (collectively referred to hereafter as ''features'') under EPCA on a case-by-case basis. As highlighted by NEMA in its comments, the incandescent lamp's ability to deep-dim light output to below 0.1% of maximum light output represents a significant feature of this product that is not replicated by the CFL or general service LED lamp. This feature is desirable to residential consumers for ambience effects in dining rooms, living rooms, bedrooms and other rooms of the home, as well as for safety in navigation in the middle of the night. Setting a standard at TSL 1 would likely force the unavailability of deep-dimming general service lamps from the market. (*See* NEMA, No. 88 at p. 15) Moreover, aside from eliminating this significant feature to consumers, NEMA, with the support of GE and Westinghouse, has shown by a preponderance of the evidence that adopting a higher efficiency standard for GSILs would completely destroy the market for GSILs, a covered product, which is in violation of 42 U.S.C. 6295(o)(4). Earthjustice and NRDC argued in their March 1, 2019 comments on a petition requesting an interpretive rule that DOE's proposed energy conservation standards for residential furnaces and commercial water heaters would result in the unavailability of performance characteristics within the meaning of 42 U.S.C. 6295(o)(4): ''Congress did not intend the resulting unavailability of any and every performance characteristic to be a barrier to the imposition of strong efficiency standards. Rather, the legislative history of the provision confirms that the problem Congress intended section 325(o)(4) of EPCA to address is the possibility that efficiency standards could completely destroy the market for a covered product.'' (Earthjustice/NRDC Joint Comment, No. 55 at p. 3). While we take no position (because we need not do so here) on the full scope of section 325(o)(4) of EPCA, we agree that section 325(o)(4) of EPCA is meant to preclude the imposition of efficiency standards that would completely destroy the market for a covered product. Thus, even if deep-dimming were not considered an important consumer feature under EPCA, DOE finds that 42 U.S.C. 6295(o)(4) prevents standards for GSILs, as a distinct covered product listed under 42 U.S.C. 6292(a)(14), from being set at a level that would increase the price to the point that the product would be noncompetitive and that would result in the removal of the product from the market.

D. Economic Justification

In the September 2019 GSIL NOPD, DOE tentatively concluded, based on the second EPCA factor concerning economic justification that DOE is required to evaluate in 42 U.S.C. 6295(o)(2)(B)(i)(II), that imposition of a standard at TSL 1, which as described in Section VII, represents the max-tech efficiency level for GSILs and is composed of modeled Halogen infrared lamps, is not economically justified because the operating costs of the covered product are insufficient to recover the upfront cost. 84 FR 46830, 46858. NEMA, GE, Westinghouse and the Free Market Organizations supported DOE's conclusion that more stringent standards for GSILs cannot be economically justified. (NEMA, No. 88 at p. 2; GE, No. 78 at p. 1; Westinghouse, No. 112 at p. 1; Free Market Organizations, No. 111 at p. 2). Westinghouse agreed with DOE that the cost of the more efficacious substitute modeled for GSILs would be prohibitive and represent a net loss to the consumer, and that, in the unlikely event any manufacturer chose to make it, very few consumers would be expected to purchase this product because they would lose money on every lamp. (Westinghouse, No. 112 at p. 1) GE stated that it is very unlikely that any lamp manufacturing business could economically justify an investment in manufacturing capacity for the modeled substitute product, which would contain Halogen-IR filament tubes. The GE factory that previously made Halogen-IR filament tubes has been closed and the production equipment no longer exists. (GE, No. 78 at p. 2)

Some commenters asserted that, in making this determination, DOE misapplied EPCA's requirements governing its analysis of economic justification, and that EPCA does not permit the Department to base its analysis of economic justification on the consideration of only one factor or to decline consideration of any of the statutory factors listed in 42 U.S.C. 6295(o)(2)(B)(i) based on the outcome of its analysis of any other factor. (the Sierra Club and Earthjustice, No. 104 at p. 9) For example, the State Attorneys General and the IPI commented that DOE's failure to conduct an emissions analysis prior to issuing its proposed determination violates EPCA's requirement in 42 U.S.C. 6295(o)(2)(B)(i)(VI) to evaluate the need for national energy and water conservation as part of its economic analysis. (the State Attorneys General, No. 110 at p. 15; IPI, No. 96 at pp. 3–4). The Sierra Club and Earthjustice commented that DOE failed to consider the fifth factor, which addresses impacts on competition; the sixth factor, which addresses the need for national energy and water conservation; and the seventh factor, which encompasses any other factors DOE considers relevant, such as the benefits that accrue when consumers switch from GSILs to other types of GSLs. (the Sierra Club and Earthjustice, No. 104 at pp. 9–10) The CA IOUs stated that DOE had failed to consider the total projected amount of energy, or as applicable, water savings

likely to result from the imposition of the standard as required by 42 U.S.C. 6295(o)(2)(B)(i)(III). (CA IOUs, No. 83 at p. 3) The IPI further asserted that DOE seeks to import a new factor, unavailability, into the statutory definition of economically justified which Congress did not intend the agency to consider. (IPI, No. 96. at p. 1)

When considering new or amended energy conservation standards, the standards that DOE adopts for any type (or class) of covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) DOE's analysis indicates that more stringent standards for modeled GSILs at TSL 1 would make the lamps prohibitively expensive to the consumer, aside from the fact that such a substitute would likely never even make it to market, given its past lack of commercial viability and manufacturer unwillingness to produce such an uneconomical product. Thus, amended energy conservation standards for GSILs would not be economically justified at any level above the current standard level, because the benefits of more stringent standards would not outweigh the burdens of a high upfront cost and long payback period for consumers.

DOE continues to be of the view that failure to meet one aspect of the seven factors in EPCA's consideration of economic justification can mean that a revised standard is not economically justified, and that DOE can reach such a conclusion, in appropriate circumstances, without considering all of the other factors. For example, on October 17, 2016, DOE published in the **Federal Register** a final determination that more stringent energy conservation standards for direct heating equipment (DHE) would not be economically justified, and based this determination solely on manufacturer impacts, the first EPCA factor that DOE is required to evaluate in 42 U.S.C. 6295(o)(2)(B)(i)(I). 81 FR 71325. Specifically, due to the lack of advancement in the DHE industry in terms of product offerings, available technology options and associated costs, and declining shipment volumes, DOE concluded that amending the DHE energy conservation standards would impose a substantial burden on manufacturers of DHE, particularly small manufacturers. *Id.* at 81 FR 71328. Notably, DOE received no stakeholder comments in opposition to its conclusions regarding economic justification in the DHE standards rulemaking.

In this final rule, DOE remains consistent with its approach in the DHE rule, and finds no economic justification for amending standards based on DOE's consideration of one of the seven factors in 42 U.S.C. 6295(o)(2)(B)(i), namely, that the energy savings in operating costs of the covered product are insufficient to recover the upfront cost.

E. Preemption

The State Attorneys General asserted that the September 2019 GSIL NOPD mischaracterizes the scope of federal preemption under EPCA. (the State Attorneys General, No. 110 at p. 16) These commenters argued that EPCA does not delegate to DOE authority to decide whether a given state law is preempted, and that DOE is not entitled to deference for its interpretation of EPCA's preemption provision. (*Id.* at p. 17) The State Attorneys General rejected DOE's statement in the NOPD that because none of the narrow exceptions from preemption provided for in 42 U.S.C. 6295(i)(6)(A)(vi) are available to California and Nevada, all states, including California and Nevada, are prohibited from adopting energy conservation standards for GSLs. *See* 84 FR 46832. On the contrary, the State Attorneys General commented that California and Nevada are entitled to exemption from preemption because DOE failed to fulfill the four required elements prescribed in 42 U.S.C. 6295(i)(6)(A)(i)–(iv), and therefore the exceptions to state preemption in clauses (vi)(II) and (vi)(III) have been triggered. (the State Attorneys General, No. 110 at pp. 18–19) CEC similarly noted that it had implemented its own standards for GSLs, including GSILs under EPCA's preemption exception in 42 U.S.C. 6295(i)(6)(A)(vi)(II). (CEC, No. 102 at p. 1). Additionally, the State of Colorado stated that Colorado's greenhouse gas emission reduction goals and energy efficiency standards will continue to apply in the state regardless of whether DOE finalizes the proposed rule. (State of Colorado, No. 62 at p. 1).

Federal energy conservation requirements generally supersede state laws or regulations concerning energy conservation standards. (42 U.S.C. 6297(a)–(c)) Absent limited exceptions, states generally are precluded from adopting energy conservation standards for covered products both before and after an energy conservation standard becomes effective. (42 U.S.C. 6297(b) and (c)) However, the statute contains three narrow exceptions to this general preemption provision specific to GSLs in 42 U.S.C. 6295(i)(6)(A)(vi). Under the limited exceptions from preemption specific to GSLs that Congress included in EPCA, only California and Nevada have authority to adopt, with an effective date beginning January 1, 2018 or after, either:

(1) A final rule adopted by the Secretary in accordance with 42 U.S.C. 6295(i)(6)(A)(i)–(iv);

(2) If a final rule has not been adopted in accordance with 42 U.S.C. 6295(i)(6)(A)(i)–(iv), the backstop requirement under 42 U.S.C. 6295(i)(6)(A)(v); or

(3) In the case of California, if a final rule has not been adopted in accordance with 42 U.S.C. 6295(i)(6)(A)(i)–(iv), any California regulations related to ''these covered products'' adopted pursuant to state statute in effect as of the date of enactment of EISA 2007.

DOE reiterates in this rule that none of these narrow exceptions from preemption are available to California or Nevada. The first exception applies if DOE determines that standards in effect for GSILs need to be amended and issues a final rule setting standards for these lamps in accordance with 42 U.S.C. 6295(i)(6)(A)(i)–(iv). In that event, California and Nevada would be allowed to adopt a rule identical to the Federal standards rule. This exception does not apply because DOE has determined that standards in effect for GSILs do not need to be amended and thus has not issued a final rule setting standards for these lamps in accordance with 42 U.S.C. 6295(i)(6)(A)(i)–(iv). The second exception allows California and Nevada to adopt the statutorily prescribed backstop of 45 lm/W if DOE determines standards in effect for GSILs need to be amended and fails to adopt a final rule for these lamps in accordance with 42 U.S.C. 6295(i)(6)(A)(i)–(iv). This exception does not apply because DOE has determined not to amend standards for GSILs, and thus no obligation exists for DOE to issue a final rule setting standards for these lamps in accordance with the 42 U.S.C. 6295(i)(6)(A)(i)–(iv). The third exception does not apply because there were no California efficiency standards for GSLs in effect as of the date of enactment of EISA 2007. Therefore, all states, including California and Nevada, are prohibited from adopting energy conservation standards for GSLs, including GSILs.

F. Scope

Some commenters argued that DOE did not analyze the proper scope of products. For example, the State Attorneys General submitted that DOE's delayed, segmented review of GSL and GSIL standards is inconsistent with the detailed, expeditious and logical rulemaking process Congress set forth in 42 U.S.C. 6295(i)(6)(A). (The State Attorneys General, No. 110 at p. 16). Similarly, the CA IOUs maintained that DOE did not analyze the proper scope of products in the NOPD, and that DOE should have considered standards for the whole GSL product class, which includes fluorescent and LED technologies. (CA IOUs, No. 83 at p. 3) The CFA also took issue with DOE's approach in the September 2019 GSIL NOPD, commenting that, by ignoring superior technologies, like CFLs and especially LEDs, DOE runs afoul of the Administrative Procedure Act (APA) and violates executive branch guidance. (CFA, No. 76 at p. 20) Additionally, the Northwest Power and Conservation Council commented that to issue this NOPD that parses out and creates separate standards for lamps that are all GSLs by statute and that have the same function and intended use is contrary to the spirit of EPCA and potentially muddies the waters even further for the market to determine what technologies are subject to what standard in the coming year. (Northwest Power and Conservation Council, No. 58 at p. 2)

The Appropriations Rider precluded DOE from gathering data, performing the analysis required under 42 U.S.C. 6295(i)(6)(A), and implementing standards with respect to the incandescent lamp standards at issue in this determination. Since the Appropriations Rider has been removed, DOE continues to perform its statutory duties under EPCA, which include determining whether standards for GSILs should be amended. As that determination is the predicate for the imposition of a deadline for issuance of a rule, DOE addresses that determination first, in the present rulemaking. DOE has determined not to amend standards for GSILs at this time, and thus the existing standards for GSILs found at DOE's regulations at 10 CFR 430.32(x) remain applicable and will continue to apply after January 1, 2020. DOE is still considering whether standards in effect for GSLs, namely LEDs and CFLs, should be amended.

G. NEPA

In the September 2019 GSIL NOPD, DOE preliminarily concluded that the proposed rule fits within DOE's categorical exclusion A4 from the National Environmental Policy Act of 1969 (NEPA), which applies to actions that are interpretations or rulings with respect to existing regulations. 84 FR 46859; see also 10 CFR part 1021, subpart D, appendix A4. DOE received comments from the Sierra Club and Earthjustice disagreeing with DOE's proposed use of the A4 categorical exclusion. These commenters asserted that DOE's actions are not merely interpreting or ruling on an existing regulation, but, rather, that the September 2019 GSIL NOPD implements a statutory command to evaluate amendments to statutorily prescribed energy conservation standards. (Sierra Club and Earthjustice, No. 104 at p. 12) The Sierra Club and Earthjustice argued that DOE's proposal to cite categorical exclusion A4 avoids reviewing the environmental impacts of the proposed determination and suggests that DOE believes the same exclusion would be applicable whenever DOE refuses to amend an energy conservation standard. *Id.* The commenters stated that DOE could not finalize the September 2019 GSIL NOPD without completing a review of environmental impacts. *Id.*

Similarly, the State Attorneys General argued that DOE had decided to apply, without any reasoning, categorical exclusion A4 to its proposed determination—rather than conduct an environmental impact statement (EIS) or environmental assessment (EA)—was arbitrary and capricious. (the State Attorneys General, No. 110 at pp. 22, 24) These commenters stated that they were unable to find any past instance in which DOE's Office of Energy Efficiency and Renewable Energy had relied on categorical exclusion A4 to support its determination not to undertake NEPA review for a proposed action. (*Id.* at p. 26) Additionally, the commenters asserted that DOE's statement in the September 2019 GSIL NOPD about completing its NEPA review before issuing the final action makes it unclear as to whether DOE is, in fact, carrying out a NEPA review. (*Id.* at p. 22)

In this final determination, DOE concludes that amended energy conservation standards for GSILs would not be economically justified at any level above the current standard level. DOE disagrees with commenters that it did not use the appropriate categorical exclusion for the September 2019 GSIL NOPD. Categorical exclusion A4 accurately reflects the effect of this rulemaking, which is to maintain the status quo of an existing regulation by interpreting the existing standard. Because DOE is not adopting an amended energy conservation standard for GSILs, and thus is not changing the existing regulations, there are no significant environmental impacts to be evaluated under NEPA.

Historically, DOE had prepared numerous EAs and findings of no significant impact (''FONSI'') for rulemakings that established energy conservation standards for consumer products and industrial equipment.[21] In light of these experiences assessing the environmental effects of energy conservation standards, DOE proposed and finalized categorical exclusion B5.1 to specifically target energy conservation standard rulemakings as part of the changes made to its NEPA Implementing Procedures. 76 FR 214, 228; 76 FR 63764; see also 10 CFR part 1021, subpart D, appendix B5.1. During that rulemaking process, DOE received neither negative comments nor objections to its proposal to adopt categorical exclusion B5.1 when the department's implementing procedures were finalized in October 2011. 76 FR 63764, 63766. In practice, DOE's decades of conducting EAs and resulting FONSI determinations are relied upon whenever DOE utilizes categorical exclusion B5.1 as part of an energy conservation standard rulemaking. Therefore, DOE reasonably relies on categorical exclusion B5.1 to meet its NEPA obligations in situations where completing an energy conservation standard rulemaking would not otherwise impose a need to conduct an environmental assessment. While DOE has determined to not apply categorical exclusion B5.1 in this rulemaking, its decision nonetheless to not conduct an EA remains consistent with rulemakings that do amend energy conservation standards.

DOE's actions here find further support when viewed in the context of the DHE final rule. In the DHE final rule not to amend standards, DOE determined, with no stakeholder objections, that conducting an EA for its environmental review under NEPA was not required because updated standards were not being adopted. Arguably, DOE could make the same conclusion in this rulemaking, because amended standards for GSILs are similarly not being adopted.

[21] See Technical Support Document for the National Environmental Policy Act Implementing Procedures, Final Rule, September 27, 2011, pp 46–48, for examples of prior EAs and FONSI determinations. *https://www.energy.gov/nepa/downloads/technical-support-document-department-energys-notice-final-rulemaking.*

H. Other Environmental Laws and Intergovernmental Consultation

The State Attorneys General asserted that the September 2019 GSIL NOPD violates several environmental laws, including the Endangered Species Act, the Coastal Zone Management Act, and the National Historic Preservation Act. (State Attorneys General, No. 110 at pp. 26–27) In response to these concerns, DOE reiterates that this rulemaking determines *not* to amend energy conservation standards for GSILs, and, therefore, the existing standards applicable to GSILs remain in effect. Because this rulemaking maintains the status quo, there is no action that DOE is taking, and thus there are no environmental impacts to evaluate under the above listed statutes.

Additionally, the State Attorneys General commented that DOE's failure to consult with state and local governments regarding the September 2019 GSIL NOPD violates Executive Order 13132, which sets forth certain requirements for Federal agencies formulating and implementing actions that preempt State law or that have Federalism implications. (*Id.* at pp. 27–28) As part of the notice and comment process set by the APA, DOE published the September 2019 GSIL NOPD in the **Federal Register**, providing interested parties, including state and local governments, notice of its initial decision not to amend energy conservation standards for GSILs. (84 FR 46858; 5 U.S.C. 553). In addition to publishing notice of the proposed determination, DOE held a public meeting on the September 2019 GSIL NOPD on Tuesday, October 15, 2019. By following the statutory requirements of EPCA and the APA's rulemaking process, the same process DOE has followed for many years without objection by states, DOE provided ample opportunity for state and local governments to offer input and consult with DOE, via comments or otherwise, regarding DOE's initial determination not to amend the current energy conservation standard for GSILs.

VI. Methodology and Discussion of Related Comments

This section addresses the analyses that DOE has performed for this final determination with regard to GSILs. Separate subsections address each component of DOE's analyses.

DOE used several analytical tools to estimate the impact of the standards considered in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential amended energy conservation standards. The NIA uses a second spreadsheet that provides shipments projections and calculates NES and NPV of total consumer costs and savings expected to result from potential energy conservation standards. DOE uses a third spreadsheet, the Government Regulatory Impact Model (''GRIM''), to assess manufacturer impacts of potential amended standards. These three spreadsheets are available on the DOE website for this rulemaking (see Docket section at the beginning of this final determination).

A. Market and Technology Assessment

1. Scope of Coverage

GSIL means a standard incandescent or halogen type lamp that is intended for general service applications; has a medium screw base; has a lumen range of not less than 310 lumens and not more than 2,600 lumens or, in the case of a modified spectrum lamp, not less than 232 lumens and not more than 1,950 lumens; and is capable of being operated at a voltage range at least partially within 110 and 130 volts; however this definition does not apply to the following incandescent lamps: (1) An appliance lamp; (2) A black light lamp; (3) A bug lamp; (4) A colored lamp; (5) An infrared lamp; (6) A left-hand thread lamp; (7) A marine lamp; (8) A marine signal service lamp; (9) A mine service lamp; (10) A plant light lamp; (11) A reflector lamp; (12) A rough service lamp; (13) A shatter-resistant lamp (including a shatter-proof lamp and a shatter-protected lamp); (14) A sign service lamp; (15) A silver bowl lamp; (16) A showcase lamp; (17) A 3-way incandescent lamp; (18) A traffic signal lamp; (19) A vibration service lamp; (20) A G shape lamp with a diameter of 5 inches or more; (21) A T shape lamp that uses not more than 40 watts or has a length of more than 10 inches; and (22) A B, BA, CA, F, G16–1/2, G–25, G30, S, or M–14 lamp of 40 watts or less. 10 CFR 430.2 In this analysis, DOE relied on the definition of ''general service incandescent lamp'' currently in 10 CFR 430.2.

As discussed in section II.A, DOE continued to analyze GSILs as the covered product in this final determination. DOE did consider the possibility that consumers may choose out-of-scope substitutes, such as CFLs and LED lamps, if standards for GSILs were amended. See section VI.B.6 for a more detailed discussion of those lamps.

2. Metric

Current energy conservation standards for GSILs are applicable to active mode energy use and are based on a maximum wattage for a given lumen range. In this final rule, DOE used efficacy (lumens divided by watts, or lm/W) to assess active mode energy use. The measurement of lumens and watts and the calculation of lamp efficacy for GSILs is included in the current test procedure at appendix R to subpart B of 10 CFR part 430.

3. Technology Options

To develop a list of technology options, DOE reviewed manufacturer catalogs, recent trade publications, technical journals, and the 2015 IRL final rule [22] for incandescent reflector lamps, and consulted with technical experts. Based on DOE's review of product offerings and their efficacies in manufacturer catalogs and DOE's Compliance Certification Management System (CCMS) database, GSILs are not commercially available at efficacy levels above that which is currently required. However, DOE identified fourteen technology options in the September 2019 GSIL NOPD that could be used to improve the efficiency of currently commercially available GSILs.

Westinghouse noted that commercially available GSILs already include many of the technology options identified where they are cost effective and can be used in a manner that meets necessary product performance and important safety considerations. (Westinghouse, No. 112 at p. 1) Because GSILs are already operating close to their optimum level, NEMA stated that the technology options not screened out will not provide a significant increase in lamp efficacy. (NEMA, No. 88 at p. 6; Westinghouse, No. 112 at p. 1) While improvements in efficacy from any single technology option may be minor, DOE concludes in this final determination that all technology options identified in the September 2019 GSIL NOPD could potentially increase the efficacy of GSILs.

DOE also received comments on specific technology options. Regarding higher pressure operation, NEMA stated that halogen lamps are at the practical limit of higher pressure operation without risking safety. (NEMA, No. 88 at pp. 6) DOE considers alterations to the lamp that might be necessary for safety reasons if the lamp operates at a higher pressure. See VI.B.3 for more detail.

Regarding higher efficiency inert fill gas, NEMA stated that halogen lamps are already using xenon and krypton to reduce heat conduction. Consequently,

[22] Documents from DOE's rulemaking for IRLs are available here: *https://www.regulations.gov/docket?D=EERE-2011-BT-STD-0006.*

NEMA commented that improving lamp efficacy via alternative fill gasses is not a viable option. (NEMA, No. 88 at pp. 6) NEMA submitted a similar comment during the 2015 IRL rulemaking and DOE noted that while the majority of standards-compliant IRLs utilize xenon, the amount of xenon used in a lamp can vary. DOE concluded in that rulemaking that xenon could be used to improve lamp efficacy and DOE reaches the same conclusion in this final determination. 80 FR 4042, 4059 (January 26, 2015).

NEMA stated that certain technology options require redesigning the current halogen incandescent lamp, adding to their cost. NEMA elaborated with the following examples: (1) Use of higher pressure requires adding a heavy glass outer jacket to contain a potential rupture of the filament tube caused by the increased pressure and (2) thinner filaments require tighter coil spacing to maintain the efficacy and avoid hot shock issues leading to early lamp failure. Additionally, NEMA explained that for the higher efficiency burner design option, using a double-ended burner in itself is not more efficient, rather it reduces costs by allowing for a smaller capsule design. (NEMA, No. 88 at pp. 6–7) DOE considers technology options regardless of their cost. DOE considers cost impacts in determining the economic justification of any standard levels developed using the technology options identified. See VI.B.3 for more detail regarding lamp alterations necessary to eliminate safety concerns.

Additionally, NEMA stated that higher temperature improves efficacy but shortens lifetime and would only make sense for a lamp with lifetime lower than 1,000 hours. NEMA added the same would apply to use of thinner filaments which require higher temperature operation. (NEMA, No. 88 at pp. 6) DOE understands that for certain technologies there may be a tradeoff between efficacy and lifetime. DOE does not consider efficacy levels that necessitate a reduction in lamp lifetime relative to the baseline.

In the September 2019 GSIL NOPD DOE stated that the infrared (IR) glass coating technology option involves coatings that reflect some radiant energy emitted back onto the filament, which supplies heat to the filament increasing its temperature and thereby increasing lamp efficacy. 84 FR 46830, 46836 (September 5, 2019). NEMA clarified the increase in efficacy from IR glass coatings is due to the lamp reusing the radiant energy emitted back on to the filament resulting in less power needed to heat the filament. NEMA added that just increasing the temperature of the filament would shorten the lamp lifetime. (NEMA, No. 88 at p. 7) DOE agrees that reduction of power is also a component in this technology option. In chapter 3 of the NOPD TSD, DOE noted that in addition to the increase in temperature leading to an increase light output, the reflected IR radiation from IR glass coatings can also decrease the amount of energy needed to heat the filament.

DOE also received comments regarding two technology options that were not identified in the September 2019 GSIL NOPD that should be considered by DOE in this final determination. The Joint Advocates noted that DOE did not consider the technology used in the Philips EcoClassic HIR lamp operated at 230 volts (''V'') that was introduced in Europe. The Joint Advocates explained that the lamp used an internal power supply to drive the halogen capsule at 12 volts allowing Philips to use a sturdy, compact filament and achieve 50 percent energy savings over the conventional halogen bulb. (Joint Advocates, No. 113 at pp. 4–5, 7)

DOE has considered the use of an integral ballast (or a transformer) in an incandescent lamp that steps down the line voltage to a lower voltage (*i.e.,* integrally ballasted low voltage) in previous IRL rulemakings. In the 2009 IRL rulemaking [23] DOE identified this as a technology option and was aware that an integrally ballasted low voltage lamp was offered in Europe. 73 FR 13620, 13644 (March 13, 2008). In that rulemaking, CA IOUs provided test data showing prototypes of integrally ballasted low voltage IRLs operating at 120 V that could reach higher efficacies than the baseline. However, because the prototype that could reach the max-tech level also used a developmental design option (*i.e.,* silverized reflectors), DOE determined that the actual achievable efficacy when manufactured at a large scale was unclear. Additionally, Philips commented that higher mains voltages found in Europe (such as 220 V and 240 V) allow greater improvements in efficiency to be obtained by IRL with integrated transformers, but such improvements could not be obtained as easily in the U.S., where a mains voltage of 120 V is used. Therefore, in the 2009 IRL rulemaking, DOE recognized integrally ballasted low voltage lamps as a design option but did not base max-tech or adopt any TSL on the test data provided for the design option. 74 FR 34080, 34135 (July 14, 2009). In the 2015 IRL rulemaking, DOE removed integrally ballasted low voltage lamps as a technology option after receiving feedback that lamps using the technology are limited to certain wattages due to heat dissipation issues caused by the electronic components. Specifically, NEMA cited a 30 W limit and manufacturers in interviews cited a limiting range of 20 to 35 W. 80 FR 4060 (January 26, 2015). Based on the lack of definitive data on achievable efficacy and potential technological issues with wattages necessary to provide a lumen output within the range stated by the GSIL definition, DOE is not considering integrally ballasted low voltage lamps as a technology option in this analysis.

The Joint Advocates also stated DOE did not include photonic crystals as infrared reflectors used in a proof-of-concept high-efficiency bulb presented by researchers from the Massachusetts Institute of Technology (MIT).[24] (Joint Advocates, No. 113 at pp. 4–5, 7) DOE reviewed the MIT research cited by commentators and determined it presents a technology option for improving GSIL efficacy not identified in the September 2019 GSIL NOPD. The technology option uses a photonic filter designed to ensure IR radiation is completely reflected back to the filament while visible light is emitted out. The filter can be a 1- to 3-dimensional photonic crystal that surrounds the filament.[25] [26] In this final determination DOE identifies photonic filters as a technology option for increasing GSIL efficacy.

In this final determination, DOE has identified 15 technology options (see Table VI.1) to improve the efficacy of GSILs, as measured by the DOE test procedure. See section VI.A.4 for a discussion of which technology options were screened out of the analysis, see section VI.B.3 for a more complete discussion of how the remaining technology options (called design options) were incorporated into the more efficacious HIR lamps modeled in the engineering analysis, and see section

[23] Documents from DOE's rulemaking for IRLs are available here: *https://www.regulations.gov/docket?D=EERE-2006-STD-0131.*

[24] Ognjen, Ilic et al. ''Tailoring high-temperature radiation and the resurrection of the incandescent source'' Nature Nanotechnology 11, 320–324 (2016).

[25] Bermel, et al. (2014) *U.S. Patent No. 8,823,250 B2.* Washington, DC: U.S. Patent and Trademark Office.

[26] Ognjen, Ilic et al. ''Tailoring high-temperature radiation and the resurrection of the incandescent source'' Nature Nanotechnology 11, 320–324 (2016).

VI.C for a discussion of how lamp prices were determined.

TABLE VI.1—GSIL TECHNOLOGY OPTIONS

Name of technology option	Description
Higher Temperature Operation	Operating the filament at higher temperatures, the spectral output shifts to lower wavelengths, increasing its overlap with the eye sensitivity curve.
Microcavity Filaments	Texturing, surface perforations, microcavity holes with material fillings, increasing surface area and thereby light output.
Novel Filament Materials	More efficient filament alloys that have a high melting point, low vapor pressure, high strength, high ductility, or good radiating characteristics.
Thinner Filaments	Thinner filaments to increase operating temperature. This measure may shorten the operating life of the lamp.
Crystallite Filament Coatings	Layers of micron or submicron crystallites deposited on the filament surface that increases emissivity of the filament.
Higher Efficiency Inert Fill Gas	Filling lamps with alternative gases, such as Krypton, to reduce heat conduction.
Higher Pressure Tungsten-Halogen Lamps	Increased halogen bulb burner pressurization, allowing higher temperature operation.
Non-Tungsten-Halogen Regenerative Cycles	Novel filament materials that regenerate.
Infrared Glass Coatings	When used with a halogen burner, this is referred to as an HIR lamp. Infrared coatings on the inside of the bulb to reflect some of the radiant energy back onto the filament.
Infrared Phosphor Glass Coatings	Phosphor coatings that can absorb infrared radiation and re-emit it at shorter wavelengths (visible region of light), increasing the lumen output.
Ultraviolet Phosphor Glass Coatings	Phosphor coatings that convert ultraviolet radiation into longer wavelengths (visible region of light), increasing the lumen output.
High Reflectance Filament Supports	Filament supports that include a reflective face that reflects light to another filament, the reflective face of another filament support, or radially outward.
Permanent Infrared Reflector Coating Shroud	Permanent shroud with an IR reflector coating and a removable and replaceable lamp can increase efficiency while reducing manufacturing costs by allowing IR reflector coatings to be reused.
Higher Efficiency Burners	A double-ended burner that features a lead wire outside of the burner, where it does not interfere with the reflectance of energy from the burner wall back to the burner filament in HIR lamps.
Photonic Filter	A photonic filter surrounding the filament designed to ensure IR radiation is reflected back to the emitter while visible light is emitted out.

4. Screening Analysis

DOE uses the following four screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility or product availability.* If it is determined that a technology would have significant adverse impact on the utility of the product to significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

10 CFR part 430, subpart C, appendix A, 4(a)(4) and 5(b)

In summary, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed four criteria, it will be excluded from further consideration in the engineering analysis. Additionally, it is DOE policy not to include in its analysis any proprietary technology that is a unique pathway to achieving a certain efficacy level.

In the September 2019 GSIL NOPD, DOE screened out eight technology options because DOE could not find evidence of their existence in working prototypes or commercially available products, they were not practicable to manufacture, and/or they impacted product utility. NEMA agreed with the technology options that DOE screened out for the reasons set forth in the September 2019 GSIL NOPD. (NEMA, No. 88 at p. 6) DOE received no other adverse comments regarding the screening analysis. Therefore, the technology options that were screened out in the September 2019 GSIL NOPD are also screened out in this final determination.

As described in VI.A.3, in this final determination DOE added photonic filters as a technology option; photonic filters around filaments reflect IR radiation back to the filament while allowing visible light to exit. However, filter and filament stability, evaporation of filament material, and optimization of the spacing between the filter and filament have been cited as potential challenges in the development of this technology.[27] Further, DOE's review of the paper cited by the Joint Advocates and the patent for the technology does not indicate that a complete lamp was assembled with the photonic filter included and DOE believes including photonic filters would require use of manufacturing techniques not currently used in the mass production of GSILs. Therefore, DOE screens out this technology option based on the first criterion, technological feasibility, and

[27] Arny Leroy, Bikram Bhatia, Kyle Wilke, Ognjen Ilic, Marin Soljačić, et al. ''High performance incandescent lighting using a selective emitter and nanophotonic filters,'' Proceedings from SPIE Optical Engineering + Applications, 2017.

the second criterion, practicability to manufacture.

The technology options screened out of this analysis are summarized in Table VI.2 of this document.

TABLE VI.2—GSIL TECHNOLOGY OPTIONS SCREENED OUT OF THE ANALYSIS

Design option excluded	Screening criteria
Novel Filament Materials	Technological feasibility, Practicability to manufacture, install, and service, Adverse impact on product utility.
Microcavity Filaments	Technological feasibility, Practicability to manufacture, install, and service, Adverse impact on product utility.
Crystallite Filament Coatings	Technological feasibility, Practicability to manufacture, install, and service.
High Reflectance Filament Supports	Technological feasibility, Practicability to manufacture, install, and service.
Non-Tungsten-Halogen Regenerative Cycles	Technological feasibility, Practicability to manufacture, install, and service, Adverse impact on product utility.
Permanent Infrared Reflector Coating Shroud	Technological feasibility, Practicability to manufacture, install, and service.
Infrared Phosphor Glass Coating	Technological feasibility, Practicability to manufacture, install, and service.
Ultraviolet Phosphor Glass Coating	Technological feasibility, Practicability to manufacture, install, and service.
Photonic Filters	Technological feasibility, Practicability to manufacture, install, and service.

DOE concludes that all of the other identified technologies listed in Table VI.1 met all four screening criteria to be examined further as design options in DOE's final determination. In summary, DOE did not screen out the following technology options:

- Higher Temperature Operation
- Thinner Filaments
- Higher Efficiency Inert Fill Gas
- Higher Pressure Tungsten-Halogen Lamps
- Infrared Glass Coatings
- Higher Efficiency Burners

5. Product Classes

When evaluating and establishing energy conservation standards, DOE divides the covered product into classes by (1) the type of energy used, (2) the capacity of the product, or (3) any other performance-related feature that affects energy efficiency and justifies different standard levels, considering factors such as consumer utility. (42 U.S.C. 6295(q)) Product classes for GSILs are currently divided based on lamp spectrum and lumen output. In the September 2019 GSIL NOPD, DOE proposed to maintain separate product classes based on lamp spectrum but did not propose to maintain separate product classes based on lumen output.

CA IOUs stated that modified spectrum lamps do not need to be in a separate product class and efficacy allowances in current regulations for these products are too large. (CA IOUs, No. 83 at p. 3)

As described in section VI.A.1, DOE considers GSILs to be the covered product in this final determination and therefore DOE considers only GSILs when establishing product classes. The CA IOUs did not provide any rationale for why modified spectrum GSILs should be in the same product class as standard spectrum GSILs. Modified spectrum [28] lamps provide unique utility to consumers by providing a different type of light than standard spectrum lamps, much like fluorescent and LED lamps with different correlated color temperature (''CCT'') values. However, the same technologies that modify the spectral emission of a lamp also decrease lamp efficacy. To modify the spectrum, the coating absorbs a portion of the light emission from the filament. Neodymium coatings or other coatings on modified spectrum lamps absorb some of the visible emission from the incandescent filament (usually red), creating a modified, reduced spectral emission. Since the neodymium or other coatings absorb some of the lumen output from the filament, these coatings decrease the efficacy of the lamp. Because of the impact on both efficacy and utility, DOE is maintaining separate product classes based on spectrum.

In summary, DOE evaluates two product classes for GSILs—one for GSILs that meet the definition of modified spectrum in 10 CFR 430.2 and one for standard spectrum GSILs (*i.e.* do not meet the definition of modified spectrum). See chapter 3 of the final determination TSD for further discussion.

B. Engineering Analysis

In the engineering analysis, DOE selects representative product classes to analyze. It then selects baseline lamps within those representative product classes and identifies more-efficacious substitutes for the baseline lamps. DOE uses these more-efficacious lamps to develop efficacy levels.

For this rulemaking, DOE selected more efficacious substitutes in the engineering analysis and determined the consumer prices of those substitutes in the product price determination. DOE estimated the consumer price of lamps directly because reverse-engineering is impractical since the lamps are not easily disassembled. By combining the results of the engineering analysis and the product price determination, DOE derived typical inputs for use in the LCC analysis and NIA. Section VI.C discusses the product price determination.

The methodology for the engineering analysis consists of the following steps: (1) Select representative product classes, (2) select baseline lamps, (3) identify more efficacious substitutes, (4) develop efficacy levels by directly analyzing representative product classes, and (5) scale efficacy levels to non-representative product classes. The details of the engineering analysis are discussed in further detail in chapter 5 of the final determination TSD.

1. Representative Product Classes

In the case where a covered product has multiple product classes, DOE identifies and selects certain product classes as ''representative'' and concentrates its analytical effort on those classes. DOE chooses product classes as representative primarily because of their high market volumes. Based on its assessment of product offerings, in the September 2019 GSIL NOPD DOE analyzed standard spectrum GSILs as representative (only 3 percent of commercially available halogen GSILs were marketed as having a modified spectrum). This is consistent with the 2015 IRL rulemaking in which DOE analyzed, with support from NEMA, standard spectrum IRLs as representative. 79 FR 24068, 24107 (April 29, 2014).

[28] Definition of ''*Modified spectrum*'' is set out at 10 CFR 430.2.

NRDC requested DOE provide market shares or sales data for modified spectrum incandescent lamps. NRDC stated that major retailers have switched their house-branded lamps to be modified spectrum lamps. NRDC added that modified spectrum incandescent or halogen lamps provide little to no energy savings and less light compared to the old incandescent lamps. (NRDC, Public Meeting Transcript, No. 56 at pp. 39, 42) GE disagreed with NRDC noting that GE's halogen Reveal lamps are sold at the same wattages (*i.e.,* 43 W, 53 W) as the comparable halogen lamp on the market and have the same effect.[29] (GE, Public Meeting Transcript, No. 56 at pp. 42–43)

Westinghouse stated that using the number of models as a proxy for market data is not an effective approach. However, Westinghouse stated that anecdotally it could confirm the volume of modified spectrum lamps is lower than standard spectrum. (Westinghouse, Public Meeting Transcript, No. 56 at pp. 39–40) GE also confirmed that standard spectrum products outsell modified spectrum products by a significant percentage. (GE, Public Meeting Transcript, No. 56 at p. 43)

DOE consulted available market reports, such as the 2015 U.S. Lighting Market Characterization,[30] searched for shipment information regarding modified spectrum incandescent lamps, and reviewed market reports for LED lamps, such as those available from DOE's Solid-State Lighting Program, to get a better sense of the popularity of modified spectrum lamps as compared to standard spectrum lamps. There is very little public information available. As noted by GE during the public meeting, NEMA does not track shipments of modified spectrum lamps. (GE, Public Meeting Transcript, No. 56 at p. 41) Available information includes product offerings (with lamps designated as modified or standard spectrum), industry support in past DOE rulemakings for IRLs that standard spectrum lamps are much higher volume than modified spectrum lamps, and manufacturer confirmation at the October 2019 public meeting that standard spectrum GSILs have higher shipments than modified spectrum GSILs. Given the available information, DOE continues to analyze standard spectrum GSILs as representative in the final determination.

2. Baseline Lamps

For each representative product class, DOE selects a baseline lamp as a reference point against which to measure changes resulting from energy conservation standards. Typically the baseline lamp is the most common, least efficacious lamp that meets existing energy conservation standards. In the September 2019 GSIL NOPD, DOE selected as a baseline the least efficacious lamp meeting standards with the most common lumen output and, where possible, with the most common wattage, lifetime, input voltage, and shape for the product class.

Sierra Club and Earthjustice stated that DOE had not analyzed the correct baseline lamp because the backstop standard has been triggered and all GSLs sold beginning January 1, 2020 will need to meet a 45 lumens per watt standard. (Sierra Club and Earthjustice, No. 104 at p. 7) As stated in section V.A, the backstop has not yet been triggered and therefore DOE did not consider a minimum standard of 45 lumens per watt when selecting a baseline lamp.

GE confirmed that the lumen output of the traditional 60-watt incandescent lamp, selected by DOE, is the most popular lumen output on the market. (GE, No. 78 at p. 2) DOE received no other comments regarding the baseline lamp selected in the September 2019 GSIL NOPD and therefore selects the same baseline lamp for this final determination (shown in Table VI.3). See chapter 5 of the final determination TSD for more detail.

TABLE VI.3—BASELINE GSIL

EL	Technology	Wattage	Bulb shape	Initial lumens	Rated lifetime (hrs)	Efficacy (lm/W)
EL 0/Baseline	Halogen	43	A19	750	1,000	17.4

3. More Efficacious Substitutes

In the September 2019 GSIL NOPD, DOE evaluated more-efficacious lamps as replacements for the baseline lamp by considering commercially available products and technologies not eliminated in the screening analysis. DOE could not use data in the compliance certification database to evaluate more efficacious lamps because the information required to calculate efficacy was not included; rated wattage was reported for a given lumen range rather than for an exact lumen output. Instead, DOE reviewed its database of commercially available GSILs for lamps that met the definition of a GSIL, had a lumen output between 750 and 1,049 lumens, had an A-shape, and had a higher efficacy than the baseline lamp while still exceeding the minimum standard established by EISA. DOE did not identify any commercially available GSILs that could serve as more efficacious substitutes for the baseline lamp.

Because no commercially available products could serve as a more efficacious substitute, DOE modeled a more efficacious substitute for the baseline lamp in the September 2019 GSIL NOPD. The modeled lamp was based on an actual lamp that previously had been commercially available but was taken off the market for economic reasons. GE previously offered for sale GSILs that used HIR technology; GE's 60 watt equivalent GSIL that employed IR coatings had a rated wattage of 45 watts and a lifetime of 3,000 hours. DOE reviewed information on discontinued products and found a label that indicated this product had a lumen output of 870 lumens. DOE used a similar methodology as in the 2009 IRL rulemaking[31] and the 2015 IRL rulemaking[32] to adjust the lumen output and lifetime of the lamp to be equal to that of the baseline lamp (see chapter 5 of the TSD for the 2009 IRL final rule). Making these adjustments lowered the rated wattage of the modeled lamp to 34.3 watts.

DOE received several comments regarding the characteristics of the HIR lamp modeled in the engineering analysis. NRDC stated that DOE failed to

[29] DOE interprets ''have the same effect'' as meaning they are perceived as providing the same amount of light.

[30] Available at *https://www.energy.gov/sites/prod/files/2017/12/f46/lmc2015_nov17.pdf.*

[31] DOE published a final rule on July 14, 2009 amending energy conservation standards for IRLs. The docket for the 2009 rulemaking is available at *https://www.regulations.gov/docket?D=EERE-2006-STD-0131.*

[32] Chapter 5 of the TSD for the 2015 IRL final rule is available at *https://www.regulations.gov/document?D=EERE-2011-BT-STD-0006-0066.*

provide the method used to determine the performance characteristics of the modeled lamp and information on the actual lamp sold by GE in their analysis. (NRDC, No. 97 at p. 4) In September 2019 GSIL NOPD, DOE stated that it modeled the more efficacious substitute at EL 1 using a previously offered GE lamp with a rated wattage 45 watts, a lifetime of 3,000 hours, and a lumen output of 870 lumens. DOE explained that it used the same methodology used in the previous IRL rulemakings (both the 2009 IRL Rulemaking and the 2015 IRL Rulemaking) to adjust the lumen output and lifetime of the lamp. 84 FR 46830, 46840. DOE specified the equation used to make these adjustments in chapter 5 of the NOPD TSD. DOE developed this equation and its associated constants in the 2009 IRL rulemaking using a set of equations from the IESNA Handbook that relate voltage to lumens, wattage, and lifetime. (See chapter 5 of 2009 IRL final rule TSD and 2015 IRL final rule TSD.) DOE determined that the equation used in the IRL rulemakings could be applied GSILs because they use the same technology to produce light. DOE continues to use the equation described in this paragraph to model lamps in this final determination.

DOE received comments confirming the performance characteristics of the HIR lamp modeled at EL 1. GE stated that DOE had modeled the representative unit at EL 1 based on a technically sound lamp that was offered by GE for a few years. GE confirmed that if the lumen output of the lamp it offered (870 lumens) was lowered to 750 lumens and the lifetime of the lamp it offered (3,000 hours) was lowered to 1,000 hours, the wattage of the lamp would be similar or the same as the wattage of the HIR lamp modeled by DOE. (GE, Public Meeting Transcript, No. 56 at pp. 49–50) GE stated that it no longer sells HIR technology in its A-line lamps because it cannot economically compete with current lighting options. (GE, Public Meeting Transcript, No. 56 at p. 53; GE, No. 78 at p. 2)

DOE also received comments regarding the design options incorporated into the modeled lamp. In the September 2019 GSIL NOPD, DOE stated that the modeled lamp utilized an IR coating and also higher temperature and pressure operation. DOE stated that the modeled lamp did not incorporate thinner filaments, higher efficiency inert fill gas, or higher efficiency burners because DOE did not believe including those design options would increase the efficacy beyond that achieved by the combination of an IR coating and higher temperature and pressure operation.

NEMA agreed with DOE's initial determination that an HIR lamp is the only technologically feasible GSIL alternative that is more efficacious than the halogen lamp currently on the market. (NEMA, No. 88 at p. 5) GE stated that while different advanced filament technologies were evaluated in the past 20 years, only HIR technology identified by DOE has proven technologically feasible to manufacture for commercial sale and therefore, represents the best design option for this analysis. (GE, No. 78 at p. 2) Rothenhaus similarly stated that HIR technology is the most efficient form of GSIL. (Rothenhaus, No. 16 at p. 2)

IPI disagreed with DOE's decision to not incorporate thinner filaments, higher efficiency inert fill gas, and higher efficiency burner design options in the modeled lamp. IPI stated that in doing so, DOE did not consider that technological development due to regulatory pressure may reduce the cost or increase the efficacy of these additional technology options, making higher efficiency GSILs available. (IPI, No. 96 at p. 5) The Joint Advocates noted that DOE identified other, valid energy efficiency technologies such as thinner filaments and less conductive inert fill gas but did not develop an energy efficiency level that included these options. (Joint Advocates, No. 113 at pp. 3–4)

Regarding design options incorporated into the modeled HIR lamp, DOE notes that the incorporation of certain design options may affect other aspects of lamp operation and/or increase the cost of the lamp. After reviewing the comments and reviewing images of the label on the product previously offered by GE, DOE concludes that the modeled HIR lamp incorporates the following technology options: Higher temperature operation, higher pressure operation, IR glass coatings, and higher efficiency burners. As described in the September 2019 GSIL NOPD, IR coatings on incandescent lamps are used to reflect some of the radiant energy emitted back onto the filament which can result in higher temperature operation. Further, as described by NEMA and GE, a halogen capsule with an IR coating operates at a much higher pressure than a standard halogen capsule. Thus, applying an IR coating also results in higher temperature and higher pressure operation. (GE, Public Meeting Transcript, No. 56 at p. 53; NEMA, No. 88 at p. 5) In addition, the image of the label for the 45 watt HIR lamp previously offered by GE shows a double-ended burner. As stated in the 2009 IRL final rule, double-ended burners are more efficient than single-ended burners because the lead wire inside of a single-ended burner prevents a certain amount of energy from reaching the burner wall and being reflected back to the filament (a double-ended burner features a lead wire outside of the capsule, where it does not interfere with the reflectance of energy from the burner wall back to the filament). 74 FR 34080, 34106–34107 (July 14, 2019). Thus, the modeled lamp in the engineering analysis also incorporates the most efficient burner.

Although DOE identified higher efficiency fill gas and thinner filaments as design options, DOE does not incorporate them into the modeled HIR lamp. DOE lacks information regarding the specific gas composition in the capsule of the GE lamp previously offered for sale, and therefore it lacks information regarding the efficacy improvement possible from improving the fill gas. Further, DOE is not aware whether the filament of the GE HIR lamp can be improved. As stated by NEMA, thinner filaments in an HIR lamp require tighter coil spacing in order to maintain efficacy and avoid ''hot shock'' issues, which leads to early failure of the lamp. (NEMA, No. 88 at p. 6) It is unclear if using a thinner filament than that used in the GE HIR lamp would cause the lamp's lifetime to decrease due to ''hot shock.''

DOE received several comments regarding other more efficacious substitutes that could have been included in the analysis. The Joint Advocates commented that DOE modeled a lamp that was less economically desirable than the product offered for sale by GE. (Joint Advocates, No. 113 at pp. 3–4) NRDC agreed and stated that it was odd that DOE failed to analyze the actual lamp that was sold by GE. (NRDC, No. 97 at p. 4)

DOE did not directly analyze the GE HIR lamp previously offered for sale because its wattage (45 watts) was higher than the wattage of the baseline lamp (43 watts). Energy conservation standards prescribed by DOE must be designed to achieve the maximum improvement in energy efficiency, which the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Further, relevant to GSILs, EPCA defines an ''energy conservation standard'' as a performance standard which prescribes a minimum level of energy efficiency or a maximum quantity of energy use. (42 U.S.C. 6291(6)(A)) In accordance with these statutory provisions, the engineering analysis evaluates only

energy-saving substitutes in the engineering analysis.

Several commenters stated that even though DOE considered a more efficacious substitute that utilized IR coatings, DOE did not consider the maximum efficacy that could be achieved using HIR technology. NRDC stated that GSILs have been introduced to the market with higher efficacies and lower prices than the more efficacious substitute considered by DOE. As a result, NRDC argued, DOE's analysis underestimates potential benefits and overstates the cost of updated efficiency standards for GSILs. NRDC stated that DOE must update its analysis with additional ELs prior to the issuance of a final rule. (NRDC, Public Meeting Transcript, No. 56 at p. 16) The Joint Advocates stated that Venture Lighting had previously offered an HIR lamp (''Vybrant 2X'') at a higher efficiency and longer life than the one DOE analyzed at max tech. The Joint Advocates noted that the lamp used a less expensive technique for applying the IR coating to the halogen capsule and was sold at $3.50 per bulb. The Joint Advocates were unaware of any consumer concerns about the performance or longevity of the lamp. (Joint Advocates, No. 113 at pp. 4–5, 7) NRDC provided details that Venture Lighting offered a 50 W replacement for the 100 W incandescent lamp and a 30 W replacement for the 60 W incandescent and 43 W halogen incandescent lamps. (NRDC, No. 97 at p. 4) Further the Joint Advocates noted that Technical Consumer Products (TCP) had announced an HIR lamp with an even higher efficiency than the Vybrant 2X for a similar price, but that it was never commercially introduced in the U.S. (Joint Advocates, No. 113 at pp. 4–5, 7) NRDC noted that the TCP lamp had 2,000-hour lifetime. (NRDC, No. 97 at p. 4)

Regarding Venture Lighting's high efficiency HIR lamp, NEMA stated that it was available for three months before it was withdrawn because the lamp filament would cross over on itself resulting in a shortened lifetime or immediate failure (referred to as ''hot shock''). NEMA explained that the lamp filament needs to be positioned precisely to maximize absorption of infrared light and maximize lamp efficacy. This poses mechanical and chemical constraints on filament construction and material as well as design challenges to accommodate other components of the lamp structure such as a fuse link, which is required for safe operation of the lamp. NEMA noted that the expense of overcoming these design challenges would not result in a cost-effective product for the consumer. NEMA stated that Venture Lighting decided that the product could not be commercialized due to the technical and cost issues. (NEMA, No. 88 at pp. 9–10)

DOE appreciates the comments regarding more efficient HIR lamps. However, for the reasons that follow, DOE did not use them to develop a more efficacious lamp than the one modeled in the September 2019 GSIL NOPD. Commenters focused on two products when stating that DOE should consider a more efficacious lamp than that considered in the September 2019 GSIL NOPD: A lamp advertised by TCP and a lamp sold by Venture Lighting, known as the Vybrant 2X lamp. Commenters indicate that both lamps utilize, or were advertised to utilize, HIR technology to achieve efficacies greater than the lamp modeled by DOE in the September 2019 GSIL NOPD. While the TCP lamp was announced in 2011, it was never commercially introduced for sale. DOE did not base a more efficacious substitute on the TCP product because it is unclear whether the advertised performance characteristics would have remained the same when it was manufactured on a commercial scale. Further, TCP informed NEMA that the lamp was never offered for sale because the cost of the product was too high. (NEMA, No. 329 at p. 38) [33] As the cost is only identified as ''too high,'' it is also unclear what the cost of the product would be in the retail market. The Vybrant 2X lamp, in contrast, was offered for sale for a period of three months in 2013 via Venture's website. Commenters state that it was priced at $3.50 in 2013. (Joint Advocates, No. 113 at pp. 4; NRDC, No. 97 at p. 4) Venture informed NEMA that the Vybrant 2X lamp was withdrawn for technical and product performance reasons because the lamp experienced ''hot shock'' issues whereby the filament would cross over on itself and create short life or immediate failure. Because of these technical issues and because of cost issues, Venture concluded the product would not be commercialized and discontinued the product. (NEMA, No. 329 at p. 38) [34] DOE did not base a more efficacious substitute on the Vybrant 2X lamp offered by Venture because the lifetime of the lamp did not appear to meet the advertised value and it was unclear what value should be used for the actual lifetime. There is a relationship between lifetime, wattage, and lumen output for incandescent/halogen lamps, and absent all three pieces of information it is not possible to fairly compare the level of technology from one lamp to another. For these reasons, DOE did not model a more efficacious substitute with an efficacy greater than that of the HIR lamp modeled in the September 2019 GSIL NOPD.

Regarding the lamp modeled in the September 2019 GSIL NOPD, while DOE changed the lumen output of the GE lamp previously offered for sale (870 lumens) to be equal to that the lumen output of the baseline lamp (750 lumens), several stakeholders commented on DOE's approach to changing the lifetime of the GE lamp (3,000 hours) to be equal to that of the baseline lamp (1,000 hours). GE stated that the minimum lifetime allowed under current regulations, 1,000 hours, will produce the most efficacious design possible. (GE, No. 78 at p. 2) However, NEMA and GE stated that while they agreed with the performance characteristics of the HIR lamp modeled by DOE, they believe that consumers will receive better economic value for a 3,000-hour HIR lamp rather than one that is 1,000 hours as modeled by DOE. (NEMA, No. 88 at p. 8; GE, Public Meeting Transcript, No. 56 at pp. 49–50) NEMA stated that modeling the substitute at 1,000 hours to reduce the wattage does not lower the initial cost of the lamp but does decrease the hours to recover the cost. Specifically, NEMA stated that the 10.7 watts energy saving of efficiency level (''EL'') 1 over the baseline, would yield a $1.40 saving over a period of 1,000 hours (at $0.1312/kWh), which does not justify paying $6.00 more for the lamp. NEMA added this is supported by GE's and Philip's business decision to offer a longer-life lamp. (NEMA, No. 88 at p. 8)

The Joint Advocates stated that DOE took an ''economically unacceptable'' product and hypothesized an even less economically acceptable version on which to base its analysis. (Joint Advocates, No. 113 at pp. 3–4) IPI stated that DOE did not consider lamp options with comparable performance to EL 1 but with a different lifetime, and thus did not consider the impact of such options on cost and the payback period. (IPI, No. 96 at pp. 6–7) The Joint Advocates recommended that DOE evaluate an efficacy level below EL 1 (EL 0.5) that achieves a 26 percent improvement over the baseline based on a 43 W lamp that has a lumen output

[33] This comment was submitted in response to docket number EERE–2018–BT–STD–0010 and is available here: *https://www.regulations.gov/document?D=EERE-2018-BT-STD-0010-0329.*

[34] This comment was submitted in response to docket number EERE–2018–BT–STD–0010 and is available here: *https://www.regulations.gov/document?D=EERE-2018-BT-STD-0010-0329.*

of 800 lumens and lifetime of 3,000 hours. (Joint Advocates, No. 113 at p. 5)

DOE analyzes energy-saving substitutes in the engineering analysis. As described previously in this section, because the wattage of the commercially available GE lamp was greater than that of the baseline lamp, DOE adjusted the performance characteristics to create an energy-saving substitute. Adjusting both the lifetime and the lumen output resulted in a lamp with the lowest possible wattage (*i.e.,* the most energy-saving substitute). However, DOE acknowledges that adjusting both lifetime and lumen output is not necessary to create an energy-saving substitute. If DOE adjusts only the lumen output to be equal to that of the baseline lamp, the wattage decreases from 45 watts to 39.3 watts. The lifetime of 3,000 hours would be maintained. DOE analyzes this lamp as a new option at EL 0.5 in this final determination. The performance characteristics of the modeled HIR lamps are shown in Table VI.4.

TABLE VI.4—MORE EFFICACIOUS GSIL SUBSTITUTES

EL	Technology	Wattage	Bulb shape	Initial lumens	Rated lifetime (hrs)	Efficacy (lm/W)
EL 0.5	HIR	39.3	A19	750	3,000	19.1
EL 1	HIR	34.3	A19	750	1,000	21.9

4. Efficacy Levels

After identifying more-efficacious substitutes for the baseline lamp, DOE developed ELs based on the consideration of several factors, including: (1) The design options associated with the specific lamps being studied, (2) the ability of lamps across lumen outputs to comply with the standard level of a given product class, and (3) the max-tech level.

In the September 2019 GSIL NOPD, DOE employed an equation-based approach for efficacy levels. DOE considered the following equation that relates the lumen output of a lamp to lamp efficacy:

$$Efficacy = A - 29.42 * 0.9983^{\text{initial lumen output}} \quad \text{Equation 1.}$$

where A is a constant that varies by EL. The equation characterizes efficacy as sharply increasing as lumen output increases at the lowest part of the lumen range and then the increase slows down such that a curve is formed with a steep slope at the low end of the lumen range and a flatter slope at the high end of the lumen range.

DOE did not receive any comments regarding the form of the equation and therefore continues to use the same equation form in this final determination.

As described in section VI.B.3, DOE identified, through modeling, two more efficacious GSIL substitutes. DOE developed two ELs based on the efficacies of the modeled lamps. Table VI.5 summarizes the ELs developed by the engineering analysis.

TABLE VI.5—ELS FOR GSIL REPRESENTATIVE PRODUCT CLASS

Representative product class	Efficacy level	Efficacy (lm/W)
Standard Spectrum GSILs	EL 0.5	27.2–29.42 * 0.9983 ∧ Initial Lumen Output.
	EL 1	30.0–29.42 * 0.9983 ∧ Initial Lumen Output.

5. Scaling to Other Product Classes

DOE identifies and selects certain product classes as representative and analyzes these product classes directly. DOE chooses representative product classes primarily due to their high market volumes. The ELs for product classes that are not directly analyzed (''non-representative product classes'') are then determined by scaling the ELs of the representative product classes. For this rulemaking, DOE directly analyzed standard spectrum GSILs but did not directly analyze modified spectrum GSILs.

DOE developed an EL for the modified spectrum product class by scaling the EL of the standard spectrum product class. The primary difference between these product classes is the lamp spectrum; a coating applied to the lamp modifies its spectral emission but also decreases its efficacy. DOE developed a scaling factor by comparing existing standards for standard spectrum GSILs to similar modified spectrum GSILs. DOE determined that the modified spectrum lamps are 25 percent less efficacious than standard spectrum lamps. DOE applied this reduction to the A-value for the EL developed in section VI.B.4 of this document.

CA IOUs commented that a reduced efficacy allowance for modified spectrum lamps is not needed. CA IOUs noted that in incandescent lamps, light spectrum is modified by filtering out certain wavelengths after they are generated whereas high efficacy light sources can be designed to produce the desired wavelengths and without reducing efficacy. (CA IOUs, No. 83 at pp. 3–4).

As discussed in section V, the covered products in this rulemaking are GSILs. Therefore, DOE did not consider CFL or LED lamps when establishing product classes or determining the appropriate scaling factor. As indicated by the existing standards for GSILs, modified spectrum lamps cannot be as efficient as standard spectrum lamps. DOE did not receive any adverse comments to reducing efficacy levels by 25 percent to account for the capabilities of modified spectrum GSILs. DOE therefore continues to use this scaling factor in the final determination.

Table VI.6 summarizes the efficacy requirements for the non-representative product class.

TABLE VI.6—ELS FOR GSIL NON-REPRESENTATIVE PRODUCT CLASS

Non-representative product class	Efficacy level	Efficacy (lm/W)
Modified Spectrum GSILs	EL 0.5	20.4–29.42 * 0.9983 ∧ Initial Lumen Output.
	EL 1	22.5–29.42 * 0.9983 ∧ Initial Lumen Output.

6. Product Substitutes

If energy conservation standards for GSILs are amended, consumers may substitute alternative lamps that are not GSILs. In the September 2019 GSIL NOPD, DOE considered several alternatives available to consumers that have the same base type (medium screw base) and input voltage (120 volts) as the baseline lamp. DOE considered two more efficacious lamps that consumers may choose if standards for GSILs are amended: A CFL and an LED lamp. For consumers who are resistant to changing technology, and for those who are trying to replace a 60 watt incandescent lamp with a 60 watt replacement, DOE also considered a shatter-resistant incandescent lamp that is exempt from the definition of GSIL. Because this lamp is not a GSIL, it would not be subject to amended standards for GSILs and would remain available on the market.

Several commenters agreed that LED lamps were a likely substitute for GSILs; compared to the modeled HIR lamp, LED lamps were significantly more efficient and had a longer lifetime while also being less expensive. The Joint Advocates stated that LED lamps are more than five times as efficient as halogen lamps and last ten times as long. (Joint Advocates, No. 113 at p. 1) NRDC stated that LED lamps are extremely cost-effective replacements for incandescent and halogen lamps and are available in a wide range of shapes, base types, and brightness levels. (NRDC, Public Meeting Transcript, No. 56 at pp. 13–14) PA DEP explained that LED lamps are readily available as a replacement option for all GSIL applications. (PA DEP, No. 77 at p. 2) CFA stated that both CFL and LED technologies have much higher efficiencies and lower costs than the HIR level analyzed. (CFA, No. 76 at p. 5) An individual commented that store shelves are stocked with LED lamps because they are efficient, cheap, and dimmable. (Dufford, No. 32 at p. 1).

DOE also received several comments regarding the shatter-resistant incandescent lamp. The State Attorneys General and the Joint Advocates stated that DOE's scenarios in the September 2019 GSIL NOPD were unrealistic and over-estimated costs associated with more stringent GSIL standards because DOE assumed consumers would substitute GSILs with shatter-proof lamps but did not account for the fact that if shatter-proof lamp sales increased, DOE would be required to establish standards for these lamps or EPCA's backstop specific to these lamps would be triggered. (State Attorneys General, No. 110 at p. 16; Joint Advocates, No. 113 at p. 6) The State Attorneys General noted that exempt shatter-resistant incandescent lamps consume more energy than other substitutes such as CFL or LED lamps. (State Attorneys General, No. 110 at p. 16) NEMA commented that data available to and published by DOE indicates that shipments of this product have been steadily declining for over a decade now, and there is absolutely no evidence of substitution of shatter-resistant lamps for GSILs, CFLs or general service LEDs. Shipments of the shatter-resistant incandescent lamps have declined 67 percent since 2011. NEMA explained that a shatter-resistant lamp has special coating to contain the glass if the glass envelope is broken. NEMA added that the lamp's reduced lumen output due to the coating will affect consumer acceptance as a meaningful substitute for a GSIL or a GSL and that these lamps are usually used in food service, food manufacturing, water treatment, and other industrial applications. (NEMA, No. 88 at pp. 11–12).

DOE agrees with commenters that a separate backstop provision applies to shatter-resistant incandescent lamps if sales exceed a certain threshold. The shipments of shatter-resistant incandescent lamps forecasted in the September 2019 GSIL NOPD would have exceeded that threshold and therefore DOE would have had to complete an accelerated rulemaking or impose a maximum wattage limitation of 40 watts and a requirement that those lamps be sold at retail only in a package containing one lamp. 42 U.S.C. 6295(l)(4)(H) In this final determination, DOE removed the shatter-resistant incandescent lamp as an option that consumers may choose in response to a higher standard for GSILs because the lumen output of a 40 watt shatter-resistant incandescent lamp would be insufficient for people replacing a 43 watt halogen GSIL. Whereas the halogen GSIL has a lumen output of 750 lumens, 40 watt shatter-resistant lamps have lumen outputs from about 265 lumens to 415 lumens.

Table VI.7 summarizes the performance characteristics of the GSIL alternatives that consumers can choose if GSIL standards are amended.

TABLE VI.7—ALTERNATIVE LAMPS CONSUMERS MAY SUBSTITUTE FOR GSILS

Option	Technology	Wattage	Bulb shape	Initial lumens	Rated lifetime (hrs)	Efficacy (lm/W)
A	CFL	13	Spiral	900	10,000	69.2
B	LED	9	A19	800	15,000	88.9

C. Product Price Determination

Typically, DOE develops manufacturer selling prices (''MSPs'') for covered products and applies markups to create end-user prices to use as inputs to the LCC analysis and NIA. Because GSILs are difficult to reverse-engineer (*i.e.,* not easily disassembled), DOE directly derives end-user prices for GSILs. End-user price refers to the product price a consumer pays before tax and installation.

In the September 2019 GSIL NOPD, DOE used the same methodology as the March 2016 GSL NOPR to calculate the prices for the GSIL baseline lamp and the consumer choice alternatives. GSILs and the consumer choice alternatives

are purchased through the same distribution channels as the CFL and LED lamps analyzed in the March 2016 GSL NOPR. Because DOE modeled an HIR lamp at EL 1, which is not currently commercially available, DOE could not gather prices for commercially available lamps and use the same methodology. Instead, for the modeled HIR lamp in the September 2019 GSIL NOPD, DOE added the incremental change in end-user price from the 2015 IRL final rule to the price of the baseline halogen GSIL.

DOE received several comments regarding the price of the HIR lamp at EL 1. Some commenters supported the price determined by DOE. According to GE the HIR lamp it used to sell was expensive to make because of how it was constructed as well as the heavy glass covering required due to the higher pressure of the filament tube. (GE, Public Meeting Transcript, No. 56 at p. 53) GE stated that the numerous layers of coatings required on the filament tubes made it a slow and a laborious process that could not be done on a high-speed production line. (GE, Public Meeting Transcript, No. 56 at p. 59) NEMA noted that the slow batch production made it difficult for the GE and Philips HIR lamps to attain the same economies scale that a lower cost halogen lamp would have. (NEMA, No. 88 at p. 9) NEMA explained that the halogen IR tube is 6 to 8 times more expensive than the halogen incandescent capsule. (NEMA, No. 88 at p. 5) NEMA also noted that manufacturers indicated that there are distinct safety issues with the halogen IR lamp. One manufacturer's safety protocol required the lamp to be sold in an expensive heavy glass outer jacket to contain a filament tube rupture (the halogen IR filament tube operates at a much higher pressure than standard halogen capsules). Another manufacturer addressed the safety issue by operating its halogen IR filament tube at a low voltage, but this required an expensive electronic transformer in each lamp. Either solution was very expensive. (NEMA, No. 88 at p. 5) While DOE had calculated an incremental production cost for HIR technology using information from the 2015 IRL rulemaking, NEMA noted that switching from a standard to a more expensive IR halogen burner increases the price by a much higher percentage in a general service A-line incandescent lamp compared to a Parabolic Reflector (PAR) Lamp. (NEMA, No. 88 at p. 5)

In contrast, several commenters disagreed with the price determined by DOE and stated that it should be lower. The Joint Advocates stated that DOE provides no explanation of how the incremental value of $5.19 was determined. (Joint Advocates, No. 113 at p. 5) IPI noted that DOE had stated that it had used the IRL prices derived in the 2015 IRL rulemaking to develop the price for the modeled HIR lamp. However, IPI stated that the 2015 IRL rulemaking showed a difference of $2.62 in 2018$ between the baseline IRL and the HIR IRL while in the September 2019 GSIL NOPD analysis the difference between the baseline GSIL and the modeled HIR lamp was $5.19 in 2018$. IPI added that there was a 1,000-hour difference between the baseline IRL and HIR IRL lamp and DOE never explains how this was accounted for in using the IRL price differential to develop the price of the modeled HIR lamp. (IPI, No. 96 at p. 6) NRDC noted that HIR lamps had previously been sold at about $3.50 before any volume increases. (NRDC, Public Meeting Transcript, No. 56 at pp. 58–59) The Joint Advocates added that DOE should have determined the incremental cost using the price of the Venture Lighting Vybrant 2X lamp ($3.93 in 2019$) which had not experienced the high product costs of the more expensive IRL lamps. This would have resulted in an incremental cost of $3.39 in 2019$. (Joint Advocates, No. 113 at p. 5)

Westinghouse countered that due to the cost of the burner, complexity of the filament position, the specific filament type, and the coating process, it did not understand how the Vibrant 2X lamp could be sold at $3.50. Westinghouse reasoned that it may have been an attempt to gain market share that would later offset costs or to close out inventory. Westinghouse added that for the price to be that low, one of the manufacturers would have to absorb the up-front capital investment until volume caught up, and that such a manufacturer would never absorb the cost. (Westinghouse, Public Meeting Transcript, No. 56 at pp. 60–61)

CFA stated that based on a study of approaches used by DOE programs, there is a consistent tendency for product costs to be much lower than projected by the agency. CFA asserted that this is due to setting standards that set a performance level but not dictating the technologies that can be used to achieve the level. CFA commented that this results in companies producing the lowest possible cost product that meets standards. (CFA, No. 76 at p. 15)

Regarding the Vybrant 2X lamp, DOE notes that although it may have been sold for a period of time at $3.50, as discussed in section VI.B.3 it is unclear what the lifetime of the lamp was given that the lamp experienced early failure and was ultimately withdrawn for technical reasons. Because DOE could not confirm the performance characteristics associated with the $3.50 Vybrant 2X lamp, DOE did not consider the lamp in its determination of the price of the modeled HIR lamps.

DOE reviewed its methodology for calculating the price of the modeled HIR lamp in light of the comments received. NEMA noted that the halogen IR filament tube operates at a much higher pressure than standard halogen capsules. Manufacturers have dealt with this in two distinct ways: Adding an expensive heavy glass outer jacket or operating the halogen IR filament tube at a low voltage by adding an expensive electronic transformer. DOE's review of its methodology from the September 2019 GSIL NOPD concluded that this change in cost due to safety issues was not included because the PAR-shaped IRLs analyzed in the 2015 rulemaking use different glass than GSILs and the PAR glass does not require alteration in the presence of an IR-coated halogen capsule.

For the final determination, DOE has revised its pricing methodology to account for lamp adaptations that are necessary for safety reasons in the presence of an IR-coated halogen capsule. Instead of calculating the incremental change in cost for adding an IR-coated capsule to a halogen lamp based on the change in cost of an IRL, DOE calculated the incremental change in cost based on the change in cost of a GSIL. Specifically, DOE used the pricing information provided by GE for a halogen and HIR GSIL to calculate the cost of adding an IR-coated halogen capsule and otherwise modifying the lamp to account for the safety concerns of higher-pressure operation. Per NEMA's comment in response to the March 2016 GSL NOPR, the average price of the GE HIR lamp was $7 compared to the $1.25 price for the 1,000 hour halogen lamp, resulting in an incremental increase of $5.75 in 2012$ (NEMA also stated in that comment that GE's HIR lamp was withdrawn in 2012). Using the consumer price index to inflate the incremental cost to 2018$, DOE calculated the incremental cost to be $6.29 in 2018$ and added that cost to the price for the baseline halogen lamp from the September 2019 GSIL NOPD. Because both more efficacious substitutes are derived from the same GE lamp, they are the same price.

Table VI.8 summarizes the prices of the GSILs analyzed in this rulemaking and Table VI.9 summarizes the prices of the alternative lamps consumers may choose if standards for GSILs are amended.

TABLE VI.8—END-USER PRICES FOR GSILS

EL	Technology	Wattage	Initial lumens	Rated lifetime (hrs)	Efficacy (lm/W)	End-user price
EL 0	Halogen	43	750	1,000	17.4	$1.81
EL 0.5	HIR	39.3	750	3,000	19.1	8.10
EL 1	HIR	34.3	750	1,000	21.9	8.10

TABLE VI.9—END-USER PRICES FOR CONSUMER CHOICE ALTERNATIVES

Option	Technology	Wattage	Initial lumens	Rated lifetime (hrs)	Efficacy (lm/W)	End-user price
A	CFL	13	900	10,000	69.2	$2.94
B	LED	9	800	15,000	88.9	3.00

D. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of GSILs in representative U.S. single-family homes, multi-family residences, and commercial buildings, and to assess the energy savings potential of an amended energy conservation standard applied to GSILs. To develop annual energy use estimates, DOE multiplied GSIL input power by the number of hours of use (''HOU'') per year and a factor representing the impact of controls. The energy use analysis estimates the range of energy use of GSILs in the field (*i.e.,* as they are actually used by consumers). The energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards.

DOE analyzed energy use in the residential and commercial sectors separately but did not explicitly analyze GSILs installed in the industrial sector. This is because far fewer GSILs are installed in that sector compared to the commercial sector, and the average operating hours for GSILs in the two sectors were assumed to be approximately equal. In the energy use and subsequent analyses, DOE analyzed these sectors together (using data specific to the commercial sector), and refers to the combined sector as the commercial sector.

All comments received on the energy use methodology from the September 2019 GSIL NOPD were supportive (GE, No. 78 at p. 2; NEMA, No. 88 at p. 8; Westinghouse, No. 112 at p. 1) and DOE has continued to use the same methodology in the final determination.

1. Operating Hours

a. Residential Sector

To take into account the regional variability in the average HOU of GSILs in the residential sector—which were assumed to have similar HOU to medium screw base (''MSB'') A-type lamps—DOE used data from various regional field-metering studies of GSL operating hours conducted across the U.S. Chapter 7 of the final determination TSD lists the regional metering studies used. Specifically, DOE determined the average HOU for each Energy Information Association (''EIA'') 2015 Residential Energy Consumption Survey (''RECS'') reportable domain (*i.e.,* state, or group of states).[35] [36] For regions without HOU metered data, DOE used data from adjacent regions. DOE estimated the national weighted-average HOU of GSILs in the residential sector to be 2.3 hours per day.

The operating hours of lamps in actual use are known to vary significantly based on the room type the lamp is located in. Therefore, DOE estimated this variability by developing HOU distributions for each room type using data from Northwest Energy Efficiency Alliance's (NEEA's) Residential Building Stock Assessment Metering Study (RBSAM),[37] a metering study of 101 single-family houses in the Northwest. DOE assumed that the shape of the HOU distribution for a particular room type would be the same across the United States, even if the average HOU for that room type varied by geographic location. To determine the distribution of GSILs by room type, DOE used data from NEEA's 2011 RBSAM for single-family homes,[38] which included GSL room-distribution data for more than 1,400 single-family homes throughout the Northwest.

b. Commercial Sector

For each commercial building type presented in the 2015 Lighting Market Characterization (''LMC''), DOE determined average HOU based on the fraction of installed lamps utilizing each of the light source technologies typically used in GSLs and the HOU for each of these light source technologies. DOE estimated the national-average HOU for the commercial sector by weighting the building-specific HOU for GSLs by the relative floor space of each building type as reported in in the 2012 EIA Commercial Buildings Energy Consumption Survey (''CBECS'').[39] The national weighted-average HOU for GSLs, and therefore GSILs, in the commercial sector was estimated at 11.8 hours per day. To capture the variability in HOU for individual consumers in the commercial sector, DOE used data from NEEA's 2014 Commercial Building Stock Assessment (CBSA).[40] As for the

[35] The 2015 RECS provided detail only to the division, not reportable domain, level; therefore, in creating its residential consumer sample DOE randomly assigned a RECS reportable domain to each consumer based on the reportable domain breakdown from RECS 2009.

[36] U.S. Department of Energy—Energy Information Administration. *2015 RECS Survey Data.* (Last accessed July 2, 2019.) *https://www.eia.gov/consumption/residential/data/2015/.*

[37] Ecotope Inc. *Residential Building Stock Assessment: Metering Study.* 2014. Northwest Energy Efficiency Alliance: Seattle, WA. Report No. E14–283. (Last accessed July 5, 2019.) *https://neea.org/resources/2011-rbsa-metering-study.*

[38] Northwest Energy Efficiency Alliance. *2011 Residential Building Stock Assessment Single-Family Database.* (Last accessed July 5, 2019.) *https://neea.org/resources/2011-rbsa-single-family-database.*

[39] U.S. Department of Energy—Energy Information Administration. *2012 CBECS Survey Data.* (Last accessed July 5, 2019.) *http://www.eia.gov/consumption/commercial/data/2012/index.cfm?view=microdata.*

[40] Navigant Consulting, Inc. *2014 Commercial Building Stock Assessment: Final Report.* 2014. Northwest Energy Efficiency Alliance: Seattle, WA.

Continued

residential sector, DOE assumed that the shape of the HOU distribution from the CBSA was similar for the U.S. as a whole.

2. Input Power

The input power used in the energy use analysis is the input power presented in the engineering analysis (section VI.B) for the representative lamps considered in this rulemaking.

3. Lighting Controls

For GSILs that operate with controls, DOE assumed an average energy reduction of 30 percent. This estimate was based on a meta-analysis of field measurements of energy savings from commercial lighting controls by Williams, et al.,[41] because field measurements of energy savings from controls in the residential sector are very limited, DOE assumed that controls would have the same impact as in the commercial sector.

DOE assumed that 9 percent of residential GSILs are on controls, which aligns with the fraction of lamps reported to be on dimmers or occupancy sensors in the 2015 LMC.

DOE assumed that building codes would drive an increase in floor space utilizing controls in the commercial sector. DOE notes that the estimate of the impact of controls on energy consumption increases over time in the commercial sector, but does not require an update to the HOU estimate.

E. Life-Cycle Cost and Payback Period Analysis

DOE conducted LCC and PBP analyses to evaluate the economic effects on individual consumers of potential energy conservation standards for GSILs. In particular, DOE performed LCC and PBP analyses to evaluate, in part, the savings in operating costs throughout the estimated average life of GSILs compared to any associated increase in costs likely to result from a TSL. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure effects on the consumer:

- The LCC (life-cycle cost) is the total consumer expense of an appliance or product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair) and any applicable disposal costs. To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product. For this final determination, DOE presents annualized LCC because average GSIL lifetimes are less than a year in the commercial sector and because the lifetimes differ between ELs.
- The PBP (payback period) is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates a simple PBP by dividing the change in purchase cost at higher efficacy levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.[42]

DOE received a comment from an individual suggesting that the life-cycle cost analysis should also include costs associated with mining, component manufacturing, and product assembly. (Anonymous, No. 98 at p. 7) DOE notes that the life-cycle cost calculation is intended to provide an economic assessment from the consumer's perspective and includes only those costs a consumer would be sensitive to, such as the product price or operating costs. DOE also notes that mining, manufacturing, and assembly costs may be imbedded in the purchase price.

For each considered standard level, DOE measures the change in annualized LCC relative to the annualized LCC in the no-new-standards case, which reflects the estimated efficacy distribution of GSILs in the absence of new or amended energy conservation standards. Due to the Department's statutory obligations to examine and compare the savings and cost increases for covered products, DOE presents LCC savings results for two scenarios with different efficacy distributions: DOE presents the LCC savings of GSILs, the covered product in this final determination, for a scenario representing only shipments of GSILs, and also includes LCC savings for a scenario that includes shipments of out-of-scope lamps as an input to the NPV calculation. This latter LCC savings is relevant as an input to the NPV, but it does not compare the savings and price increases of the covered product because it also includes out-of-scope products. For details on the two scenarios, see section VI.F of this document. The PBP for each efficacy level is measured relative to the baseline efficacy level. The LCC savings with substitution effects are not comparable to the PBP analysis because they extend beyond the covered product in this final determination.

For each considered efficacy level, DOE calculated the annualized LCC and PBP for a nationally-representative set of potential customers. Separate calculations were conducted for the residential and commercial sectors. DOE developed consumer samples based on the 2015 RECS and the 2012 CBECS for the residential and commercial sectors, respectively. For each consumer in the sample, DOE determined the energy consumption of the lamp purchased and the appropriate electricity price. By developing consumer samples, the analysis captured the variability in energy consumption and energy prices associated with the use of GSILs.

DOE added sales tax, which varied by state, and installation cost (for the commercial sector) to the cost of the product developed in the product price determination to determine the total installed cost. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, lamp lifetimes, and discount rates. DOE created distributions of values for lamp lifetimes, discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

For a GSIL standard case (*i.e.,* case where a standard would be in place at a particular TSL), DOE measured the annualized LCC savings resulting from the technological requirements for GSILs at the considered standard relative to the efficacy distribution in the no-new-standards case for the covered product scenario. DOE also presents annualized LCC savings that include substitution effects and their effects on efficacy distribution in the standards case relative to the estimated efficacy distribution in the no-new-standards case for a scenario in which consumers can substitute out-of-scope products. The efficacy distributions in the substitution scenario include market trends that can result in some lamps with efficacies that exceed the minimum efficacy associated with the standard under consideration. In contrast, the PBP only considers the average time required to recover any increased first cost associated with a

(Last accessed July 5, 2019.) *https://neea.org/resources/2014-cbsa-final-report.*

[41] Williams, A., B. Atkinson, K. Garbesi, E. Page, and F. Rubinstein. Lighting Controls in Commercial Buildings. *LEUKOS.* 2012. 8(3): pp. 161–180. (Last accessed July 5, 2019.) *https://www.tandfonline.com/doi/abs/10.1582/LEUKOS.2012.08.03.001.*

[42] The simple payback period calculation does not account for the additional cost of any needed replacement lamps when comparing lamps with different lifetimes.

purchase at a particular EL relative to the baseline product.

The computer model DOE used to calculate the annualized LCC and PBP results relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and consumer user samples. The model calculated the annualized LCC and PBP for a sample of 10,000 consumers per simulation run.

DOE calculated the annualized LCC and PBP as if each consumer were to purchase a new product in the expected year of required compliance with amended standards. Any amended standards would apply to GSILs manufactured 3 years after the date on which any amended standard is published. (42 U.S.C. 6295(i)(6)(A)(iii)) As this final determination is expected to publish by the end of 2019, DOE used 2023 as the first full year in which compliance with any amended standards for GSILs could occur.

Table VI.10 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the final determination TSD and its appendices.

TABLE VI.10—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS * [43]

Inputs	Source/method
Product Cost	Weighted-average end-user price determined in the product price determination. For the LCC with substitution, DOE used a price-learning analysis to project the price of the CFL and LED lamp alternatives in the compliance year.
Sales Tax	Derived 2023 population-weighted-average tax values for each state based on Census population projections and sales tax data from Sales Tax Clearinghouse.
Installation Costs	Used RSMeans and U.S. Bureau of Labor Statistics data to estimate an installation cost of $1.54 per installed GSIL for the commercial sector.
Annual Energy Use	Derived in the energy use analysis. Varies by geographic location and room type in the residential sector and by building type in the commercial sector.
Energy Prices	Based on 2018 average and marginal electricity price data from the Edison Electric Institute. Electricity prices vary by season and U.S. region.
Energy Price Trends	Based on *AEO 2019* price forecasts.
Product Lifetime	A Weibull survival function is used to provide the survival probability as a function of GSIL age, based on the GSIL's rated lifetime, sector-specific HOU, and impact of dimming.
Discount Rates	Approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances.
Efficacy Distribution	Estimated by the market-share module of shipments model. See chapter 9 of the final determination TSD for details.
Compliance Date.	2023.

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the final determination TSD.

1. Product Cost

As noted in section VI.C, DOE rulemaking analyses typically calculate consumer product costs by multiplying MSPs developed in the engineering analysis by the markups along with sales taxes. For GSILs, the product price determination calculated end-user prices directly; therefore, for the LCC analysis, the only adjustment was to add sales taxes, which were assigned to each household or building in the LCC sample based on its location.

In the LCC with substitution scenario, DOE used a price-learning analysis to determine the impact of GSIL standards on consumers who select a CFL or LED lamp alternative under a standard. The price-learning analysis accounts for changes in lamp prices that are expected to occur between the time for which DOE has data for lamp prices (2018) and the assumed compliance date of the rulemaking (2023).

DOE did not include price learning for HIR GSILs in the final determination, because DOE did not project any shipments of HIR GSILs since manufacturers are highly unlikely to produce these lamps given the upfront cost to bring such lamps to market. For details on the price-learning analysis, see section VI.F.1.b of this document.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the product. For this final determination, DOE assumed an installation cost of $1.54 per installed commercial GSIL (based on RSMeans [44] and U.S. Bureau of Labor Statistics data [45]), but zero installation cost for residential GSILs.

3. Annual Energy Consumption

For each sampled household or commercial building, DOE determined the energy consumption for a lamp using the approach described previously in section VI.D of this document.

4. Energy Prices

Consistent with the September 2019 GSIL NOPD, DOE used both marginal and average electricity prices to calculate operating costs. Specifically, DOE used average electricity prices for the baseline EL and marginal electricity prices to characterize incremental electricity cost savings associated with other TSLs. DOE estimated these prices using data published with the Edison Electric Institute Typical Bills and Average Rates reports for summer and winter 2018.[46] DOE assigned seasonal marginal and average prices to each household in the LCC sample based on its location. DOE assigned seasonal marginal and average prices to each commercial building in the LCC sample

[43] Although DOE addresses the invalidity of California law relating to GSILs in the 2019 GSL Definition Rule, published on September 5, 2019, and reiterates that view in this final rule, in generating its consumer samples DOE did not sample consumers from California.

[44] RSMeans. *Facilities Maintenance & Repair Cost Data 2013.* 2012. RSMeans: Kingston, MA.

[45] U.S. Department of Labor—Bureau of Labor Statistics. *Occupational Employment and Wages, May 2018: 49–9071 Maintenance and Repair Workers, General.* May 2018. (Last accessed July 30, 2019.) *http://www.bls.gov/oes/current/oes499071.htm.*

[46] Edison Electric Institute. *Typical Bills and Average Rates Report.* 2018. Winter 2018, Summer 2018: Washington, DC.

based on its location and annual energy consumption.

5. Energy Price Trends

To arrive at electricity prices in future years, DOE multiplied the electricity prices described above by the forecast of annual residential or commercial electricity price changes for each Census division from EIA's Annual Energy Outlook (''AEO'') 2019, which has an end year of 2050.[47] To estimate the trends after 2050, DOE used the compound annual growth rate of change between 2035 and 2050. For each purchase sampled, DOE applied the projection for the Census division in which the purchase was located. The AEO electricity price trends do not distinguish between marginal and average prices, so DOE used the same (AEO 2019) trends for both marginal and average prices.

DOE used the electricity price trends associated with the AEO Reference case, which is a business-as-usual estimate, given known market, demographic, and technological trends. In response to this approach in the September 2019 GSIL NOPD, IPI commented that, while AEO 2019 projects relatively flat residential and commercial electricity prices in the reference case, electricity prices can vary considerably across different scenarios. IPI said that the reference case does not account for potential future changes in laws and policies that could affect electricity prices. (IPI, No. 96 at pp. 7–8) IPI also commented that DOE should consider other reasonable assumptions about future electricity prices, and whether such assumptions would change its determinations. (*Id.*) DOE notes that in the context of a proposed or final rule, DOE does consider how the high- and low-growth AEO scenarios, including the associated electricity price trends, impact the analytical results and whether a standard would still be economically justified. However, in the context of a proposed or final determination, if the analytical results in the reference scenario indicate that a standard would not be economically justified, it is unnecessary to consider how the analytical results might differ under additional scenarios, as DOE would not set a standard that is not economically justified in the reference scenario.

6. Product Lifetime

DOE considered the lamp lifetime to be the service lifetime (*i.e.,* the age at which the lamp is retired from service). In the September 2019 GSIL NOPD, DOE's lifetime model for halogen and HIR GSILs was based on a convolution of Weibull distributions that translated the rated lifetime and sector-specific operating hours distribution into a sector-specific distribution of survival probability, accounted for the increase in lifetime resulting from dimming, and served to bring historic shipments and stock of incandescent lamps into alignment. In the public meeting for the September 2019 GSIL NOPD, NRDC noted that DOE's average lifetime, in years, for halogen and HIR GSILs was longer than would be expected for lamps with a rated lifetime of 1,000 hours. (NRDC, Public Meeting Transcript, No. 56 at p. 102) For the final determination, DOE continues to use the approach from the September 2019 GSIL NOPD to model historic shipments of GSILs and initialize the stock turnover model, but uses a simplified lifetime approach to project shipments of GSILs over the analysis period. In contrast to the September 2019 GSIL NOPD approach, DOE has simplified the lifetime model for GSILs in the final determination to use the average sector-specific operating hours, as opposed to the full sector-specific operating hours distributions, and no longer includes the Weibull distribution that was intended to bring historic shipments and stock into alignment. DOE notes that the average lifetime of GSILs still somewhat exceeds the expected lifetime based solely on rated lifetime and average hours of use. This reflects the impact of dimming on the lifetime distribution for GSILs.

To model lifetime for the CFL and LED lamp out-of-scope substitutes in the September 2019 GSIL NOPD, DOE used the methodology from the reference (''Renovation-Driven'') lifetime scenario from the March 2016 GSL NOPR. DOE did not receive any comments objecting to the lifetime models for these lamps, and has continued to use the same methodology for the final determination.

For a detailed discussion of the development of lamp lifetimes, see appendix 8C of the final determination TSD.

7. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to commercial and residential consumers to estimate the present value of future operating costs. DOE estimated a distribution of discount rates for GSILs based on cost of capital of publicly traded firms in the sectors that purchase GSILs.

DOE applies weighted average discount rates calculated from consumer debt and asset data, rather than marginal or implicit discount rates. DOE notes that the LCC does not analyze the equipment purchase decision, so the implicit discount rate is not relevant in this model. The LCC estimates net present value over the lifetime of the equipment, so the appropriate discount rate will reflect the general opportunity cost of household funds, taking this time scale into account. Given the long time horizon modeled in the LCC, the application of a marginal interest rate associated with an initial source of funds would be inaccurate. Regardless of the method of purchase, consumers are expected to continue to rebalance their debt and asset holdings over the LCC analysis period, based on the restrictions consumers face in their debt payment requirements and the relative size of the interest rates available on debts and assets. DOE estimates the aggregate impact of this rebalancing using the historical distribution of debts and assets.

To establish residential discount rates for the LCC analysis, DOE identified all relevant household debt or asset classes in order to approximate a consumer's opportunity cost of funds related to appliance energy cost savings. It estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's Survey of Consumer Finances (SCF) for 1995, 1998, 2001, 2004, 2007, 2010, 2013, and 2016.[48] Using the SCF and other sources, DOE developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which amended standards would take effect.

For commercial consumers, DOE used the cost of capital to estimate the present value of cash flows to be derived from a typical company project or investment. Most companies use both debt and equity capital to fund investments, so the cost of capital is the weighted-average cost to the firm of equity and debt financing. This corporate finance approach is referred to as the weighted-average cost of capital. DOE used currently available economic data in developing discount rates.

IPI objected to DOE's approach to discount rates in the September 2019 GSIL NOPD, arguing that interest rates have been falling for an extended period

[47] U.S. Energy Information Administration. *Annual Energy Outlook 2019 with projections to 2050.* 2019. Washington, DC. Report No. AEO2019. (Last accessed July 5, 2019.) *https://www.eia.gov/outlooks/AEO/pdf/AEO2019.pdf.*

[48] U.S. Board of Governors of the Federal Reserve System. *Survey of Consumer Finances.* 1995, 1998, 2001, 2004, 2007, 2010, 2013, and 2016. (Last accessed August 8, 2019.) *http://www.federalreserve.gov/econresdata/scf/scfindex.htm.*

of time and that DOE should not include older data in its projection of future discount rates. (IPI, No. 96 at p. 8) IPI encouraged DOE to test its payback against other reasonable discount rate assumptions. (*Id.*)

Commercial discount rates are estimated as the weighted average cost of capital, which is calculated from four key components: Share of equity financing, share of debt financing, cost of equity, and cost of debt. Parameters of the cost of capital equation can vary substantially over time, and therefore the estimates can vary with the time period over which data are selected and the technical details of the data-averaging method. The cost of equity is estimated using the capital asset pricing model (CAPM), which is a function of the risk-free rate, risk premium, and firm or industry beta. Federal Reserve guidance was used to select the historic period of data and the choice of averaging method. In use of CAPM, the Federal Reserve suggests capturing a forty-year period for calculating risk premiums because it is ''sufficiently long to smooth cyclical fluctuations in realized returns, but short enough to reflect trends in required returns.'' (Federal Reserve Bank Services Private Sector Adjustment Factor: Docket No. OP–1229, Washington, DC retrieved from *https://www.federalregister.gov/documents/2005/10/17/05-20660/federal-reserve-bank-services-private-sector-adjustment-factor*) The method for estimating the residential discount rate parallels that of the commercial discount rate to the extent possible, and it thus aims to capture observed variations in household debt and asset rates over a similar historical time horizon.

The commercial and residential discount rate estimation methods used in the GSIL determination maintain analytical consistency with those applied across rules for other appliances and equipment. The use of historic data provides a comparatively conservative estimate of benefits of standards, but it is robust to previously-observed market fluctuations. However, even if discount rates were decreased several percentage points to represent a shorter recent time frame, analytical results would not be substantially changed in the absence of any projected shipments for GSILs under a standard. And DOE notes that the payback period calculation does not include a discount rate. If, as the comment notes, risk-free rates do continue to remain low in the future, the rolling average of the commercial and residential discount rate estimation methods will incorporate these values and decrease accordingly.

8. Efficacy Distribution

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular TSL, DOE's LCC analysis considered the projected distribution (*i.e.,* market shares) of product efficacies that consumers purchase under the no-new-standards case and the standards case (*i.e.,* the case where a standard would be set at TSL 0.5 or TSL 1, which, as defined in this section, correspond to efficiency levels 0.5 and 1, respectively) in the assumed compliance year. The estimated market shares for the no-new-standards case and each standards case are based on the shipments analysis and are shown in Table VI.11 for the LCC with substitution scenario. In response to the market shares projected for the substitution scenario in the September 2019 GSIL NOPD, a couple of commenters noted that while DOE stated that GSILs would be unavailable under a standard, DOE projected that HIR GSILs would be 3.8 percent of the residential market share in 2023. (IPI, No. 96 at p. 5; Rothenhaus, No. 16 at p. 1–2) For the final determination, in response to comments on HIR GSIL shipments, DOE has not projected any shipments of HIR GSILs, and thus the GSIL market share is 0 percent under a standard. This projection is also consistent with comments from industry indicating that manufacturers are highly unlikely to produce HIR lamps in a standards case. For more details on the HIR shipments, see section VI.F of this document. In the LCC with substitution scenario, DOE estimates that the GSILs that are covered by this notice would account for 10.8 percent of residential market share in 2023 in the absence of federal standards, and 0 percent of the residential market under TSL 0.5 or TSL 1. That is, all consumers would switch from GSILs to out-of-scope substitutes under TSL 0.5 or TSL 1. DOE notes that the market share of GSILs has declined in the no-new-standards case for the LCC with substitution scenario in this final determination due to the reduction in estimated average lifetime of GSILs (see section VI.E.6 of this document). This reduction in estimated average lifetime of GSILs results in a faster market transition to out-of-scope substitute lamps.

TABLE VI.11—GSIL MARKET SHARE DISTRIBUTION BY TRIAL STANDARD LEVEL IN 2023—LCC WITH SUBSTITUTION

Trial Standard Level	EL 0 43 W Halogen (%)	EL 0.5 39.3 W HIR (%)	EL 1 34.3 W HIR (%)	13 W CFL * (%)	9 W LED * (%)	Total ** (%)
Residential						
No-New-Standards	10.8	0	0	5.6	83.6	100
TSL 0.5	0	0	0	7.9	92.1	100
TSL 1	0	0	0	7.9	92.1	100
Commercial						
No-New-Standards	2.7	0	0	3.1	94.2	100
TSL 0.5	0	0	0	3.3	96.7	100
TSL 1	0	0	0	3.3	96.7	100

* CFLs and LED lamps are out-of-scope consumer choice alternatives for GSILs (see section VI.B.6).
** The total may not sum to 100% due to rounding.

Regarding the market share for GSIL lamps in the LCC GSIL-only (*i.e.,* covered product) scenario, without any shipments of HIR GSILs, the efficacy distribution is simply that all consumers in the consumer sample purchase the EL 0 halogen lamp in the no-new-standards case, and no consumers purchase any of the GSIL lamp options under the standards cases. That is, the efficacy distribution considers that the 10.8% of consumers who purchase halogen lamps

would continue to make the same purchase.

See section VI.F of this document and chapter 9 of the final determination TSD for further information on the derivation of the market efficacy distributions for the scenario with substitution.

9. LCC Savings Calculation

DOE calculated the annualized LCC savings at TSL 0.5 and TSL 1 based on the change in annualized LCC for the standards case compared to the no-new-standards case. In the covered product scenario, this approach models the lifecycle cost of HIR lamps under TSL 0.5 and TSL 1 compared with the lifecycle cost of GSILs in the no-new standards case. In contrast, the LCC savings results in the substitution scenario also includes out-of-scope lamps in the efficacy distribution for both the standards case and the no-new standards case. That is, the LCC with substitution analysis also considers the upfront price and operating costs of out-of-scope lamps that consumers would substitute for covered GSILs. This approach models how consumers would substitute other lamps (which are more efficient and sometimes less-expensive) and is intended as an input into the NPV to reflect actual consumer behavior. In the covered product scenario, which includes only the product that would be directly regulated by a GSIL standard, no consumers purchase the EL 0.5 or EL 1 HIR lamps. Although consumers would not experience actual savings in this scenario, DOE provides a comparison of annualized LCC at each EL to compare the upfront price increase to operating cost savings. DOE provides this analysis to illustrate the choices facing consumers in the EL 0.5 and EL 1 standards scenarios.

DOE used the consumer-choice model in the shipments analysis to determine the fraction of consumers that purchase each lamp option under a standard, but the model is unable to track the purchasing decision for individual consumers in the LCC sample. However, DOE must track any difference in purchasing decision for each consumer in the sample in order to determine the fraction of consumers who experience a net cost. Therefore, DOE assumed that the rank order of consumers, in terms of the efficacy of the product they purchase, is the same in the no-new-standards case as in the standards cases. In other words, DOE assumed that the consumers who purchased the most-efficacious products in the efficacy distribution in the no-new-standards case would continue to do so in standards cases, and similarly, those consumers who purchased the least efficacious products in the efficacy distribution in the no-new-standards case would continue to do so in standards cases. This assumption is only relevant in determining the fraction of consumers who experience a net cost in the annualized LCC savings calculation, and has no effect on the estimated national impact of a potential standard.

10. Payback Period Analysis

The PBP is the amount of time it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy cost savings. PBPs are expressed in years. PBPs that exceed the life of the product mean that the increased initial installed cost is not recovered in reduced operating expenses.[49]

The inputs to the PBP calculation for each efficacy level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. The PBP calculation typically uses the same inputs as the LCC analysis, except that discount rates are not needed. In this document, DOE presents the LCC savings in the standards case for a covered product scenario along with an LCC with substitution scenario, the latter of which differs from the PBP because it includes out-of-scope lamps rather than only the product that would be directly regulated by a GSIL standard.

EPCA, as amended, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficacy level, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price projection for the year in which compliance with the amended standards would be required.

F. Shipments Analysis

DOE uses projections of annual product shipments to calculate the national impacts of potential amended energy conservation standards on energy use, NPV, and future manufacturer cash flows.[50] The shipments model takes a stock-accounting approach, tracking market shares of each product class and the vintage of units in the stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution of in-service product stocks is a key input to calculations of both the NES and NPV, because lamp energy consumption and operating costs for any year depend on the age distribution of the stock. The shipments analysis also provides the efficacy distribution in the year of compliance which is an input to calculating LCC savings.

In the September 2019 GSIL NOPD, DOE modeled shipments for two scenarios. For the purposes of the covered product scenario LCC scenario, DOE ran a version of the shipments analysis where consumers selected between product options for the covered product at issue (*i.e.,* GSILs). As an input to the NIA, DOE modeled a scenario where consumers selected between GSIL options and out-of-scope alternatives, including CFLs, LED lamps, and traditional incandescent (*e.g.,* shatter resistant) lamps, because amended standards on GSILs could affect substitution rates.

DOE received a number of comments on the projected shipments of HIR lamps during the analysis period. EEI expressed surprise that consumers would purchase an HIR lamp, given the higher purchase price compared to CFLs and LED lamps. (EEI, Public Meeting Transcript, No. 56 at pp. 57–58) CFA found the covered-product shipments scenario unrealistic, expressing doubt that a large volume of consumers would behave irrationally by purchasing HIR lamps. (CFA, No. 76 at pp. 2–3) Lamp manufacturers argued that, given the market transition toward LED lamps and that HIR GSILs do not currently exist on the market, no manufacturer would undertake the upfront cost to bring such lamps to market and, thus, there should not be any projected shipments of HIR GSILs. (GE, Public Meeting Transcript, No. 56 at p. 62; NEMA, No. 88 at pp. 5, 8–9, 11, 14; Westinghouse, No. 112 at p. 2) DOE agrees that it is very unlikely that any HIR GSILs will be produced, given the market's overall shift toward LEDs and the information provided by industry manufactures, and has therefore not projected any shipments of

[49] The simple payback period calculation does not account for the additional cost of any needed replacement lamps when comparing lamps with different lifetimes.

[50] DOE uses data on manufacturer shipments as a proxy for national sales, as aggregate data on sales are lacking. In general one would expect a close correspondence between shipments and sales.

HIR GSILs in this final determination. Given that HIR GSILs were the only lamp options available under a standard in the covered product scenario, DOE has not projected shipments for this scenario. In the final determination, DOE projects shipments for out-of-scope alternative lamps.

Additionally, DOE received comment on projected shipments of shatter-resistant lamps. NEMA commented that sales of shatter-resistant lamps are currently low and declining. (NEMA, No. 88 at p. 12) Several commenters noted that if sales increased to exceed a specific threshold, 42 U.S.C. 6295(l)(4)(H) would cause DOE to set a standard or trigger a backstop specific to shatter resistant lamps. (Westinghouse, Public Meeting Transcript, No. 56 at pp. 86–87; NEMA, No. 88 at p. 12; Joint Advocates, No. 113 at p. 6; State Attorneys General, No. 110 at p. 16) The Joint Advocates commented that the 40 watt maximum imposed by the backstop would limit shipments because a 40 watt shatter-resistant incandescent lamp would be incapable of providing adequate levels of light for common uses. (Joint Advocates, No. 113 at p. 6) The State Attorneys General commented that DOE overestimated costs associated with a standard in the September 2019 GSIL NOPD because it assumed extended sales of shatter-resistant lamps. (State Attorneys General, No. 110 at p. 16)

DOE acknowledges that the projected shipments of the shatter-resistant incandescent lamps in the September 2019 GSIL NOPD were large enough to trigger the product-specific backstop provision, which would impose a maximum wattage of 40 watts and a requirement that those lamps be sold at retail in a package containing only one lamp. DOE also notes that the September 2019 GSIL NOPD did not model a significant shift to non-GSIL incandescent products under a standard; shipments of shatter-resistant incandescent lamps increased by only 0.1 percent in the presence of a standard for GSILs as compared to the no-new-standards case. While traditional incandescent lamps, such as shatter-resistant lamps, may exist as a theoretical substitute, given the limited practical impact on the analytical results, DOE has removed shatter-resistant lamps as an option for consumers in the final determination, as discussed in the engineering analysis (see section VI.B.6). Therefore DOE has not projected shipments of such lamps in its analysis.

1. Shipments Model

The shipments model projects shipments of GSILs over a thirty-year analysis period for the no-new-standards case and for standards cases. Separate shipments projections are calculated for the residential sector and for the commercial sector. The shipments model used to estimate GSIL lamp shipments for this rulemaking has three main interacting elements: (1) A lamp demand module that estimates the demand for available lamp options for each year of the analysis period; (2) a price-learning module that projects future prices based on historic price trends; and (3) a market-share module that assigns shipments to the available lamp options.

a. Lamp Demand Module

The lamp demand module first estimates the national demand in each year for GSILs and potential alternative products. The demand calculation assumes that sector-specific lighting capacity (maximum lumen output of installed lamps) remains fixed per square foot of floor space over the analysis period, and total floor space changes over the analysis period according to the EIA's *AEO 2019* projections of U.S. residential and commercial floor space.[51] A lamp turnover calculation estimates demand for new lamps in each year based on the growth of floor space in each year, the expected demand for replacement lamps, and sector-specific assumptions about the distribution of per-lamp lumen output desired by consumers. The demand for replacements is computed based on the historical shipments of lamps, the expected lifetimes of the lamps (in terms of total hours of operation), and sector-specific assumptions about lamp operating hours. In the September 2019 GSIL NOPD, the lamp demand module for the scenario with substitution also accounted for the adoption of integral LED luminaires into lighting applications traditionally served by GSILs and for consumers' transitioning between GSILs and CFLs or LED lamps both prior to and during the analysis period, either spontaneously or due to amended standards. DOE maintains this methodology for the shipments projections in the final determination.

[51] U.S. Energy Information Administration. *Annual Energy Outlook 2019 with projections to 2050.* 2019. Washington, DC. Report No. AEO2019. (Last accessed July 5, 2019.) *https://www.eia.gov/outlooks/AEO/pdf/AEO2019.pdf.*

b. Price-Learning Module

The price-learning module estimates lamp prices in each year of the analysis period using a standard price-learning model,[52] which relates the price of a given technology to its cumulative production, as represented by total cumulative shipments. Current cumulative shipments are determined for each lighting technology expected to undergo learning at the start of the analysis period and are augmented in each subsequent year of the analysis based on the shipments determined for the prior year. New prices for each technology are calculated from the updated cumulative shipments according to the learning (or experience) curve for each technology. The current year's shipments, in turn, affect the subsequent year's prices.

In the September 2019 GSIL NOPD, DOE only applied learning to lamps with CFL and LED technologies. DOE stated that GSILs represent a mature technology that has reached a stable price point due to the high volume of total cumulative shipments, so price learning was not considered for this technology. However, several stakeholders argued that price learning should be included for HIR GSIL lamps, specifically, as these lamps are not currently on the market and do not represent a mature technology and thus prices would decline with an increase in shipments. (IPI, No. 96 at p. 7; CEC, No. 102 at pp. 4–5; Joint Advocates, No. 113 at p. 6; Rothenhaus, No. 16 at p. 1) The Joint Advocates also noted that DOE applied price learning to HIR IRLs in the 2015 IRL final rule. (Joint Advocates, No. 113 at pp. 5–6). In the final determination, DOE is not projecting any shipments of HIR GSILs. Without any increase in cumulative shipments, these is no decrease in product price due to price learning.

Alternative lamps with CFL and LED technologies may continue to drop in price due to price learning as a result of increases in cumulative shipments. Because LED lamps are a relatively young technology, their cumulative shipments increase rapidly and hence they undergo a substantial price decline during the shipments analysis period. CFL prices, by contrast, undergo a negligible price decline, owing to the low shipments volume and relative maturity of this technology. Commenters agreed with application of

[52] Taylor, M. and S. K. Fujita. *Accounting for Technological Change in Regulatory Impact Analyses: The Learning Curve Technique.* 2013. Lawrence Berkeley National Laboratory: Berkeley, CA. Report No. LBNL–6195E. (Last accessed June 23, 2015.) *https://eta.lbl.gov/publications/accounting-technological-change.*

price learning for LED lamps, given the observed price declines and DOE maintained the same approach to price learning for the final determination. (CFA, No. 76 at p. 7; PA DEP, No. 77 at p. 2) CFA also commented that DOE's failure to set a standard on GSILs and would slow the progress of LEDs in gaining market share and diminish the extent to which economies of scale continue to bring down the purchase price of LEDs. DOE notes that the analysis reflects that the price of LED lamps declines slightly more slowly in the no-new-standards case compared to the standards cases, but that the difference in LED lamp purchase price is minimal.

c. Market-Share Module

The market-share module apportions the lamp shipments in each year among the different lamp options developed in the engineering analysis, based on consumer sensitivity to various lamp features. The market-share module assumes that, when replacing a lamp, consumers will choose among all of the available lamp options. Substitution matrices were developed to specify the product choices available to consumers. The available options additionally depend on the case under consideration; in each standards case corresponding to a TSL, only those lamp options at or above the particular standard level, and relevant alternative lamps, are considered to be available. In this way, the module assigns market shares to the different ELs, and consumer choice alternatives, based on observations of consumer preferences.

In the September 2019 GSIL NOPD, DOE used a market-share module that considered purchase price, energy savings, lifetime, and mercury content as measured in a market study,[53] as well as on consumer preferences for lighting technology as revealed in historical shipments data for estimating product market share in the scenario with substitution. DOE uses the same features in the market-share module for its projections in the final determination.

In the September 2019 GSIL NOPD, HIR GSILs, CFLs, LED lamps, and traditional incandescent alternatives were all available as options under a standard in the scenario with substitution. In the final determination, DOE only considers CFL and LED alternatives as potential substitutes for halogen GSILs in the shipments analysis. As discussed previously, in this final determination, DOE did not include traditional incandescent alternatives as a potential substitute and DOE assumed that manufacturers would not produce HIR GSILs in the no-new-standards cases or under an amended standards case and therefore they would not be available as options to consumers in the market-share module.

The market-share module incorporates a limit on the diffusion of LED technology into the market using the widely accepted Bass adoption model,[54] the parameters of which are based on data on the market penetration of LED lamps published by NEMA.[55] In this final determination, DOE maintains the same methodology and derived parameters as was used in the September 2019 GSIL NOPD.

In response to the September 2019 GSIL NOPD, there was consensus that the market has been transitioning to LED lamps (ASAP, Public Meeting Transcript, No. 56 at p. 18; NPCC, No. 58 at p. 2; NEMA, No. 88 at p. 4; Free Market Organizations, No. 111 at p. 3; Westinghouse, No. 112 at p. 1) and general agreement with the shipments trends for LED lamps, CFLs, and halogen GSILs in the analysis. (GE, No. 78 at p. 3; NEMA, No. 88 at p. 10, 12; Westinghouse, No. 112 at p. 2) NRDC commented that some consumers continue to buy incandescent lamps, due to slightly lower purchase prices and a tendency to purchase products similar to past purchases (NRDC, Public Meeting Transcript, No. 56 at p. 14) and ASAP commented that a GSIL standard would push more customers to purchase LED lamps. (ASAP, Public Meeting Transcript, No. 56 at p. 18) DOE notes these observations and that these comments are consistent with DOE's analysis in the September 2019 GSIL NOPD.

While NEMA generally agreed with DOE's projected trend of declining lamp shipments from 2018 to 2019 in the September 2019 GSIL NOPD, NEMA did not expect the decline to be quite as steep as presented in Figure 9.4 in chapter 9 of the NOPD TSD. (NEMA, No. 88 at p. 13) DOE projects lamp shipments over the shipments analysis period, which begins in 2019, using historical shipments in conjunction with estimates for lamp retirement functions as described in section VI.E.6 of this document. The projected drop in shipments is due to consumers choosing lamps with longer lifetimes, consistent with NEMA's lamp indices,[56] leading to slower turnover in stock and fewer overall shipments of general service lamps. DOE also notes that historical shipments for 2018 were higher than shipments between the years 2015–2017 which showed consecutive declines in lamp shipments, making the projected drop in shipments for 2019 appear steep relative to shipments in 2018. The drop in shipments for 2019 is less dramatic when factoring in the overall historical trend of declining lamp shipments from 2015–2017.

CFA commented in response to the September 2019 GSIL NOPD that the no-new-standard base case uses the behavior of the market with standards to project what market behavior would be without standards. (CFA, No. 76 at p. 5) DOE clarifies that the no-new-standard case assumes no amended standard, but does include the existing standards for GSILs from EISA that were phased in between 2012 and 2014.

G. National Impact Analysis

The NIA assesses the NES and the national NPV from a national perspective of total consumer costs and savings that would be expected to result from new or amended standards at specific TSLs.[57] (''Consumer'' in this context refers to consumers of the product being regulated and includes both residential and commercial consumers.) DOE calculated the NES and NPV based on projections of annual product shipments and prices from the shipments analysis, along with the HOU and energy prices from the energy use and LCC analysis.[58] For the present analysis, DOE projected the energy savings, operating-cost savings, product costs, and NPV of consumer benefits over the lifetime of GSILs sold from 2023 through 2052. However, the energy savings and NPV of consumer benefits are not those associated with the technology in question for TSL 0.5 and TSL 1. Because manufacturers will not produce HIR lamps and consumers will not purchase them, there are no energy savings or benefits from transitioning

[53] Krull, S. and D. Freeman. *Next Generation Light Bulb Optimization.* 2012. Pacific Gas and Electric Company. (Last accessed December 17, 2015.) *http://www.etcc-ca.com/sites/default/files/OLD/images/stories/Lighting_Conjoint_Study_v020712f.pdf.*

[54] Bass, F. M. A New Product Growth Model for Consumer Durables. *Management Science.* 1969. 15(5): pp. 215–227. (Last accessed January 22, 2016.) *http://www.jstor.org/stable/2628128?seq=1#page_scan_tab_contents.*

[55] National Electrical Manufacturers Association. *Lamp Indices.* (Last accessed July 23, 2019.) *http://www.nema.org/Intelligence/Pages/Lamp-Indices.aspx.*

[56] National Electrical Manufacturers Association. *Lamp Indices.* (Last accessed July 23, 2019.) *http://www.nema.org/Intelligence/Pages/Lamp-Indices.aspx.*

[57] The NIA accounts for impacts in the 50 States and the U.S. territories.

[58] For the NIA, DOE adjusts the installed cost data from the LCC analysis to exclude sales tax, which is a transfer.

from the GSIL baseline to HIR technology.

DOE evaluates the impacts of new and amended standards by comparing a case without such standards against standards-case projections. The no-new-standards case characterizes energy use and consumer costs in the absence of new or amended energy conservation standards. DOE compares the no-new-standards case with projections characterizing the market if DOE adopted new or amended standards at specific TSLs. For the standards cases, DOE considers how a given standard would likely affect the market shares of products with efficacies greater than the standard, as well as consumer-choice alternatives. Any energy savings or benefits estimated in the standards case are the result of product shifting as consumers substitute different product types such as CFLs and LED lamps.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs.

Table VI.12 summarizes the inputs and methods DOE used for the NIA analysis for the final determination. Discussion of these inputs and methods follows the table.

TABLE VI.12—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments for each lamp option from shipments model for the no-new standards case and each TSL analyzed.
Assumed compliance date of standard	January 1, 2023.
No-new-standards efficacy distribution	Estimated by the market-share module of the shipments analysis.
Standards-case efficacy distribution	Estimated by the market-share module of the shipments analysis.
Annual energy use per unit	Calculated for each lamp option based on inputs from the Energy Use Analysis.
Total installed cost per unit	Uses lamp prices, and for the commercial sector only, installation costs from the LCC analysis.
Electricity prices	Estimated marginal electricity prices from the LCC analysis.
Energy price trends	*AEO 2019* forecasts (to 2050) and extrapolation thereafter.
Annual operating cost per unit	Calculated for each lamp option using the energy use per unit, and electricity prices and trends.
Energy Site-to-Source Conversion	A time-series conversion factor based on *AEO 2019*.
Discount rate	Three and seven percent real.
Present year	2020.

1. National Energy Savings

The NES analysis involves a comparison of national energy consumption of the considered products in each standards case with consumption in the case with no new or amended energy conservation standards. DOE calculated the annual national energy consumption by multiplying the number of units (stock) of each lamp option (by vintage or age) by the unit energy consumption (also by vintage) for each year in the analysis. The NES is based on the difference in annual national energy consumption for the no-new-standards case and each of the standards cases. DOE estimated the energy consumption and savings based on site electricity and converted that quantity to the energy consumption and savings at the power plant using annual conversion factors derived from *AEO 2019*. Cumulative energy savings are the sum of NES for each year over the analysis period, taking into account the full lifetime of GSILs shipped in 2052.

As in the September 2019 GSIL NOPD, in the final determination, DOE tracks both the energy consumption of GSILs and substitute out-of-scope lamps. Under the standards case, the lack of availability of GSIL options leads consumers to choose out-of-scope alternative lamps. This leads to a decrease in GSIL shipments that appears as a decrease in GSIL energy consumption, while the increase in out-of-scope shipments appears as an increase in energy consumption for those lamp types. DOE also calculated the overall energy impact of a standard including the increased energy consumption of out-of-scope lamps.

DOE generally accounts for the direct rebound effect in its NES analyses. Direct rebound reflects the idea that as appliances become more efficient, consumers use more of their service because their operating cost is reduced. In the case of lighting, the rebound effect could be manifested in increased HOU or in increased lighting density (lamps per square foot). DOE assumed no rebound effect for GSILs in the September 2019 GSIL NOPD and commenters supported this assumption. (GE, No. 78 at p. 3; NEMA, No. 88 at p. 17; Westinghouse, No. 112 at p. 2) DOE maintains this assumption for the final determination.

In response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (August 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that EIA's National Energy Modeling System (''NEMS'') is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (August 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector that EIA uses to prepare its *AEO*.[59] The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B of the final determination TSD.

In response to the September 2019 GSIL NOPD, EEI commented that the site-to-primary and FFC factors used by DOE are too high and that DOE should anticipate that they will decline more than AEO currently projects. (EEI, Public Meeting Transcript, No. 56 at pp. 117–119) DOE acknowledges that renewable power sources are expected to account for a growing share of national electricity generation. Because these technologies do not consume fuel, the ''source'' (or ''primary'') energy from these sources cannot be accounted for in

[59] For more information on NEMS, refer to *The National Energy Modeling System: An Overview*, DOE/EIA–0581 (98) (Feb.1998) (Available at: *http://www.eia.gov/oiaf/aeo/overview/).*

the same manner as it is for fossil fuel sources. EIA has historically used a fossil fuel equivalency approach when calculating the primary energy associated with renewable electricity generation. As a result, DOE's site-to-primary conversion factors are only slightly affected by increase in renewable electricity and decrease in coal-fired generation.

2. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are: (1) Total annual increases in installed cost; (2) total annual savings in operating costs; and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating-cost savings over the lifetime of each product shipped during the analysis period.

The efficacy improvements from TSL 0.5 and TSL 1 do not result in any direct benefits from the purchase of GSIL lamps meeting those standards. As discussed in section VI.F of this document, manufacturers would not produce HIR lamps in the standards case. Manufacturers that have produced and attempted to sell such lamps in the recent past have found it uneconomic to do so. Benefits from TSL 0.5 and TSL 1 result from product shifting as consumers substitute more efficient out-of-scope alternative lamps. As discussed in section VI.F.1.b of this document, DOE developed prices for alternative LED lamps and CFLs using a price-learning module incorporated in the shipments analysis.

The operating cost savings in this document are a result of product shifting. The operating-cost savings are energy cost savings, which are calculated using the estimated energy savings in each year and the projected price of electricity. To estimate energy prices in future years, DOE multiplied the average national marginal electricity prices by the forecast of annual national-average residential or commercial electricity price changes in the Reference case from *AEO 2019,* which has an end year of 2050. To estimate price trends after 2050, DOE used the average annual rate of change in prices from 2035 to 2050.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For the September 2019 GSIL NOPD, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (''OMB'') to federal agencies on the development of regulatory analysis.[60] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value. In the September 2019 GSIL NOPD, DOE used a present year of 2019. For this final determination, DOE has updated the present year to 2020.

H. Manufacturer Impact Analysis

DOE performed an MIA to estimate the financial impacts of potential amended energy conservation standards on manufacturers of GSILs. DOE relied on the GRIM, an industry cash flow model with inputs specific to this rulemaking. The key GRIM inputs include data on the industry cost structure, unit production costs, product shipments, manufacturer markups, and investments in research and development (''R&D'') and manufacturing capital required to produce compliant products. The key GRIM output is INPV, which is the sum of industry annual cash flows over the analysis period, discounted using the industry weighted average cost of capital. The GRIM calculates cash flows using standard accounting principles and compares changes in INPV between the no-new-standards case and the standards cases. The difference in INPV between the no-new-standards case and the standards cases represent the financial impact of the analyzed energy conservation standards on manufacturers. To capture the uncertainty relating to manufacturer pricing strategies following potential amended standards, the GRIM estimates a range of possible impacts under different manufacturer markup scenarios.

DOE created initial estimates for the industry financial inputs used in the GRIM (*e.g.,* tax rate; working capital rate; net property plant and equipment expenses; selling, general, and administrative (''SG&A'') expenses; R&D expenses; depreciation expenses; capital expenditures; and industry discount rate) based on publicly available sources, such as company filings of form 10–K from the U.S. Securities and Exchange Commission (''SEC'') or corporate annual reports.[61]

The GRIM uses several factors to determine a series of annual cash flows starting with the announcement of potential standards and extending over a 30-year period following the compliance date of potential standards. These factors include annual expected revenues, costs of sales, SG&A and R&D expenses, taxes, and capital expenditures. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) Creating a need for increased investment, (2) raising production costs per unit, and (3) altering revenue due to higher per-unit prices and changes in sales volumes.

The GRIM spreadsheet uses inputs to arrive at a series of annual cash flows, beginning in 2020 (the reference year of the analysis) and continuing to 2052. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. DOE used a real discount rate of 6.1 percent for GSIL manufacturers. This initial discount rate estimate was derived using the capital asset pricing model in conjunction with publicly available information (*e.g.,* 10-year treasury rates of return and company specific betas).

1. Manufacturer Production Costs

Manufacturing more efficacious GSILs is more expensive because of the machinery required to coat halogen capsules and the process by which the capsules are coated. The changes in the manufacturer production costs (''MPCs'') of covered products can affect the revenues, gross margins, and cash flow of the industry. Typically, DOE develops MSPs for the covered products using reverse-engineering. However, because GSILs are difficult to reverse-engineer, DOE derived end-user prices directly in the product price determination and then used the end-user prices in conjunction with distribution chain markups to calculate the MSPs of GSILs. These end-user prices are used as an input to the LCC analysis and NIA. DOE updated the end-user price for the modeled HIR lamp in the final determination (see section VI.C). DOE uses this updated end-user

[60] United States Office of Management and Budget. Circular A–4: Regulatory Analysis,'' (Sept. 17, 2003), section E (Available at: *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf*).

[61] 10–Ks are collected from the SEC's EDGAR database: *https://www.sec.gov/edgar.shtml* or from annual financial reports collected from individual company websites.

price in the MIA conducted as part of the final determination.

To determine MPCs of GSILs from the end-user prices calculated in the product price determination, DOE divided the end-user prices by the home center markup to calculate the MSP. DOE then divided the MSP by the manufacturer markup to get the MPCs. DOE determined the home center markup to be 1.52 and the manufacturer markup to be 1.40 for all GSILs. Markups are further described in section VI.H.4 of this document.

2. Shipments Projections

The GRIM estimates manufacturer revenues based on total unit shipment projections and the distribution of those shipments by TSL. Changes in sales volumes and efficacy mix over time can significantly affect manufacturer finances. For this analysis, the GRIM uses the NIA's annual shipment projections derived from the shipments analysis from 2020 (the reference year) to 2052 (the end year of the analysis period). The shipment analysis was updated for the final determination. DOE uses the updated shipment projections in the MIA conducted for the final determination. The updated shipment analysis is described in further detail in section VI.F of this document.

3. Product and Capital Conversion Costs

Potential amended energy conservation standards could cause manufacturers to incur conversion costs to bring their production facilities and product designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered TSL. For the MIA, DOE classified these conversion costs into two major groups: (1) Product conversion costs; and (2) capital conversion costs. Product conversion costs are investments in research, development, testing, marketing, and other non-capitalized costs necessary to make product designs comply with the analyzed energy conservation standards. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new compliant product designs can be fabricated and assembled.

As part of the September 2019 GSIL NOPD, DOE evaluated the level of capital conversion costs and product conversion costs manufacturers would likely incur at the analyzed TSL to manufacture the volume of projected HIR shipments. In response to the September 2019 GSIL NOPD, NEMA stated that no manufacturer would invest to produce a general service HIR lamp in the current market environment, now or in the reasonably foreseeable future, even if standards were set above baseline. NEMA stated that when GE and Philips brought their expensive HIR lamps to market, general service LED lamps had not been commercialized and now they are competitive in price and exceeding in sales compared to GSILs. Therefore, NEMA states, they would not expect any appreciable HIR product shipments to appear in the market in either the no-new-standards case or the standards cases. (NEMA, No. 88 at p. 4–5, 9–11) Similarly, GE stated it is very unlikely that any lamp manufacturing business could economically justify an investment in manufacturing capacity for A-line lamps containing HIR filament tubes. The GE factory that previously made HIR filament tubes has been closed and the production equipment no longer exists. (GE, No. 78 at p. 3) NEMA further noted that over the past two years, manufacturers have begun withdrawing from manufacturing halogen infrared PAR lamps and much of what continues to be available for sale is slow-moving older inventory. This fact lends further credibility to the proposition that HIR GSILs will not be forthcoming in the event of a standard that requires them. (NEMA, No. 88 at p. 5) Westinghouse stated if someone saw an opportunity and had $8 million, such a person may attempt to make an HIR lamp but it was not aware of any major manufacturer intending to invest that kind of money in a product that people may not purchase. (Westinghouse, Public Meeting Transcript, No. 56 at p. 124)

As part of this final determination, DOE updated the shipment analysis described in section VI.F of this document. DOE is no longer projecting shipments for HIR lamps in either the standards cases or the no-new-standards case. Therefore, for the MIA conducted for the final determination, DOE estimated that manufacturers would not incur any conversion costs in the standards cases for HIR GSILs as there are no shipments of those products.

4. Markup Scenarios

To calculate the MPCs used in the GRIM, DOE divided the end-user prices calculated in the product price determination analysis by the home center markup and the manufacturer markup. DOE continued to use the home center markup of 1.52 that was used in the September 2019 GSIL NOPD.

The manufacturer markup accounts for the non-production costs (*i.e.,* SG&A, R&D, and interest) along with profit. Modifying these markups in the standards cases yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case markup scenarios to represent uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards: (1) A preservation of gross margin percentage markup scenario; and (2) a technology specific markup scenario. These scenarios lead to different markup values that, when applied to the MPCs, result in varying revenue and cash flow impacts.

Under the preservation of gross margin percentage scenario, DOE applied a single uniform ''gross margin percentage'' markup of 1.40 across all analyzed lamps, which assumes that manufacturers would be able to maintain the same amount of profit as a percentage of revenues at all lamps analyzed. This markup scenario is identical to the one used in the September 2019 GSIL NOPD.

Under the technology specific markup scenario, DOE assumed that incandescent lamps, CFLs, and LED lamps have different manufacturer markups. As sales of lamp technologies that are no longer able to meet the analyzed energy conservation standards are no longer sold, the average manufacturer markup is reduced. DOE slightly altered the technology specific markups in the final determination due to the changes in the shipment analysis. For the final determination DOE estimated an incandescent lamp manufacturer markup of approximately 1.532, a CFL manufacturer markup of approximately 1.459, and an LED lamp manufacturer markup of approximately 1.386. In the no-new-standards case these technology specific manufacturer markups produce an identical INPV as in the preservation of gross margin markup scenario.

A comparison of industry financial impacts under the two markup scenarios is presented in section VII.D.1 of this document.

VII. Analytical Results and Conclusions

A. Trial Standard Levels

DOE analyzed the benefits and burdens of two TSLs for GSILs. TSL 0.5 is a new TSL analyzed in the final determination and is composed of EL 0.5, which is modeled on lamps with a 3,000 hour life. TSL 1, which was included in the September 2019 NOPD,

is composed of EL 1 and is the max-tech EL for GSILs. Analyses were conducted as described in section VI for each TSL. Table VII.1 presents the TSLs and the corresponding efficacy levels that DOE has identified for potential amended energy conservation standards for GSILs.

TABLE VII.1—TRIAL STANDARD LEVELS FOR GSILS

TSL	EL	Technology required to comply with standard	Description
TSL 0	EL 0	Halogen	No new GSIL standard.
TSL 0.5	EL 0.5	HIR (3,000 hour lamp)	HIR standard in 2023.
TSL 1	EL 1	HIR (1,000 hour lamp)	HIR standard in 2023.

B. Economic Impacts on Individual Consumers

DOE analyzed the cost effectiveness (*i.e.,* the savings in operating costs compared to any increase in purchase price likely to result from the imposition of a standard) by considering the LCC and PBP. DOE presents the LCC of the covered product (*i.e.,* GSILs) and also presents a second LCC, which is used as an input for the NPV, which goes beyond GSILs and also accounts for the purchase price and operating costs of out-of-scope substitute lamps (''LCC with substitution''). These analyses are discussed in the following sections.

1. Life-Cycle Cost and Payback Period

In general, higher-efficiency products can affect consumers in two ways: (1) Purchase price increases and (2) annual operating cost decreases. Inputs used for calculating the annualized LCC and PBP include total installed costs (*i.e.,* product price plus installation costs) and operating costs (*i.e.,* annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The annualized LCC calculation also uses product lifetime and a discount rate.

Table VII.2 shows the average annualized LCC and PBP results for the ELs considered for GSILs in this analysis. For both the residential and commercial sector, the payback period for HIR lamps is approximately four times longer than the product life.

Projected shipments are typically used as an input to calculate LCC savings. In this case, because DOE projects zero shipments of the covered product in a standards scenario, DOE compares the upfront price increase to operating cost savings to examine the annualized LCC at each EL. The annualized LCC at EL 0.5 in the residential sector is $6.83 compared to $6.28 at the baseline, representing a cost increase of $0.55. The annualized LCC at EL 0.5 in the commercial sector is $27.14 compared to $28.44 at the baseline, a savings of $1.30. The annualized LCC at EL 1 in the residential sector is $10.77 compared to $6.28 at the baseline, a cost increase of $4.49. The annualized LCC at EL 1 in the commercial sector is $52.13 compared to $28.44 at the baseline, a cost increase of $23.69. DOE provides this analysis to illustrate the choices facing consumers in the EL 0.5 and EL 1 standards case.

Table VII.3 shows the average annualized LCC savings for TSL 0.5 and TSL 1 under the substitution scenario. No consumers are anticipated to buy HIR technology in the standards case. Instead, these numbers reflect the result of a substitution effect as consumers substitute out-of-scope lamps for GSILs that are no longer available, yielding a reduction in operating costs relative to the no-new-standards case.

TABLE VII.2—AVERAGE ANNUALIZED LCC AND PBP RESULTS BY EFFICACY LEVEL

EL	Average costs (2018$)						Simple payback (years)	Average lifetime (years)
	Installed cost	Annualized installed cost	First year's operating cost	Annualized lifetime operating cost	Annualized LCC	Change in annualized LCC		
Residential Sector								
0	1.94	1.57	4.51	4.71	6.28	.....	.....	1.5
0.5	8.67	2.47	4.12	4.36	6.83	(0.55)	17.3	4.5
1	8.67	7.02	3.60	3.76	10.77	(4.49)	7.4	1.5
Commercial Sector								
0	3.48	13.77	13.55	14.67	28.44	.....	.....	0.4
0.5	10.21	13.71	12.38	13.43	27.14	1.30	5.8	1.3
1	10.21	40.43	10.81	11.70	52.13	(23.69)	2.5	0.4

Note: The results for each EL are calculated assuming that all consumers use products at that EL. The PBP is measured relative to the baseline product and does not account for the additional cost of any needed replacement lamps when comparing lamps with different lifetimes.

TABLE VII.3—AVERAGE ANNUALIZED LCC SAVINGS RESULTS BY TRIAL STANDARD LEVEL—LCC WITH SUBSTITUTION

TSL	EL	Life-cycle cost savings	
		Average annualized LCC savings * (2018$)	Percent of consumers that experience net cost
Residential Sector			
0.5	0.5	3.27	0.0
1	1	3.27	0.0
Commercial Sector			
0.5	0.5	12.75	0.0
1	1	12.76	0.0

* The savings represent the average annualized LCC savings for affected consumers.

The cost of HIR lamps cannot be recovered during their lifetime. Consumers are unlikely to buy HIR technology in the standards case, assuming manufacturers would even produce the product given the upfront cost to bring such lamps to market. Instead, any potential savings reflect the result of a substitution effect as consumers are priced out of the market for GSILs. That is, TSL 0.5 and TSL 1 are anticipated to increase the cost of GSILs by 346 percent relative to a no-standards case. This drives some consumers to shift toward out-of-scope alternative lamps, yielding a reduction in operating costs relative to the base case. Additionally, the annualized LCC would be $0.55 higher at EL 0.5 and $4.49 higher at EL 1 for residential consumers, meaning that HIR lamps would impose a net cost on affected consumers. However, because no consumers purchase the EL 0.5 and EL 1 HIR lamps, DOE is unable to provide an estimate for the proportion of consumers who would bear a net cost in the standards case.

An individual commented in response to the September 2019 GSIL NOPD that an LCC subgroup analysis should also be conducted. (Vondrasek, No. 101 at p. 5) DOE notes that in the context of a proposed or final rule, DOE considers LCC subgroup analysis for subgroups which may be disproportionately affected, such as low-income consumers or small businesses, to determine whether a standard would still be economically justified for these subgroups. However, in the context of a proposed or final determination, if the analytical results for the full consumer sample indicate that a standard would not be economically justified, it is unnecessary to consider how the analytical results might differ for a subgroup of that sample, as DOE would not set a standard that is not economically justified for the full sample.

2. Rebuttable Presumption Payback

As discussed in section VI.E.9 of this document, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. In calculating a rebuttable presumption PBP for each of the considered ELs, DOE used discrete values, and, as required by EPCA, based the energy use calculation on the DOE test procedure for GSILs. In contrast, the PBPs presented in section VII.B.1 of this section were calculated using distributions that reflect the range of energy use in the field. See chapter 8 of the final determination TSD for more information on the rebuttable presumption payback analysis. Regardless of whether the rebuttable presumption PBP had been met, 42 U.S.C. 6295(o)(4) would prevent DOE from setting standards at that level.

C. National Impact Analysis

This section presents DOE's estimates of the NES and the NPV of consumer benefits that would result from each of the considered TSLs as potential amended standards.

1. Energy Savings

To estimate the energy savings attributable to potential amended standards for GSILs, DOE compared consumer energy consumption under the no-new-standards case to consumer anticipated energy consumption under each TSL. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2023–2052). Table VII.4 presents DOE's projections of the NES for each TSL considered for GSILs, as well as considered GSIL alternatives. The savings were calculated using the approach described in section VI.G of this document. In addition to GSIL energy savings, Table VII.4 illustrates the increased energy consumption of consumers who transition to out-of-scope CFL and LED lamp alternatives, because more consumers purchase these lamps at TSL 0.5 and TSL 1 relative to the no-new-standards case. At both TSLs the impact of a standard is the same, as DOE anticipates that manufacturers will not produce HIR lamps under an amended GSIL standard and that consumers will only purchase CFL and LED lamp out-of-scope options. DOE notes that the reduction in energy savings in the final determination compared to the September 2019 GSIL NOPD is a result of the shorter lifetime for halogen GSILs, which results in a faster market transition to more efficient out-of-scope lamps in the no-new-standards case.

TABLE VII.4—CUMULATIVE NATIONAL ENERGY SAVINGS FOR GSILS AND GSIL ALTERNATIVES; 30 YEARS OF SHIPMENTS

[2023–2052]

	TSL 0.5	TSL 1
Site energy savings (quads):		
GSILs	0.197	0.197

TABLE VII.4—CUMULATIVE NATIONAL ENERGY SAVINGS FOR GSILS AND GSIL ALTERNATIVES; 30 YEARS OF SHIPMENTS—Continued

[2023–2052]

	TSL 0.5	TSL 1
CFL alternatives	(0.006)	(0.006)
LED alternatives	(0.036)	(0.036)
Total	0.155	0.155
Source Energy Savings (quads):		
GSILs	0.532	0.532
CFL alternatives	(0.016)	(0.016)
LED alternatives	(0.098)	(0.098)
Total	0.419	0.419
FFC Energy Savings (quads):		
GSILs	0.557	0.557
CFL alternatives	(0.016)	(0.016)
LED alternatives	(0.102)	(0.102)
Total	0.438	0.438

OMB Circular A–4 [62] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this final determination, DOE undertook a sensitivity analysis using 9 years, rather than 30 years, of product shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[63] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to GSILs. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES sensitivity analysis results based on a 9-year analytical period are presented in Table VII.5 of this document. The impacts are counted over the lifetime of GSILs purchased in 2023–2031.

TABLE VII.5—CUMULATIVE NATIONAL ENERGY SAVINGS FOR GSILS AND GSIL ALTERNATIVES; 9 YEARS OF SHIPMENTS

[2023–2031]

	TSL 0.5	TSL 1
Site Energy Savings (quads):		
GSILs	0.061	0.061
CFL alternatives	(0.005)	(0.005)
LED alternatives	(0.009)	(0.009)
Total	0.047	0.047
Source Energy Savings (quads):		
GSILs	0.166	0.166
CFL alternatives	(0.013)	(0.013)
LED alternatives	(0.024)	(0.024)
Total	0.129	0.129
FFC Energy Savings (quads):		
GSILs	0.174	0.174
CFL alternatives	(0.014)	(0.014)
LED alternatives	(0.025)	(0.025)
Total	0.136	0.136

[62] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.*

[63] Section 325(m) of EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. If DOE makes a determination that amended standards are not needed, it must conduct a subsequent review within three years following such a determination. As DOE is evaluating the need to amend the standards, the sensitivity analysis is based on the review timeframe associated with amended standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some products, the compliance period is 5 years rather than 3 years.

2. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the considered TSLs for GSILs. However, as described previously, the benefits of the considered TSLs do not come from improved efficiency for the product for which DOE is making a determination whether existing standards should be amended. Rather, because manufacturers will not produce HIR lamps in the standard case, any benefit from an amended standard is the result of consumers shifting to out-of-scope alternatives. In accordance with OMB's guidelines on regulatory analysis,[64] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table VII.6 shows the consumer NPV results with impacts counted over the lifetime of GSILs purchased in 2023–2052.

TABLE VII.6—CUMULATIVE NET PRESENT VALUE OF QUANTIFIABLE CONSUMER BENEFITS FOR GSILS AND GSIL ALTERNATIVES; 30 YEARS OF SHIPMENTS

[2023–2052]

	TSL 0.5	TSL 1
3 percent (billions 2018$):		
GSILs	5.539	5.539
CFL alternatives	(0.192)	(0.192)
LED alternatives	(0.969)	(0.969)
Total	4.378	4.378
7 percent (billions 2018$):		
GSILs	3.217	3.217
CFL alternatives	(0.133)	(0.133)
LED alternatives	(0.566)	(0.566)
Total	2.518	2.518

The NPV results based on the aforementioned 9-year analytical period are presented in Table VII.7 of this document. The impacts are counted over the lifetime of products purchased in 2023–2031. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE VII.7—CUMULATIVE NET PRESENT VALUE OF QUANTIFIABLE CONSUMER BENEFITS FOR GSIL AND GSIL ALTERNATIVES; 9 YEARS OF SHIPMENTS

[2023–2031]

	TSL 0.5	TSL 1
3 percent (billions 2018$):		
GSILs	2.184	2.184
CFL alternatives	(0.168)	(0.168)
LED alternatives	(0.353)	(0.353)
Total	1.663	1.663
7 percent (billions 2018$):.		
GSILs	1.675	1.675
CFL alternatives	(0.121)	(0.121)
LED alternatives	(0.285)	(0.285)
Total	1.268	1.268

DOE recognizes that the current quantifiable framework does not represent the full welfare effects of this shift in consumer purchase decisions due to an energy conservation standard. In the 2015 IRL final rule, DOE ''committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards.'' (80 FR 4141) DOE remains committed to this goal and to enhancing the methodology the Department uses to represent and quantify the consumer welfare impacts of its standards.

D. Economic Impacts on Manufacturers

DOE performed a manufacturer impact analysis (''MIA'') to estimate the impact of analyzed energy conservation standards on manufacturers of GSILs. The following section describes the expected impacts on GSIL manufacturers at each considered TSL. Chapter 11 of the final determination TSD explains the analysis in further detail.

1. Industry Cash Flow Analysis Results

In this section, DOE provides results from the Government Regulatory Impact Model (''GRIM''), which examines changes in the industry that would result from the analyzed standard. Table VII.8 and Table VII.9 illustrate the estimated financial impacts (represented

[64] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.*

by changes in INPV) of potential amended energy conservation standards on manufacturers of GSILs, as well as the conversion costs that DOE estimates manufacturers of GSILs would incur at the analyzed TSLs.

To evaluate the range of cash-flow impacts on the GSIL industry, DOE modeled two manufacturer markup scenarios that correspond to the range of anticipated market responses to potential standards. Each markup scenario results in a unique set of cash flows and corresponding industry values at the analyzed TSLs. In the following discussion, the INPV results refer to the difference in industry value between the no-new-standards case and the standards cases that result from the sum of discounted cash flows from the reference year (2020) through the end of the analysis period (2052).

DOE modeled a preservation of gross margin markup scenario. This scenario assumes that in the standards cases, manufacturers would be able to pass along all the higher production costs required for more efficacious products to their consumers. DOE also modeled a technology specific markup scenario. In the technology specific markup scenario, different lamp technologies (incandescent, CFL, LED) have different manufacturer markups.

Table VII.8 and Table VII.9 present the results of the industry cash flow analysis for GSIL manufacturers under the preservation of gross margin and the technology specific markup scenarios.

TABLE VII.8—MANUFACTURER IMPACT ANALYSIS FOR GSILS—PRESERVATION OF GROSS MARGIN MARKUP SCENARIO

	Units	No-new-standards case	TSL 0.5	TSL 1
INPV	*2018$ millions*	298.3	292.4	292.4
Change in INPV	*2018$ millions*		(5.9)	(5.9)
	%		(2.0)	(2.0)
Product Conversion Costs	*2018$ millions*			
Capital Conversion Costs	*2018$ millions*			
Total Conversion Costs	*2018$ millions*			

TABLE VII.9—MANUFACTURER IMPACT ANALYSIS FOR GSILS—TECHNOLOGY SPECIFIC MARKUP SCENARIO

	Units	No-new-standards case	TSL 0.5	TSL 1
INPV	*2018$ millions*	298.3	270.9	270.9
Change in INPV	*2018$ millions*		*(27.5)	*(27.5)
	%		(9.2)	(9.2)
Product Conversion Costs	*2018$ millions*			
Capital Conversion Costs	*2018$ millions*			
Total Conversion Costs	*2018$ millions*			

*Values do not add exactly due to rounding.

At TSL 0.5 and at TSL 1, DOE estimates that impacts on INPV will range from −$27.5 million to −$5.9 million, or a change in INPV of −9.2 to −2.0 percent. At TSL 0.5 and at TSL 1, there is no change in free cash-flow from the no-new-standards case since manufacturers do not have any conversion costs. Therefore, free cash-flow remains at $31.7 million in 2022, the year leading up to the potential standard, which is the same value as in the no-new-standards case.

At TSL 0.5 and TSL 1, the change in shipment-weighted average MPC in 2023 increases 2.7 percent. However, lighting manufacturers sell approximately 19 million fewer units annually after 2023 because most consumers purchase longer lifetime products. This decrease in sales volume outweighs the small increase in average MPC causing INPV to decrease in both markup scenarios.

2. Direct Impacts on Employment

DOE typically presents quantitative estimates of the potential changes in production employment that could result from the analyzed energy conservation standards. However, all production facilities that once produced GSILs in the U.S. have either closed or are scheduled to close prior to 2023, the estimated compliance year of the analysis. Therefore, DOE assumed there will not be any domestic employment for GSIL production after 2023, and that none of the analyzed standards would impact domestic GSIL production employment. While there is limited CFL and LED lamp production in the U.S., DOE also does not assume that any CFL or LED lamp domestic production employment would be impacted by the analyzed standards. Therefore, the final determination would not have a significant impact on domestic employment in the GSIL industry.

Several individuals, some through a form letter process, stated that DOE's proposed determination would put thousands of manufacturing jobs at risk. (Coconut Moon, No. 35 at p. 1; Goldman, No. 36 at p. 1; LeRoy, No. 40 at p. 1; Meadow, No. 41 at p. 1; Caswell, No. 44 at p. 1; H, No. 47 at p. 1; Kodama, No. 49 at p. 1; Dashe, No. 61 at p. 1; Werner, No. 37 at p. 1; Datz, No. 39 at p. 1; Kodama, No. 48 at p. 1; Anonymous, No. 98 at p. 16) DOE assumes the analyzed energy conservation standards would not impact GSIL domestic production, as none exists. Additionally, DOE assumes the final determination would not decrease the limited CFL and LED lamp domestic production, as those lamps would continue to be sold in the U.S. Therefore, DOE does not believe that any jobs related to the manufacturing of GSILs, CFLs, or LED lamps are at risk due to this final determination.

3. Impacts on Manufacturing Capacity

DOE does not anticipate any significant capacity constraints at the analyzed energy conservation standards. As previously discussed in section VI.F, DOE did not estimate any HIR lamp sales (EL 0.5 and EL 1) in either the no-new-standards case or in the standards cases. Therefore, manufacturers would not need to purchase machines used to coat halogen capsules. Additionally, manufacturers would not need to add capacity for either CFLs or LED lamps in the standards cases as there would already be excess production capacity for those lamps in the analyzed

compliance year since DOE estimates higher production volumes of both of those lamps in the years leading up to the compliance date of the analyzed standards.

4. Impacts on Subgroups of Manufacturers

Using average cost assumptions to develop an industry cash-flow estimate may not be adequate for assessing differential impacts among manufacturer subgroups. Small manufacturers, niche equipment manufacturers, and manufacturers exhibiting cost structures substantially different from the industry average could be affected disproportionately. DOE identified one manufacturer subgroup for GSILs, small manufacturers.

For the small business subgroup analysis, DOE applied the small business size standards published by the Small Business Administration (''SBA'') to determine whether a company is considered a small business. The size standards are codified at 13 CFR part 121. To be categorized as a small business under NAICS code 335110, ''electric lamp bulb and part manufacturing,'' a GSIL manufacturer and its affiliates may employ a maximum of 1,250 employees. The 1,250-employee threshold includes all employees in a business's parent company and any other subsidiaries. The small business subgroup analysis is discussed in section VIII.C of this document.

5. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the regulatory actions of other Federal agencies and States that affect the manufacturers of a covered product. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE typically conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency. However, given the conclusion discussed in section VII.E of this document, DOE did not conduct a cumulative regulatory burden analysis.

E. Conclusion

When considering amended energy conservation standards, the standards that DOE adopts for any type (or class) of covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

For this final determination, DOE considered the impacts of amended standards for GSILs at analyzed TSLs, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation. Because an analysis of potential economic justification and energy savings first requires an evaluation of the relevant technology, in the following sections DOE first discusses the technological feasibility of amended standards. DOE then addresses the energy savings and economic justification associated with potential amended standards.

1. Technological Feasibility

EPCA mandates that DOE consider whether amended energy conservation standards for GSILs would be technologically feasible. (42 U.S.C. 6295(o)(2)(A)) DOE has determined that there are design options that would improve the efficacy of GSILs. These design options are being used in similar products (IRLs) that are commercially available and have been used in commercially available GSILs in the past and therefore are technologically feasible. Hence, DOE has determined that amended energy conservation standards for GSILs are technologically feasible.

2. Significant Conservation of Energy

EPCA also mandates that DOE consider whether amended energy conservation standards for GSILs would result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) As stated in section III.D.2, DOE has not finalized updates to the Process Rule, in which DOE considers how to determine whether a new or amended standard would result in significant energy savings. As this rule is not yet finalized, DOE is not relying on that proposed threshold for this determination. However, DOE is still required by statute to issue only such standards as will save a significant amount of energy. (42 U.S.C. 6295(o)(3)(B))

As described previously, there are no energy savings or benefits from transitioning to HIR technology. HIR lamps would burden consumers with net costs, because the installed cost of the technology is too high to recoup via energy savings. As a result, any energy savings that might result from establishing a standard at TSL 0.5 or TSL 1 are the result of product shifting as consumers abandon HIR GSIL products in favor of different product types having different performance characteristics and features. DOE notes that EPCA prohibits DOE from prescribing an amended or new standard if that standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. 42 U.S.C. 6295(o)(4)

3. Economic Justification

In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens, considering to the greatest extent practicable the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) One of those seven factors is the savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard. This factor is assessed using life cycle cost and payback period analysis, discussed in section III.E.1.b of this section.

Given the high upfront cost and long payback period, these analyses do not anticipate that consumers will benefit from the introduction of HIR lamp technology. Additionally, the recent experiences of two manufacturers that attempted and failed to market such

products illustrates that they are not commercially viable. At TSL 0.5 and TSL 1, manufacturers would not spend the capital required to produce HIR lamps given the low probability of recovering those costs as consumers substitute less costly non-GSIL products. Manufacturers would instead choose to forego the investment and produce other lighting products or exit the market entirely.

After considering the analysis and weighing the benefits and the burdens, DOE concluded that, at TSL 1 for GSILs, the benefits of energy savings and positive NPV of consumer benefits would be outweighed by the fact that the covered product PBP exceeds covered product lifetime by nearly a factor of five in the residential sector and more than a factor of six in the commercial sector. Further, HIR products at EL 1 represent an additional annualized life cycle cost of $4.49 in the residential sector and $23.69 in the commercial sector relative to the baseline GSIL. The simple payback period is 7.4 years (compared to an average lifetime of 1.5 years) in the residential sector and 2.5 years (compared to an average lifetime of 0.4 years) in the commercial sector. At TSL 1, DOE estimates that INPV will decrease between $27.5 million to $5.9 million, or a decrease in INPV of 9.2 to 2.0 percent. Based on the second EPCA factor that DOE is required to evaluate, DOE has concluded that imposition of a standard at TSL 1 is not economically justified because the operating cost savings of the covered product are insufficient to recover the upfront cost. Based on these considerations, DOE is not amending energy conservation standards to adopt TSL 1 for GSILs.

DOE has presented additional consumer choice analysis anticipating that if it were to establish a standard at TSL 1, consumers would substitute other available products, such as LED lamps and CFLs (the substitution scenario). DOE then estimated the NPV of the total costs and benefits experienced by the Nation in this scenario. DOE also conducted an MIA to estimate the impact of amended energy conservation standards on manufacturers of GSILs in this consumer choice scenario. Under the consumer choice analysis, the NPV of consumer benefits at TSL 1 would be $2.518 billion using a discount rate of 7 percent, and $4.378 billion using a discount rate of 3 percent. However, this NPV is based on the anticipated lifecycle cost savings to consumers who substitute other lamps due to the unavailability of GSILs. As explained elsewhere in this document, EPCA requires DOE to compare the savings in operating costs of the covered product compared to any cost increase of the covered products which are likely to result from the imposition of the standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) Although the NPV is projected based on shipments of out-of-scope lamps, DOE's consideration of life cycle costs is limited to the covered product examined here—that is, GSILs. As discussed in section V.C. of this final rule, EPCA prohibits DOE from prescribing an amended or new standard if that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. In addition to being economically unjustified, amended standards for GSILs would force the unavailability of a product type, performance characteristic or feature in contravention of EPCA.

After considering the analysis and weighing the benefits and the burdens, DOE concluded that, at TSL 0.5 for GSILs, the benefits of energy savings and positive NPV of consumer benefits would be outweighed by the fact that the covered product PBP exceeds covered product lifetime by nearly a factor of four in the residential sector and more than a factor of four in the commercial sector. At EL 0.5, the annualized covered product LCC is an additional $0.55 in the residential sector and a decrease of $1.30 in the commercial sector relative to the baseline GSIL. The simple payback period is 17.3 years (compared to an average lifetime of 4.5 years) in the residential sector and 5.8 years (compared to an average lifetime of 1.3 years) in the commercial sector. At TSL 0.5, DOE estimates that INPV will decrease between $27.5 million to $5.9 million, or a decrease in INPV of 9.2 to 2.0 percent. Based on the second EPCA factor that DOE is required to evaluate, DOE has concluded that imposition of a standard at TSL 0.5 is not economically justified because the operating costs of the covered product are insufficient to recover the upfront cost. Based on these considerations, DOE is not amending energy conservation standards to adopt TSL 0.5 for GSILs.

DOE has presented additional consumer choice analysis anticipating that if it were to establish a standard at TSL 0.5, consumers would substitute other available products, such as LED lamps and CFLs (the substitution scenario). DOE then estimated the NPV of the total costs and benefits experienced by the Nation in this scenario. DOE also conducted an MIA to estimate the impact of amended energy conservation standards on manufacturers of GSILs in this consumer choice scenario.

Under the substitution analysis, the NPV of consumer benefits at TSL 0.5 would be $2.518 billion using a discount rate of 7 percent, and $4.378 billion using a discount rate of 3 percent. However, this NPV is based on the anticipated lifecycle costs to consumers who substitute other lamps due to the unavailability of GSILs. As explained elsewhere in this document, EPCA requires DOE to compare the savings in operating costs of the covered product compared to any cost increase of the covered products which are likely to result from the imposition of the standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) Although the NPV is projected based on shipments of out-of-scope lamps, DOE's consideration of life cycle costs is limited to the covered product examined here—that is, GSILs.

EPCA prohibits DOE from prescribing an amended or new standard if that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. In addition to being economically unjustified, amended standards for GSILs would result in the unavailability of a product type, performance characteristic or feature in contravention of EPCA.

In this final determination, based on the determination that amended standards would not be economically justified, DOE has determined that energy conservation standards for GSILs do not need to be amended.

VIII. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and Administrative Procedure Act

This final determination has been determined to be a significant regulatory action for purposes of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). As a result, OMB reviewed this rule.

DOE finds good cause pursuant to 5 U.S.C. 553(d)(3) to waive the delay in effective date for this rule. The energy conservation standards applicable to GSILs will be precisely the same after the effective date of this rule as they are

prior to that date. As such, a delay in effectiveness is unnecessary as it would serve no useful purpose.

B. Review Under Executive Orders 13771 and 13777

On January 30, 2017, the President issued Executive Order (''E.O.'') 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' E.O. 13771 stated the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. E.O. 13771 stated it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations.

Additionally, on February 24, 2017, the President issued E.O. 13777, ''Enforcing the Regulatory Reform Agenda.'' E.O. 13777 required the head of each agency designate an agency official as its Regulatory Reform Officer (''RRO''). Each RRO oversees the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law. At a minimum, each regulatory reform task force must attempt to identify regulations that:

(i) Eliminate jobs, or inhibit job creation;

(ii) Are outdated, unnecessary, or ineffective;

(iii) Impose costs that exceed benefits;

(iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;

(v) Are inconsistent with the requirements of Information Quality Act, or the guidance issued pursuant to that Act, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or (vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

As discussed in this document, DOE is not amending the energy conservation standards for GSILs and the final determination would not yield any costs or cost savings. Therefore, this final determination is an E.O. 13771 other action.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') and a final regulatory flexibility analysis (''FRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*http://energy.gov/gc/office-general-counsel*).

DOE reviewed this final determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. DOE is not amending energy conservation standards for GSILs. On the basis of the foregoing, DOE certifies that this final determination does not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared an FRFA for this final determination.

D. Review Under the National Environmental Policy Act of 1969

DOE has analyzed this final determination in accordance with the National Environmental Policy Act of 1969 (''NEPA'') and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for actions which are interpretations or rulings with respect to existing regulations. 10 CFR part 1021, subpart D, appendix A4. DOE has determined that this action qualifies for categorical exclusion A4 because it is an interpretation or ruling in regards to an existing regulation and otherwise meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final determination. A discussion of Federal preemption as it applies to GSILs can be found in section V.E of this final rule. DOE has examined this rule and has determined that it 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. Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) 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 issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section

3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final determination meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

DOE has concluded that this final determination does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by the private sector. As a result, the analytical requirements of UMRA do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), DOE has determined that this rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final determination under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that this regulatory action, which does not adopt amended energy conservation standards for GSILs, is not a significant energy action because the standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this final determination.

L. Information Quality

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (''OSTP''), issued its Final Information Quality Bulletin for Peer Review (''the Bulletin''). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and prepared a report describing that peer review.[65] Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. DOE has determined that the peer-reviewed analytical process continues to reflect current practice, and the Department followed that process for developing energy conservation standards in the case of the present rulemaking.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

[65] The 2007 ''Energy Conservation Standards Rulemaking Peer Review Report'' is available at the following website: *http://energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0.*

IX. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final determination.

Signed in Washington, DC, on December 17, 2019.

Daniel R. Simmons,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2019–27515 Filed 12–26–19; 8:45 a.m.]

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Part V

Department of Health and Human Services

45 CFR Parts 155 and 156

Patient Protection and Affordable Care Act; Exchange Program Integrity; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 155 and 156

[CMS–9922–F]

RIN 0938–AT53

Patient Protection and Affordable Care Act; Exchange Program Integrity

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

ACTION: Final rule.

SUMMARY: This final rule revises standards relating to oversight of Exchanges established by states and periodic data matching frequency. This final rule also includes new requirements for certain issuers related to the collection of a separate payment for the portion of a plan's premium attributable to coverage for certain abortion services.

DATES: This final rule is effective on February 25, 2020.

FOR FURTHER INFORMATION CONTACT: Emily Ames, (301) 492–4246 or Marisa Beatley, (301) 492–4307.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legislative and Regulatory Overview

Sections 1311(b) and 1321(b) of the Patient Protection and Affordable Care Act (PPACA) provide that each state has the opportunity to establish an Exchange. Section 1311(b)(1) of the PPACA gives each state the opportunity to establish an Exchange that facilitates the purchase of qualified health programs (QHPs) by individuals and families, and provides for the establishment of a Small Business Health Options Program (SHOP) that is designed to assist qualified small employers in the state in facilitating the enrollment of their employees in QHPs offered in the small group market in the state.

Section 1313 of the PPACA describes the steps the Secretary of Health and Human Services (the Secretary) may take to oversee Exchanges' compliance with HHS standards related to title I of the PPACA and ensure their financial integrity, including conducting investigations and annual audits.

Section 1321(a) of the PPACA provides broad authority for the Secretary to establish standards and regulations to implement the statutory standards related to Exchanges, QHPs, and other identified standards of title I of the PPACA.

Section 1321(c)(2) of the PPACA authorizes the Secretary to enforce the Exchange standards using civil money penalties (CMPs) on the same basis as detailed in section 2723(b) of the Public Health Service Act (PHS Act). Section 2723(b) of the PHS Act authorizes the Secretary to impose CMPs as a means of enforcing the individual and group market reforms contained in Part A of title XXVII of the PHS Act when a state fails to substantially enforce these provisions with respect to health insurance issuers.

Section 1303 of the PPACA, as implemented in 45 CFR 156.280, specifies standards for issuers of qualified health plans (QHPs) through the Exchanges that cover abortion services for which public funding is prohibited (also referred to as non-Hyde abortion services). The statute and regulation establish that, unless otherwise prohibited by state law, a QHP issuer may elect to cover such non-Hyde abortion services. If an issuer elects to cover such services under a QHP sold through an individual market Exchange, the issuer must take certain steps to ensure that no premium tax credit (PTC) or cost-sharing reduction (CSR) funds are used to pay for abortion services for which public funding is prohibited.

As specified in section 1303(b)(2), one such step is that individual market Exchange issuers must determine the amount of, and collect, from each enrollee, a separate payment for an amount equal to the actuarial value of the coverage for abortions for which public funding is prohibited, which must be no less than $1 per enrollee, per month. QHP issuers must also segregate funds for non-Hyde abortion services collected through this payment into a separate allocation account used to pay for non-Hyde abortion services.

Section 1411(c) of the PPACA requires the Secretary to submit certain information provided by applicants under section 1411(b) of the PPACA to other federal officials for verification, including income and family size information to the Secretary of the Treasury.

Section 1411(d) of the PPACA provides that the Secretary must verify the accuracy of information provided by applicants under section 1411(b) of the PPACA for which section 1411(c) does not prescribe a specific verification procedure, in such manner as the Secretary determines appropriate.

Section 1411(f)(1)(B) of the PPACA requires the Secretary to establish procedures to redetermine eligibility on a periodic basis, in appropriate circumstances, including for eligibility to purchase a QHP through the Exchange and for advance payments of the premium tax credit (APTC) and CSRs.

Section 1411(g) of the PPACA allows the exchange of applicant information only for the limited purposes of, and to the extent necessary to, ensure the efficient operation of the Exchange, including by verifying eligibility to enroll through the Exchange and for APTC and CSRs.

On October 30, 2013, we published a final rule entitled, ''Patient Protection and Affordable Care Act; Program Integrity: Exchange, Premium Stabilization Programs, and Market Standards; Amendments to the HHS Notice of Benefit and Payment Parameters for 2014,'' (78 FR 65046), to implement certain program integrity standards and oversight requirements for State Exchanges.

On March 27, 2012, we published a final rule entitled ''Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers,'' (Exchange Establishment Rule (77 FR 18309), in which we codified the statutory provisions of section 1303 of the PPACA in regulation at 45 CFR 156.280, and established many standards related to Exchanges. On February 27, 2015, we published the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2016, final rule (80 FR 10750) (hereinafter referred to as the 2016 Payment Notice) providing guidance regarding acceptable billing and premium collection methods for the portion of the policy holder's total premium attributable to non-Hyde abortion coverage for purposes of satisfying the statutory separate payment requirement.

On March 8, 2016, we published the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017, final rule (81 FR 12204), in which we provided issuers the option to adopt a premium payment threshold policy to avoid situations in which an enrollee who owes only a de minimis amount of premium has his or her enrollment terminated for non-payment of premiums.

On November 9, 2018, we published a proposed rule entitled ''Patient Protection and Affordable Care Act; Exchange Program Integrity'' (83 FR 56015), which proposed to revise standards relating to oversight of Exchanges established by states and periodic data matching frequency and authority. It also proposed new requirements for certain issuers related to the billing and collection of the separate payment for the premium portion attributable to coverage for certain abortion services.

B. Stakeholder Consultation and Input

HHS has consulted with stakeholders on policies related to the operation of Exchanges. We have held a number of listening sessions with consumers, providers, employers, health plans, the actuarial community, and state representatives to gather public input, with a particular focus on risks to the individual and small group markets, and how we can alleviate burdens facing patients and issuers. We consulted with stakeholders through regular meetings with the National Association of Insurance Commissioners, regular contact with State Exchanges through the Exchange Blueprint process and ongoing oversight and technical assistance engagements, and meetings with Tribal leaders and representatives, health insurance issuers, trade groups, consumer advocates, employers, and other interested parties.

II. Provisions of the Proposed Rule and Analysis of and Responses to Public Comments

A. Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act

1. Functions of an Exchange (§ 155.200)

We proposed to revise § 155.200 to clarify that the Exchanges must perform oversight functions generally, and cooperate with oversight activities, in accordance with section 1313 of the PPACA and as required under 45 CFR part 155. Section 155.200 describes the functions that an Exchange must perform. Section 155.200(c) specifies that the Exchange must perform functions related to oversight and financial integrity in accordance with section 1313 of the PPACA. HHS interprets this requirement broadly to include program integrity functions related to protecting against fraud, waste, and abuse, including functions not explicitly identified in section 1313 of the PPACA. We believe State Exchanges, including State Exchanges on the Federal Platform (SBE–FPs), have also generally interpreted this requirement broadly, as evidenced by their engagement in activities designed to combat fraud and abuse.

However, questions about the breadth of this function have arisen when Exchanges have sought to understand what uses and disclosures of personally identifiable information (PII) are permitted under § 155.260.[1] Specifically, we received questions about whether Exchanges are permitted under § 155.260 to disclose applicant PII to government oversight entities, such as state departments of insurance, when investigating fraudulent behavior related to Exchange enrollments on the part of agents and brokers. As noted in the proposed rule, we believe that use and disclosure of PII related to Exchange program integrity efforts, such as combatting fraud, currently fall under § 155.200(c), but seek to make that position more clear. Therefore, we proposed to revise § 155.200(c) to clarify that the Exchanges must perform oversight functions generally, and cooperate with oversight activities, in accordance with section 1313 of the PPACA and as required under 45 CFR part 155, including overseeing its Exchange programs, Navigators, agents, brokers, and other non-Exchange entities as defined in § 155.260(b). We further explained that because this is a clarification and not a new function, we did not believe it would impose additional burdens on Exchanges, but instead would help resolve questions about the available tools and authority to enable Exchanges to effectively oversee and combat potentially fraudulent behavior.

After consideration of comments received, we are finalizing this provision as proposed, with one technical modification to remove a redundant term included in the proposed regulation text. The comments we received on this topic are summarized below, along with our responses.

Comment: All commenters on this topic supported the proposed amendment to § 155.200(c) as it clarifies that oversight and transparency for all Exchanges is required with respect to determining eligibility for APTC and combatting fraud. Two commenters encouraged HHS to work closely with states once the proposal is finalized to ensure that individuals who are assisting consumers receive proper notice and training on the applicable compliance requirements and standards in their states. One commenter suggested that HHS solicit stakeholder feedback on the possibility of incorporating an additional level of collaborative issuer-Exchange oversight and verification prior to enrollment when the applicant's coverage has been previously terminated for fraud.

Response: We remain committed to improving Exchange program integrity, including efforts related to combatting fraud, and appreciate commenters' support for our clarification that Exchanges are permitted to use and disclose applicant PII to certain entities for these efforts. We agree that it is important for agents, brokers, Navigators, and other assisters to understand the applicable standards in their state, and plan to work closely with states to ensure compliance. We continue to explore other pathways for combatting fraud in Exchanges and appreciate commenters' recommendations.

We are finalizing the amendment to § 155.200(c) as proposed, with one modification. We are removing the reference to assisters because it is redundant of the reference to non-Exchange entities. Non-Exchange entities are defined in § 155.260(b) and include Navigators, non-Navigator assistance personnel, certified application counselors, agents, brokers, web-brokers and other individuals or entities who gain access to PII submitted to an Exchange or collect, use or disclose PII gathered directly from Exchange applicants or enrollees.

2. Verification Process Related to Eligibility for Insurance Affordability Programs (§ 155.320)

We requested comment on our proposed plans to expand the current scope of Medicare periodic data matching (PDM), which only identifies and notifies those dual enrollees receiving financial assistance, to also include the Exchange population not receiving financial assistance. Specifically, we proposed to add a new authorization compliant with Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104–191) standards to the single streamlined application to permit Exchanges using the federal platform to collect PHI in order to determine enrollees' Medicare enrollment status. We also proposed to leverage the current attestation question on the single, streamlined application, for applicants to provide written consent permitting the Exchange to terminate their coverage if they are found later to be dually enrolled in Medicare and a QHP to expand the scope of Medicare PDM to the population not receiving financial assistance. We will not finalize these proposed actions, but will continue to identify and notify dual enrollees receiving financial assistance

[1] Section 155.260 limits an Exchange's use and disclosure of PII when an Exchange creates or collects personally identifiable information for the purposes of determining eligibility for enrollment in a qualified health plan; determining eligibility for other insurance affordability programs, as defined in § 155.300; or determining eligibility for exemptions from the individual shared responsibility provisions in section 5000A of the Internal Revenue Code. One of the permitted uses and disclosures is for the Exchange to carry out the functions described in § 155.200.

as part of current Medicare PDM operations.

Under § 155.330, Exchanges are required to periodically examine available data sources to identify whether enrollees on whose behalf APTC or CSRs are being paid have been found eligible for or are enrolled in Medicare, Medicaid, Children's Health Insurance Program (CHIP), or the Basic Health Program (BHP), if a BHP is operating in the service area of the Exchange. Individuals identified as enrolled both in Exchange coverage (with or without APTC or CSRs) and one of these other forms of coverage are referred to as dually enrolled consumers. Generally, if an individual is eligible for or enrolled in such other forms of coverage that qualify as minimum essential coverage (MEC) under section 5000A of the Code, the individual is not eligible to receive APTC or CSRs. For instance, if an individual is eligible for premium-free Medicare Part A or enrolled in Medicare Part A or Part C (also known as Medicare Advantage), all of which qualify as MEC, he or she is not eligible to receive APTC or CSRs to help pay for an Exchange plan or covered services.

The Secretary has broad authority under section 1321(a) of the PPACA to establish regulations setting standards to implement certain statutory requirements under title I of the PPACA, including with respect to the establishment and operation of Exchanges, the offering of QHPs through the Exchanges, the establishment of the risk adjustment and reinsurance programs, and such other requirements as the Secretary determines appropriate. Additionally, section 1411(g) of the PPACA allows the exchange of certain applicant information as necessary to ensure the efficient operation of the Exchange, including verifying eligibility to enroll in coverage through the Exchange and to receive APTC or CSRs.

Furthermore, 45 CFR 155.430(b)(1)(ii) requires an Exchange to provide an opportunity at the time of plan selection for enrollees receiving and not receiving financial assistance to choose to remain enrolled in a QHP if he or she becomes eligible for other MEC, or to terminate QHP coverage if the enrollee does not choose to remain enrolled in the QHP upon completion of the redetermination process. As such, for plan year 2018 and thereafter, we added language to the existing single, streamlined application to support compliance with this requirement by all Exchanges using the federal platform. This new language allows all consumers, regardless of whether they are seeking financial assistance, to authorize the Exchange to obtain eligibility and enrollment data and, if so desired by the consumer, to end their QHP coverage if the Exchange finds during its periodic eligibility checks that the consumer has become eligible for or enrolled in other MEC, such as Medicare, Medicaid/CHIP, or BHP.

In addition, for plan years beginning with the 2020 plan year, we stated in the proposed rule our intention to add a new HIPAA authorization to the single, streamlined application used by Exchanges using the federal platform, which would meet HIPAA standards regarding how one's protected health information (PHI) is collected and used. In the preamble to the proposed rule, we discussed using this proposed new HIPAA authorization to expand the current scope of Medicare PDM to individuals in the Exchange population who are not receiving financial assistance and who authorize the Exchanges using the federal platform to conduct certain PDM by requesting PHI from HHS such as their name, Social Security Number, Medicare eligibility or enrollment status, and other data elements the Exchange may determine necessary, to allow the Exchange to determine whether the consumer is dually enrolled in Medicare and Exchange coverage. This HIPAA authorization would allow HHS to check Medicare enrollment databases for applicants regardless of whether they seek or receive financial assistance.

As we discussed in the preamble to the proposed rule, for consumers who request voluntary termination upon a finding of dual enrollment, the Exchange would terminate coverage after following the current PDM process outlined in § 155.330(e)(2)(i), which requires Exchanges to provide notice of the updated information the Exchange found, as well as a 30-day period for the enrollee to respond to the notice. We emphasize again, because the Exchange cannot identify through this process those consumers who are eligible for, but not enrolled in premium-free Part A, we encourage all consumers who are 65 and older to apply with the Social Security Administration (SSA) to receive an eligibility determination with respect to Medicare.

We received multiple comments on this discussion regarding expanding the scope of Medicare PDM to the Exchange population not receiving financial assistance. After further consideration of the technical complexity of implementing a HIPAA authorization on the single, streamlined application and the potential burden on consumers to read, decipher, and agree to legal agreements many may find confusing, we will not pursue the addition of a new authorization to the single streamlined application. Instead, we will explore other means through which the Exchanges can expand the scope of Medicare PDM to the Exchange population that is not receiving financial assistance. A summary of these comments and our responses to those comments follow:

Comment: Most commenters generally supported HHS's goal to reduce dual enrollment in Medicare and Exchange coverage, but cautioned HHS about the consequences of terminating QHP coverage for this population. Commenters noted that terminating Exchange coverage could: (1) Interfere with the continuity of care, (2) create gaps in coverage, especially for those dual enrollees who have not yet enrolled in Medicare Part B, (3) cause other family members on the Medicare beneficiary's policy to lose coverage, and (4) cause increased consumer confusion over their coverage options. Rather than terminating QHP coverage, commenters recommended targeted outreach and education to the Medicare eligible population to ensure this population fully understands the consequences of dual enrollment, the appropriate time to enroll in Medicare Part B to avoid financial penalties for delayed enrollment, and how access to their Medicare eligibility information intersects with QHP termination via Medicare PDM. One commenter recommended that we prevent all individuals with Medicare from enrolling in QHP coverage through screening at initial application.

Response: Given the technical complexity of implementing a HIPAA authorization on the single streamlined application and the potential burden it would place on consumers as consumers would be required to read, decipher, and agree to complex legal agreements that may be confusing for consumers, we are reconsidering our approach to expanding Medicare PDM to the Exchange population not receiving financial assistance. We are exploring other options to identify and notify this population of their dual enrollment in Medicare and Exchange coverage to ensure that this population is able to enroll in Medicare Part B at the appropriate time and without financial penalty.

For enrollees in Exchanges using the federal platform who are receiving financial assistance, the Exchanges will continue to end subsidies or QHP coverage for those consumers who permit the Exchange to do so in accordance with § 155.330. For the Exchange population receiving financial

assistance, terminating QHP coverage as part of Medicare PDM ensures that consumers are not enrolled in unnecessary duplicative coverage, reduces the potential for taxpayer financial liability related to possibly having to repay APTC at the time of federal income tax reconciliation, and also protects the integrity of the Exchange by ensuring enrollees no longer eligible for financial assistance do not receive these subsidies inappropriately.

HHS is also aware of concerns from stakeholders that consumers often do not know when they should contact the Exchange to end their QHP coverage after enrolling in Medicare. We believe this voluntary option to provide written consent for the Exchange to end a Medicare dual enrollee's QHP coverage will alleviate some of the confusion consumers currently face when transitioning from Exchange coverage to Medicare as the Exchange provides information in the intial warning notice on how to end QHP coverage after enrolling in Medicare. Furthermore, in instances where the dual enrollee does not take action, the Exchange will automatically end coverage for the dual enrollee; thus, saving the enrollee time and reducing the risk of the consumer having to pay back some or all of the APTC received when they file their federal income taxes.

In addition, in response to commenter concerns about the consequences of termination of dually enrolled consumers' coverage, we note that enrollees receiving financial assistance have 30 days to respond to their Medicare PDM notice before the Exchange takes action as specified in § 155.330(e)(2)(i)(D). As we noted in the preamble to the proposed rule, upon receiving the required notice, the enrollee could (1) return to the Exchange and terminate his or her QHP coverage, (2) revoke the prior authorization for the Exchange to terminate his or her QHP coverage in the event dual enrollment is found, so that he or she would remain enrolled both in the QHP and in Medicare, or (3) notify the Exchange that he or she is not eligible for, or enrolled in, Medicare. For enrollees who revoke their prior authorization for the Exchange to terminate their QHP enrollment where the Exchange finds the enrollee is eligible for or enrolled in Medicare, or who disagree that they are eligible for or enrolled in Medicare, the Exchange would only proceed to terminate the enrollee's APTC and CSRs, and not his or her enrollment in QHP coverage through the Exchange, using the process specified in § 155.330(e)(2)(i). Therefore, we believe this operational change mitigates adverse impacts on the continuity of care and the risk of coverage gaps because enrollees can choose to opt out and remain in QHP coverage without APTC, pursuant to the current regulation.

We also appreciate the concerns raised that non-Medicare family members could potentially lose coverage. We note that a special enrollment period will be available for family members of dual enrollees when such family members lose their coverage or their financial subsidies as a result of the PDM process described here.

Additionally, we continue to prioritize consumer and stakeholder education regarding dual enrollment and transitioning between coverage, and to engage in various outreach activities including distributing webinar, newsletter, and fact sheet content for assisters, agents, brokers, and issuers, as well as direct consumer notification and application help text. We also are working to develop educational materials to ensure that all Medicare beneficiaries understand the consequences of dual enrollment and associated penalties for not enrolling in Medicare Part B when first eligible. We believe this will help reduce consumer confusion over their coverage options and the appropriate time to sign up for Medicare. We appreciate the comments and ideas for future education efforts for this population and will consider these suggestions as part of our Medicare PDM stakeholder outreach moving forward.

3. Eligibility Redetermination During a Benefit Year (§ 155.330)

We proposed to add a new paragraph (d)(3) to § 155.330, under which Exchanges would be required to conduct PDM at least twice each calendar year beginning with calendar year 2020. We are finalizing this proposal. However, we have changed the implementation date to the 2021 calendar year, and added clarifying language regarding State Exchanges that have fully integrated eligibility systems with their respective Medicaid agencies.

In accordance with § 155.330(d), Exchanges must periodically examine available data sources to determine whether enrollees in a QHP through an Exchange with APTC or CSRs have been determined eligible for or enrolled in other qualifying coverage through Medicare, Medicaid, CHIP, or the BHP, if applicable. HHS has not previously defined ''periodically.'' Currently, Exchanges using the federal platform conduct Medicare PDM and Medicaid/CHIP PDM twice a year. To ensure that all Exchanges are taking adequate steps to identify enrollees who have become eligible for or enrolled in these other forms of MEC, and to terminate APTC and CSRs for those identified, we proposed to add paragraph (d)(3) to specify that Exchanges would be required to conduct Medicare, Medicaid/CHIP, and, if applicable, BHP PDM at least twice a calendar year, beginning with the 2020 calendar year. We indicated that this timeframe would likely give Exchanges that are not already performing these PDM checks twice a year sufficient time to implement any business, operational, and information technology changes needed to comply with the proposed new requirement.

We explained our belief that this policy would reduce QHP premiums, since Medicare and Medicaid/CHIP beneficiaries tend to have a higher risk profile than a typical Exchange enrollee and, therefore, may have negative impacts on the risk pool. Because this population includes significant numbers of older and disabled beneficiaries, or persons that may have poorer health outcomes generally associated with lower income statuses, we expect that these populations typically will utilize health care services at a greater rate as compared to other populations.[2] So that the Exchanges could prioritize the implementation of the proposed requirement to conduct PDM for Medicare, Medicaid, CHIP, and, if applicable, BHP eligibility or enrollment at least twice yearly, we did not also propose requiring Exchanges to perform PDM for death at least twice in a calendar year, and will consider this as part of future rulemaking.

Since most State Exchanges that operate their own eligibility and enrollment platform have a single shared, integrated eligibility system with their respective Medicaid programs, the Medicaid/CHIP PDM requirements may be met differently by State Exchanges. State Exchanges that have fully integrated eligibility systems generally have controls in place to prevent concurrent or dual enrollment of an individual in both a QHP through the Exchange with APTC/CSRs, and Modified Adjusted Gross Income (MAGI)-based Medicaid/CHIP coverage, at any given time. We proposed at paragraph (d)(3) that we will deem these State Exchanges to be in compliance with the requirement to perform

[2] For example, see Urban Institute and Center on Society and Health, How Are Income and Wealth Linked to Health and Longevity? (April 2015), available at *https://www.urban.org/sites/default/files/publication/49116/2000178-How-are-Income-and-Wealth-Linked-to-Health-and-Longevity.pdf.*

Medicaid/CHIP PDM or, if applicable, BHP PDM. Thus, these State Exchanges would not need to perform additional Medicaid/CHIP PDM outside of the controls that are currently in place to prevent dual enrollment in their integrated eligibility system. State Exchanges that operate their own eligibility and enrollment platform and do not have fully integrated eligibility systems for APTC/CSRs and Medicaid/CHIP or BHP, if applicable, would be required to perform Medicaid/CHIP PDM at least twice a year.

We anticipate many State Exchanges will meet or exceed the proposed requirements for Medicare PDM, Medicaid/CHIP PDM and, if applicable, BHP PDM, based on operations reported to us through the State-based Marketplace Annual Reporting Tool (SMART). This view is also supported by information we have learned through technical assistance engagements. Furthermore, the new Medicaid/CHIP PDM requirement would not result in a significant administrative burden for State Exchanges because we believe most State Exchanges currently operate an integrated eligibility system and could be deemed to be in compliance with the proposed Medicaid/CHIP PDM requirements.

We did not propose specific penalties if State Exchanges do not comply with the proposed PDM requirements. However, we noted that, under current authority, HHS requires a State Exchange to take corrective action if it is not complying with applicable federal requirements. We utilize specific oversight tools (SMART, programmatic audits, etc., as described in the preamble to § 155.1200) to identify issues with, and place corrective actions on, the Exchanges, and to provide technical assistance and ongoing monitoring to track those actions until the Exchange comes into compliance.

Additionally, under section 1313(a)(4) of the PPACA, if HHS determines that an Exchange has engaged in serious misconduct with respect to compliance with Exchange requirements, it has the option to rescind up to 1 percent of payments due to a state under any program administered by HHS until it is resolved. These existing authorities would apply to the proposed periodic data matching requirements in § 155.330(d). If HHS were to determine that it is necessary to apply this authority due to non-compliance by an Exchange with § 155.330(d), HHS would also determine the HHS-administered program from which it would rescind payments that are due to that state.

Lastly, we proposed to make a technical correction in § 155.330(d)(1) by adding an additional reference to the process and authority in § 155.320(b). This reference was omitted previously, but the requirements in § 155.320(b), specifying that Exchanges must verify whether an applicant is eligible for MEC other than through an eligible employer-sponsored plan using information obtained by transmitting identifying information specified by HHS to HHS for verification purposes, apply to the PDM process in § 155.330.

We are finalizing this proposal to add paragraph (d)(3) as proposed, but have changed the implementation date to the 2021 calendar year, and have added some clarifying language with regard to fully integrated eligibility systems, as described below. A summary of comments received and our responses to those comments appear below.

Comment: We received multiple comments in support of PDM as an effort to improve Exchange program integrity. These commenters agreed that the process helps inform consumers of their enrollment in potentially duplicative other MEC such as certain Medicare and Medicaid coverage, CHIP, or, if applicable, the BHP, and to help consumers avoid a tax liability for having to repay APTC received during months of overlapping coverage when reconciling at the time of annual federal income tax filing. Many commenters suggested improvements that could be made to current PDM processes.

Some commenters suggested that consumers, especially Medicare beneficiaries, could benefit from additional education or outreach from assisters, Navigators, or call center representatives to help these dually enrolled consumers make informed choices about their coverage options. Another commenter recommended that HHS work closely with SSA to identify which Medicare beneficiaries are approaching Medicare eligibility so that notices can be sent during the beneficiary's initial enrollment period. Another commenter recommended that, in addition to periodic checks for other qualifying coverage, HHS should implement periodic checks for deceased enrollees and that these checks should occur before auto re-enrollment.

Response: We agree that the PDM process is an important tool to ensure that Exchange enrollees are enrolled in the appropriate coverage that best meets their needs and budget while reducing the risk for potential tax liabilities for having to repay APTC received during months of overlapping coverage. We also agree that outreach and education is critical for dual enrollees and we continue to work with Exchange stakeholders on education and outreach strategies, especially for the Medicare beneficiary population to ensure that consumers can make well-informed choices and sign up for Medicare coverage during the appropriate timeframes. In 2018, we added additional resources to the Exchange application that provided information on the appropriate timeframes to enroll in Medicare Parts A and B to help consumers avoid incurring any late enrollment penalties. We also believe that periodic checks for deceased enrollees are a critical aspect to ensuring Exchange program integrity. Beginning in late 2019, Exchanges using the federal platform will conduct periodic checks for deceased enrollees in single member applications and subsequently end deceased enrollees' QHP coverage. As noted previously, to ensure State Exchanges have appropriate time to implement the technical and operational changes necessary to conduct Medicare, Medicaid/CHIP, and, if applicable, BHP, PDM, we are not requiring that State Exchanges perform checks for deceased enrollees twice yearly, and will be considering changes as part of future rulemaking.

Comment: We received mixed comments regarding our proposal to require Exchanges to conduct Medicare, Medicaid/CHIP and, if applicable, BHP PDM twice a year. Many commenters stated that increasing the frequency of PDM, particularly Medicare PDM, may be burdensome on both consumers and State Exchanges, and could lead to increased consumer confusion, diversion of resources from customer service and outreach efforts, and potential loss of APTC due to potentially outdated data sources for Medicare enrollment and Medicaid/CHIP eligibility and enrollment. One commenter recommended that additional verification checks be incorporated into the final rule to ensure consumers are not removed from coverage due to outdated data. Two commenters noted that the twice yearly frequency was too infrequent and would not provide timely notice for those consumers who are dually enrolled in Medicare and Exchange coverage. One commenter recommended requiring that Exchanges only perform PDM checks once yearly, which taken together with the annual renewal process, would allow a check every 6 months. Another commenter expressed concerns that our proposed language would allow State Exchanges to perform PDM more than twice a year, which could cause consumers to lose coverage erroneously.

Response: We continue to believe that conducting Medicare, Medicaid/CHIP

and, if applicable, BHP PDM serves a critical role in ensuring that consumers are enrolled in the appropriate coverage and ensures that APTC is paid appropriately. We continue to work with our partners throughout HHS to ensure the accuracy of Medicare, Medicaid, and CHIP data, and will continue to provide guidance to State Exchanges on notice language, especially regarding the availability of special enrollment periods for consumers who erroneously lose APTC or QHP coverage, as well as the consumer's right to appeal an Exchanges' determination. We disagree that conducting PDM checks twice yearly would cause consumer confusion or divert resources away from customer service and outreach because PDM provides valuable information to consumers regarding their dual enrollment in Medicare and/or Medicaid/CHIP and serves an important program integrity function by ensuring that only consumers eligible for APTC/CSRs receive them. We continue to prioritize consumer and stakeholder education related to dual enrollment and transitioning between coverage, including webinar, newsletter, and fact sheet content for assisters, agents, brokers, and issuers, as well as direct consumer notification and application help text. We encourage State Exchanges to prioritize these education efforts as well.

We appreciate commenters' suggestions regarding the frequency of PDM checks, but we believe that requiring these checks at least twice a year strikes the appropriate balance between providing timely notice for dually enrolled consumers and not overburdening Exchanges with potentially costly system changes and notice requirements. With respect to the comment regarding Exchanges conducting a Medicaid/CHIP or Medicare PDM check during the annual renewal process, this rule specifies the frequency, and not the precise timing, for when Exchanges must conduct the Medicaid/CHIP and Medicare PDM checks. Exchanges have the flexibility to conduct one of the required PDM checks during the annual renewal process.

Finally, we disagree that the changes outlined to PDM would increase burden on all Exchanges. We will deem State Exchanges that have implemented fully integrated eligibility systems with their respective Medicaid programs to be in compliance with the proposed Medicaid/CHIP PDM requirement. Thus, we anticipate the change to the Medicaid/CHIP PDM requirement will not increase burden for those State Exchanges because they will not have to build new functionality to meet this requirement. However, we do agree that any significant burden on State Exchanges would likely be on those that currently do not perform any Medicare PDM, or those that currently do not operate integrated eligibility systems and do not perform any Medicaid/CHIP PDM and, therefore, are not already in compliance with § 155.330(d). Those Exchanges would likely be required to engage in information technology (IT) system development activities in order to communicate with these programs and act on enrollment data in a new way.

Comment: We received multiple comments that the proposed date of January 1, 2020 for the implementation of twice yearly Medicare, Medicaid/CHIP, and, if applicable, BHP PDM provides insufficient time for State Exchanges to implement the required technical changes. Commenters noted that State Exchanges that do not currently conduct Medicare PDM, or do not have integrated eligibility systems with their State Medicaid programs and do not currently conduct Medicaid/CHIP PDM, would have to make significant changes to their eligibility systems and processes to to confirm enrollment in Medicare or to verify Medicaid or CHIP eligibility, respectively. One commenter suggested 2021 as an appropriate implementation date. Two commenters also requested that HHS finalize a clear and certain definition of a fully integrated eligibility system to mean eligibility systems that have one eligibility rules engine, shared between the State Exchange and its respective Medicaid program, for MAGI-based Medicaid, CHIP, APTC, and if applicable, BHP, eligibility determinations.

Response: We agree with commenters that requiring implementation by the 2020 calendar year may not provide State Exchanges with a sufficient timeframe to implement these changes, especially for Exchanges without integrated eligibility systems that do not currently perform Medicaid/CHIP PDM or those that currently do not perform Medicare PDM. These Exchanges would need to implement new interfaces with their respective Medicaid programs and/or a new connection to federal data to confirm Medicare enrollment. Therefore, we are finalizing the proposal in § 155.330(d)(3) to take effect beginning with the 2021 calendar year. We also agree on the importance of providing a clear and specific definition of ''fully integrated eligibility system.'' As described in the preamble to the proposed rule, by ''fully integrated eligibility system,'' we mean one where a State Exchange and its respective Medicaid program shares a single eligibility rules engine for determining eligibility for MAGI-based Medicaid/CHIP, APTC, and if applicable, BHP. We are finalizing paragraph (d)(3) with some additional language to codify this meaning.

Comment: We received three comments that were opposed to the proposed requirement to conduct Medicare, Medicaid/CHIP and, if applicable, BHP PDM, cautioning us that defining the precise frequency and nature of PDM encroaches upon the sovereignty of the State Exchanges. Two commenters noted that HHS has not provided enough evidence that there is a significant problem with duplicative enrollment in other qualifying coverage such as Medicare, Medicaid/CHIP, and BHP. One commenter expressed concern that additional requirements on State Exchanges could discourage consumers from applying for coverage.

Response: Ensuring that consumers are enrolled in the appropriate coverage remains a top priority for HHS. Additionally, ensuring that APTC is paid appropriately is a requirement set forth in § 155.330(d)(1)(ii). Several Government Accountability Office (GAO) reviews have underscored the importance of continually re-verifying enrollee eligibility for APTC through PDM with other government entities.[3] As such, we believe PDM plays a vital role in ensuring the health and integrity of all Exchanges by ensuring consumers are enrolled in the appropriate coverage, and reduces the risk that consumers will have to pay back all or some of APTC paid on their behalf during months of overlapping coverage when they file their annual federal income taxes. We disagree that the twice yearly requirement to conduct Medicare, Medicaid/CHIP and, if applicable, BHP PDM would discourage consumers from applying for and enrolling in QHP coverage, as the majority of consumers become dually enrolled inadvertently, such as by aging into Medicare or experiencing fluctuations in household income.

4. General Program Integrity and Oversight Requirements (§ 155.1200)

As the Exchange Establishment grant program established under section 1311 of the PPACA has come to a conclusion and State Exchanges have become financially self-sustaining, HHS

[3] ''Improper Payments: Improvements Needed in CMS and IRS Controls over Health Insurance Premium Tax Credit'' (GAO 17–467); ''Federal Health-Insurance Marketplace: Analysis of Plan Year 2015 Application, Enrollment, and Eligibility-Verification Process'' (GAO–18–169).

continues to develop and refine its mechanisms and tools for overseeing the ongoing compliance of State Exchanges and SBE–FPs with federal requirements for Exchanges, including eligibility and enrollment requirements under 45 CFR part 155.

HHS approves or conditionally approves a state to establish a State Exchange based on an assessment of a state's attested compliance with applicable statutory and regulatory rules. Once approved or conditionally approved, State Exchanges must meet specific program integrity and oversight requirements identified at section 1313(a) of the PPACA, and the implementing regulations at §§ 155.1200 and 155.1210. These requirements outline HHS's authority to oversee the Exchanges after their establishment. Currently, annual reporting requirements for State Exchanges at § 155.1200(b) include the annual submission of (1) a financial statement in accordance with generally accepted accounting principles (GAAP); (2) eligibility and enrollment reports; and (3) performance monitoring data.

Additionally, under § 155.1200(c), each State Exchange is required to contract with an independent external auditing entity that follows generally accepted government auditing standards (GAGAS) to perform annual independent external financial and programmatic audits. State Exchanges are required to provide HHS with the results of the annual external audits, including corrective action plans to address any material weaknesses or significant deficiencies identified by the auditor.[4] All corrective action plans are monitored by HHS until closed. Currently, the audits must address compliance with all Exchange requirements under 45 CFR part 155.[5]

HHS designed and developed the SMART in 2014 to assist State Exchanges in conducting a defined set of oversight activities. The SMART was designed to facilitate State Exchanges' reporting to HHS on how they are meeting federal program and operational requirements, including State Exchanges reporting their compliance with federal eligibility and enrollment program requirements under 45 CFR part 155 subparts D and E. The SMART, thus, enables HHS to evaluate and monitor State Exchange progress in coming into compliance with federal requirements where needed. Since then, HHS has come to utilize the SMART, along with the annual programmatic and financial audit reports, as primary oversight tools for identifying and addressing State Exchange non-compliance issues. HHS requires State Exchanges to take corrective actions to address issues that are identified through the SMART and annual audits, and HHS monitors the implementation of the corrective actions.

In the proposed rule, we proposed to modify § 155.1200(b)(2) to reflect that HHS requires State Exchanges to submit annual compliance reports (such as the SMART), that encompass eligibility and enrollment reporting by State Exchanges, and also include reporting on compliance across other Exchange program requirements under 45 CFR part 155. We also proposed to modify § 155.1200(b)(1) to eliminate the April 1st date by which State Exchanges must provide a financial statement to HHS, to provide HHS the flexibility to align the financial statement deadline with the SMART deadline, which is set annually by HHS. Because we proposed to remove the April 1st date, but intend to maintain the requirement that State Exchanges submit the required reports by a deadline, we also proposed to modify the introductory text to § 155.1200(b) to specify that State Exchanges must provide the required annual reporting by deadlines to be set by HHS.

We proposed to retain the requirement at § 155.1200(c) that an annual programmatic audit be conducted by State Exchanges, but proposed a minor change from ''state'' to ''State Exchanges'' to be consistent and clear on the entities to which this rule applies. We also proposed to add specificity to the annual programmatic audit requirement by proposing a clarification of § 155.1200(d)(2) to make clear that HHS may specify or target the scope of a programmatic audit to address compliance with particular Exchange program areas or requirements. We explained that this would provide HHS with the ability to specify those Exchange functions that are most pertinent to a particular State Exchange model (either a traditional State Exchange that operates its own eligibility and enrollment system or an SBE–FP) and need to be regularly included in the audit; target those Exchange functions most likely to impact program integrity, such as eligibility verifications; and reduce burden on State Exchanges where possible. In addition, we proposed to modify § 155.1200(d) by replacing existing paragraph (d)(4) with new paragraphs (d)(4) and (5). These proposed new requirements specify that State Exchanges must ensure that the independent audits implement testing procedures or other auditing procedures that assess whether a State Exchange is conducting accurate eligibility determinations and enrollment transactions under 45 CFR part 155 subparts D and E. Such auditing procedures can include the use of statistically valid sampling methods in the testing or auditing procedures.

We indicated that we believe these proposed changes would strengthen our programmatic oversight and the program integrity of State Exchanges, while providing flexibility for HHS in the collection of information. We further explained that, through the Paperwork Reduction Act (PRA) process, we are able to make updates and refinements to the SMART reporting tool to align with our program integrity priorities for Exchanges as they evolve. In addition, allowing HHS to specify the scope of the programmatic audit at § 155.1200(d)(2) would provide us the ability to target our oversight to specific Exchange program requirements based on the particular State Exchange model, our program integrity priorities, and the goal of reducing burden on State Exchanges where possible. We explained our belief that this approach would provide HHS and states with greater insight into State Exchange compliance with federal standards in a more cost-effective manner.

We also noted our belief that this approach would allow HHS to identify State Exchange non-compliance issues with more precision and efficacy. It would allow HHS to provide more effective, targeted technical assistance to State Exchanges in developing corrective action plans to address issues that are identified. We discussed how this approach could reduce administrative burden on State Exchanges while maintaining the traditional role of State Exchanges in managing and operating their Exchanges, with HHS maintaining its role of overseeing State Exchange compliance with federal requirements through structured reporting processes. We sought comments on these proposals. After consideration of comments received, we are finalizing the amendments to § 155.1200 as proposed. A summary of comments received and our responses to those comments appear below:

Comment: Commenters generally expressed support for some of the proposed changes to the annual reporting and programmatic audit requirement. They expressed support for removal of the April 1st financial statement deadline as long as the new deadline accommodates the state budget cycles for all State Exchanges. Some

[4] 45 CFR 155.1200(c)(1) and (2).

[5] 45 CFR 155.1200(d)(2).

commenters supported the proposal to provide flexibility to specify the scope of the programmatic audit, such as focusing on eligibility and enrollment requirements under 45 CFR part 155 subparts D and E, while two commenters asked HHS to refrain from expanding the scope of the programmatic audit as it can divert funding from other Exchange functions and create administrative burden. Some commenters expressed concern with the timing and potential funding to implement the changes. These commenters urged HHS to provide State Exchanges with over a year of advanced notice to implement the changes, to ensure proper planning and funding.

One commenter requested that HHS clarify the proposed requirement for the State Exchange's independent external auditor to use statistically valid sampling in their review of the State Exchange eligibility and enrollment transactions, noting that statistically significant sampling in the programmatic audit can be larger in scope and more costly in comparison to random sampling which can also identify programmatic issues. Another commenter recommended that HHS consider changing the frequency of the programmatic audit to biennially unless the programmatic audit shows irregularities.

Another commenter urged HHS to clarify that the proposed changes to the programmatic audit specific to eligibility and enrollment activities do not pertain to SBE–FPs, since SBE–FPs rely on HHS and the federal platform to perform eligibility and enrollment functions.

Response: We believe these proposed changes will strengthen our programmatic oversight and the program integrity of State Exchanges and thus are finalizing these amendments as proposed. As detailed in the proposed rule, these amendments are intended to allow for more targeted audits that focus HHS and State Exchange resources on compliance with particular Exchange program areas that have higher program integrity risks in a more consistent manner, rather than covering all program areas. These amendments are also intended to address requirements that are applicable only to a particular State Exchange model, in a more standardized manner. We are removing the April 1st deadline from § 155.1200(b)(1) to allow HHS to align the deadline for submission of the financial statement to HHS with the deadline for submission of SMART reports, currently June 1. Going forward, we anticipate establishing the deadline for submission of the financial statement and SMART report on an annual basis through guidance and would seek to accommodate state budget cycles to the maximum extent practical when setting these dates. The general scope of these audits remains the same, that is, under the new paragraph (d)(2), HHS may specify that an audit focus on compliance with subparts D and E of 45 CFR part 155, or other requirements under 45 CFR part 155, as specified by HHS.[6] However, we appreciate and considered the comments received. We understand that most State Exchanges negotiate their contracts with external auditing entities a year or more in advance and would need sufficient time to update their contracts to reflect any changes in the scope of the external programmatic audits. We also recognize that State Exchanges that operate their own eligibility and enrollment platforms would also need time to work with their contracted auditors to implement new procedures for testing the accuracy of eligibility determinations if their auditors have not previously employed such procedures for this purpose. Thus, subsequent to this rule, we will provide State Exchanges with technical operational guidance that will specify the first plan year for which changes to the scope of the programmatic audit would apply, taking into account the need to allow for a period of time for State Exchanges to implement the changes finalized in this rule.

In response to the comments regarding use of a statistically-significant sampling methodology versus a random sampling methodology, we clarify that, in this rule, we are not specifying a particular sampling methology that must be used by all State Exchanges for testing the accuracy of eligibility determinations in the annual programmatic audits. In addition to State Exchanges and their contracted auditors using the generally accepted government auditing standards, CMS's technical operational guidance would also outline procedures the independent external auditor can chose to implement to assess whether a State Exchange is conducting accurate eligibility determinations and enrollment transactions under 45 CFR part 155 subparts D and E. Going forward we intend to provide State Exchanges with this technical operational guidance on an annual basis to outline the deadline for submission of the applicable year's reports, the scope of the applicable year's external programmatic audit, and the requirements under 45 CFR part 155 that are applicable to each State Exchange model. We intend to release this guidance around April each year, to align with our existing timeframe for providing guidance to State Exchanges on the annual SMART process, so that State Exchanges have sufficient time to prepare, and administrative burden is minimized to the extent practical. Lastly, we agree with the overall notion of taking a risk-based approach towards determining the frequency by which State Exchanges are required to conduct the external programmatic audit. Specifically, we considered the recommendation to change the frequency of State Exchange programmatic audits to biennially unless the audit shows irregulatrities. We decline to make this change at this time because some State Exchanges currently are addressing active findings or corrective actions as a result of past programmatic audits, which we believe annual re-evaluations are still appropriate. However, we will consider this recommendation going forward and may propose to decrease the frequency of State Exchange audits in future rule-making.

Comment: Some commenters requested that certain regulatory language remain unchanged or be modified. One commenter urged HHS to retain the language under §§ 155.1200(b)(2) and 155.1200(d)(2) because the proposed language is broader and targeted auditing can create administrative burden. Another commenter requested that HHS limit the scope of the programmatic audit under § 155.1200(d)(2) to solely cover the eligibility and enrollment requirements under 45 CFR part 155 subparts D and E and remove the language that allows HHS to include other Exchange requirements under 45 CFR part 155 in the scope of the programmatic audit. Another commenter requested that § 155.1200(d)(2) remain unchanged because the general reference to compliance with 45 CFR part 155 is consistent with the HHS's stated intent to specify the scope for programmatic audits, and recommended that HHS make clear that the proposed changes to the review of State Exchange eligibility determinations under § 155.1200(d)(4) applies to eligibility determinations for QHP/APTC only, and not to Medicaid eligibility determinations.

Response: We believe the proposed changes under § 155.1200(d) will strengthen our programmatic oversight and the program integrity of State Exchanges and provide appropriate

[6] This is consistent with the scope for audits in the existing regulation at 45 CFR 155.1200(d)(2), which currently requires State Exchanges to ensure these audits address compliance with ''the requirements under this part.''

flexibility to target oversight and enforcement activities, as well as HHS and State Exchange resources, which, in turn, will reduce burden. As State Exchanges continue to evolve and mature, HHS will be able to focus oversight efforts, including making refinements to annual compliance reporting tools (such as the SMART), in response to changes in federal policy, as well as federal program integrity priorities and processes. We further note that, while these amendments provide flexibility for HHS to target these audits, they also retain the authority for HHS to require the audits to address other requirements under 45 CFR part 155, as specified by HHS. As such, HHS can still require audits with a broader scope when deemed appropriate or necessary. While we generally intend to focus programmatic audits on those Exchange functions most likely to impact program integrity, such as eligibility verifications, we do not agree with commenters that these audits should only focus on eligibility and enrollment functions because there may be changes to federal policy, priorities, or processes that result in the need for HHS to focus our oversight on other Exchange functions besides eligibility and enrollment. Also, not all State Exchanges perform their own eligibility and enrollment functions. For instance, SBE–FPs rely on HHS and the federal platform to perform their eligibility and enrollment functions, and thus HHS's oversight of SBE–FPs would need to focus on other Exchange functions that are more relevant or critical to the SBE–FP model. That is why HHS retains the authority, and the flexibility, under the amended § 155.1200(d)(2) to require the audits to address other requirements under 45 CFR part 155, as specified by HHS. In addition, the amendments to § 155.1200(d)(2) finalized in this rule give HHS flexibility to specify the Exchange functions that are most pertinent to the State Exchange model and most likely to impact program integrity. In response to comments, we clarify that the changes to subparagraph § 155.1200(d)(4) apply to State Exchange eligibility determinations for QHP/APTC, and not to Medicaid eligibility determinations. We recognize that not all State Exchanges make Medicaid eligibility determinations, but also wish to clarify that in accordance with § 155.302, State Exchanges must conduct a MAGI-based assessment or determination of eligibility for Medicaid as part of determining eligibility for APTC. HHS will provide further guidelines on the auditing of State Exchange eligibility and enrollment transactions, and any other audit requirements applicable in a given year, in the annual technical operational guidance. We further clarify that the amendments to § 155.1200(b)(2) do not reflect an expansion of State Exchange reporting obligations and instead capture the existing annual compliance reports (such as the SMART), that encompass eligibility and enrollment reporting, as well as compliance across other Exchange program requirements under 45 CFR part 155, that State Exchanges currently submit to HHS.

Comment: One commenter requested transparency regarding HHS's oversight of the Federally-facilitated Exchanges' (FFEs') compliance with oversight standards. The commenter recommended that HHS publish a comparison of compliance standards and activities to ensure the FFEs and State Exchanges are held to the same oversight requirements. Another commenter generally supported the proposed changes as enhancing the oversight and transparency of the State Exchanges.

Response: We appreciate and strive for transparency in the oversight of all Exchanges and will consider these suggestions. However, we note that the oversight standards under § 155.1200, including the proposed amendments, are specific to State Exchanges. Therefore, the comments related to FFE oversight standards are outside the scope of this rulemaking. We also note that the FFEs are overseen through the efforts of other federal entities such as the Government Accountability Office and the HHS Office of the Inspector General.

Comment: Several commenters opposed HHS's proposed changes to the annual reporting and programmatic audit requirements for State Exchanges. They stated that the proposed language expands federal authority and can add administrative burden to State Exchanges. Some commenters disagreed that the Federalism implications are substantially mitigated since the proposed changes only add specificity to existing requirements, stating that the proposed changes are open-ended and remove specificity. Additionally, some of these commenters expressed concern that HHS is eliminating the requirement of eligibility and enrollment reports under § 155.1200(b)(2). These commenters also raised concerns with the disclosure of consumer information, as well as negative consumer impacts, due to the additional oversight on eligibility determinations being proposed.

Response: We believe these changes will strengthen our programmatic oversight and the program integrity of State Exchanges. Further, as detailed above, the amendments do not represent an expansion of HHS's authority to oversee and monitor compliance of State Exchanges. Under the existing language at § 155.1200(d)(2), State Exchanges are currently required to ensure their respective annual programmatic audits address compliance with ''the requirements under this part.'' The changes to this provision finalized in this rule provide HHS with the flexibility to target the scope of the audits to the requirements applicable to each State Exchange model under 45 CFR part 155 and that most impact program integrity, which should generally reduce the administrative burdens associated with these audits. For example, we anticipate tailoring the requirements regarding audit of eligibility and enrollment activities by State Exchange model. Since SBE–FPs rely on the federal platform for eligibility and enrollment functions, we believe that they should not be subject to the same audit requirements as State Exchanges that perform all eligibility and enrollment activities because they operate their own technology platform for such activities.

We also clarify that we are not eliminating eligibility and enrollment reporting under § 155.1200(b)(2). The amendments finalized to that provision reflect that HHS already requires State Exchanges to submit annual reporting (such as the SMART) that encompass eligibility and enrollment reporting, along with other information about compliance with requirements in other subparts under 45 CFR part 155. These changes recognize that HHS has come to utilize the SMART along with the annual programmatic and financial audit reports as the primary oversight tools to oversee State Exchange compliance with the applicable requirements under 45 CFR part 155, which includes compliance with eligibility and enrollment requirements. We further clarify that if we need additional information about a State Exchange's compliance with applicable requirements beyond what is reported through SMART, we would leverage the new flexibility under the new § 155.1200(d)(2) to conduct a targeted audit.

Finally, in response to the comments expressing concern about the increased risk of disclosure of consumer information as a result of the additional oversight and auditor review of individual eligibility determinations made by State Exchanges that is contemplated in this rule, we note that,

as part of the responsibilities of State Exchanges and their contracted entities in handling individual consumer data associated with core Exchange functions such as eligibility, enrollment, and consumer assistance, State Exchanges and their contracted non-Exchange entities must always comply with the privacy and security requirements under §§ 155.260 and 155.280 with respect to the protection and disclosure of personally identifiable information. Additionally, under § 155.285, State Exchanges and their contracted entities are subject to civil monetary penalties for improper use or disclosure of personally identifiable information. Finally, HHS has authority under § 155.280 to conduct audits and investigations to ensure compliance with Exchange privacy and security standards, and may pursue civil, criminal or adminstirative proceedings or actions as determined necessary.

After considering the comments received in response to the proposed rule and for the reasons discussed above, we are finalizing the modifications to § 155.1200.

B. Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related to Exchanges

1. Segregation of Funds for Abortion Services (§ 156.280)

We proposed an amendment at § 156.280(e)(2) relating to billing and payment of the policy holder's portion of the premium attributable to abortion services for which appropriated funds may not be used. Since 1976, Congress has included language, commonly known as the Hyde Amendment, in the Labor, Health and Human Services, Education and Related Agencies appropriations legislation.[7] The Hyde Amendment, as currently in effect, permits federal funds subject to its funding limitations to be used for abortion services only in the limited cases of rape, incest, or if a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed (Hyde abortion services). Generally, when appropriated funds are subject to the Hyde Amendment's funding limitations, an agency is prohibited, among other things, from using those funds to pay for coverage of abortion beyond these specific limited exceptions (non-Hyde abortion services). Section 1303(b)(2) of the PPACA prohibits the issuer of a QHP offering coverage for abortion services that are not exempt from the Hyde Amendment's ban on the use of federal funds to pay for certain abortions, from using any amount attributable to PTC (including APTC) or CSRs (including advance payments of those funds to an issuer, if any) for abortions for which federal funds are prohibited, ''based on the law as in effect as of the date that is 6 months before the beginning of the plan year involved.''[8]

Section 1303 of the PPACA outlines specific accounting and notice requirements that QHPs covering non-Hyde abortion services must follow to ensure that no federal funding is used to pay for services for which public funds are prohibited. Under sections 1303(b)(2)(B) and (b)(2)(D) of the PPACA, as implemented in § 156.280(e)(2)(i) and (e)(4), QHP issuers must collect a separate payment from each enrollee in such a plan without regard to the enrollee's age, sex, or family status, for an amount equal to the greater of the actuarial value of coverage of abortion services for which public funding is prohibited, or $1 per enrollee per month.

Section 1303(b)(2)(D) of the PPACA establishes certain requirements with respect to a QHP issuer's estimation of the actuarial value of non-Hyde abortion services. Under section 1303(b)(2)(D) of the PPACA, the QHP issuer ''may take into account the impact on overall costs of the inclusion of such coverage, but may not take into account any cost reduction estimated to result from such services, including prenatal care, delivery, or postnatal care.'' The QHP issuer is also required to estimate such costs as if such coverage were included for the entire population covered, and may not estimate such a cost at less than $1 per enrollee, per month. If an enrollee's premium is paid through employee payroll processes, section 1303(b)(2)(B) of the PPACA requires that the separate payments ''shall each be paid by a separate deposit.'' Accordingly, issuers that offer QHPs that provide coverage of non-Hyde abortion services must collect a separate payment of no less than $1 per enrollee in the plan per month, regardless of the actuarial value of coverage of non-Hyde abortion services and regardless of whether premiums are paid directly by enrollees or through payroll deductions.

In certain rare scenarios, the FFEs' system allocated an amount of APTC to a QHP such that the share of the aggregate premium attributable to coverage of non-Hyde abortion services is less than $1, which falls below the minimum requirement under section 1303 of the PPACA. We made system changes for the open enrollment period for plan year 2019 to ensure that the minimum premium amount of $1 per enrollee per month is assigned to all enrollments into plans offering coverage of non-Hyde abortion services, so that issuers can separately collect this amount directly from enrollees for the portion of the total premium attributable to coverage of non-Hyde abortion services.

Pursuant to section 1303(b)(2)(C) of the PPACA, as implemented at § 156.280(e)(3), QHP issuers must segregate funds for coverage of non-Hyde abortion services collected from enrollees into a separate allocation account that is to be used to pay for non-Hyde abortion services. Thus, if a QHP issuer disburses funds for a non-Hyde abortion on behalf of an enrollee, it must draw those funds from the segregated allocation account. The account cannot be used for any other purpose.[9]

Section 1303 of the PPACA and current implementing regulations at § 156.280 do not specify the method a QHP issuer must use to comply with the separate payment requirement under section 1303(b)(2)(B)(i) of the PPACA and § 156.280(e)(2)(i). In the 2016 Payment Notice, we provided guidance with respect to acceptable methods that a QHP issuer offering coverage of non-Hyde abortion services on an individual market Exchange may use to comply with the separate payment requirement. We stated that the QHP issuer could satisfy the separate payment requirement in one of several ways, including by sending the enrollee a single monthly invoice or bill that separately itemizes the premium amount for coverage of non-Hyde abortion services; sending the enrollee a separate monthly bill for these services; or sending the enrollee a notice at or soon after the time of enrollment that

[7] Accordingly, the Hyde Amendment is not permanent Federal law, but applies only to the extent reenacted by Congress from time to time in appropriations legislation.

[8] Section 1303(b)(1)(B)(i) of the PPACA.

[9] This means that funds from the allocation account into which premium amounts attributable to the non-Hyde abortion service benefit must be deposited are the only funds that may be used to pay for non-Hyde abortion services. It should not be read to suggest that the funds in the separate allocation account may not be used to cover administrative costs associated with coverage of non-Hyde abortion services. *See* 42 U.S.C. 18023(b)(2)(D)(ii)(I) (when estimating per member, per month cost of non-Hyde abortion services, issuers may take into account the impact on overall costs of the inclusion of such coverage).

the monthly invoice or bill will include a separate charge for such services and specify the charge. In the 2016 Payment Notice, we also stated that an enrollee may make the payment for coverage of non-Hyde abortion services and the separate payment for coverage of all other services in a single transaction. On October 6, 2017, we released a bulletin that discussed the statutory requirements for separate payment, as well as this previous guidance with respect to the separate payment requirement.[10]

As explained in the proposed rule, HHS now believes that some of the methods for billing and collection of the separate payment for coverage of non-Hyde abortion services described as permissible in the preamble to the 2016 Payment Notice do not adequately reflect Congress's intent. We believe Congress intended that QHP issuers collect two distinct (that is, ''separate'') payments, one for the coverage of non-Hyde abortion services, and one for coverage of all other services covered under the policy, rather than simply itemizing these two components in a single bill, or notifying the enrollee that the monthly invoice or bill will include a separate charge for these services.

We proposed an amendment at § 156.280(e)(2) relating to billing and payment of the policy holder's portion of the premium attributable to coverage of non-Hyde abortion services to reflect this interpretation of the statute. Specifically, we proposed that, as of the effective date of this final rule, QHP issuers (1) send an entirely separate monthly bill to the policy holder, the individual who is the party legally responsible for the payment of premiums (which we refer to in this final rule as the ''policy holder'') for only the portion of premium attributable to coverage of non-Hyde abortion services, and (2) instruct the policy holder to pay the portion of their premium attributable to coverage of non-Hyde abortion services in a separate transaction from any payment the policy holder makes for the portion of their premium not attributable to coverage of non-Hyde abortion services. We also proposed that if a policy holder pays the entire premium in a single transaction (both the portion attributable to coverage of non-Hyde abortion services, as well as the portion attributable to coverage for other services), the QHP issuer would not be permitted to refuse to accept such a combined payment on the basis that the policy holder did not send payment in two separate transactions as requested by the QHP issuer, and to then terminate the policy, subject to any applicable grace period, for non-payment of premiums. We also stated that the QHP issuer would be expected to counsel enrollees to pay in two separate transactions in the future. Finally, we proposed a technical change to § 156.280(e)(2)(iii), as redesignated, to insert an appropriate cross reference to the explanation of the separate payments.

We are finalizing these policies at § 156.280(e)(2), but with several changes explained below. We are also finalizing the technical revision to § 156.280(e)(2)(iii) as redesignated, on which we received no comments, and are revising the heading of § 156.280 so that it accurately describes the new requirements we are finalizing in this final rule.

Comment: Most commenters objected to the proposed changes to issuer billing for the portion of the premium attributable to coverage of non-Hyde abortion services, asking that we withdraw the proposals altogether. A minority of commenters summarily supported the policy.

Nearly all commenters objecting to the proposals stated that separately billing for one specific service would be an unnecessary change that would not enhance program integrity with respect to enrollee transparency or appropriate use of federal funds. These commenters noted that current requirements already adequately comply with the statute and ensure appropriate segregation of funds, without imposing the operational and administrative burdens of the proposed approach. These commenters asserted that the current regulatory structure allows enrollees to make and issuers to accept a single transfer of funds for the full amount of an enrollee's premium payment including the amount attributable to coverage of non-Hyde abortion services, while still ensuring that the funds are ultimately segregated appropriately. Many commenters noted that requiring a separate bill and instructing enrollees to pay in separate transactions would be against industry practice, which permits one single bill outlining charges and allows for enrollees to make payments using a single transfer of funds which can be administratively separated by the insurer after payment is received.

Some commenters who supported the proposed changes stated that section 1303 of the PPACA contains an unambiguous statutory command that issuers separately bill and collect payments for the portion of a policy holder's premium attributable to coverage of non-Hyde abortion services. These commenters stated that the proposals are necessary to remedy incorrect methods for billing and payment and will help to ensure issuer compliance with the segregation of funds and the requirement to collect separate payments under section 1303 of the PPACA.

Nearly all objecting commenters stated that the proposals would cause considerable and unnecessary confusion and frustration for enrollees that may jeopardize their health insurance coverage. Commenters expressed concern that these billing changes would make it more difficult for policy holders to pay their premium bills, and could result in coverage being terminated for unintentional non-payment. Commenters expressed concerns that, despite issuer notices and communications to explain the second bill and separate payment requirement, enrollees would likely not understand this change in billing.

Among the many scenarios that commenters asserted could result in enrollees failing to pay the separate bill, commenters noted that enrollees might not realize or understand that there is a separate bill covering different services under their plan; enrollees may not realize that such payment is mandatory in order to fully satisfy their premium liability each month and avoid termination of coverage; or enrollees may not notice a second bill since it would be delivered in a separate mailing with which they are unfamiliar. Commenters expressed concern that in any of these scenarios, the enrollee would enter a grace period and, in most cases, have 90 days from the date of the missed payment to reconcile their balance, resulting in enrollees who fail to do so losing their health insurance coverage. Commenters expressed concern that such slight enrollee confusion as a result of the proposal could lead to the complete loss of coverage.

Commenters also stated that the proposal to allow enrollees to ''not be penalized'' for sending back a combined payment, would only send conflicting messages to enrollees and add to their confusion. Commenters stated that our proposal that issuers could accept combined payments from enrollees, but would then be expected to counsel enrollees to pay in two separate payments in the future, requiring issuers to repeatedly instruct enrollees to pay in separate transactions for each bill despite not being able to penalize enrollees if they continuously fail to do

[10] CMS Bulletin Addressing Enforcement of Section 1303 of the Patient Protection and Affordable Care Act (October 6, 2017), available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Section-1303-Bulletin-10-6-2017-FINAL-508.pdf.*

so, adds additional burden on issuers and will lead to increased calls from confused enrollees.

Many commenters stated they appreciated the enrollee protections prohibiting QHP issuers from refusing to accept a combined payment or terminating an enrollee's coverage on this basis. However, commenters expressed concerns that this protection alone would not be enough for enrollees who fail to pay the second bill entirely and asked that HHS add protections to the policy to avoid termination of coverage for enrollees who inadvertently fail to make the additional payment due to confusion about the separate bill.

Response: We continue to believe that the statute contemplates issuers billing separately for coverage of non-Hyde abortion services, consistent with Congress's intent that issuers collect separate payments for such services. Requiring one bill for the portion of the policy holder's premium attributable to coverage of non-Hyde abortion services and a separate bill for the portion of the policy holder's premium attributable to coverage of all other services covered under the QHP will better align with the intent of section 1303 of the PPACA.

HHS intentionally sought comment on ways to mitigate possible enrollee confusion from these proposals. After considering these comments, we believe there may be less confusing and less burdensome ways to implement these billing changes while also fulfilling section 1303 of the PPACA's statutory mandates.

Therefore, we are finalizing, as proposed in a new paragraph at § 156.280(e)(2)(ii)(A), the requirement that QHP issuers must send an entirely separate monthly bill to the policy holder for only the portion of the premium attributable to coverage of non-Hyde abortion services. However, in an effort to mitigate issuer burden associated with added postage and mailing costs, we will not require separate mailings with separate postage, as proposed. Rather, we are codifying that the QHP issuer may include the separate bill for coverage of non-Hyde abortion services in the same envelope or mailing as the bill for the portion of the premium attributable to coverage of all other services. As a result of finalizing this proposal, and to more accurately reflect the contents of § 156.280, we are making a technical change to revise the section heading of § 156.280 to now read, ''Separate billing and segregation of funds for abortion services.''

We note that when issuers send a separate paper bill for the portion of the premim attributable to coverage of non-Hyde abortion services in the same mailing as the bill for the other portion of the policy holder's premium, the bills must remain distinct and separate, on separate pieces of paper with separate explanations of the charges to ensure the policy holder understands the distinction between the two bills and understands that they are expected to pay the separate bills in separate transactions.

We are also codifying that issuers transmitting bills through email or other electronic means will still be required to transmit the separate bill for coverage of non-Hyde abortion services in a separate email or electronic communication than for the bill for the portion of the premium attributable to coverage of all other services. We assume that bills sent electronically can be sent at minimal cost such that requiring separate electronic communications will not significantly increase the burden this requirement places on issuers. We also believe policy holders are more likely to make a separate payment for coverage of non-Hyde abortion services when they receive a separate bill for such amount, and that receiving the separate bill in a separate communication further bolsters that likelihood. In deciding to finalize that QHP issuers may send the separate bill in a single mailing when sending paper bills, but must send the separate bill in a separate email or electronic communication when sending bills electronically, we weighed the goal of separate payment with the competing concern of issuer burden resulting from sending separate paper bills, and the comparatively low burden in sending separate electronic bills.

We are also finalizing, as proposed in a new paragraph at § 156.280(e)(2)(ii)(B) the requirement that issuers must instruct policy holders to pay the separate bill in a separate transaction. QHP issuers should make reasonable efforts to collect the payment separately. However, we continue to believe that potential loss of coverage would be an unreasonable result of an enrollee paying in full, but failing to adhere to the QHP issuer's requested payment procedure. Therefore, at § 156.280(e)(2)(ii)(B) we are also codifying, with minor non-substantive revisions, that the QHP issuer would not be permitted to refuse a combined payment on the basis that the policy holder did not send two separate payments as requested by the QHP issuer, and to then terminate the policy for non-payment of premiums. QHP issuers that receive combined enrollee premiums in a single payment must treat the portion of the premium attributable to coverage of non-Hyde abortion services as a separate payment and must disaggregate the amounts into the separate allocation accounts, consistent with § 156.280(e)(2)(iii).

To mitigate enrollee confusion and satisfy the requirement to instruct policy holders to pay the separate bill in a separate transaction, QHP issuers should consider including—in the email or electronic communication containing the bill for the portion of the policy holder's premium not attributable to coverage of non-Hyde abortion services—language notifying policy holders that they will be receiving a second, separate email or electronic communication containing a separate bill for the portion of their premium attributable to coverage of non-Hyde abortion services that they should pay in a separate transaction. Regardless of whether the QHP issuer sends the bills as paper copies in a mailing or sends the bills through electronic communications, the QHP issuer must instruct their enrollees to pay the separate bill in a separate transaction and must still produce an invoice or bill that is distinctly separate from the invoice or bill for the other portion of the policy holder's premium that is not attributable to coverage of non-Hyde abortion coverage, whether in paper or electronic format. We also suggest that issuers state clearly for policy holders on both bills that the policy holder is receiving two bills to cover the total amount of premium due for the coverage period, that the policy holder's total premium due is inclusive of the amount attributable to coverage of non-Hyde abortion services, and that the policy holder should make separate payments for each bill. We believe including these statements on each bill, will help policy holders to understand that they are receiving two bills for the premiums due for the payment period, the total amount of premium they owe, and the need to make a separate payment for each bill. We believe this will help to ensure that policy holders return the full monthly amount due, thus preventing policy holders from entering grace periods for non-payment of the premium amounts for the non-Hyde abortion coverage.

We believe these changes will assist in managing enrollee confusion. However, we also acknowledge that additional outreach and education may still be necessary on the part of issuers and states to explain to enrollees why they are receiving a separate bill for a relatively small amount for which they are expected to submit payment in a separate transaction. As indicated above, we believe that QHP issuers

should explain to the policy holder in layperson terms on the separate bill for coverage non-Hyde abortion services, or otherwise communicate to enrollees through enrollee outreach and education, that non-payment of any premium due (including non-payment of the portion of the policy holder's premium attributable to coverage of non-Hyde abortion services) would continue to be subject to state and federal rules regarding grace periods (unless the QHP issuer elects to take advantage of the enforcement discretion we outline later in this section), clarifying for policy holders that failure to pay the portion of the premium attributable to coverage of non-Hyde abortion services could ultimately result in termination of coverage.

We believe that including explanatory language on the bills as well as additional outreach and education by QHP issuers will decrease the likelihood that policy holders would inadvertently fail to pay the separate bill for the portion of their premium attributable to coverage of non-Hyde abortion services. However, we acknowledge commenters' concerns that, even with fulsome outreach and education efforts to explain the billing scheme to the policy holder, consumer confusion could still lead to inadvertent coverage losses. This risk may be especially acute for enrollees whose plan choices likely were not motivated by the plan's coverage of non-Hyde abortion services, such as men purchasing a QHP solely for themselves, consumers buying coverage for babies or toddlers, and those who otherwise may be unaware that the plan covers non-Hyde abortion services. However, we note that this risk is mitigated by the steps we have taken to improve transparency regarding QHP offerings, to make it easier for consumers to select QHPs that they believe are best suited to their needs and preferences, such as information to more readily identify QHPs that offer coverage of non-Hyde abortion services.[11]

To address the risk of terminations related to inadvertent failure to pay the separately billed amount for coverage of non-Hyde abortion services, we intend to propose further rulemaking to change our regulations including, for example, our regulations governing termination for non-payment of premiums.[12] Although QHP issuers can implement premium payment thresholds under § 155.400(g), those thresholds may not be effective at preventing termination of coverage for policy holders receiving higher APTC amounts who would have greater difficulty meeting the issuer's premium payment threshold pursuant to § 155.400(g). Until we can finalize regulatory changes through a separate rulemaking, we will exercise enforcement discretion as an interim step. Specifically, HHS will not take enforcement action against a QHP issuer that adopts and implements a policy, applied uniformly to all its QHP enrollees, under which an issuer does not place an enrollee into a grace period and does not terminate QHP coverage based solely on the policy holder's failure to pay the separate payment for coverage of non-Hyde abortion services. In accordance with non-discrimination rules applicable to QHP issuers, we would expect issuers to apply such a policy uniformly to all of their enrollees for the duration of the applicable plan year. We also note that if a QHP issuer chooses to take this approach, the QHP issuer would still be prohibited from using any federal funds for coverage of non-Hyde abortion services. Moreover, the QHP issuer would still be required to collect the premium for the non-Hyde abortion coverage, which means that the QHP issuer cannot relieve the policy holder of the duty to pay the amount of the premium attributable to coverage for non-Hyde abortion services. This enforcement posture will take effect upon the effective date of the separate billing requirements under 45 CFR 156.280, which is 6 months after publication of this final rule in the **Federal Register**. We encourage states and State Exchanges to take a similar enforcement approach.

We acknowledge that the enforcement posture described above may not mitigate all concerns identified by commenters. Some commenters expressed concern that the lack of transparency under current section 1303 billing requirements has contributed to unknowing purchases of QHPs that include coverage of non-Hyde abortion services by consumers who object to purchasing such coverage. As noted above, this risk is mitigated by the steps the FFEs have taken to improve transparency of the coverage of non-Hyde abortion services under FFE QHPs.[13] However, even where consumers who hold religious or moral objections to coverage of non-Hyde abortion services may more easily detect whether a QHP offers coverage to which they object, they may still be deciding between purchasing a QHP that covers non-Hyde abortion services, or else going without the coverage they need, because there may not be a QHP available on the Exchange that omits coverage for non-Hyde abortion services.

Until we are able to address these concerns through future rulemaking or other appropriate action, we also will not take enforcement action against QHP issuers that modify the benefits of a plan either at the time of enrollment or during a plan year to effectively allow enrollees to opt out of coverage of non-Hyde abortion services by not paying the separate bill for such services. This would result in the enrollees having a modified plan that does not cover non-Hyde abortion services, meaning that they would no longer have an obligation to pay the required premium for such services. We recognize that a QHP issuer's ability to make changes to its QHPs to implement a policy holder's opt out would be subject to applicable state law. We encourage states and State Exchanges to take an enforcement approach that is consistent with the one we intend to take, as described in this section.

Where a QHP issuer allows an enrollee to opt out of coverage of non-Hyde abortion services by not paying the separate bill for such services, the user fee a QHP issuer in an FFE or SBE–FP would pay would continue to be based on the original premium, which includes the portion of the premium attributable to non-Hyde abortion coverage. This is being done for operational reasons and issuer convenience, as making changes to the user fee system for FFEs and SBE–FPs to reflect a reduction in premium would result in only a minimal reduction in user fees owed. We do not believe the minimal reduction justifies the additional expense to FFEs and SBE–FPs related to the development of systems to receive and process such

[11] "Frequently Asked Questions for Agents, Brokers, and Assisters Providing Consumers with Details on Plan Coverage of Certain Abortion Services" (November 21, 2018), available at *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQ-on-Providing-Consumers-with-Details-on-Plan-Coverage-of-Certain-Abortion-Services.pdf.*

[12] CMS has yet to make determinations regarding specific requirements or rule changes CMS will propose to address the risk of terminations related to inadvertent failures to pay the separately bill amounts for coverage of non-Hyde abortion services. Accordingly, although CMS will undertake the described rulemaking, nothing in this preamble discussion should be construed as a representation or guarantee that CMS will propose changes to any specific rule or requirement.

[13] "Frequently Asked Questions for Agents, Brokers, and Assisters Providing Consumers with Details on Plan Coverage of Certain Abortion Services" (November 21, 2018), available at *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQ-on-Providing-Consumers-with-Details-on-Plan-Coverage-of-Certain-Abortion-Services.pdf.*

reports (which could then result in higher user fees in the future) or the additional cost to QHP issuers related to reporting the minimal changes in premiums.

We expect QHP issuers taking this approach to take appropriate measures to distinguish between a policy holder's inadvertent non-payment of the separate bill for coverage of non-Hyde abortion services and a policy holder's intentional nonpayment of the separate bill. A policy holder who inadvertently fails to pay the separate bill may have failed to pay because of unfamiliarity with receiving a separate bill for this portion of their premium and may still wish to retain coverage for non-Hyde abortion services if provided the opportunity to rectify nonpayment of the separate bill. A policy holder who intentionally does not pay the separate bill is likely to have made the conscious choice to opt-out of such coverage. To help ensure any modifications made by a QHP issuer under this enforcement approach to a policy holder's plan align with the policy holder's intent, the QHP issuer could include on the separate bill for coverage of non-Hyde abortion services or separate electronic communication an option (such as a check box or option button) where the policy holder can affirmatively indicate their intent to opt-out of such coverage by not paying the separate bill. We also recommend including an explanation for the policy holder that by affirmatively opting out, the policy holder would no longer have coverage for non-Hyde abortion services and would no longer have an obligation to pay the required premium for such services.

To be clear, we intend that a policy holder's opt-out would have to be applied to all persons in the enrollment group under the policy. For example, if the policy holder does not pay the separate bill for the portion of the premium attributable to non-Hyde abortion coverage and therefore opts out of coverage for non-Hyde abortion, this opt-out would be applicable to all persons in the policy holder's enrollment group, such as the policy holder's spouse and/or family if they are also covered under the policy holder's policy. Further, our exercise of enforcement discretion would only permit issuers to make one-time changes to remove coverage of non-Hyde abortion services from the QHP coverage.

Accordingly, once a policy holder opts out of coverage for non-Hyde abortion services, the policy holder would not be allowed to retract their opt-out decision and reinstate coverage of non-Hyde abortion services for that benefit year, by paying premiums that could cover a portion of premium attributable to coverage of non-Hyde abortion services. Thus, an opt-out would be effective for the remainder of the benefit year.

Unlike the enforcement discretion policy we announce above to mitigate risk of inadvertent terminations, this enforcement posture will become effective on the effective date of this final rule, which will be 60 days after its publication in the **Federal Register**. The separate billing requirements we finalize here under 45 CFR 156.280 will address, among other things, stakeholder comments that the lack of transparency under current section 1303 billing requirements has contributed to unknowing purchases of QHPs that include coverage of non-Hyde abortion services by consumers who object to purchasing such coverage. Because the new billing requirements under these final rules will not take effect upon finalization of these rules, we believe it is important to take this enforcement posture as soon as possible to provide relief for the lack of transparency under current QHP billing requirements.

We are taking this approach to maintain protections against adverse selection, while mitigating the serious negative risks of coverage loss by enrollees who might experience difficulties adjusting from the manner in which enrollees are accustomed to paying for insurance coverage or services under a single plan or contract. These interim policies will also provide relief to persons who may unknowingly purchase coverage to which they object because of the lack of transparency under current QHP billing requirements that do not require separate bills for non-Hyde abortion coverage. We believe these interim enforcement policies strike an appropriate balance between honoring PPACA section 1303's requirement for collection of separate payments, protecting enrollees against inadvertent losses of coverage, and ensuring all enrollees have access to coverage that meets their needs and that does not result in their supporting coverage for non-Hyde abortion services to which they object.

Comment: Commenters stated that HHS greatly underestimated the burden on issuers caused by these proposals. Commenters stated that the proposed rule's analysis of the expected costs and benefits was incomplete, such that HHS cannot accurately determine whether the benefits outweigh the quantitative and qualitative costs to justify finalizing the proposals. Many commenters stated that the burden and costs far outweigh any benefit and, as such, the proposals should not be finalized.

Commenters also stated that requiring issuers to send the separate bill in a different envelope or separate email communication would cost QHPs significantly more resources than HHS estimated for the multiple mailings, email communications, and personnel hours spent managing enrollee confusion, termination notices, and multiple bills. For example, commenters noted requiring a separate mailing would double the mailing and postage costs associated with current issuer billing. Commenters also explained that the technical build issuers would need to implement to comply with these proposals would be both complex and time consuming, and would alone require substantial new upfront and annual costs for issuers that HHS did not account for. In general, commenters expressed concerns that requiring separate billing and instructing enrollees to make separate payments for a single policy would create substantial new operational administrative costs for health insurance issuers and, subsequently, for the enrollees they serve.

Commenters also expressed concerns with the burdens these changes would impose on Exchanges. Commenters noted Exchanges would need to make time consuming and resource intensive changes to their websites, enrollment systems, and customer service and outreach efforts to align with the separate billing and payment requirements, which would be costly and disrupt Exchange efficiency.

Commenters also expressed concern that HHS failed to address the adverse impacts on enrollees resulting from how issuers would react to being forced to allocate additional significant operational and administrative resources towards issuing and processing multiple bills and monthly payments from each policy holder. Many commenters stated that issuers would be required to consider these new costs when setting actuarially sound rates, which would lead to higher premiums for enrollees. Many commenters stated that the costs and requirements on QHP issuers that cover non-Hyde abortion services will in many cases be so high that it will result in QHP issuers dropping coverage for non-Hyde abortion services altogether, even if their enrollees desire such coverage. Commenters expressed concern that, in such scenarios, this would transfer the costs and burdens of accessing non-Hyde abortion services to enrollees who must seek coverage for non-Hyde abortion services elsewhere

or pay out-of-pocket. Other commenters noted that issuers are likely to drop coverage of non-Hyde abortion services if the alternative is terminating coverage for a substantial number of its enrollees due to enrollee confusion resulting in non-payment of miniscule amounts.

Many commenters stated that the proposals would threaten the mental and physical health, well-being, and economic security of enrollees, especially women, across the country. Commenters stated that health insurance should provide coverage for the full range of reproductive health care, including abortion, and that this rule threatens to take such coverage away by imposing burdensome requirements on issuers. Commenters also expressed concern that, should these proposals result in issuers ceasing to provide coverage of non-Hyde abortion services, it could impede a patient's ability to make the best medical decision for herself and her family in consultation with her physician given that many women would be unable to pay privately for such services due to high costs without insurance. Commenters noted that barriers to accessing affordable non-Hyde abortion services could have long-term, devastating effects on a woman and her family's economic future.

Commenters noted that the proposals would have a greater impact on subsidized enrollees and might have a discriminatory effect on enrollees receiving higher APTC amounts who would have greater difficulty meeting the issuer's premium payment threshold pursuant to § 155.400(g). Commenters also stated that it would have damaging consequences on enrollees with specific conditions (like patients with cancer or chronic conditions), as any gaps in coverage as a result of confusion over billing may interrupt disease treatment schedules and could jeopardize health outcomes. Commenters also stated that the proposals would threaten the coverage gains made by the PPACA and have a disproportionate impact on enrollees who already face barriers to care, such as low-income individuals and marginalized communities. HHS received many comments expressing concern that when legal abortion becomes inaccessible, women who seek to end their pregnancy turn to unsafe and illegal methods, risking arrest, serious injury, or even death. Commenters also expressed concern that HHS did not propose any requirements or guidelines for how issuers should educate, inform, and conduct outreach to enrollees regarding these changes in billing and payment if the proposed regulation is implemented as proposed. Commenters also expressed concern that the proposals didn't address how individuals with limited English proficiency (LEP) or individuals with disabilities may experience barriers in complying with the proposed changes which commenters found particularly concerning, since individuals with LEP and individuals with disabilities already experience hardships in navigating and accessing health care.

Response: As we acknowledged in the proposed rule, we recognize that QHP issuers that cover non-Hyde abortion services may experience an increase in burden as a result of the proposals. We have carefully considered the comments that shared information about how the proposals would likely impact markets, issuers, and enrollees.

We agree with commenters that separately mailing the separate bill with separate postage could cause unintended additional burden and cost for issuers. Therefore, we are not finalizing the requirement that the separate bills be mailed separately with separate postage. However, we also acknowledge that QHP issuers will nevertheless still incur significant burden and costs as a result of implementing this new separate billing policy. We agree with commenters that QHP issuers are likely to consider these new costs when setting actuarially sound rates and that this will likely lead to higher premiums for enrollees. The potential premiums increases are discussed in further detail in section III, ''Collection of Information Requirements,'' and section IV, ''Regulation Impact Analysis,'' of this rule. However, in spite of the potential premium increases, we do not agree that requiring issuers to send separate bills, instruct policy holders to pay in two separate transactions, and make reasonable efforts to collect the payments separately would be an inefficient use of resources. Rather, this instruction is important to achieving better alignment of the regulatory requirements for QHP issuer billing of enrollee premiums with the separate payment requirement in section 1303 of the PPACA. We understand commenters' concerns that the issuer burden associated with this policy may result in issuers withdrawing coverage of non-Hyde abortion services altogether, requiring some enrollees to pay for these services out-of-pocket.

Subject to applicable state law, it is ultimately at the issuer's discretion whether to cover non-Hyde abortion services in their QHPs, and thus to incur any associated burden, and it is ultimately the states' and HHS's duty to enforce the statutory provisions of the PPACA as they are written. Although section 1303 permits issuer flexibility in abortion coverage choices, it also requires that QHP issuers electing to cover non-Hyde abortion services take certain steps to ensure that no APTC or CSR funds are used to pay for these services, such as requiring the QHP issuer to collect a separate payment for these services. The finalized changes at § 156.280(e)(2)(ii) may add issuer burden with regard to their payment and billing operations. However, the statute contemplates such burden in section 1303(b)(2)(B)(i) of the PPACA when it requires that issuers collect a separate payment for the portion of the premium attributable to coverage of non-Hyde abortion services and in section 1303(b)(2)(D) of PPACA when it specifies how QHP issuers are to calculate the basic per enrollee, per month cost, determined on an average actuarial basis, for including coverage of non-Hyde abortions in QHPs. We believe that finalizing the rule to allow issuers to send both bills in a single mailing will mitigate the issuer and state burden that would be imposed if we were finalizing the policy as originally proposed, as well as any initial confusion on the part of enrollees. We estimate that these changes would eliminate much of the additional mailing costs for the second bill since issuers would no longer need to pay for additional postage and envelopes. We believe the changes we are finalizing at § 156.280(e)(2)(ii) strike a balance between requiring the separate bill that we believe is required for better alignment with section 1303 of the PPACA, while also avoiding unnecessary enrollee confusion, enrollee harm, and issuer burden.

We understand that non-Hyde abortion services are services for which some enrollees may desire coverage, as they may be costly when not covered by insurance. However, we believe that requiring separate billing for the portion of the premium attributable to coverage of non-Hyde abortion services is a necessary change to better align issuer billing with the statutory requirements specified in section 1303 of the PPACA, which requires non-Hyde abortion services be treated differently from other covered services. We believe the changes we are finalizing at § 156.280(e)(2)(ii) will impose less burden on issuers to implement this policy than if we were finalizing as originally proposed, decreasing the likelihood that issuers will drop this coverage or significantly raise their premiums. Although we acknowledge

the changes we are finalizing will increase the burden associated with personnel hours spent managing enrollee confusion, termination notices, and multiple bills, we also believe the changes we are finalizing at § 156.280(e)(2)(ii) minimize enrollee confusion surrounding receiving a separate bill, helping to prevent situations where enrollees enter grace periods and subsequently have their coverage terminated for failing to inadvertently pay the second bill. We also believe policy holder confusion regarding the separate bill may decrease in future plan years as policy holders acclimate to this billing structure and as consumer education continues. However, we acknowledge that a policy holder enrolling for the first time after this policy is finalized in a QHP covering non-Hyde abortion services may still experience confusion regarding the separate bill. As finalized, we believe the inclusion of a second separate bill for these services in the same mailing and requiring issuers to instruct enrollees to pay in a separate transaction for the separate bill (whether sent electronically or by mail), but allowing issuers to accept combined payments if the enrollee fails to pay separately, will allow QHP issuers to continue providing coverage for non-Hyde abortion services subject to state and federal law and allow policy holders to continue accessing such coverage when available through their QHPs.

We understand commenters' concern about how these proposals will impact individuals with LEP and other policy holders, especially those with disabilities. We note that, under the policy being finalized, issuers must still comply with all applicable enrollee assistance requirements for QHPs on the Exchange, such as those requirements at § 155.205. In particular, we believe that the requirements at § 155.205(c) will help to ensure that issuers are providing information regarding the separate bill and payment options to individuals with LEP and policy holders with disabilities in plain language and in an accessible manner as specified in regulation. We also suggest that issuers consider the needs of these enrollee groups when conducting enrollee education or outreach about the finalized changes.

A more detailed summary of comments discussing the potential burden associated with the proposals can be found in the sections III ''Collection of Information Requirements'' and IV ''Regulation Impact Analysis'' of this rule. In section III ''Collection of Information Requirements'' of this final rule, a detailed breakdown of the estimated one-time burden per issuer and the estimated one-time burden for all issuers can be found in tables 2 and 3, and a detailed breakdown of the estimated annual burden per issuer and the estimated annual burden for all issuers can be found in tables 4 and 5.

Comment: Many commenters expressed concern that the proposed effective date would be administratively and operationally infeasible. As proposed, issuers would be required to implement these proposals beginning on the effective date of the final rule, which is 60 days after the final rule is published in the **Federal Register**. Commenters explained that issuer billing and payment requirements are typically included in plan documents that are approved by the state regulator and provided to the enrollee at the time of enrollment. Commenters noted that a change in payment policies would mean that issuers would need to re-file their applications for all affected plans for approval by state regulators and that such a change could not be implemented mid-plan year. Commenters also stated that, given the substantial investment required to operationalize the new proposals and the associated complexities, issuers would need a minimum of 12 to 18 months to implement these changes. Further, because implementation would need to coincide with the beginning of a new plan year, many commenters stated that plan year 2021 would be the earliest at which implementation could occur given the likely publication timeline for this final rule. Commenters also stated that enrollees can more easily adapt to new payment arrangements at the beginning of a plan year, when they expect premiums to be different and other changes to their plan to occur. Commenters also emphasized that the earlier the effective date, the more burdensome these proposals become.

One commenter noted that although state regulators are able to accept the responsibility of primary enforcement of this rule given appropriate lead time, they will be ill-equipped to enforce it if it is made effective immediately, since regulators will need time to develop enforcement policies in consultation with state stakeholders. This commenter also noted that, due to the small amounts issuers would separately bill for coverage of non-Hyde abortion services, many issuers may choose to revise their premium payment threshold policies permitted under § 155.400, but would not have time to do so if the rule were made effective immediately.

Response: In response to comments that implementation will take longer than the proposed effective date would allow, we are finalizing that QHP issuers must be in compliance with the policies being finalized at § 156.280(e)(2) on or before the day that is 6 months after publication of the final rule. If the date that is 6 months after publication of the final rule falls in the middle of a QHP issuer's billing cycle (in other words, after the QHP issuer has already sent out bills to policy holders for that month), the QHP issuer would be expected to comply beginning with the next billing cycle immediately following that date. We acknowledge that requiring QHP issuers to begin complying mid-plan year may pose implementation challenges for some states and issuers. For example, as discussed further later in this response, QHP issuers offering coverage of non-Hyde abortion services will already have filed rates for the 2020 plan year and would be unable to update those rates until the following plan year to reflect the added administrative costs they may experience as a result of the finalized separate billing policy. We also acknowledge requiring QHP issuer compliance mid-plan year would not provide QHP issuers offering coverage of non-Hyde abortion services an opportunity, in their discretion, to revise their plan and benefit designs, such as to remove coverage of non-Hyde abortion services, in order to avoid requirements under the separate billing policy.

We anticipate that State Exchanges that perform premium billing and payment processing that have QHP issuers that offer coverage for non-Hyde abortion services will face similar challenges to comply with the separate billing requirements within 6 months after publication of this final rule as QHP issuers that offer coverage for non-Hyde abortion services. However, we believe 6 months is sufficient for State Exchanges performing premium billing and payment processing and QHP issuers to implement the administrative and operational changes to billing processes necessary to comply with this policy. We also believe a 6-month implementation timeline appropriately prioritizes the goals of improved statutory alignment with the additional time State Exchanges and issuers may need to implement this policy. For those State Exchanges and QHP issuers that may face uncommon or unexpected impediments to timely compliance, HHS will consider extending enforcement discretion to an Exchange or QHP issuer that fails to timely

comply with the separate billing policy as required under this final rule, if we find that the Exchange or QHP issuer attempted in good faith to timely meet the requirements.

Although we do not believe that it is necessary for state enforcement policies to have been developed prior to the effective and/or compliance date for the separate billing requirements, we believe this will offer state regulators enough time to develop enforcement policies in consultation with state stakeholders. We also believe this implementation timeline will provide sufficient time for enrollee outreach and education to help mitigate any enrollee confusion resulting from the finalized policies, and to explain to enrollees how the QHP issuer's previous payment policies will be changing to comply with these new billing requirements.

We believe it is important that QHP issuers implement these policy changes at the earliest date feasible to improve statutory alignment with section 1303 of the PPACA. Similarly, we do not believe that potential implementation challenges in connection with a mid-year implementation date should outweigh numerous commenters' concerns regarding the lack of transparency as to whether their QHP covers non-Hyde abortion services, transparency that would be delayed by approximately a year if compliance were required by the first day of the 2021 plan year. We believe that further delaying implementation would be imprudent given that we are now aware of these consumer concerns and given that we believe it is operationally and administratively feasible for State Exchanges and QHP issuers to comply with the policy within 6 months after publication of the final rule.

We acknowledge that if QHP issuers are not able to take these additional costs into consideration when setting rates for the 2020 plan year, it is possible that some issuers may seek to exit the individual market in a state or incur losses. We believe that any such risk is small. QHP issuers will have the opportunity to adjust their plan and benefits design and rates in response to the separate billing policy for their plan year 2021 plan offerings. Moreover, we are aware that the actuarial value of the non-Hyde abortion coverage under QHPs generally may be less than the minimum $1 per enrollee, per month QHP issuers must charge for such services under section 1303 of the PPACA; and we are not aware of any reason QHP issuers could not use funds from the allocation account into which premium amounts attributable to the non-Hyde abortion service benefit must be deposited to cover administrative costs associated with coverage of non-Hyde abortion services.[14] This should mitigate the financial consequences to issuers of their not being able to update individual market rates prior to the 2021 plan year to incorporate the costs of implementing the processes required by this rule. We therefore believe that finalizing a longer, 6-month implementation timeline sufficiently mitigates the risk that some issuers would seek to exit the individual market to avoid the separate billing requirements under this final rule.

We acknowledge that State Exchanges' and QHP issuers' ability to comply within 6 months may depend on the current status of their billing systems and operations, and that State Exchanges and QHP issuers may be confronted with unexpected impediments to timely compliance. For this reason, HHS will consider extending enforcement discretion to an Exchange or QHP issuer that fails to timely comply with the separate billing policy as required under this final rule, if HHS finds that the Exchange or QHP issuer attempted in good faith to timely meet the requirements. Evidence of such good faith efforts might include records showing that planning for compliance with this final rule's requirements was begun within a reasonable time following the publication of the final rule, but events outside the Exchange's or QHP issuer's control caused implementation delays. HHS will consider exercising this enforcement discretion based on the circumstances of the particular Exchange or QHP issuer. We do not anticipate that HHS would exercise such discretion for an Exchange or QHP issuer that fails to meet the separate billing requirements after more than 1 year following publication of this final rule.

Comment: Many commenters who supported the proposals stated that these proposals would increase issuer compliance with the segregation of funds and separate payment requirements under section 1303 of the PPACA, and that the proposals would clarify and correct the previous administration's interpretation of the statute. Many supporting commenters noted their dissatisfaction that abortion coverage of any kind is offered at all in the individual market, but expressed support that the proposals would better protect enrollees who object, based on their religious or moral beliefs (collectively, ''conscience''), to coverage of non-Hyde abortion services.

Many commenters stated that it is a direct violation of their conscience rights to have to pay for abortion in any form, including subsidizing it through insurance coverage. Commenters stated that these proposals would increase transparency for enrollees as to what their health insurance covers and would allow enrollees to use this information to seek a plan that does not cover non-Hyde abortion services, consistent with their conscience.

Although many commenters expressed support for the proposals, many also objected to being required to pay this separate bill at all if they object to coverage of non-Hyde abortion services. Many commenters asked that HHS accommodate individuals who have conscience objections to these services by allowing enrollees in plans covering non-Hyde abortion to ''opt out'' of this coverage by not paying the separate bill attributable to coverage of non-Hyde abortion services.

Many commenters stated they were unconvinced by the stated justification for the proposals (to better align the regulatory requirements for QHP issuer billing of enrollee premiums with the separate payment requirement in section 1303 of the PPACA) and instead stated that the motivation was to appease religious or political special interests. Commenters stated that the proposals would value the needs of enrollees with conscience objections to coverage of non-Hyde abortion services more highly than the needs of enrollees with a health interest in receiving coverage for non-Hyde abortion services. These commenters stated that the proposals address conscience objections of the few at the cost of the many women who need and value coverage of non-Hyde abortion services.

Many commenters asked that these proposals be withdrawn because they impose a narrow religious belief opposing a legal medical service on enrollees who do not share this viewpoint and need or value this coverage. Commenters also objected to the proposal because it singles out coverage of non-Hyde abortion services as the only service for which separate billing and payment is required, questioning why other services are not similarly subject to separate payment and billing requirements based on conscience objections. For example, one commenter expressed that they object based on their conscience to supporting coverage of individuals who get sick after refusing vaccinations for that illness. Another commenter noted that they object to having to pay for coverage

[14] *See* 42 U.S.C. 18023(b)(2)(D)(ii)(I) (when estimating per member, per month cost of non-Hyde abortion services, issuers may take into account the impact on overall costs of the inclusion of such coverage).

of services for tobacco-related illnesses as they believe persons who voluntarily choose to use tobacco products should not be subsidized by other enrollees for their unhealthy behaviors.

Response: Although we understand objecting commenters' concerns, the changes are primarily meant to better align the regulatory requirements for QHP issuer billing of enrollee premiums with the statutory separate payment requirement in section 1303 of the PPACA. We acknowledge that the finalized policy regarding separate billing may increase transparency for policy holders who object on the basis of conscience to coverage of non-Hyde abortion services in their QHPs. And while it is true that this final rule treats coverage of non-Hyde abortion services differently from other covered services for purposes of QHP billing and payment, this differential treatment is based on the statutory PPACA requirement that non-Hyde abortion services be treated differently for billing, collection, payment, and federal-subsidy purposes; we are obligated to enforce the statute. Section 1303 of the PPACA has always required QHP issuers to estimate the basic per enrollee per month cost based on the average actuarial basis of the QHP's coverage of non-Hyde abortion services, and prohibited QHP issuers from estimating that cost to be less than $1 per enrollee per month. Under the statute, QHP issuers must also collect a separate payment for that portion of the enrollee's QHP premium attributable to coverage of non-Hyde abortion services and must segregate these payments in a separate allocation account that is to be used to pay for non-Hyde abortion services. Furthermore, section 1303 of the PPACA bars the use of PTCs or CSRs for such coverage. The changes we are finalizing at § 156.280(e)(2)(ii) would strengthen regulatory alignment with the existing statutory requirements for QHP issuer billing of enrollee premiums with the separate payment requirement in section 1303 of the PPACA.

We further understand that policy holders who object, based on their conscience, to non-Hyde abortion services may prefer to not pay the separate bill attributable to coverage of these services, and thereby opt out of such coverage. We also acknowledge there may be other services covered by a plan that consumers object to or do not intend to use. As previously stated, the primary motivation for this rule is to better align the regulatory requirements for QHP issuer billing of premiums with the statutory separate payment requirement in section 1303 of the PPACA.

However, we agree that consumers are best served by the Exchanges when they can enroll in a QHP that meets their needs, from a conscience, as well as a care, perspective. In the Exchanges that use the federal platform, we have taken steps to improve transparency regarding QHP offerings to make it easier for consumers to select plans that they believe are best suited to their needs, preferences, and conscience concerns, such as information to more readily identify QHPs that offer coverage of non-Hyde abortion services.[15] State Exchanges that operate their own technology platforms have taken similar steps. For example, State Exchanges display different plan attributes to enrollees to foster the decision-making process, and allow consumers to view plan offerings by selecting filters that show plans with their desired plan characteristics. In addition, Summary of Benefits and Coverage (SBC) requirements help ensure that consumers have access to easy-to-understand information about coverage. Further, with regard to commenters that stated their dissatisfaction that abortion coverage is offered at all in the individual market, we note that section 1303(a)(1) of the PPACA specifies that states may enact laws prohibiting QHP issuer coverage of abortion services on the Exchange. We also note that section 1303(a)(2) of the PPACA provides that a state may repeal such a law and provide for the offering of abortion coverage through the Exchange, and section 1303(b)(1)(A)(ii) of the PPACA allows QHP issuers to decide whether or not to offer coverage for abortion services, consistent with applicable state law.

Comment: Some commenters objected to HHS stating that it would enforce the requirements of section 1303 of the PPACA as codified at § 156.280 directly in the event that State Exchanges do not enforce these requirements, arguing that it would be inconsistent with other HHS efforts to ensure that states can operate their programs with limited federal interference. Commenters also expressed concern that the proposed enforcement structure overrides the authority delegated to states in section 1303 of the PPACA over issuers that operate in their states, and will disrupt the nature of collaboration and partnership that the PPACA meant to create between the states and the federal government. Commenters also stated that the addition of new compliance reviews are unnecessary, as HHS does not articulate any facts or data establishing the current landscape of compliance—or lack of compliance—with existing regulations.

Many commenters stated that the 2014 U.S. Government Accountability Office report,[16] which the proposed rule cites as evidence of potential remaining issuer compliance concerns, predates the 2016 Payment Notice, which clarified for issuers how to comply with the separate payment requirement. These commenters assert that HHS offers no evidence that any compliance problems remain over 4 years later. Commenters also stated that the research to inform that report was conducted between February 2014 and September 2014, less than 1-full year after the Exchanges began operating and, as such, issuers were less likely to have fully implemented the compliance standards required under the PPACA.

Other commenters stated that compliance with section 1303 of the PPACA has been inconsistent and were supportive that the proposals would require greater oversight and transparency from State Exchanges and require them to meet the standards of section 1303 of the PPACA. Some commenters cited to the 2014 U.S. Government Accountability Office report[17] as evidence of this noncompliance, and others cited to a letter sent prior to publication of the proposed rule by 102 members of Congress to HHS Secretary Alex Azar, which requested that new regulations be implemented ''to remedy the severe problems with the ACA in regard to abortion coverage.''[18]

Response: We agree that oversight of issuer compliance with section 1303 of the PPACA is important to achieving greater transparency for consumers. We acknowledge that section 1303(b)(2)(E)(i) of the PPACA, as implemented at § 156.280(e)(5), designates the state insurance commissioners as responsible for monitoring, overseeing, and enforcing

[15] ''Frequently Asked Questions for Agents, Brokers, and Assisters Providing Consumers with Details on Plan Coverage of Certain Abortion Services'' (November 21, 2018), available at *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQ-on-Providing-Consumers-with-Details-on-Plan-Coverage-of-Certain-Abortion-Services.pdf.*

[16] U.S. Government Accountability Office, ''Health Insurance Exchanges: Coverage of Non-excepted Abortion Services by Qualified Health Plans,'' (Sept. 15, 2014), available at *http://www.gao.gov/products/GAO-14-742R.*

[17] U.S. Government Accountability Office, ''Health Insurance Exchanges: Coverage of Non-excepted Abortion Services by Qualified Health Plans,'' (Sept. 15, 2014), available at *http://www.gao.gov/products/GAO-14-742R.*

[18] Letter from Chris Smith, Member of Congress, to Alex Azar, Secretary, U.S. Department of Health and Human Services (Aug. 6, 2018), available at *https://chrissmith.house.gov/uploadedfiles/2018-08-06_-_smith_letter_on_section_1303_-_abortion_funding_transparency.pdf.*

the provisions in section 1303 of the PPACA related to QHP segregation of funds for non-Hyde abortion services. That is different than assigning the exclusive enforcement authority, with respect to all provisions in section 1303, to the states or to State Exchanges. As is the case with many provisions in the PPACA, states are generally the entities primarily responsible for implementing and enforcing the provisions in section 1303 of the PPACA related to individual market QHP coverage of non-Hyde abortion services.

However, where we are charged with directly enforcing statutory requirements in the FFE, we intend to do so fully in instances of issuer non-compliance with the separate payment requirement under section 1303 of the PPACA. Moreover, to the extent a state operating its own Exchange fails to substantially enforce these requirements, HHS is authorized to enforce them directly. Pursuant to section 1321(c)(2) of the PPACA, after determining that a state (or State Exchange) has failed to substantially enforce a federal requirement related to Exchanges and the offering of QHPs through Exchanges, including section 1303 of the PPACA's separate payments requirement (or other requirements), the Secretary may step in to enforce the requirement against the non-compliant issuer. This enforcement structure strikes an appropriate balance between federal oversight and state flexibility with regard to the requirements of section 1303. Accordingly, unless HHS determines a state (or State Exchange) has failed to substantially enforce section 1303 of the PPACA requirements, we intend to continue to defer to states (or State Exchanges) that enforce section 1303 of the PPACA requirements. HHS disagrees that this enforcement structure in a state operating its own Exchange would override the state's exercise of authority expressly delegated to states in section 1303 of the PPACA.

The compliance reviews governing QHP issuers participating in the FFE include reviews of compliance with section 1303 of the PPACA and § 156.280. The compliance reviews for future benefit years will include the new requirements finalized in this rule for separate billing of the portion of the policy holder's premium attributable to coverage of non-Hyde abortion services, as finalized at § 156.280(e)(2). We continue to believe such compliance reviews will help to address remaining issuer compliance issues, if any, previously identified by the 2014 U.S. GAO report.[19] However, commenters also expressed concern that the 2014 U.S. GAO report is outdated and that there is no evidence of ongoing compliance issues to support the changes we are finalizing regarding separate billing. But regardless of whether there are ongoing compliance issues, the changes we are finalize are primarily meant to better align the regulatory requirements for QHP issuer billing of enrollee premiums with the statutory separate payment requirement in section 1303 of the PPACA. This goal is related to overall compliance with section 1303, but has a different compliance focus than the compliance issues cited in the 2014 U.S. GAO report. Additionally, because we are amending the acceptable methods for issuers to comply with the separate payment requirement, we believe additional oversight during this transition time will be necessary to ensure that issuers are modifying their billing procedures appropriately.

FFE issuers subject to compliance reviews under § 156.715 must retain all documents and records of compliance with section 1303 of the PPACA and these requirements in accordance with § 156.705, and should anticipate making available to HHS the types of records specified at § 156.715(b) that would be necessary to establish their compliance with these requirements. For example, FFE issuers subject to compliance reviews for § 156.280 should anticipate supplying HHS with documentation of their estimate of the basic per enrollee per month cost, determined on an average actuarial basis, for including coverage of non-Hyde abortion services; detailed invoice and billing records demonstrating they are separately billing for and instructing policy holders to pay for in a separate transaction the portion of the policy holder's premium attributable to coverage of non-Hyde abortion services as specified in this rule, the actuarial value which must be estimated to be no less than $1 per enrollee, per month; and appropriately segregating the funds collected from enrollees into a separate allocation account that is used to pay for non-Hyde abortion services.

We remind issuers that pursuant to § 156.280(e)(5)(ii), any issuer offering coverage of non-Hyde abortion services on the Exchange must submit a plan to the relevant state insurance regulator that details the issuer's process and methodology for meeting the requirements of section 1303(b)(2)(C), (D), and (E) of the PPACA (hereinafter, ''segregation plan'').[20] The segregation plan should describe the QHP issuer's financial accounting systems, including appropriate accounting documentation and internal controls, that would ensure the segregation of funds required by section 1303(b)(2)(C), (D), and (E) of the PPACA. Issuers should refer to § 156.280(e)(5)(ii) for more information on precisely what issuers should include in their segregation plans to demonstrate compliance with these requirements. We also remind QHP issuers that pursuant to § 156.280(e)(5)(iii) each QHP issuer participating in the Exchange must provide to the state insurance commissioner an annual assurance statement attesting that the plan has complied with section 1303 of the PPACA and applicable regulations.

We also remind issuers offering medical QHPs in the FFEs that they already must attest to adhering to all applicable requirements of 45 CFR part 156 as part of the QHP certification application, including those requirements related to the segregation of funds for abortion services implemented in § 156.280.[21] As finalized, issuers in the FFE completing this attestation would also attest to adhering to these new separate billing and collection requirements. As part of the QHP certification process, issuers in states with FFEs where the states perform plan management functions must also complete similar program attestations attesting to adherence with § 156.280.[22] Issuers in states with State Exchanges that offer QHPs that cover non-Hyde abortion services should contact their state regarding the QHP certification process.

Comment: HHS received comments expressing a variety of legal arguments against the proposals. Many commenters stated that the proposals violate the Administrative Procedure Act (APA) because the proposals advance an unreasonable interpretation

[19] U.S. Government Accountability Office, ''Health Insurance Exchanges: Coverage of Non-excepted Abortion Services by Qualified Health Plans,'' (Sept. 15, 2014), available at *http://www.gao.gov/products/GAO-14-742R.*

[20] While we included compliance with section 1303(b)(2)(D) in the segregation plan that QHP issuers are required to submit to state insurance commissioners under our regulations at 45 CFR 156.280(e)(5), we did not mean to suggest by that inclusion that such provision is part of the segregation requirements in the statutory subsection that are subject to the jurisdiction of state health insurance commissioners under section 1303(b)(2)(E).

[21] 2019 Qualified Health Plan Issuer Application Instructions, available at: *https://www.qhpcertification.cms.gov/s/2019QHPInstructionsVersion1.pdf?v=1.*

[22] State Partnership Exchange Issuer Program Attestation Response Form, available at: *https://www.qhpcertification.cms.gov/s/SuppDoc_SPE_Attestationsed._revised_508.pdf?v=1.*

of law, are arbitrary and capricious, fail to provide adequate reasons or satisfactory explanations why HHS seeks to adopt a newly preferred interpretation of the requirement, and fail to adequately assess the costs and harms. Commenters also stated the proposals raise Federalism concerns under the Tenth Amendment because the proposals allegedly are designed to penalize states that have laws requiring QHPs to provide coverage of non-Hyde abortion services by requiring states—through their respective Exchanges and the Department of Insurances (DOIs)—to adopt new oversight responsibilities, and make systemic changes to fit the alterations the proposals require. For these states, commenters stated that this effectively requires states to either divert extensive resources to implement these changes or change their sovereign laws to no longer require coverage of non-Hyde abortion services. Commenters also stated that the proposals exceed the federal government's spending power by implementing new reporting and oversight obligations in the Exchanges that impose post-acceptance or retroactive conditions on states that were not originally anticipated. Commenters also stated that the proposals serve as a tax penalty on issuers for doing business in states with non-Hyde abortion services coverage requirements. One commenter stated that HHS improperly excluded the proposed changes to § 156.280 among the rule changes with Federalism implications.

Commenters also stated that requiring QHP issuers to send a separate bill to enrollees about the plan's coverage of non-Hyde abortion services constitutes a second separate notice outside of the notice included in the SBC indicating whether the plan covers abortions services and that, as such, these proposals violate section 1303(b)(3)(A) of the PPACA, which specifies that QHP issuers covering these services ''shall provide a notice to enrollees, only as part of the summary of benefits and coverage explanation, at the time of enrollment, of such coverage.'' Commenters further assert that the proposals violate section 1303(b)(3)(B), which states that all advertising used by issuers, any information provided by the Exchange, and ''any other information specified by the Secretary'' shall only provide information with respect to the total amount of the combined payments for all services.

Commenters also stated that the proposals violate section 1554 of the PPACA because these proposals will limit access to health care services, conflict with section 1557 of the PPACA, violate the Equal Protection Clause because the proposals place a heavy burden on a unique health care service only applicable to women, constitute an undue burden on a woman's right to procreative choice, violate the unconstitutional conditions doctrine by penalizing those who choose to exercise a constitutionally-protected right by imposing unreasonable payment protocols to access abortion services, and violate the establishment clause of the First Amendment.

HHS also received many comments stating that the proposed interpretation of section 1303 of the PPACA violates congressional intent. Commenters stated that section 1303 of the PPACA makes clear that absent a state law to the contrary, issuers offering Exchange coverage can decide whether to cover non-Hyde abortion services and that these requirements effectively take that decision away from issuers. Commenters also stated that Congress specifically enacted section 1303 of the PPACA's provisions after rejecting more extreme and restrictive alternatives that would have eliminated abortion coverage in the Exchanges or prohibited enrollees from using federal financial assistance to purchase a plan including abortion coverage, and that HHS is ignoring that legislative history by proposing changes that would have a net effect of reducing abortion coverage where issuers decide to eliminate coverage due to the regulatory burden. Commenters also noted that, although Congress decided to treat abortion differently when passing section 1303 of the PPACA, it did so specifically to ensure that private insurance plans could continue to decide whether or not to cover abortion in states that did not ban such coverage, and that this rule threatens that right. One commenter also stated that HHS violated generally accepted principles of statutory interpretation and should have construed ''separate payment'' in line with industry practice.

Many commenters also stated that these proposals conflict with the Administration's stated goals of reducing economic and regulatory burden, in conflict with several recently issued Executive Orders. Specifically commenters stated that the proposals would undermine Executive Order 13765 because these proposals would increase the administrative and economic burden of the PPACA, Executive Order 13813 which called for rules and guidelines to improve access to and the quality of information that Americans need to make informed healthcare decisions, Executive Order 13777 which orders federal agencies to alleviate unnecessary regulatory burden placed on the American people, and Executive Order 12866 because HHS did not ''assess both the costs and the benefits of the intended regulation and . . . propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs,'' as the Executive Order directs. Commenters also stated that the proposals would undermine CMS's ''Patients Over Paperwork'' initiative aimed at reducing administrative burden on health plans and providers.

HHS also received comments arguing that these changes advance the congressional intent for the separate payment requirement in section 1303 of the PPACA, arguing that both the congressional record and the statutory language clearly demonstrate that Congress intended that billing for coverage of non-Hyde abortion services be separate.

Response: HHS disagrees with comments questioning its legal authority to make these policy changes, and disagrees that interpreting section 1303 of the PPACA to require issuers to send a separate bill for the portion of the premium attributable to coverage of non-Hyde abortion services violates the APA. Section 1303 of the PPACA and regulations at § 156.280 do not specify the method a QHP issuer must use to comply with the separate payment requirement under section 1303(b)(2)(B)(i) of the PPACA and § 156.280(e)(2)(i). Although we recognized in the preamble to the proposed rule that the previous methods of itemizing or providing advance notice about the amounts noted as permissible in the preamble of the 2016 Payment Notice arguably identifies two ''separate'' amounts for two separate purposes, we continue to believe that requiring issuers to bill for two separate ''payments'' of these two amounts better aligns with, and better enables compliance with, the separate payment requirement in section 1303 of the PPACA. We also believe that consumers are more likely to make a separate payment for the non-Hyde abortion coverage when they receive a separate bill for such amount.

In fact, among the previously acceptable methods for QHP issuers to comply with the separate payment requirement outlined in the preamble to the 2016 Payment Notice was sending a separate monthly bill for these

services.[23] As such, amending the policy to only permit this method of complying with the separate payment requirement does not wholly depart from the previous interpretation, it merely refines it to better reflect the statute.

Additionally, we have carefully considered the comments we received estimating the burden the proposals would impose on issuers, states, enrollees, and other entities, and agree—without accepting the estimates provided by commenters—that, as originally proposed, the actual burden would have exceeded HHS's estimates. As such, we are finalizing several changes described in responses to comments earlier in this section of the preamble with the specific intent of mitigating the burden that would have been imposed if we were finalizing as originally proposed.

HHS disagrees that the policy as originally proposed or as revised in the final rule violates state sovereignty, exceeds the federal government's spending power, or raises other Federalism concerns. Because states are the entities primarily responsible for implementing and enforcing the provisions in section 1303 of the PPACA related to individual market QHP coverage of non-Hyde abortion services, we acknowledge that requiring issuers to separately bill for the portion of the premium attributable to these services means that states will likely adjust how they ensure issuer compliance with these new requirements. We also remind states concerned about enforcement and oversight of these requirements that, under section 1321(c) of the PPACA, states may elect not to establish and operate an Exchange, thereby deferring those responsibilities to HHS.

We are clarifying the existing statutory requirement by adding specificity to the regulatory requirement, for issuers to collect a separate payment for these services. As such, these changes do not directly impose new requirements on states other than to adjust how they check for compliance. We believe that any state oversight responsibility modified through these changes was already contemplated by section 1303 of the PPACA in identifying states as the entities primarily, but not exclusively, responsible for enforcing the provisions in section 1303. Further, as noted above, among the previously acceptable methods for QHP issuers to comply with the separate payment requirement was sending a separate monthly bill for coverage of non-Hyde abortion services. Therefore, states should already have developed mechanisms to confirm compliance with separate monthly billing and payment for these services for any issuers that previously elected this option.

Setting aside the question of whether state laws requiring coverage of non-Hyde abortion services on the Exchange are consistent with statutory conditions on federal funding from the Department to the States, we acknowledge that some states have such laws. However, the changes we are finalizing do not preempt state law regarding coverage of non-Hyde abortion services or otherwise attempt to coerce states into changing these laws or to deny QHP issuers the ability to offer plans on the Exchanges that provide coverage of non-Hyde abortion services. HHS is simply refining the method by which issuers comply with the separate payment requirement.

HHS does not agree with commenters' concerns that the proposals would inhibit enrollee access to appropriate and timely medical care in violation of section 1554 of the PPACA. We acknowledge that, as originally proposed, the combination of issuer burden and enrollee confusion could have potentially led to a reduction in the availability of coverage of non-Hyde abortion services (either by issuers choosing to drop this coverage to avoid the additional costs or by enrollees having their coverage terminated for failure to pay the second bill), thereby potentially increasing out-of-pocket costs for some women seeking those services. But such an effect of a separate billing requirement would not constitute a violation of section 1554. Moreover, we believe the changes we are finalizing will decrease the likelihood of these outcomes. Importantly, subject to state law, section 1303(b)(1)(A) of the PPACA makes it clear that it is ultimately at the issuer's discretion whether to cover non-Hyde abortion services in their QHP; requiring a separate bill for these services does not limit that right.

HHS also disagrees that the policy in the proposed rule, as revised in this final rule, is inconsistent with sections 1303(b)(3)(A) or 1303(b)(3)(B) of the PPACA. Reading section 1303(b)(3) alongside section 1303(b)(2), which requires collection of separate payments, suggests that section 1303(b)(3) pertaining to notices should be read harmoniously with the separate payment requirement, rather than in conflict with those requirements, as commenters suggest. For example, the separate bill for the portion of the policy holder's premium attributable to coverage of non-Hyde abortion services is primarily a means of ensuring separate QHP issuer collection of that portion of the policy holder's premium, as required under section 1303(b)(2). This separate bill does not circumvent or conflict with the independent requirement in section 1303(b)(3) pertaining to notices. Further, any insight the policy holder gains from the separate bill for coverage of non-Hyde abortion services about the QHP's coverage of non-Hyde abortion services is incidental to the primary purpose of the bill, which is to help ensure separate payment by the policy holder, and separate QHP issuer collection on this portion of the policy holder's premium. We also note that requiring a separate bill for coverage of non-Hyde abortion services is not a violation of section 1303(b)(3), just as the separate itemization of the premium amount for such coverage on a single bill (as was previously one of the acceptable billing and premium collection methods for this amount) was not a violation of that section. Therefore, we believe it is a more reasonable interpretation of section 1303 of the PPACA that section 1303(b)(2) and 1303(b)(3) of the PPACA need not conflict when read in context with one another.

Section 1557 of PPACA prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs or activities. HHS disagrees that the policy in the proposed rule and as revised in this final rule discriminates against women or constitutes gender discrimination in violation of section 1557 of the PPACA or of the Equal Protection Clause. Although only women access non-Hyde abortion services, the separate bill for the portion of the premium attributable to coverage of these services, and any enrollee burden associated with that bill, is broadly applicable to any policy holder in a plan that covers non-Hyde abortion services. In other words, both men and women in plans covering non-Hyde abortion services will receive a separate bill for the portion of the premium attributable to coverage of these services, not just the women who may ultimately access such services.

Similarly, HHS disagrees that the proposals violate the unconstitutional conditions doctrine, given that QHP issuers offering these services will be required to send the separate bill to all policy holders in their plan, not just those who choose to access non-Hyde abortion services. As such, although it

[23] Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2016 (80 FR 10750, 10840).

may be true that enrollees who would be most likely to need access to coverage of non-Hyde abortion services would be most likely to intentially enroll in a QHP with such coverage, any additional burden these enrollees experience related to understanding and paying the second bill is unrelated to whether enrollees actually do access coverage of non-Hyde abortion services. Therefore, the finalized policy does not penalize enrollees for accessing their constitutionally protected right to abortion. All policy holders would receive the separate bill for the portion of their premium attributable to coverage of non-Hyde abortion services, regardless of whether they could, intend to, or do, access the coverage for these services.

HHS also disagrees that the policy in the proposed rule, or as revised in this final rule, violates the Establishment Clause or otherwise impedes the free exercise of religion. Although it may be a secondary impact that the billing changes serve the interests of enrollees who object to coverage of non-Hyde abortion services based on their conscience, the objective for this policy change continues to be achieving better alignment with the statutory requirement for issuers to collect a separate payment for coverage of non-Hyde abortion services, as specified in section 1303 of the PPACA. As such, we reject commenter's arguments that these proposals are religiously motivated.

We also disagree with commenters that this interpretation of section 1303 of the PPACA violates congressional intent. We acknowledge that, in drafting section 1303 of the PPACA, Congress rejected language that would have imposed more restrictive requirements on QHP issuers offering coveage of non-Hyde abortion services.[24] However, although the language in section 1303 of the PPACA that Congress ultimately enacted into law permits issuers to offer coverage for non-Hyde abortion services subject to state law, this flexibility is not without limitations. As enacted, section 1303 of the PPACA requires that QHP issuers offering non-Hyde abortion coverage on the Exchanges follow specific actuarial, accounting, and notice requirements to ensure that federal funds are not used to pay for the costs of including coverage of these services under the QHP. We believe that by requiring issuers to collect separate payments, section 1303 of the PPACA contemplates sending to enrollees separate bills for these services to help ensure appropriate segregation of these funds. Furthermore, HHS previously listed ''sending a separate monthly bill for these services'' as one of the permissible methods for issuers to comply with the separate payment requirement in the 2016 Payment Notice.

HHS also disagrees with claims that the proposals impermissibly undermine the Executive Orders mentioned in comments. We interpret the proposals and the policy as finalized in this rule as consistent with Executive Order 13765 because the law is being ''efficiently implemented'' through better aligning the issuer requirements related to fulfilling section 1303 of the PPACA's separate payment requirements with the statute. We also believe Executive Order 13813 supports the changes to the policy as finalized in this rule, since providing a separate bill to policy holders for the portion of the premium attributable to coverage of non-Hyde abortion services will ''improve access to and the quality of information that Americans need to make informed healthcare decisions.'' [25] We note that we also believe Executive Order 13877 supports the policy changes by enhancing the ability of enrollees ''to choose the healthcare that is best for them'' and to make ''fully informed decisions about their healthcare.'' Indeed, many commenters highlighted that this would be one of the positive impacts of the proposal—that the separate bill would serve to clarify for enrollees that their plan covers non-Hyde abortion services and at what cost, information which many commenters would use to decide whether to remain enrolled in that QHP or seek a QHP without such coverage. We also believe Executive Order 13777 supports the proposals and changes being finalized in this rule, since requiring a separate bill for coverage of these services helps to ensure that HHS is ''prudent and financially responsible in the expenditure of funds,'' by better aligning the requirements with the statute in a manner that will help to ensure that QHP issuers that offer coverage for non-Hyde abortion services collect a separate payment from policy holders for the portion of their premium attributable to non-Hyde abortion coverage which also helps to ensure that APTC or CSR funds are not used pay for such services.

Additionally, HHS did ''assess both the costs and the benefits'' of the proposed rule. However, we note that Executive Order 12866's directive to only issue net-beneficial regulations applies only ''to the extent permitted by law.'' Although we have since adjusted the policy as well as the estimated burden to reflect a larger burden estimate, we continue to believe that requiring QHP issuers to separately bill the portion of the policy holder's premium attributable to coverage of non-Hyde abortion services is a better interpretation of the statutory requirement for QHP issuers to collect a separate payment for coverage of these services, and, thus, justifies the costs.[26]

Lastly, although CMS's ''Patients Over Paperwork'' initiative does include the goal of reducing unnecessary burden, HHS believes these changes and the added burdens associated with the changes are necessary, as the changes will better align issuer billing with the statutory requirements of the PPACA. Moreover, in line with this initiative, we believe enrollees will benefit from the additional clarity that the separate bill provides about their plan's coverage of non-Hyde abortion services.

III. Collection of Information Requirements

This final rule contains information collection requirements as defined under the Paperwork Reduction Act of 1995 (PRA). We proposed and solicited comments on these information collection requirements (ICRs) in the notice of proposed rulemaking that published on November 9, 2018 (84 FR 56015). The information collection requirements and the reconciliation of any comment received on the requirements are discussed below.

In order to fairly evaluate whether an information collection should be approved by the Office of Management and Budget (OMB), section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the

[24] *See* Amendment to H.R. 3962, 111th Cong. (2009) (offered by Rep. Stupak and Rep. Pitts), 155 Cong. Rec. H12,921 (Nov. 7, 2009); *See* 155 Cong. Rec. S12,665 (2009).

[25] Executive Order on Improving Price and Quality Transparency in American Healthcare to Put Patients First (issued on June 24, 2019, *available at https://www.whitehouse.gov/presidential-actions/executive-order-improving-price-quality-transparency-american-healthcare-put-patients-first/.*

[26] This rule has been subject to interagency (including OMB) review under Executive Order 12866 and cleared by OMB for issuance and publication, indicating that the rule is consistent with Executive Orders.

affected public, including automated collection techniques.

In our November 9, 2018 (83 FR 56015) proposed rule, we solicited public comment on each of the required issues under section 3506(c)(2)(A) of the PRA for the following ICRs.

A. Wage Estimates

To derive average costs, we generally used data from the Bureau of Labor Statistics to determine average labor costs (including a 100 percent increase for fringe benefits and overhead) for estimating the burden associated with the ICRs.[27] Table 1 in this final rule presents the mean hourly wage (calculated at 100 percent of salary), the cost of fringe benefits and overhead, and the adjusted hourly wage.

As indicated, employee hourly wage estimates have been adjusted by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and overhead costs vary significantly across employers, and because methods of estimating these costs vary widely across studies. However, we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

TABLE 1—ADJUSTED HOURLY WAGES USED IN BURDEN ESTIMATES

Occupation title	Occupational code	Mean hourly wage ($/hour)	Fringe benefits and overhead ($/hour)	Adjusted hourly wage ($/hour)
General and Operations Manager	11–1021	$59.56	$59.56	$119.12
Computer and Information Systems Manager	11–3021	73.49	73.49	146.98
Computer Programmer	15–1131	43.07	43.07	86.14
Computer System Analyst	15–1121	45.01	45.01	90.02
Business Operations Specialist	13–1199	37.00	37.00	74.00
Secretaries and Administrative Assistants	43–6014	18.28	18.28	36.56

B. Information Collection Requirements (ICRs)

1. ICRs Regarding General Program Integrity and Oversight Requirements (§ 155.1200)

The burden associated with State Exchanges meeting the program integrity reporting requirements in § 155.1200 have already been assessed and encompassed through SMART currently approved under OMB control number: 0938–1244 (CMS–10507). While we are finalizing proposals in this rule that would provide HHS the ability to focus State Exchange oversight and audit activities towards particular Exchange functions that have higher program integrity risks in a more consistent manner, and require State Exchanges and their auditors to employ auditing techniques or procedures in a more consistent manner, we do not envision these changes to have a material impact on the burden for State Exchanges. As detailed in the proposed rule and in the preamble of this rule, these amendments are intended to allow for more targeted oversight and audits of State Exchanges that focus and direct existing HHS and State Exchange resources towards particular Exchange program areas that have higher program integrity risks, rather than having those Federal and State Exchange resources covering all program areas or covering program areas that have lower program integrity risks. Because existing resources would be directed away from certain program areas and towards program areas with higher program integrity impact across all State Exchanges, we believe the overall burden on State Exchanges would not change. Further, we are not specifying a particular sampling methodology that must be used by all State Exchanges for testing the accuracy of eligibility determinations in annual programmatic audits. This final rule therefore does not impose any new burden or revised information collection requirements pertaining to § 155.1200.

2. ICRs Regarding Rules Relating To Segregation of Funds for Abortion Services (§ 156.280)

In § 156.280(e)(2), we are finalizing that QHP issuers must send an entirely separate monthly bill to the policy holder covering only the portion of premium attributable to coverage of non-Hyde abortion, and instruct the policy holder to pay the portion of their premium attributable to coverage of non-Hyde abortion services in a separate transaction from any payment the policy holder makes for the portion of their premium not attributable to coverage of non-Hyde abortion services. Based on 2020 QHP certification data in the FFEs and SBE–FPs, we estimate that 23 QHP issuers will offer a total of 338 plans with coverage of non-Hyde abortion services in 9 FFE and SBE–FP states. For the 12 State Exchanges that will operate their own technology platforms in 2020 and have QHPs that offer coverage of non-Hyde abortion services, we have updated our methodology for identifying issuers with QHPs that offer coverage of non-Hyde abortion services, and now estimate that 71 QHP issuers will offer a total of approximately 1,129 plans that include coverage for non-Hyde abortions services. Three of those State Exchanges perform premium billing and payment processing, while the other 9 have their issuers perform premium billing and payment processing. In total, we now estimate that will be 94 QHP issuers offering a total of 1,467 plans (representing approximately 32 percent of individual market, on-Exchange plans) covering non-Hyde abortion services across 21 states in plan year 2020. As such, the ICRs associated with these proposals create a new burden on QHP issuers and State Exchanges that perform premium billing and payment processing, and thus will be submitted to OMB for final approval (OMB control number: 0938–1358 (Billing and Collection of the Separate Payment for Certain Abortion Services (CMS–10681)).

Comment: We used the estimated numbers of impacted issuers and plans to estimate the costs associated with the proposals regarding separate billing and payment for coverage of non-Hyde abortion services.

We received many comments from issuers, issuer associations, states, State Exchanges, state regulators, and other organizations arguing that we greatly underestimated the burden on issuers to implement the original proposals. For example, commenters stated that actual one-time costs for issuers to implement

[27] See May 2018 Bureau of Labor Statistics, Occupational Employment Statistics, National Occupational Employment and Wage Estimates at *https://www.bls.gov/oes/current/oes_stru.htm.*

these proposals would be anywhere from $50,000 to $7,500,000 per issuer. Commenters also stated that annual costs per issuer would be anywhere from $40,000 to $10,800,000 annually. One commenter stated that the operational burden of a mid-size issuer (serving approximately 70,000 Exchange enrollees) would exceed HHS's estimate by approximately 2,666 times for the first year alone. Commenters explained that the proposals would require changes to nearly every aspect of the enrollment and billing processes to identify impacted enrollees, generate and send multiple accurate invoices, collect multiple payments, and reconcile payment amounts.

Some commenters noted that many issuers do not have the ability to generate two separate bills for one policy and that, as such, the proposals would require them to issue two policies per policy holder (and enroll every policy holder into two separate policies to be able to bill them in the required way). Commenters stated that the proposals would consequently require that many issuers create separate member IDs in order to facilitate every enrollee receiving two bills and making two payments. Commenters stated that this would be an extraordinarily costly and difficult change for such issuers to make.

Commenters also expressed concern that requiring issuers to send the separate bill in a separate mailing would double an issuer's postage and associated mailing costs, costing issuers an additional $15.6 to $31.2 million nationally per year, and expressed further concern that this cost was not accounted for in the proposed rule's impact estimates. Many commenters explained that it is unrealistic to assume that issuers can save costs by enrollees switching to electronic billing, since many enrollees still elect to receive and pay their health coverage bills through the mail. Other commenters explained that many enrollees have no choice but to receive paper bills and send paper checks, as many enrollees in rural areas and many low-income individuals still do not have access to the internet.

Response: We appreciate these comments and after consideration, have adjusted the estimated burden below. In response to these comments, we have updated the associated ICRs to reflect an increase in burden and costs for issuers. We believe that the original burden estimate in the proposed rule would not accurately reflect the actual costs issuers would have incurred if we finalized the provisions as proposed.

We estimate that allowing issuers to send the separate bill in the same mailing (though not in the same email or electronic communication) as the bill for other services would eliminate much of the commenter estimated $15.6 to $31.2 million that the second bill would have cost annually if we had finalized as proposed. By finalizing this policy to allow for combined mailings when sending paper bills, we ensure that issuers will not be required to incur the costs associated with additional postage and envelopes.

Issuers will incur burden to complete the one-time technical build to implement the necessary changes, which will involve activities such as planning, assessment, budgeting, contracting, building and testing their systems; as well as one-time changes such as billing-related outreach and call center training. We assume that this one-time burden will be incurred primarily in 2020. We estimate that, for each issuer, on average, it will take business operations specialists 2,500 hours (at $74 per hour), computer system analysts 6,500 hours (at $90.02 per hour), computer programmers 22,000 hours (at $86.14 per hour), computer and information systems managers 200 hours (at $146.98 per hour) and operations managers 300 hours (at $119.12 per hour) to complete this task. The total burden for an issuer will be approximately 31,500 hours on average, with an equivalent cost of approximately $2.7 million. We anticipate that implementing these changes within 6 months would result in issuers incurring additional costs such as higher contracting costs and overtime payments, which will increase the total cost for each issuer by 50 percent, to approximately $4.1 million. For all 94 issuers, the total one-time burden will be 2,961,000 hours for a total cost of approximately $385 million.

We anticipate that the burden incurred by State Exchanges that perform premium billing and payment processing and have QHP issuers that offer coverage for non-Hyde abortion services will be similar to the burden incurred by QHP issuers offering coverage for non-Hyde abortion services. Therefore the total burden for a State Exchange that performs premium billing and payment processing will be approximately 31,500 hours on average, with a total cost of approximately $4.1 million. For all 3 State Exchanges that perform premium billing and payment processing, the total one-time burden will be 94,500 hours for a total cost of approximately $12.3 million.

TABLE 2—ESTIMATED ONE-TIME BURDEN PER ISSUER OR STATE EXCHANGE PERFORMING PREMIUM BILLING AND PAYMENT PROCESSING

Occupation	Burden hours per respondent	Labor cost per hour	Total cost per respondent
General and Operations Manager	300	$119.12	$35,736
Computer and Information Systems Manager	200	146.98	29,396
Computer Programmer	22,000	86.14	1,895,080
Computer System Analyst	6,500	90.02	585,130
Business Operations Specialist	2,500	74.00	185,000
Total Burden and Labor Cost per respondent	31,500		2,730,342
Additional Costs due to Expedited Implementation			1,365,171
Total per respondent	31,500		4,095,513

TABLE 3—ESTIMATED ONE-TIME BURDEN FOR ALL ISSUERS AND STATE EXCHANGES PERFORMING PREMIUM BILLING AND PAYMENT PROCESSING

Type of respondent	Number of respondents	Number of responses	Burden hours per respondent	Total burden hours	Total cost
Issuer	94	94	31,500	2,961,000	$384,978,222
State Exchange	3	3	31,500	94,500	12,286,539
Total	97	97	31,500	3,055,500	397,264,761

In addition to the one-time costs estimated, issuers will incur ongoing annual costs, such as those related to identifying impacted enrollees, ensuring billing accuracy, reconciliation, quality assurance, printing, recordkeeping, and document retention. We estimate that for each issuer, on average, it will take administrative assistants 20,000 hours (at $36.56 per hour), business operations specialists 2,000 hours (at $74 per hour), computer programmers 2,000 hours (at $86.14 per hour), and operations managers 120 hours (at $119.12 per hour) each year to perform these tasks. The total annual burden for each issuer will be 24,120 hours, with an equivalent cost of approximately $1.07 million. Assuming that issuers will start sending separate bills in July, 2020, the total burden for all 94 issuers for the 6 months in 2020 is estimated to be 1,133,640 hours with an equivalent cost of approximately $50.1 million. From 2021 onwards, we estimate the total annual burden for all 94 issuers will be approximately 2,267,280 hours with an associated cost of approximately $100.2 million.

We anticipate that State Exchanges performing premium billing and payment processing and which have QHP issuers that offer coverage for non-Hyde abortion services will incur costs similar to QHP issuers offering coverage of non-Hyde abortion services. Therefore, we estimate that for all 3 State Exchanges performing premium billing and payment processing, the total annual burden will be approximately 36,180 hours with an equivalent cost of approximately $1.6 million in 2020 and 72,360 hours with an associated cost of approximately $3.2 million starting in 2021.

TABLE 4—ESTIMATED ANNUAL BURDEN PER ISSUER OR STATE EXCHANGE PERFORMING PREMIUM BILLING AND PAYMENT PROCESSING

Occupation	Burden hours per respondent	Labor cost per hour	Total cost per respondent
Secretaries and Administrative Assistants	20,000	$36.56	$731,200
General and Operations Manager	120	119.12	14,294
Business Operations Specialist	2,000	74.00	148,000
Computer Programmer	2,000	86.14	172,280
Total per Respondent	24,120	.....	1,065,774

TABLE 5—ESTIMATED ANNUAL BURDEN FOR ALL ISSUERS AND STATE EXCHANGES PERFORMING PREMIUM BILLING AND PAYMENT PROCESSING FOR 2020, 2021 AND 2022

Type of respondent	Year	Number of respondents	Number of responses	Burden hours per respondent	Total burden hours per year	Total labor cost per year
Issuer	2020	94	94	12,060	1,133,640	$50,091,397
State Exchange	2020	3	3	12,060	36,180	1,598,662
Total	2020	97	97	12,060	1,169,820	51,690,058
Issuer	2021, 2022	94	94	24,120	2,267,280	100,182,794
State Exchange	2021, 2022	3	3	24,120	72,360	3,197,323
Total	2021, 2022	97	97	24,120	2,339,640	103,380,117

In response to comments, we reviewed our original enrollee estimates and have updated our estimates for accuracy. Based on 2019 QHP Certification Data in the FFEs and SBE–FPs, we now estimate that there are approximately 442,400 enrollees in QHPs covering non-Hyde abortion services. In the 11 State Exchanges that operated their own technology platform and had issuers that offered coverage of non-Hyde abortion services in 2019, we estimate that there are approximately 2,597,700 enrollees in QHPs covering non-Hyde abortion services. The total number of enrollees in QHPs covering non-Hyde abortion services is approximately 3.04 million in 2019. The number of QHPs covering non-Hyde abortion services will be higher in 2020 compared to 2019. Therefore, we are using the number of enrollees in such QHPs in 2019 as a lower bound for the number of enrollees who will experience an increase in burden as a result of the finalized policies.

Assuming 1.5 enrollees per policy, issuers and State Exchanges performing premium billing and payment processing will be required to send a separate bill to approximately 2 million

policy holders. We understand that, although enrollees can often choose to pay electronically or by phone, choose to utilize automatic payment deductions, and often opt out of receiving paper bills, many enrollees still opt to receive physical mail detailing their coverage. We also understand that many enrollees face barriers to accessing the internet and have little choice but to receive paper bills. Because enrollees typically receive paper bills and because many enrollees already face barriers to accessing the internet, issuers are likely to experience an increased administrative cost in having to print an additional monthly bill for the majority of their policy holders. According to one commenter, issuers send paper bills to 92 percent of Exchange customers. We anticipate that the number of consumers opting for electronic bills will increase over time. Therefore, we assume that approximately 90 percent of policy holders will receive paper bills in 2020 and issuers and State Exchanges performing premium billing and payment processing will need to print and send approximately 1.82 million separate paper bills per month. Assuming materials and printing cost of $0.05 per page, issuers will incur additional monthly costs of approximately $91,200 to print separate bills for impacted policy holders in 2020. Assuming that issuers start sending separate bills in July 2020, for the 6 months in 2020, total cost for all issuers is estimated to be approximately $547,225. Assuming that more consumers will opt to receive electronic bills over time, we estimate that approximately 88 percent of policyholders will receive paper bills in 2021, and the annual cost for all issuers to send separate paper bills will be approximately $1,070,129. We assume that, in 2022, approximately 86 percent of policyholders will receive paper bills, and the annual cost for all issuers to send separate paper bills will be approximately $1,045,808. The average annual materials and printing cost over 3 years (2020 to 2022) will be approximately $887,721. Since issuers and State Exchanges performing premium billing and payment processing will be permitted to send both bills together when sending bills in a physical mailing, they will not incur any additional mailing costs. We assume that bills sent electronically can be sent at minimal cost and note that we have incorporated any associated IT changes to accommodate electronic billing changes based on this rule above, where we discussed premium billing and payment processing costs to issuers and State Exchanges.

FFE issuers are subject to future HHS compliance reviews, requiring issuers in the FFE to maintain and submit records to HHS showing compliance with separately billing for the portion of the policy holder's premium attributable to non-Hyde abortion services as specified in this rule. Commenters stated that HHS excluded an evaluation of the burden and cost for FFE issuers to participate in the additional HHS compliance reviews, ignoring the potential for any new costs associated with this requirement, such as documenting all efforts for audit purposes. We have revised our burden estimates to account for additional recordkeeping costs not reflected in the proposed rule's estimates but reiterate that the requirements associated with compliance reviews were already assessed and subsumed within issuer burdens described in previously finalized rules, including the information collection currently approved under OMB control number: 0938–1277 (Program Integrity: Exchange, Premium Stabilization Programs, and Market Standards; Amendments to the HHS Notice of Benefit and Payment Parameters for 2014 (CMS–10516)).

To show compliance with FFE standards and program requirements, all issuers seeking QHP certification in FFEs are required to submit responses to program attestations as part of their QHP application. This response already includes an attestation that the issuer agrees to adhere to the requirements related to the segregation of funds for abortion services implemented in § 156.280. We have determined that the requirements associated with QHP certification have already been assessed and encompassed by the information collection currently approved under OMB control number: 0938–1187 (Establishment of Exchanges and Qualified Health Plans; Exchange Standard for Employers (CMS–10433)).

C. Summary of Annual Burden Estimates for Proposed Requirements

TABLE 6—ANNUAL RECORDKEEPING AND REPORTING REQUIREMENTS

Regulation section(s)	OMB control number	Number of respondents	Number of responses	Burden per response (hours)	Total annual burden (hours)	Total labor cost of reporting ($)	Capital costs (printing and materials) ($)	Total cost ($)
§ 156.280	0938–NEW	97	97	30,600	2,968,200	$218,571,684	$887,721	$219,459,405
Total		97	97	30,600	2,968,200	218,571,684	887,721	219,459,405

D. Submission of PRA-Related Comments

We have submitted a copy of this final rule to OMB for its review of the rule's information collection and recordkeeping requirements. The requirements are not effective until they have been approved by OMB.

IV. Regulatory Impact Analysis

A. Statement of Need

This final rule implements standards to ensure enrollees receive the correct amount of APTC and CSRs at the time of enrollment or re-enrollment via periodic data matching requirements. In addition, the provisions in this rule strengthen the mechanisms and tools for overseeing ongoing compliance by State Exchanges with federal program requirements. Finally, the provisions in this rule refine some of the methods for billing of the separate payment for the portion of the policy holder's premium attributable to non-Hyde abortion services to better align with congressional intent regarding the separate payments provision of section 1303 of the PPACA. The following summary focuses on the benefits and costs of the requirements in this final rule.

B. Overall Impact

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on

Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity), to the extent permitted by law. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for rules with economically significant effects ($100 million or more in at least 1 year). This final rule is economically significant within the meaning of section 3(f)(1) of the Executive Order. Therefore, OMB has reviewed these regulations and HHS has provided an assessment of the potential costs, benefits, and transfers associated with this rule. Accordingly, we have prepared an RIA that presents the costs and benefits of this final rule.

C. Impact Estimates of the Program Integrity Provisions and Accounting Table

In accordance with OMB Circular A–4, Table 7 depicts an accounting statement summarizing HHS's assessment of the benefits, costs, and transfers associated with this regulatory action. Table 8 includes a summary of annualized values of costs, over a perpetual time horizon at 7 percent discount rate for Executive Order 13771 (E.O. 13771). This final rule implements standards that will have numerous effects, including ensuring that eligible enrollees receive the correct amount of APTC and CSR (as applicable); improving alignment with the separate payment requirement in section 1303 of the PPACA by requiring QHP issuers to send separate bills to policy holders for the portion of their premium attributable to non-Hyde abortion services; conducting effective and efficient monitoring and oversight of State Exchanges to ensure that enrollees are receiving the correct amount of APTC and CSRs in State Exchanges, and that State Exchanges are meeting the standards of federal law in a transparent manner; and protecting the interests of taxpayers, and enrollees, and the financial integrity of Exchanges through oversight of health insurance issuers, including ensuring compliance with the requirements of section 1303 of the PPACA. We are unable to quantify certain benefits and costs of this final rule—such as benefits to enrollees for timely notification of their dual enrollment in other qualifying coverage such as Medicare, Medicaid/CHIP, and, if applicable, the BHP, potential increases in cost to states for increased oversight activities and to establish access to federal data systems to verify eligibility for or enrollment in Medicaid/CHIP or Medicare, and potential costs to enrollees such as increased out-of-pocket costs related to billing changes due to the separate payment requirements for non-Hyde abortion services. The effects in Table 7 reflect qualitatively assessed impacts and estimated direct monetary costs and transfers resulting from the provisions of this final rule for health insurance issuers. States impacted by PDM requirements will incur costs of up to $6.9 million in 2020. In addition, we estimate that issuers, State Exchanges, FFEs, and consumers impacted by the separate billing and payment requirements will incur costs of approximately $546.1 million in 2020, $232.1 million in 2021, $230.7 million in 2022, and $229.3 million 2023 onwards (see Table 10 below). We also expect that transfers from the federal government to consumers in the form of premium tax credits will decrease as a result of Exchanges conducting Medicare, Medicaid/CHIP, and, if applicable, BHP PDM, and increase as a result of separate billing and payment requirements. The net increase in premium tax credits is estimated to be approximately $106 million in 2021 and $96 million in 2022 onwards.

TABLE 7—ACCOUNTING TABLE

Benefits:

Qualitative:

- Better alignment of the regulatory requirements for QHP issuer billing of premiums with the separate payment requirement in section 1303 of the PPACA.
- Clearer regulatory requirements for how frequently Exchanges should be conducting periodic checks for dual enrollment in other qualifying coverage.
- Clearer regulatory requirements for State Exchanges around CMS's oversight and reporting process that allows for more effective oversight of State Exchanges.

Costs:	Estimate (million).	Year Dollar	Discount Rate (percent).	Period Covered
Annualized Monetized ($/year)	$304.09	2019	7	2020–2024
	$298.92	2019	3	2020–2024

Quantitative:

- Burden incurred by issuers, states, federal government and enrollees to comply with provisions related to coverage of non-Hyde abortion services and the segregation of premiums for such services.
- Costs for State Exchanges not in compliance with regulatory requirements to conduct Medicare, Medicaid/CHIP, and, if applicable, BHP PDM.

TABLE 7—ACCOUNTING TABLE—Continued

Qualitative:

- Potential increase in costs to states for increased oversight of separate payment requirements.
- Potential increased costs incurred by enrollees who choose to make separate payments for coverage of non-Hyde abortion services.
- Potential increased burden and costs for State Exchanges to authorize access to federal data sources to verify Medicare and Medicaid/CHIP eligibility and/or enrollment, notifying enrollees when dual enrollment is detected, and process QHP coverage terminations.
- Potential increased burden for assisters, agents and brokers to explain new billing process.
- Potential increase in public spending and out-of-pocket costs to enrollees if there is an increase in unplanned pregnancies due to loss of abortion coverage and, with respect to public spending, if those unplanned pregnancies are experienced by individulas who would be eligible for public benefit programs.

- Potential decrease in broker and issuer revenue due to decrease in QHP enrollment.

Transfers:	Estimate (million).	Year Dollar percent.	Discount Rate	Period Covered
Federal Annualized Monetized ($/year)	$76.2	2019	7	2020–2024
	$77.7	2019	3	2020–2024

Quantitative:
- Total transfers from the federal government to enrollees due to an increase in premium tax credit payments.

Qualitative:
- Increase in premiums beginning in plan year 2021.
- Potential increase in out-of-pocket costs for enrollees who experience lapse in coverage for failing to make payments for coverage of non-Hyde abortion services due to confusion with new billing system.
- Potential increase in out-of-pocket costs for individuals who lose health insurance coverage due to increase in premiums.
- Potential increase in uncompensated care costs for people who lose health insurance coverage.

TABLE 8—E.O. 13771 SUMMARY TABLE

[In $ millions 2016 dollars, over a perpetual time horizon]

	Estimate (7% discount rate)
Annualized Costs	$182.98
Annualized Cost Savings	0
Annualized Net Costs	182.98

1. Functions of an Exchange (§ 155.200)

Our revisions to § 155.200(c) specifying that Exchanges must perform oversight functions or cooperate with activities related to oversight and financial integrity requirements are a clarification and not a new function. Therefore, they will not impose additional burdens on State Exchanges.

2. Eligibility Redetermination During a Benefit Year (§ 155.330)

Our requirement that Exchanges conduct Medicare PDM, Medicaid/CHIP PDM, and, if applicable, BHP PDM at least twice a year beginning with the 2021 calendar year, adds specificity to the existing requirement that Exchanges must periodically examine available data sources to determine whether Exchange enrollees have been determined eligible for or enrolled in other qualifying coverage such as Medicare, Medicaid, CHIP, or, if applicable, the BHP. Therefore, we expect the costs associated with this requirement to be minimal. However, State Exchanges that are not already conducting PDM with the required frequency, or deemed in compliance with the Medicaid, CHIP, and, if applicable, BHP PDM requirements, will be required to engage in IT system development activity in order to communicate with these programs and act on enrollment data either in a new way, or in the same way more frequently. Thus, there may be additional associated administrative cost for these State Exchanges to implement the proposed PDM requirements. We anticipate a majority (up to eight) of the twelve State Exchanges that operate their own technology platforms would be exempt from the requirement to perform Medicaid/CHIP, and, if applicable, BHP PDM because they have shared, integrated eligibility systems with their respective Medicaid programs, as such they would be deemed in compliance with this requirement. However, we are not able to confirm the exact number because we have not yet set specific criteria and process to assess and confirm which State Exchanges would be exempt, and would need additional operational information from State Exchanges to confirm our assessment. We will establish and engage in that process after finalization of the rule. For a State Exchange not already conducting Medicare, Medicaid/CHIP, and, if applicable, BHP PDM at least twice a year, and that does not already have a shared, integrated eligibility system with its respective Medicaid/CHIP, and, if applicable, BHP programs, we estimate that it will cost approximately $1,740,000 per State Exchange (a total of $6,960,000 for all 4 nonexempt State Exchanges) to build such capabilities in their system. We assume that this cost will be incurred primarily in 2020. These costs would be incurred by the State Exchange as they are required to be financially self-sustaining and do not receive federal funding for their establishment or operations.

We believe these changes will support HHS's program integrity efforts regarding the Exchanges by helping promote a balanced risk pool for the individual market as Medicare and Medicaid/CHIP beneficiaries tend to be higher utilizers of medical services, ensuring that consumers are accurately

determined eligible for APTC and income-based CSRs, and safeguarding consumers against enrollment in unnecessary or duplicative coverage. Such unnecessary or duplicative coverage, coupled with typically higher utilization, generally results in higher premiums across the individual market, leading to unnecessarily inflated expenditures of federal funds on PTC for taxpayers eligible for PTC in the individual market. We estimate that requiring State Exchanges to perform Medicare PDM twice a year will result in a reduction in PTC payments of approximately $500 million over a 9-year period (Table 9). We believe this will not have any discernable impact on premiums.

TABLE 9—MEDICARE PDM EFFECT ON PREMIUM TAX CREDIT OUTLAYS

Fiscal year	2021	2022	2023	2024	2025	2026	2027	2028	2029	Total
PTC ($ millions)	−40	−50	−50	−50	−60	−60	−60	−60	−70	−500

3. General Program Integrity Oversight Requirements (§ 155.1200)

We do not anticipate the changes to § 155.1200(b)(2) will result in any additional cost for State Exchanges because the changes leverage an existing reporting mechanism currently used by all State Exchanges, the annual SMART, for meeting eligibility and enrollment reporting requirements. Additionally, State Exchanges are already required to annually contract with, and budget accordingly for, an external independent audit entity to perform an annual financial and programmatic audit as required under § 155.1200(c). We believe the flexibility under the new § 155.1200(d)(2) to permit HHS to target the scope of annual programmatic audits to focus on the program areas that are most pertinent to a State Exchange model (including SBE–FPs), or have the greatest program integrity implications, would allow State Exchanges to utilize the funds that they already allocate to contracting with an external independent audit entity in the most cost-effective manner. We also believe the flexibility we are providing to State Exchanges in the sampling method employed by their external independent audit entities for testing the accuracy of eligibility determinations in the annual programmatic audits, along with the flexibility for HHS to set the reporting deadlines for State Exchanges under § 155.1200 on an annual basis, will also allow State Exchanges to utilize the funds that they have already allocated to these activities in the most cost-effective manner.

4. Segregation of Funds for Abortion Services (§ 156.280)

In § 156.280, we proposed to amend billing and premium collection requirements related to the separate payment requirement for coverage of abortions for which public funding is prohibited pursuant to section 1303 of the PPACA, as implemented at § 156.280. We originally proposed that QHP issuers send an entirely separate monthly bill in a separate envelope to the policy holder for only the portion of premium attributable to coverage of non-Hyde abortion services, and instruct the policy holder to pay the portion of their premium attributable to coverage of non-Hyde abortion services in a separate transaction from any payment the policy holder makes for the portion of their premium not attributable to coverage of non-Hyde abortion services. We are also finalizing that QHP issuers must begin complying with these billing changes on or before the date that is 6 months after publication of the final rule. If the date that is 6 months after publication of the final rule falls in the middle of the QHP issuer's billing cycle (in other words, after the QHP issuer has already sent out bills to policy holders for that month), QHP issuers would be expected to begin complying the next billing cycle immediately following that date. We will consider extending enforcement discretion to an Exchange or QHP that fails to timely comply with the separate billing policy as required under this final rule, if we find that the Exchange or QHP issuers attempted in good faith to timely meet the requirements. We believe these changes to the proposed policy will advance HHS's goal of more closely aligning the regulatory requirements for QHP issuer billing of premiums with the separate payment requirement in section 1303 of the PPACA, while also mitigating the overall burden to affected issuers, states, and enrollees.

HHS received many comments stating that we greatly underestimated the burden caused by these proposals. Although we recognized in the proposed rule that QHP issuers that cover non-Hyde abortion services would experience an increase in burden as a result of finalizing these changes, we are committed to mitigating issuer burden where possible and, as such, are finalizing changes to § 156.280(e)(2) that we believe will result in a lower overall regulatory burden than what issuers would have incurred if the provisions were finalized as originally proposed. Specifically, we are amending the proposals at § 156.280(e)(2) to finalize in a new paragraph at § 156.280(e)(2)(ii)(A) that QHP issuers offering coverage of non-Hyde abortion services through an Exchange must send an entirely separate monthly bill to the policy holder for the portion of premium attributable to coverage of non-Hyde abortion services, but they will be permitted to send this separate bill in the same mailing (although not in the same email or electronic communication) as the bill for the portion of the policy holder's premium not attributable to coverage of non-Hyde abortion services when sending paper copies of bills to policy holders. We are finalizing that, when issuers sending or issuing bills electronically, the issuer must send or issue a separate bill for the portion of the premium attributable to coverage of non-Hyde abortion services in a separate email or electronic communication from the bill for the rest of the policy holder's premium. We are also finalizing at a new paragraph § 156.280(e)(2)(ii)(B) the requirement that, although the QHP issuer would not be permitted to refuse a combined payment on the basis that the policy holder did not send two separate payments as requested by the QHP issuer, and to then terminate the policy, subject to any applicable grace period, for non-payment of premiums, the QHP issuer must continue to instruct the policy holder to pay the portion of their premium attributable to coverage of non-Hyde abortion services in a separate transaction from any payment the policy holder makes for the portion of their premium not attributable to coverage of non-Hyde abortion services. We are also finalizing that QHP issuers must begin complying with these billing changes on or before the date that is 6 months after publication of the final rule. We believe these changes to the proposed policy will advance HHS's goal of more closely aligning the regulatory requirements for QHP issuer billing of premiums with the separate payment requirement in

section 1303 of the PPACA, while also mitigating the overall burden to affected issuers, states, and enrollees.

However, we acknowledge that the changes we are finalizing will still result in additional burden for issuers. HHS received many comments on the original proposals arguing that the burden imposed on issuers would significantly exceed the estimated burden included in the proposed rule. Some commenters from the issuer community conducted internal surveys, providing detailed accounts to HHS of the various ways in which they believe HHS underestimated the burden and detailing the various issuer and Exchange activities that would be necessary for implementation that HHS failed to account for in estimating the burden.

The following one-time changes are issuer activities that commenters stated HHS should account for in response to the proposed policy, and that we expect may still be necessary for issuers under the amendments we are finalizing: Planning, assessment, budgeting, funding approval, and allocating funds and resources for the actual technical build (a process of 6 to 9 months); changes to system architecture to allow multiple billing statements per policy holder; changes to enrollment systems to identify enrollees subject to separate billing and payment requirements; automating the processes to send separate invoices (mail or electronic communication); adding electronic communications and payment links (for example, to issuer's online payment portal) for enrollees to pay separately for the separate bill; changes to call center training/scripting, response processes, billing-related outreach, and interactive voice response (IVR) technology; changes to enrollee notifications related to non-payment and the 3-month grace period; updating Health Insurance Casework System (HICS) and DOI complaint processes, changes to grievance/appeals processes; and testing to ensure accuracy of separate billing processes. Commenters also stated that HHS should have accounted for the development of new training materials. Commenters explained that issuers would need to develop additional materials and training modules for customer service representatives, brokers, and agents, so that they could address member questions and educate them, particularly on the risk of losing coverage should members fail to pay the multiple bills.

We expect the following one-time activities to add burden for issuers as issuers must still make system changes to accommodate policy holders paying separately, potential changes to binder payment processing to collect two separate payments to effectuate enrollment; changes to processes to intake payments, including automating ability to match identity and match multiple payments from a policy holder; changes to pay-by-phone and online payment portal to support dual invoices and separate payments, while also supporting combined payments for enrollees who do not make separate payments; changes to processes for enrollment and payment reconciliation, including 834 matching to effectuate enrollments; and adding new processes to address scenarios where an enrollee's payment is not processed because the bank flags payment as potentially fraudulent (expected to occur for multiple payments in the same day or $1 payments).

Commenters also noted several activities issuers would have to complete annually to effectively implement these proposals would also significantly raise the annual burden for issuers. The following annual changes are activities raised by commenters in response to the proposed policy, but that we expect will still be relevant under the amendments we are finalizing: Generating separate billing statements (paper or electronic) and additional member education materials to explain separate billing; administrative expenses in generating twice as many bills; quality assurance to ensure accuracy of separate billing statements; additional customer service resources, including additional staffing and training, to address enrollee questions, confusion, frustration, etc.; increased resources for HICS/DOI case resolution; system testing for billing accuracy; identifying enrollees who did not meet an issuer's premium payment threshold and enter a grace period for non-payment of premium if they fail to pay the second bill; managing the grace period process for a higher volume of enrollees who enter a non-payment grace period (notices, termination, appeals process, reinstatement), and verification and reconciliation of the two separate bills. Commenters also stated that issuer costs should account for additional staffing since issuers would need to hire additional FTEs for reconciliation and auditing of the enrollment, billing, delinquency and payment processes and to manage the added complexity for the Exchange back-end processes.

Because the policy as finalized will require QHP issuers to instruct the policy holder to pay the portion of their premium attributable to coverage of non-Hyde abortion services in a separate transaction from any payment the policy holder makes for the portion of their premium not attributable to coverage of non-Hyde abortion services, we anticipate that the burden associated with the following annual activities raised by commenters will still be relevant: Budgeting for fees for collecting and processing multiple payments, such as bank processing fees; processing and reconciling separate payments (paper and electronic) sent by enrollees; additional resources for manual review where automated processes are not able to reconcile enrollments and payments; and managing the grace period process for a higher volume of enrollees who enter a non-payment grace period (notices, termination, appeals process, reinstatement).

Comment: Many commenters expressed concerns that these burdens would fall hardest on those issuers in states that require QHPs to cover non-Hyde abortion services, and that if issuers in these states find the requirements overly burdensome they would not have an option to eliminate coverage of non-Hyde abortion services and would thus have to absorb all associated costs or pass those costs onto enrollees. One commenter stated that the proposals are also likely to have an impact off-Exchange, as issuers offering plans on the Exchange are also generally required under guaranteed availability to offer the plans off the Exchange, and that because these administrative processes are fixed investments across all plans, it is likely that many plans would simply change their systems to apply to all plans even though the proposals would only require QHPs to comply.

Response: Setting aside the question of whether state laws requiring coverage of non-Hyde abortion services on the Exchange are consistent with statutory conditions on federal funding from the Department to the States, we acknowledge that some states have such laws. The changes we are finalizing do not preempt state law regarding coverage of non-Hyde abortion services or otherwise attempt to coerce states into changing these laws. Although we acknowledge that issuers in these states would incur additional costs if they choose to continue offering individual market plans, HHS is refining the method issuers use to comply with the separate payment requirement, changes that we believe are necessary to align issuer billing with the separate payment requirement in section 1303 of the PPACA.

The burden and costs related to the one-time technical changes have been

previously estimated in section III ''Collection of Information Requirements'' of this final rule. We have also updated HHS's estimates in the Collection of Information Requirements section to reflect some of the increased annual burden to be incurred by issuers. Additionally, based on comments we received, we estimate that issuers will incur ongoing annual costs associated with activities such as processing and reconciling separate payments, support for enrollees who enter grace period for non-payments, customer service, outreach and compliance. We estimate that each issuer will incur additional annual costs of approximately $1 million for these activities. Assuming that issuers will start sending separate bills in July 2020, the total annual cost of for all 94 issuers will be approximately $47 million for the 6 months in 2020 and $94 million for 2021 onwards. Since issuers will not be able to take the costs incurred in 2020 into consideration when setting rates for the 2020 plan year, it is possible that some issuers will exit the individual market or incur losses. We acknowledge that QHP issuers may choose to make similar billing changes off-Exchange to maximize their investment in making system changes to comply with the separate billing policy required for on-Exchange QHPs. However, we note that the separate billing policy we are finalizing only requires QHP issuers to implement the required changes for their on-Exchange QHPs offering non-Hyde abortion coverage.

Comment: Commenters also stated that issuers would be required to consider the added operational and administrative costs when setting actuarially sound rates, which would lead to higher premiums for enrollees. Commenters also expressed concern that the additional administrative costs would be so high that they would place issuers at risk of not meeting the required Medical Loss Ratio (MLR) limits.

Response: We believe that the changes we are finalizing to § 156.280(e)(2) will result in a lower burden than the provisions as originally proposed and as such will lessen the degree to which issuers have to raise enrollee premiums. However, we acknowledge that issuers will still incur significant burden and costs as estimated above. Based on the total premiums in the 21 states that have QHP issuers offering non-Hyde abortion coverage, we estimate that there will be no premium impact in 2020 (as plan year 2020 premium rates will already be finalized), and an approximate premium impact of up to 1.0 percent in plan year 2021 and each year thereafter.

We also estimate that enrollment will be reduced in the impacted states very slightly as a result of the increase to premiums. In plan year 2021 and each year after, we estimate that APTC amounts will be increased by up to $146 million when premium rates reflect the projected additional administrative and operational expense burdens. We do not anticipate that the policies finalized at § 156.280(e)(2) will measurably increase MLR rebates as we believe that QHP issuers would either cease offering coverage of non-Hyde abortion services (unless state law requires QHP issuers to offer coverage of non-Hyde abortion services) in the plan year following the effective date to avoid issuing additional MLR rebates or would pay for the increased administrative costs from a different revenue source. Further, as noted elsewhere in this rule, among the previously acceptable methods for QHP issuers to comply with the separate payment requirement was sending a separate monthly bill for these services. Therefore, if any issuers already elected this option, there should be no change or impact on MLR rebates as a result of the policies finalized at § 156.280(e)(2). We believe these additional costs are necessary to achieve better alignment of issuer billing with the statute, and strikes a better balance between burden and benefit than if HHS were to require issuers to send the separate bill in a separate mailing.

Comment: Commenters also expressed concerns with the burdens these changes would impose on Exchanges, which commenters noted would need to make time consuming and resource intensive changes to their websites, enrollment systems, and customer service and outreach efforts (including the reallocation of marketing funds that currently provide critical enrollee outreach which drives Exchange success) to align with the separate billing and payment requirements, which would be costly and disrupt states' Exchange efficiency. Commenters noted a variety of changes Exchanges would be required to make, including communicating the new separate billing and payment requirement to enrollees during the enrollment process; updating the online payment portal (the ''Pay Now'' button on *HealthCare.gov*) to collect the binder payment through two separate transactions; updating the enrollment materials and notices that reference binder payment requirements to effectuate coverage, updating call center scripting and customer service to address questions related to separate billing and payment (since questions related to payments should be referred to the issuer, but that the call center should be prepared to answer questions about why enrollees are required to make multiple payments); and update complaint processes to address complaints and questions related to separate bills and payments.

One commenter estimated that the proposed changes would cost $250,000 annually for its State Exchange customer service center, $152,000 annually for customer outreach, and $19,000 annually to resolve customer complaints and appeals. Another commenter estimated that the proposals would cost its state Exchange an additional $2.9 million annually in customer service costs, $2.25–$2.75 million for IT system changes, and $3.6 million annually for outreach and education, which reflects one-quarter of that state Exchange's annual advertising and outreach budget. Commenters also stated that, because the proposed changes would lead to decreased QHP enrollment, the proposed rule would cause a corresponding loss of revenue to the Exchange. Commenters also highlighted how any lapse or loss of enrollee coverage due to these proposals would result in more individuals turning to state-funded programs or emergency care for their treatment needs and that any loss of coverage would decrease the size of the risk pool and increase the cost of uncompensated care, driving medical costs and health insurance rates higher generally. For example, one commenter estimated that each one percentage point decline in the uninsured rate is associated with a $167 million drop in uncompensated care.

Response: We acknowledge that these provisions will impact Exchange operations. Exchanges perform important enrollee-facing functions that could be integral to issuer and enrollee compliance with the new requirements. Ultimately, we believe the changes we are finalizing will mitigate some of the burden on Exchanges that would have been incurred if we were finalizing as proposed by decreasing potential enrollee confusion and lessening potential issuer burden.

We anticipate that State Exchanges will incur additional one-time costs associated with technical changes such as updating online payment portals to accept separate payments and updating enrollment materials and notices that reference binder payments. In addition, State Exchanges will incur ongoing annual costs associated with increased customer service, outreach, and compliance. Based on comments, we estimate that each State Exchange will

incur, on average, one-time costs of $750,000 in 2020, and ongoing annual costs of approximately $200,000 for the 6 months in 2020 and $400,000 in 2021. We anticipate that ongoing annual costs will decrease over time as consumers become used to receiving and paying separate bills. We estimate that ongoing annual costs will be approximately $300,000 for each State Exchange in 2022 and $200,00 in 2023 and after. The total one-time cost for all 12 State Exchanges affected by these requirements will be approximately $9 million in 2020. Total ongoing costs for all 12 State Exchanges is estimated to be approximately $2.4 million in 2020, $4.8 million in 2021, $3.6 million in 2022 and $2.4 million 2023 onwards. In addition, we anticipate that the 3 State Exchanges that perform premium billing and payment processing will incur annual ongoing costs similar to QHP issuers that offer coverage of non-Hyde abortion services, as discussed above. We estimate that each State Exchange that performs premium billing and payment processing will incur additional annual costs of approximately $1 million. The total annual cost for all 3 State Exchanges performing premium billing and payment processing will be approximately $1.5 million in 2020 and $3 million for 2021 onwards.

Comment: One commenter also stated that the federal government will incur additional expenses due to additional personnel time and other resources needed to ensure that QHPs on the FFEs comply with the proposed rule's requirements and to ensure compliance if a State Exchange is unable to do so, costs that will be passed on to consumers in the form of taxes.

Response: We acknowledge that the FFEs will experience added burden as a result of the final policy. However, because federal government compliance efforts will be covered primarily by FFEs user fees, we disagree that the added costs on the FFEs will be passed on to consumers in the form of taxes (though any increase in user fees may be passed on to enrollees in the form of increased premiums). We do, however, anticipate that the FFEs will incur additional costs due to one-time technical changes and increased call volumes and additional customer services efforts. We do not anticipate that the FFEs will need to make any operational changes to comply with these final policies. We estimate that the FFEs will incur a one-time cost of $750,000 in 2020 and ongoing annual cost of approximately $400,000 in 2020 and $800,000 in 2021 to implement these provisions. As consumers become used to receiving and paying separate bills, the ongoing costs should decrease. We estimate that ongoing costs will be approximately $600,000 in 2022 and $400,000 in 2023 onwards.

Comment: Commenters stated that Navigators and in-person assisters will also need to invest time and training resources necessary to ensure that they can provide support to enrollees (especially populations who would be disproportionately impacted by these proposals, including the most financially vulnerable and those with limited English proficiency) as they become acquainted with additional steps needed to maintain coverage as a result of the proposed changes. Commenters also noted that any level of QHP disenrollment resulting from the proposed changes will result in decreased broker revenue and potential loss of broker participation in the market.

Response: Although there also may be an impact on Navigators, brokers, and other assisters, we believe these entities receive training and generally keep abreast of policy changes as part of their normal duties. As such, we believe these requirements will not amount to any additional burden above that already experienced by Navigators, brokers, and other assisters as a result of providing support to enrollees who are navigating these new billing requirements.

Comment: Many commenters also stated that enrollees would incur ancillary costs that would further drive up administrative costs and burden for enrollees, including postage costs, money order fees, or other banking fees for the second bill and cautioned that these costs will be felt most strongly by low income enrollees.

Many commenters stated that these proposals would transfer the costs and burdens of accessing non-Hyde abortion services to enrollees who must seek coverage for abortion elsewhere or pay out-of-pocket. Commenters estimated that non-Hyde abortions can cost between $400 and $1900. Commenters noted that low-income women who lack insurance coverage for abortion often struggle to pay for the procedure out-of-pocket, causing financial hardship that can drive families further into poverty. Commenters also expressed concern that when legal abortion is inaccessible, people who seek to end their pregnancy turn to unsafe and illegal methods, risking arrest, serious injury, or even death. Commenters also suggested that the changes would have a disproportionate effect on enrollee groups who already face barriers to care at higher rates such as low-income individuals, young people, people of color, individuals with LEP, lesbian, gay, bisexual, transgender and queer enrollees, the Latinx community, people with disabilities, rural residents, individuals without access to the internet, and American Indian/Alaskan Native populations.

Response: We acknowledge that as originally proposed, the combination of issuer burden and enrollee confusion could have potentially led to a reduction in the availability of coverage of non-Hyde abortion services in insurance (either by issuers choosing to drop this coverage to avoid the additional costs or by enrollees having their coverage terminated for failure to pay the second bill), thereby increasing out-of-pocket costs for those seeking those services.

We understand that, even with the changes we are finalizing, the increased burden associated with issuers complying with the separate billing policy, could influence whether a QHP issuer continues offering coverage of non-Hyde abortion services in states that do not require it. However, we believe allowing the separate bill to be included in the same mailing (although not in the same email or other electronic communication), and allowing issuers to accept combined payments when policy holders fail to pay separately for the separate bill will mitigate some of the potential issuer and Exchange burden and consumer confusion associated with the proposed policy, thereby decreasing the likelihood that issuers will drop coverage of non-Hyde abortion services solely to avoid the burden associated with these changes or solely to avoid having to terminate enrollees coverage for non-payment of miniscule amounts.

We are also finalizing an enforcement posture that will further mitigate the risk of potential coverage loss. We intend to propose further rulemaking to change our regulations to mitigate this risk. Until we can effectuate such changes, we will exercise enforcement discretion as an interim step. Specifically, HHS will not take an enforcement action against a QHP issuer that adopts and implements a policy, beginning on or after the effective date for the separate billing policies, applied uniformly to all its QHP enrollees, under which an issuer does not place an enrollee into a grace period and does not terminate QHP coverage based solely on the policy holder's failure to pay the separate payment for coverage of non-Hyde abortion services. We note that the QHP issuer would still be required to collect the premium for the non-Hyde abortion coverage. We also

will not take enforcement action against QHP issuers that, beginning upon the effective date of the final rule, modify the benefits of a plan either at the time of enrollment or during a plan year to effectively allow enrollees to opt out of coverage of non-Hyde abortion services by not paying the separate bill for such services, resulting in the enrollee having a modified plan that does not cover non-Hyde abortion services and that no longer obligates the enrollee to pay the required premium for such services. QHP issuers taking this approach should implement appropriate measures to distinguish between a policy holder's inadvertent non-payment of the separate bill for non-Hyde abortion services and a policy holder's intentional nonpayment of the separate bill. Although both of these approaches would be entirely optional for a QHP issuer, we believe that offering this enforcement discretion strikes an appropriate balance between honoring section 1303's requirement for issuers to calculate the actuarial cost of non-Hyde abortion coverage and bill and collect premiums for such coverage in separate transactions, protecting enrollees against inadvertent losses of coverage, and ensuring all enrollees have access to coverage that meets their needs and that does not result in their supporting coverage for non-Hyde abortion services to which they object. We acknowledge that QHP issuers that do not utilize this available enforcement discretion may subsequently experience a higher number of enrollee terminations as a result of delinquent premium payments, which could influence whether a QHP issuer continues offering coverage of non-Hyde abortion services in states that do not require it.

Because enrollees will be instructed to make separate payments, those that follow the instructions may need to pay for additional postage, money order fees, credit card fees, or other banking fees for the second bill depending on how the QHP issuer implements this policy. For example, policy holders who have funds automatically withdrawn from their bank accounts may need to arrange for a second withdrawal and may encounter additional fees. Additionally, because QHP issuers often incur fees for credit card transactions and these fees would double when a policy holder is paying in two separate transactions, QHP issuers may decide to transfer the cost of those credit card transaction fees onto policy holders choosing to pay via credit card rather than covering the cost of those transactions themselves. Policy holders that pay their premium bills via money order may need to pay an additional fee for the additional money order they submit for payment of the separate bill.

Comment: Many commenters stated that the proposals would cause considerable and unnecessary confusion and frustration for enrollees that may jeopardize their health insurance coverage by making it more difficult for policy holders to pay their premium bills, which could potentially result in their coverage being terminated for unintentional non-payment. Commenters also expressed concerns that despite consumer education and outreach, enrollees would likely not understand this change in billing.

Many commenters also stated that we underestimated the number of enrollees who would be impacted by these proposals. One commenter stated that there are 2 million enrollees alone in states where non-Hyde abortion coverage is required in all plans. Another commenter conducted an internal member survey, to which ten issuers responded, indicating that 2.4 million enrollees would be impacted across these ten issuers. This commenter noted that these ten issuers do not represent all health insurance issuers who would be required to comply with the proposals and that, thus, the number of affected enrollees would be greater than 2.4 million. Another commenter stated that the rule would impact 3 million enrollees. As such, commenters stated that we underestimated how much it would cost enrollees annually to comply with the proposals. Commenters also objected that we excluded the cost of enrollees learning in our estimate.

Response: We based our initial estimates on 2018 QHP Certification data, and we acknowledge that the estimates may not have captured the exact number of enrollees that may be impacted by this final rule. In response to comments, we have reviewed our methodology and have updated our enrollee estimates accordingly. We also acknowledge that enrollees may initially be confused by receiving a separate bill for the portion of their premium attributable to coverage of non-Hyde abortion services in the same envelope as the bill for the rest of their premium. We believe that the provisions as finalized will minimize enrollee confusion surrounding the second bill for those receiving paper bills and will help to ensure that policy holders pay the entire premium due including the portion attributable to non-Hyde abortion services. There is still potential for confusion and loss of coverage for enrollees who receive electronic bills, due to failure to pay the second bill sent through a separate electronic communication, but the mechanisms by which electronic bills are paid may mitigate or lessen the potential for confusion over separate bills. We believe enrollee outreach and education will assist in further mitigating this risk.

Based on 2019 QHP certification data for the FFEs and SBE–FPs, we now estimate that there are approximately 442,400 enrollees in QHPs covering non-Hyde abortion services. In the 11 State Exchanges that operated their own technology platforms and had issuers that offered coverage of non-Hyde abortion services in 2019, we estimate that there are approximately 2,597,700 million enrollees enrolled in QHPs offering coverage for non-Hyde abortion. As noted previously in section III ''Collection of Information Requirements'' of this final rule, we estimate that there are approximately 3.04 million enrollees impacted by these provisions. Assuming 1.5 enrollees per policy, issuers will be required to send a separate bill to approximately 2 million policy holders. We believe that finalizing the policies to allow for the separate bill to be sent in the same mailing with the bill for the rest of the policy holder's premium will minimize enrollee confusion and burden.

We acknowledge that some policy holders will fail to pay in a separate transaction for both bills, and acknowledge that the burden may be moderately higher for those policy holders who follow instructions to pay in separate transactions. We also acknowledge that enrollees may experience burden in receiving a separate bill to which they are not yet accustomed in the same mailing as for the other portions of their premium or in a separate electronic communication. As such, using the May 2018 National Occupational Employment and Wage Estimates United States, Department of Labor's Bureau of Labor Statistics (BLS) (*https://www.bls.gov/oes/current/oes_stru.htm*), listed national mean hourly wage for the 25th percentile,[28] we estimate that for the 2020 plan year each policy holder will incur a burden of approximately 1 hour (at a cost of $12.37 per hour) to read and understand the separate bills received the first time and seek help from customer service if necessary, and approximately 5 minutes for each of the subsequent 5 months, resulting in a total estimated annual burden of 1.42 hours with an associated annual cost of approximately $18. For

[28] The 25th percentile mean hourly wage most closely resembles the group of enrollees likely to be affected by this change as most enrollees enrolled in QHPs on the Exchange are between 100 percent and 400 percent of the federal poverty level.

all policy holders we estimate that the initial 2020 burden will be approximately 2.9 million hours with and associated annual cost of $35.5 million. For subsequent years we estimate that enrollees will require approximately 5 minutes per month to read and understand their statements, resulting in an estimated annual burden of 1 hour with an associated annual cost of approximately $12. For all policy holders, we estimate that the annual enrollee burden will be approximately 2 million hours with an associated annual cost of approximately $25.1 million.

We also note that, although policy holders may experience burden related to reading and understanding the separate bills, there are non-quantifiable benefits to policy holders in QHPs covering non-Hyde abortion who hold conscience objections to such coverage or policy holders who seek a better understanding of what their health care dollars are purchasing.

HHS continues to believe that, although these changes will increase enrollee burden, this burden is reasonable and justified because it will achieve better alignment of the regulatory requirements for QHP issuer billing of premiums with the separate payment collection requirement in section 1303 of the PPACA.

TABLE 10—SUMMARY OF COSTS RELATED TO SEPARATE BILLING AND PAYMENT REQUIREMENTS

	2020	2021	2022	2023	2024
Issuers	$482,616,844	$195,252,923	$195,228,601	$195,216,441	$195,216,441
States	11,400,000	4,800,000	3,600,000	2,400,000	2,400,000
State Exchanges with payment portals	15,385,201	6,197,323	6,197,323	6,197,323	6,197,323
Consumers	35,517,268	25,071,013	25,071,013	25,071,013	25,071,013
Federal Government	1,150,000	800,000	600,000	400,000	400,000
Total	546,069,313	232,121,259	230,696,938	229,284,777	229,284,777

D. Regulatory Review Costs

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this final rule, we estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique reviewers on similar Exchange-related CMS rules will be the number of reviewers of this final rule. We acknowledge this assumption may understate or overstate the costs of reviewing this rule. It is possible that not all reviewers will review the rule in detail. For these reasons, we consider the number of past reviewers on similar CMS rules will be a fair estimate of the number of reviewers of this rule.

We recognize that different types of entities may be affected by only certain provisions of this final rule, and therefore, for the purposes of our estimate, we assume that each reviewer reads approximately 50 percent of the rule.

Using the wage information from the BLS for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this rule is $109.36 per hour, including overhead and fringe benefits.[29] We estimate that it would take approximately 1 hour for each reviewer to review the relevant portions of this final rule. We received 75,439 comments, including 70,396 comments that were substantially similar to one of 13 different form letters, resulting in 5,043 unique comments on the proposed rule. We further assume that for the form letters received, only the staff at the organization that arranged for those letters will review the final rule. Therefore, we estimate that there will be 5,056 individuals that review the final rule resulting in an estimated total cost of review of approximately $552,924 ($109.36 × 5,056 reviewers).

E. Regulatory Alternatives Considered

In developing the policies contained in this final rule, we considered numerous alternatives. Below we discuss the key regulatory alternatives that we considered.

For the eligibility determination during a benefit year, we considered not defining ''periodically'' for the frequency of Medicare, Medicaid/CHIP, or BHP, if applicable, PDM as twice a year in lieu of further outreach, education, and coordination with State Exchanges to identify and notice consumers who may also be enrolled in other qualifying coverage with APTC/CSRs. However, we believe it is critical that consumers receive timely notification of their potential dual enrollment in other qualifying coverage to ensure that consumers are accurately determined eligible for APTC and income-based CSRs, and to ensure that consumers are not enrolling in unnecessary or duplicative coverage. As previously discussed in the preamble of the proposed rule, such unnecessary or duplicative coverage, coupled with typically higher utilization generally results in higher premiums across the individual market leading to unnecessary expenditures of federal funds on PTC for taxpayers eligible for PTC in the individual market.

In finalizing the proposed changes to the general program integrity and oversight requirements in § 155.1200, we considered not taking any action. However, because the existing requirements under § 155.1200(b) did not accurately reflect the current structure of CMS's oversight approach and reporting requirements for State Exchanges, not taking any action could have prevented HHS from being able to accurately describe our reporting requirements and strengthen our oversight processes for State Exchanges. In particular, we needed to clarify that the eligibility and enrollment reports required under § 155.1200(b)(2) were part of the annual compliance reports that State Exchanges were submitting to us, and did not require submission of a separate report. Thus, the amendments to § 155.1200(b) do not reflect an expansion of State Exchange reporting obligations but instead were intended to capture the existing annual compliance reports (such as the SMART) that encompass eligibility and enrollment reporting, as well as compliance across other Exchange program reqirements under 45 CFR part 155, that State Exchanges currently submit to HHS. Also, because the existing external programmatic audit requirements under § 155.1200(d) did not specify how the audits needed to verify the accuracy of eligibility determinations made by State Exchanges, not taking any action would have prevented CMS from strengthening oversight processes by identifying a consistent procedure for these State Exchanges and their auditors to

[29] *https://www.bls.gov/oes/current/oes_nat.htm.*

implement in order to ensure accurate eligibility determinations.

In finalizing the proposed changes to § 155.1200(c) and (d), we also considered the alternative of narrowing the focus of the external programmatic audits to only 45 CFR part 155 subparts D and E, which cover Exchange eligibility and enrollment requirements. This approach would have focused the State Exchange's auditing resources to the areas with highest program integrity impact. However, this approach would essentially exclude SBE–FPs from the external programmatic audit requirements altogether because SBE–FPs utilize the federal platform to carry out their eligibility and enrollment functions. Additionally, this approach would have limited our oversight in other program integrity areas that are important for all State Exchanges, such as consumer outreach and assistance. Because the external audit requirements under § 155.1200 is one of the only oversight tools we have for State Exchanges, we did not want to limit the scope of the Exchange functions that the external programmatic audits must cover. Instead, the approach finalized in this rulemaking allows us to specify the Exchange functions that are applicable to each State Exchange model through annual technical operational guidance. As State Exchanges continue to evolve and mature, this approach also provides HHS with the flexibility to focus the audits on emerging issues that raise program integrity concerns, while minimizing burden on State Exchanges to the extent possible.

In finalizing the requirement that issuers separately bill for the portion of the policy holder's premium attributable to the cost of including coverage of non-Hyde abortion services in the QHP, and permit policy holders to pay for these amounts in a separate transaction if they so choose, as described at § 156.280(e)(2), we considered maintaining the current methods of billing and collection without modification. We acknowledge that maintaining the current policy would promote stability for issuers and conserve administrative and operational resources by allowing QHP issuers to maintain their current process for billing for and collecting these separate payments. However, by requiring QHP issuers to separately bill for the portion of the policy holder's premium attributable to coverage of non-Hyde abortion services, we believe we are strengthening alignment of issuer billing with the statutory requirements for collecting a separate payment for these services required under section 1303 of the PPACA.

We also considered finalizing the changes as originally proposed. However, we believe the changes we are finalizing will help to maximize the net benefit of achieving better statutory alignment while also mitigating burden where possible. For example, we considered finalizing the proposed requirement that issuers would be required to send the separate bill in a separate mailing or electronic communication. This would have resulted in additional mailing costs of approximately $11 million in 2021 for all issuers. However, we believe allowing issuers to send the separate bill in the same mailing (although not in the same electronic communication) and allowing issuers to accept combined payments if a policy holder fails to pay the separate bill in a separate transaction will assist in mitigating the burden associated with this policy change by preventing unnecessary postage and mailing related costs and will mitigate issuer and Exchange burden and enrollee confusion generally associated with the proposed policy. We also believe the separate bill could assist in clarifying for enrollees that their plan covers non-Hyde abortion services and at what cost, increasing overall QHP transparency. Furthermore, we believe these changes will still better align issuer billing with section 1303 of the PPACA.

We also considered finalizing the rule without a requirement that issuers instruct policy holders to pay in a separate transaction. We understand that requiring issuers make this instruction and make reasonable efforts to collect the payment separately carries up-front and annual costs for issuers. However, we believe that instructing policy holders to pay the separate bill in a separate transaction is important to achieving better alignment of the regulatory requirements for QHP issuer billing of enrollee premiums with the separate payment requirement in section 1303 of the PPACA.

In addition, we considered requiring issuers to comply with the separate billing requirements within 3 months after the publication date of this final rule. We rejected this option because we estimated that one-time costs would have increased by 100 percent due to the shortened implementation period and estimated that total costs for issuers, State Exchanges, FFEs, and consumers would have been approximately $740 million in 2020. We opted to finalize a later effective date to avoid such a burden increase.

F. Regulatory Flexibility Act

The RFA requires agencies to prepare an initial RFA to describe the impact of the final rule on small entities, unless the head of the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. The RFA generally defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a not-for-profit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of ''small entity.'' HHS uses a change in revenue of more than 3 to 5 percent as its measure of significant economic impact on a substantial number of small entities.

In this final rule, we set standards for certain issuers related to the collection of a separate payment for the premium portion attributable to coverage for certain abortion services. Because we believe that insurance firms offering comprehensive health insurance policies generally exceed the size thresholds for ''small entities'' established by the SBA, we do not believe that an initial regulatory flexibility analysis is required for such firms.

For the purposes of the RFA, we expect health insurance issuers to be affected by this final rule. We believe that health insurance issuers would be classified under the North American Industry Classification System code 524114 (Direct Health and Medical Insurance Carriers). According to SBA size standards, entities with average annual receipts of $38.5 million or less would be considered small entities for these North American Industry Classification System codes. Issuers could possibly be classified in 621491 (HMO Medical Centers) and, if this is the case, the SBA size standard would be $32.5 million or less.[30] We believe that few, if any, insurance companies underwriting comprehensive health insurance policies (in contrast, for example, to travel insurance policies or dental discount policies) fall below these size thresholds.

Therefore, we are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Social Security Act requires us to

[30] *https://www.sba.gov/document/support-table-size-standards.*

prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This final rule will not have a significant impact on small rural hospitals. Therefore, the Secretary has determined that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

G. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing any rule that includes any federal mandate that may result in expenditures in any 1 year by a state, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately $154 million. We anticipate that costs incurred by state, local, or tribal governments and the private sector will cross this threshold. States impacted by the separate billing and payment requirements at § 156.280 may incur costs of approximately $26.8 million in 2020, 11 million in 2021, $9.8 million in 2022 and $8.6 million in 2023 and each year after. In addition, states impacted by PDM requirements will incur costs of up to $6.9 million in 2020. Issuers impacted by the separate billing and payment requirements will incur costs of approximately $482.6 million in 2020 and approximately $195.3 million each year after.

H. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. This final rule does not impose substantial direct costs on state and local governments or preempt state law. However, we believe the rule has Federalism implications.

In HHS's view, this regulation has Federalism implications due to our requirements that Exchanges conduct Medicare, Medicaid/CHIP, and, if applicable, BHP PDM at least twice a year, beginning with the 2021 calendar year. As discussed earlier in this final rule, we received three comments that were opposed to the requirement to conduct Medicare, Medicaid/CHIP and, if applicable, BHP PDM at least twice yearly, cautioning us that defining the exact precise frequency and nature of PDM encroached upon the sovereignty of the State Exchanges. However, HHS believes that the Federalism implications are substantially mitigated because the requirement sets only a minimum frequency with which Exchanges must conduct Medicare, Medicaid/CHIP, and, BHP, if applicable, PDM, which is already required to be conducted periodically; State Exchanges continue to have the flexibility to conduct PDM with greater frequency and the best way they see fit to implement the requirements set forth in § 155.330(d). Additionally, as discussed earlier in this final rule, ensuring consumers are enrolled in the appropriate coverage remains a top priority for HHS and ensuring that APTC is paid appropriately is a requirement set forth in § 155.330(d)(1)(ii) to mitigate the risk of federal dollars incorrectly leaving the federal Treasury in the form of APTC during the year. HHS believes that PDM plays a vital role in ensuring the health of all Exchanges, ensuring all consumers are enrolled in the appropriate coverage and in the case of Medicare enrollment, signing up at the appropriate time to avoid late enrollment penalties, and finally reduces the risk that consumers have to pay back all or some of APTC paid on their behalf during months of overlapping coverage when they file their federal income taxes.

Additionally, the changes to State Exchange oversight and reporting requirements in § 155.1200 have Federalism implications since those rules require State Exchanges to submit certain reports to HHS and require them to enter into contracts with an external independent audit entity to perform audits, and incur the associated costs. However, HHS believes that the Federalism implications are substantially mitigated because the changes do not impose new requirements on State Exchanges, but rather add specificity and flexibility with respect to the existing requirements. Therefore, HHS believes it has balanced states' interests in operating State Exchanges with the need to ensure proper federal oversight. By doing so, it is HHS's view that we have complied with the requirements of Executive Order 13132.

As discussed earlier in this final rule, commenters stated that the separate billing and payment proposals at § 156.280 raise Federalism concerns under the Tenth Amendment because the proposals are designed to penalize states that have laws requiring QHPs to provide coverage of non-Hyde abortion services by requiring states—through their respective Exchanges and DOIs—to adopt new oversight responsibilities, and make systemic changes to fit the alterations the proposals require. As explained previously, we disagree that this policy raises Federalism concerns. Setting aside the question of whether state laws requiring coverage of non-Hyde abortion services on the Exchange are consistent with statutory conditions on federal funding from the Department to the States, we acknowledge that some states have such laws. However, the changes we are finalizing do not preempt state law regarding coverage of non-Hyde abortion services or otherwise attempt to coerce states into changing these laws. HHS is simply refining the method with which issuers use to comply with the separate payment requirement. We refer readers to section II.B of this final rule regarding the discussion of § 156.280 for further information.

I. Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, entitled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017 and requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' This final rule is expected to be an Executive Order 13771 regulatory action. We estimate that this rule generates $182.98 million in annualized costs, discounted at 7 percent relative to year 2016, over a perpetual time horizon. Details on the estimated costs of this rule can be found in the preceding analyses.[31]

J. Congressional Review Act

This final rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801, *et seq.*), which specifies that before a rule can take effect, the federal agency promulgating the rule shall submit to each House of the Congress and to the Comptroller General a report

[31] We estimate costs of approximately $553.6 million in 2020, approximately $232.1 million in 2021, approximately $230.7 million in 2022, and annual costs of approximately $229.3 million thereafter. Thus the annualized value of costs, as of 2016 and calculated over a perpetual time horizon with a 7 percent discount rate, is $182.98 million.

containing a copy of the rule along with other specified information, and has been transmitted to the Congress and the Comptroller General for review.

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

List of Subjects

45 CFR Part 155

Administrative practice and procedure, Advertising, Brokers, Conflict of interests, Consumer protection, Grants administration, Grant programs-health, Health care, Health insurance, Health maintenance organizations (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs-health, Medicaid, Organization and functions (Government agencies), Public assistance programs, Reporting and recordkeeping requirements, Technical assistance, Women and youth.

45 CFR Part 156

Administrative practice and procedure, Advertising, Advisory committees, Brokers, Conflict of interests, Consumer protection, Grant programs-health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Loan programs-health, Medicaid, Organization and functions (Government agencies), Public assistance programs, Reporting and recordkeeping requirements, State and local governments, Sunshine Act, Technical assistance, Women, Youth.

For the reasons set forth in the preamble, the Departement of Health and Human Servcies amends 45 CFR parts 155 and 156 as set forth below:

PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT

■ 1. The authority citation for part 155 continues to read as follows:

Authority: 42 U.S.C. 18021–18024, 18031–18033, 18041–18042, 18051, 18054, 18071, and 18081–18083.

■ 2. Section 155.200 is amended by revising paragraph (c) to read as follows:

§ 155.200 Functions of an Exchange.

* * * * *

(c) *Oversight and financial integrity.* The Exchange must perform required functions and cooperate with activities related to oversight and financial integrity requirements in accordance with section 1313 of the Affordable Care Act and as required under this part, including overseeing its Exchange programs and non-Exchange entities as defined in § 155.260(b)(1).

* * * * *

■ 3. Section 155.330 is amended by revising paragraph (d)(1) introductory text and adding paragraph (d)(3) to read as follows:

§ 155.330 Eligibility redetermination during a benefit year.

* * * * *

(d) * * *

(1) *General requirement.* Subject to paragraph (d)(3) of this section, the Exchange must periodically examine available data sources described in §§ 155.315(b)(1) and 155.320(b) to identify the following changes:

* * * * *

(3) *Definition of periodically.* Beginning with the 2021 calendar year, the Exchange must perform the periodic examination of data sources described in paragraph (d)(1)(ii) of this section at least twice in a calendar year. State Exchanges that have implemented a fully integrated eligibility system with their respective State Medicaid programs, that have a single eligibility rules engine that uses MAGI to determine eligibility for advance payments of the premium tax credit, cost-sharing reductions, Medicaid, CHIP, and the BHP, if a BHP is operating in the service area of the Exchange, will be deemed in compliance with the Medicaid/CHIP PDM requirements and, if applicable, BHP PDM requirements, in paragraphs (d)(1)(ii) and (d)(3) of this section.

* * * * *

■ 4. Section 155.1200 is amended by—

■ a. Revising paragraphs (b) introductory text, (b)(1) and (2), and (c) introductory text;

■ b. Revising paragraphs (d)(2) and (3);

■ c. Redesignating (d)(4) as paragraph (d)(5);

■ d. Adding a new paragraph (d)(4); and

■ e. Revising newly redesignated paragraph (d)(5).

The revisions and addition read as follows:

§ 155.1200 General program integrity and oversight requirements.

* * * * *

(b) *Reporting.* The State Exchange must, at least annually, provide to HHS, in a manner specified by HHS and by applicable deadlines specified by HHS, the following data and information:

(1) A financial statement presented in accordance with GAAP,

(2) Information showing compliance with Exchange requirements under this part 155 through submission of annual reports,

* * * * *

(c) *External audits.* The State Exchange must engage an independent qualified auditing entity which follows generally accepted government auditing standards (GAGAS) to perform an annual independent external financial and programmatic audit and must make such information available to HHS for review. The State Exchange must:

* * * * *

(d) * * *

(2) Compliance with subparts D and E of this part 155, or other requirements under this part 155 as specified by HHS;

(3) Processes and procedures designed to prevent improper eligibility determinations and enrollment transactions, as applicable;

(4) Compliance with eligibility and enrollment standards through sampling, testing, or other equivalent auditing procedures that demonstrate the accuracy of eligibility determinations and enrollment transactions; and

(5) Identification of errors that have resulted in incorrect eligibility determinations, as applicable.

PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

■ 5. The authority citation for part 156 is revised to read as follows:

Authority: 42 U.S.C. 18021–18024, 18031–18032, 18041–18042, 18044, 18054, 18061, 18063, 18071, 18082, 26 U.S.C. 36B, and 31 U.S.C. 9701.

■ 6. Section 156.280 is amended by—

■ a. Revising the section heading;

■ b. Redesignating paragraph (e)(2)(ii) as paragraph (e)(2)(iii);

■ c. Adding a new paragraph (e)(2)(ii); and

■ d. Revising newly redesignated paragraph (e)(2)(iii).

The addition and revision read as follows:

§ 156.280 Separate billing and segregation of funds for abortion services.

* * * * *

(e) * * *

(2) * * *

(ii) Beginning on or before the first billing cycle following June 27, 2019, to satisfy the obligation in paragraph (e)(2)(i) of this section—

(A) Send to each policy holder of a QHP monthly bills for each of the amounts specified in paragraphs (e)(2)(i)(A) and (B) of this section, either by sending separate paper bills which may be in the same envelope or mailing,

or by sending separate bills electronically, which must be in separate emails or electronic communications; and

(B) Instruct the policy holder to pay each of the amounts specified in paragraphs (e)(2)(i)(A) and (B) of this section through separate transactions. Notwithstanding this instruction, if the policy holder fails to pay each of these amounts in a separate transaction as instructed by the issuer, the issuer may not refuse the payment and initiate a grace period or terminate the policy holder's QHP coverage on this basis.

(iii) Deposit all such separate payments into separate allocation accounts as provided in paragraph (e)(3) of this section. In the case of an enrollee whose premium for coverage under the QHP is paid through employee payroll deposit, the separate payments required under paragraph (e)(2)(i) of this section shall each be paid by a separate deposit.

* * * * *

Dated: December 16, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: December 18, 2019.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2019–27713 Filed 12–20–19; 8:45 am]

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Part VI

Department of Transportation

Office of the Secretary

14 CFR Parts 11, 300, and 302

49 CFR Parts 1, 5, 7, et al.

Administrative Rulemaking, Guidance, and Enforcement Procedures; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 11, 300, and 302

49 CFR Parts 1, 5, 7, 106, 211, 389, 553, and 601

RIN 2105–AE84

Administrative Rulemaking, Guidance, and Enforcement Procedures

AGENCY: Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule sets forth a comprehensive revision and update of the Department's regulations on rulemaking procedures and consolidates all of the Department's existing administrative procedures in one location. This final rule also incorporates and reflects the Department's current policies and procedures relating to the issuance of rulemaking documents. In addition, this update codifies the Department's internal procedural requirements governing the review and clearance of guidance documents and the initiation and conduct of enforcement actions, including administrative enforcement proceedings and judicial enforcement actions brought in Federal court.

DATES: Effective on January 27, 2020.

FOR FURTHER INFORMATION CONTACT: Jill Laptosky, Office of Regulation, Office of the General Counsel, 202–493–0308, *Jill.Laptosky@dot.gov.*

SUPPLEMENTARY INFORMATION: This final rule substantially incorporates three internal administrative procedure directives of the U.S. Department of Transportation (the Department or DOT) into one place in the Code of Federal Regulations (CFR) at 49 CFR part 5: (1) DOT Order 2100.6, ''Policies and Procedures for Rulemakings'' (December 20, 2018),[1] which sets forth updated policies and procedures governing the development and issuance of regulations by the Department's operating administrations and components of the Office of the Secretary; (2) a General Counsel memorandum, ''Review and Clearance of Guidance Documents'' (December 20, 2018),[2] which establishes enhanced procedures for the review and clearance of guidance documents; and (3) a General Counsel memorandum, ''Procedural Requirements for DOT Enforcement Actions'' (February 15, 2019),[3] which clarifies the procedural requirements governing enforcement actions initiated by the Department, including administrative enforcement proceedings and judicial enforcement actions brought in Federal court.

This final rule removes the existing procedures on rulemaking, which are outdated and inconsistent with current departmental practice, and replaces them with a comprehensive set of procedures that will increase transparency, provide for more robust public participation, and strengthen the overall quality and fairness of the Department's administrative actions. This final rule also responds to a December 20, 2018, petition for rulemaking that we received from the New Civil Liberties Alliance that asked the Department to promulgate regulations prohibiting departmental components from issuing, relying on, or defending improper agency guidance.

Rulemaking Procedures

This final rule incorporates into the Code of Federal Regulations at 49 CFR part 5, subpart B, the policies and procedures found in DOT Order 2100.6, titled: ''Policies and Procedures for Rulemakings.'' All citations to OST or OA regulations in this preamble refer to sections of the Code of Federal Regulations as amended by this final rule.

The procedures contained in this final rule apply to all phases of the Department's rulemaking process, from advance notices of proposed rulemakings to the promulgation of final rules, including substantive rules, rules of interpretation, and rules prescribing agency procedures and practice requirements applicable to outside parties. The final rule outlines the Department's regulatory policies, such as ensuring that there are no more regulations than necessary, that where they impose burdens, regulations are narrowly tailored to address identified market failures or statutory mandates, and that they specify performance objectives when appropriate. These and other policies applicable to the Department's rulemaking process can be found at 49 CFR 5.5.

This final rule reflects the existing role of the Department's Regulatory Reform Task Force in the development of the Department's regulatory portfolio and ongoing review of regulations. Established in response to Executive Order 13777, ''Enforcing the Regulatory Reform Agenda'' (February 24, 2017), the Regulatory Reform Task Force is the Department's internal body, chaired by the Regulatory Reform Officer, tasked with evaluating proposed and existing regulations and making recommendations to the Secretary of Transportation regarding their promulgation, repeal, replacement, or modification, consistent with applicable law. This final rule outlines the structure, membership, and responsibilities of the Regulatory Reform Task Force at 49 CFR 5.9.

This final rule also prescribes the procedures the Department must follow for all stages of the rulemaking process, including the initiation of new rulemakings, the development of economic analyses, the contents of rulemaking documents, their review and clearance, and the opportunity for fair and sufficient public participation. The final rule also reflects the Department's existing policies regarding contacts with outside parties during the rulemaking process as well as the ongoing review of existing regulations. These policies and procedures can be found at 49 CFR 5.11, 5.13, and 5.19.

Consistent with the Department's regulatory philosophy that rules imposing the greatest costs on the public should be subject to heightened procedural requirements, this final rule also incorporates the Department's enhanced procedures for economically significant and high-impact rulemakings. Economically significant rulemakings are defined as those rules that would result in a total annualized cost on the U.S. economy of $100 million or more, or a total net loss of at least 75,000 full-time jobs in the United States over 5 years. 49 CFR 5.17(a)(1). High-impact rulemakings would result in a total annualized cost on the U.S. economy of $500 million or more, or a total net loss of at least 250,000 full-time jobs in the United States over 5 years. 49 CFR 5.17(a)(2). These costly rulemakings may be subject to enhanced rulemaking procedures, such as advance notices of proposed rulemakings and formal hearings. The procedures for economically significant and high-impact rulemakings are provided at 49 CFR 5.17.

While much of part 5 is outdated in light of the Department's new

[1] See U.S. Department of Transportation, DOT Order 2100.6, ''Policies and Procedures for Rulemakings,'' available at *https://www.transportation.gov/regulations/2018-dot-rulemaking-order.*

[2] See U.S. Department of Transportation, ''Review and Clearance of Guidance Documents,'' available at *https://www.transportation.gov/regulations/2018-guidance-memorandum.*

[3] See U.S. Department of Transportation, ''Procedural Requirements for DOT Enforcement Actions,'' available at *https://www.transportation.gov/sites/dot.gov/files/docs/mission/administrations/office-general-counsel/331596/c1-mem-enforcement-actions-signed-21519.pdf.*

procedures, this final rule will retain and revise some procedures. The Department's existing procedures for the filing of rulemaking petitions will be retained (see 49 CFR 5.13(c)), though we are revising these regulations to give the public greater opportunities to petition the Department. In addition to petitions for rulemaking, our procedures will also explicitly allow the public to file petitions for the performance of retrospective regulatory reviews. With regard to direct final rules, the Department will be removing language that requires the withdrawal of a direct final rule if a notice of intent to file an adverse comment is received; instead withdrawal will be required upon the actual receipt of an adverse comment. Individuals who intend to file an adverse comment, but do not have enough time to do so, may instead ask the Department to extend the comment period of a direct final rule so that they may have more time to file an adverse comment. For this reason, the existing direct final rule procedures are unnecessarily duplicative of procedures that provide for requesting the extension of a comment period and can be removed in part 5 and elsewhere throughout the Department's regulations issued by its operating administrations.[4]

This rulemaking will update references throughout DOT regulations as needed to account for updated internal procedures. This final rule will revise the regulations at 14 CFR 300.2 to replace a reference to rescinded DOT Order 2100.2 with the current DOT Order 2100.6. This final rule also updates the procedures for petitions for rulemakings found in 14 CFR 302.16, including providing that interested parties may file petitions for the Department to perform retrospective reviews. Other minor conforming amendments are being made to our regulations at 49 CFR parts 1 and 7. Finally, given that this final rule codifies the DOT policy regarding contacts with outside parties during the rulemaking process (5 CFR 5.19), Appendix 1 to 14 CFR part 11, Oral Communications With the Public During Rulemaking, is no longer necessary and has been removed.

Guidance Document Procedures

This final rule incorporates into the Code of Federal Regulations at 49 CFR part 5, subpart C, the policies and procedures found in the General Counsel's memorandum, titled: ''Review and Clearance of Guidance Documents.''

The procedures contained in this final rule apply to all guidance documents, which the Department defines as any statement of agency policy or interpretation concerning a statute, regulation, or technical matter within the jurisdiction of the agency that is intended to have general applicability and future effect, but which is not intended to have the force or effect of law in its own right and is not otherwise required by statute to satisfy the rulemaking procedures of the Administrative Procedure Act.

This final rule codifies the Department's existing procedures regarding the review and clearance of guidance documents. These procedures ensure that all guidance documents receive legal review and, when appropriate, Office of the Secretary review. Before guidance documents are issued, they must be reviewed to ensure they are written in plain language and do not impose any substantive legal requirements above and beyond statute or regulation. If a guidance document purports to describe, approve, or recommend specific conduct that stretches beyond what is required by existing law, then it must include a clear and prominent statement effectively stating that the contents of the guidance document do not have the force and effect of law and are not meant to bind the public in any way, and the guidance document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. The procedures for the review and clearance of guidance documents can be found at 49 CFR 5.27, 5.29, and 5.35.

In recognition of the fact that, even though guidance documents are not legally binding, they could nevertheless have a substantial economic impact on regulated entities that alter their conduct to conform to the guidance, this final rule requires a good faith cost assessment of the impact of the guidance document. This policy is outlined at 49 CFR 5.33.

This final rule also incorporates other policies and procedures, such as describing when guidance documents are subject to notice and an opportunity for public comment and how they will be made available to the public after issuance. See 49 CFR 5.31 and 5.39. These procedures are intended to ensure that the public has access to guidance documents issued by the Department and a fair and sufficient opportunity to comment on guidance documents when appropriate and practicable. The final rule also provides a process for interested parties to petition the Department for the withdrawal or modification of guidance documents. See 49 CFR 5.43.

This final rule also responds to Executive Order 13891, titled: ''Promoting the Rule of Law Through Improved Agency Guidance Documents'' (October 9, 2019). In that Executive Order, Federal agencies are required to finalize regulations, or amend existing regulations as necessary, to set forth processes and procedures for issuing guidance documents.[5] This final rule incorporates requirements found in the Executive Order that were not otherwise provided for in the Department's existing procedures, primarily a requirement that the comment period for significant guidance documents be at least 30 days, except when the agency for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[6]

Enforcement Procedures

This final rule incorporates into the Code of Federal Regulations at 49 CFR part 5, subpart D, the policies and procedures found in the General Counsel's memorandum, titled: ''Procedural Requirements for DOT Enforcement Actions.''

The procedures contained in this final rule clarify the procedural requirements governing enforcement actions initiated by DOT, including administrative enforcement proceedings and judicial enforcement actions brought in Federal court. The purpose of these procedural policies is to ensure that DOT enforcement actions satisfy principles of due process and remain lawful, reasonable, and consistent with Administration policy. The procedures also fulfill the Department's goal of establishing standard operating procedures within its various enforcement programs.

The final rule consolidates these procedural requirements into one centralized location. The Department is committed to proper due process in enforcement proceedings and encourages regulated entities to contact a supervisor or the U.S. Small Business Administration, when appropriate, with any concerns arising from our duty to review compliance with the Department's regulations related to our authority and jurisdiction.

[4] Direct final rule procedures for the following operating administrations are amended: Federal Aviation Administration, Pipeline and Hazardous Materials Safety Administration, Federal Railroad Administration, Federal Motor Carrier Safety Administration, National Highway Traffic Safety Administration, and Federal Transit Administration.

[5] See section 4(a) of Executive Order 13891.

[6] See section 4(a)(iii)(A) of Executive Order 13891.

This final rule ensures that DOT provides affected parties appropriate due process in all enforcement actions, that the Department's conduct is fair and free of bias and concludes with a well-documented decision as to violations alleged and any violations found to have been committed, that the penalties or corrective actions imposed for such violations are reasonable, and that proper steps needed to ensure future compliance were undertaken by the regulated party. It is in the public interest and fundamental to good government that the Department carry out its enforcement responsibilities in a fair and just manner.

This final rule also responds to Executive Order 13892, titled: ''Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication'' (October 9, 2019). Under that Executive Order, Federal agencies are required to provide more transparency to the regulated community when conducting enforcement actions and adjudications. This final rule incorporates requirements found in the Executive Order related to cooperative information sharing, the Small Business Regulatory Enforcement Fairness (SBREFA) Act, and ensuring reasonable administrative inspections.[7]

Administrative Procedure

Under the Administrative Procedure Act, an agency may waive the normal notice and comment procedures if the action is a rule of agency organization, procedure, or practice. See 5 U.S.C. 553(b)(3)(A). Since this final rule merely incorporates existing internal procedures applicable to the Department's administrative procedures into the Code of Federal Regulations, notice and comment are not necessary.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking is not a significant regulatory action under Executive Order 12866. The Department does not anticipate that this rulemaking will have an economic impact on regulated entities. This is a rule of agency procedure and practice. The final rule describes the Department's existing internal procedures for the promulgation and processing of rulemaking and guidance documents, and for initiating and conducting enforcement proceedings. The Department has adopted these internal procedures as part of its regulatory reform initiative, and has not incurred any additional resource costs in doing so. The adoption of these practices has been accomplished through a realignment of existing agency resources, and it is anticipated that the public will benefit from the resulting increase in efficiency in delivery of government services.

This final rule compiles existing procedures on rulemaking as a comprehensive set of regulations that will increase accountability, ensure more robust public participation, and strengthen the overall quality and fairness of the Department's administrative actions. The Department has a long history of Federal leadership in adopting good regulatory practices, and this action is consistent with that history. While the direct impact of this rule has already been experienced internally to the Department in the form of streamlined and clarified regulatory processes, we expect additional secondary and positive impacts due to improved decision making. However, these additional impacts will be small because this rule, which has been substantively implemented, simply reflects the procedures that have evolved in response to new rulemaking demands.

Regulated entities and the public will continue to benefit from these enhanced procedures through increased agency deliberations and more opportunities to comment on rulemakings and guidance documents. With regard to the enforcement procedures, we anticipate that there will be no additional costs on regulated entities, as individual regulations already published by DOT agencies account for current costs of compliance. This final rule will simply clarify the internal DOT procedural requirements necessary to ensure fair and reasonable enforcement processes where violations are alleged to have occurred by the regulated community.

B. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

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

C. Regulatory Flexibility Act

Since notice and comment rulemaking is not necessary for this rule, the provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) do not apply.

D. Executive Order 13132 (Federalism)

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

E. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Because this rulemaking does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

F. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DOT consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. The DOT has determined there are no new information collection requirements associated with this final rule.

G. National Environmental Policy Act

The agency has analyzed the environmental impacts of this action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, ''Procedures for Considering Environmental Impacts'' (44 FR 56420, October 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on

[7] See sections 7, 9, and 10, of Executive Order 13892.

the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). The purpose of this rulemaking is to update the Department's administrative procedures for rulemaking, guidance documents, and enforcement actions. The agency does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the spring and fall of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

14 CFR Part 11

Administrative practice and procedure, Reporting and recordkeeping requirements.

14 CFR Part 300

Administrative practice and procedure, Conflicts of interests.

14 CFR Part 302

Administrative practice and procedure, Air carriers, Airports, Postal Service.

49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

49 CFR Part 5

Administrative practice and procedure.

49 CFR Part 106

Administrative practice and procedure, Hazardous materials transportation.

49 CFR Part 211

Administrative practice and procedure, Railroad safety.

49 CFR Part 389

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 553

Administrative practice and procedure, Motor vehicle safety.

49 CFR Part 601

Authority delegations (Government agencies), Freedom of information, Organization and functions (Government agencies).

Issued in Washington, DC, on December 3, 2019.

Elaine L. Chao,

Secretary.

In consideration of the foregoing, the Office of the Secretary of Transportation amends 14 CFR parts 11, 300, and 302 and 49 CFR parts 5, 106, 211, 389, 553, and 601, as follows:

Title 14—Aeronautics and Space

PART 11—GENERAL RULEMAKING PROCEDURES

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

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701–44702, 44711, 46102, and 51 U.S.C. 50901–50923.

■ 2. Amend § 11.13 by revising the last sentence to read as follows:

§ 11.13 What is a direct final rule?

* * * If we receive an adverse comment, we will either publish a document withdrawing the direct final rule before it becomes effective and may issue an NPRM, or proceed by any other means permitted under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.,* consistent with procedures at 49 CFR 5.13(l).

§ 11.31 [Amended]

■ 3. Amend § 11.31 by removing ''or notice of intent to file an adverse comment'' in paragraphs (a) introductory text, (b), and (c).

■ 4. Amend § 11.40 by revising the last sentence to read as follows:

§ 11.40 Can I get more information about a rulemaking?

* * * The Department of Transportation policy regarding public contacts during rulemaking appears at 49 CFR 5.19.

Appendix 1 to Part 11 [Removed]

■ 5. Remove appendix 1 to part 11.

PART 300—RULES OF CONDUCT IN DOT PROCEEDINGS UNDER THIS CHAPTER

■ 6. The authority citation for part 300 continues to read as follows:

Authority: 49 U.S.C. subtitle I and chapters 401, 411, 413, 415, 417, 419, 421, 449, 461, 463, and 465.

■ 7. Amend § 300.2 by revising paragraph (b)(4)(ii) to read as follows:

§ 300.2 Prohibited Communications.

* * * * *

(b) * * *

(4) * * *

(ii) A rulemaking proceeding involving a hearing as described in paragraph (b)(4)(i) of this section or an exemption proceeding covered by this chapter. (Other rulemaking proceedings are covered by the ex parte communication policies of DOT Order 2100.6 and 49 CFR 5.19.)

* * * * *

PART 302—RULES OF PRACTICE IN PROCEEDINGS

■ 8. The authority citation for part 302 continues to read as follows:

Authority: 39 U.S.C. 5402; 42 U.S.C. 4321, 49 U.S.C. Subtitle I and Chapters 401, 411, 413, 415, 417, 419, 461, 463, and 471.

■ 9. Revise § 302.16 to read as follows:

§ 302.16 Petitions for rulemaking.

Any interested person may petition the Department for the issuance, amendment, modification, or repeal of any regulation or guidance document, or for the Department to perform a retrospective review of an existing rule, subject to the provisions of part 5, Rulemaking Procedures, of the Office of the Secretary regulations (49 CFR 5.13(c) and 5.43).

Title 49—Transportation

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

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

Authority: 49 U.S.C. 322.

■ 11. Amend § 1.27 by revising paragraph (e) to read as follows:

§ 1.27 Delegations to the General Counsel.

* * * * *

(e) Respond to petitions for rulemaking or petitions for exemptions in accordance with 49 CFR 5.13(c)(2) (Processing of petitions), and notify petitioners of decisions in accordance with 49 CFR 5.13(c)(4)(v).

* * * * *

■ 12. Revise part 5 to read as follows:

PART 5—ADMINISTRATIVE RULEMAKING, GUIDANCE, AND ENFORCEMENT PROCEDURES

Subpart A—GENERAL

Sec.
5.1 Applicability.

Subpart B—Rulemaking Procedures

5.3 General.
5.5 Regulatory policies.
5.7 Responsibilities.
5.9 Regulatory Reform Task Force.

5.11 Initiating a rulemaking.
5.13 General rulemaking procedures.
5.15 Unified Agenda of Regulatory and Deregulatory Actions (Unified Agenda).
5.17 Special procedures for economically significant and high-impact rulemakings.
5.19 Public contacts in informal rulemaking.
5.21 Policy updates and revisions.
5.23 Disclaimer.

Subpart C—Guidance Procedures

5.25 General.
5.27 Review and clearance by Chief Counsels and the Office of the General Counsel.
5.29 Requirements for clearance.
5.31 Public access to effective guidance documents.
5.33 Good faith cost estimates.
5.35 Approved procedures for guidance documents identified as ''significant'' or ''otherwise of importance to the Department's interests.''
5.37 Definitions of ''significant guidance document'' and guidance documents that are ''otherwise of importance to the Department's interests.''
5.39 Designation procedures.
5.41 Notice-and-comment procedures.
5.43 Petitions for guidance
5.45 Rescinded guidance.
5.47 Exigent circumstances.
5.49 Reports to Congress and GAO.
5.51 No judicial review or enforceable rights.

Subpart D—Enforcement Procedures

5.53 General.
5.55 Enforcement attorney responsibilities.
5.57 Definitions.
5.59 Enforcement policy generally.
5.61 Investigative functions.
5.63 Clear legal foundation.
5.65 Proper exercise of prosecutorial and enforcement discretion.
5.67 Duty to review for legal sufficiency.
5.69 Fair notice.
5.71 Separation of functions.
5.73 Avoiding bias.
5.75 Formal enforcement adjudications.
5.77 Informal enforcement adjudications.
5.79 The hearing record.
5.81 Contacts with the public.
5.83 Duty to disclose exculpatory evidence.
5.85 Use of guidance documents in administrative enforcement cases.
5.87 Alternative Dispute Resolution (ADR).
5.89 Duty to adjudicate proceedings promptly.
5.91 Agency decisions.
5.93 Settlements.
5.95 OGC approval required for certain settlement terms.
5.97 Basis for civil penalties and disclosures thereof.
5.99 Publication of decisions.
5.101 Coordination with the Office of Inspector General on criminal matters.
5.103 Standard operating procedures.
5.105 Cooperative Information Sharing.
5.107 Small Business Regulatory Enforcement Fairness Act (SBREFA).
5.109 Referral of matters for judicial enforcement.
5.111 No third-party rights or benefits.

Authority: 49 U.S.C. 322(a).

Subpart A—General

§ 5.1 Applicability.

(a) This part prescribes general procedures that apply to rulemakings, guidance documents, and enforcement actions of the U.S. Department of Transportation (the Department or DOT), including each of its operating administrations (OAs) and all components of the Office of Secretary of Transportation (OST).

(b) For purposes of this part, *Administrative Procedure Act (APA)* is the Federal statute, codified in scattered sections of chapters 5 and 7 of title 5, United States Code, that governs procedures for agency rulemaking and adjudication and provides for judicial review of final agency actions.

Subpart B—Rulemaking Procedures

§ 5.3 General.

(a) This subpart governs all DOT employees and contractors involved with all phases of rulemaking at DOT.

(b) Unless otherwise required by statute, this subpart applies to all DOT regulations, which shall include all rules of general applicability promulgated by any components of the Department that affect the rights or obligations of persons outside the Department, including substantive rules, rules of interpretation, and rules prescribing agency procedures and practice requirements applicable to outside parties.

(c) Except as provided in paragraph (d) of this section, this subpart applies to all regulatory actions intended to lead to the promulgation of a rule and any other generally applicable agency directives, circulars, or pronouncements concerning matters within the jurisdiction of an OA or component of OST that are intended to have the force or effect of law or that are required by statute to satisfy the rulemaking procedures specified in 5 U.S.C. 553 or 5 U.S.C. 556.

(d) This subpart does not apply to:

(1) Any rulemaking in which a notice of proposed rulemaking was issued before December 20, 2018, and which was still in progress on that date;

(2) Regulations issued with respect to a military or foreign affairs function of the United States;

(3) Rules addressed solely to internal agency management or personnel matters;

(4) Regulations related to Federal Government procurement; or

(5) Guidance documents, which are not intended to, and do not in fact, have the force or effect of law for parties outside of the Department, and which are governed by part 5, subpart C of this chapter.

§ 5.5 Regulatory policies.

The policies in paragraphs (a) through (j) of this section govern the development and issuance of regulations at DOT:

(a) There should be no more regulations than necessary. In considering whether to propose a new regulation, policy makers should consider whether the specific problem to be addressed requires agency action, whether existing rules (including standards incorporated by reference) have created or contributed to the problem and should be revised or eliminated, and whether any other reasonable alternatives exist that obviate the need for a new regulation.

(b) All regulations must be supported by statutory authority and consistent with the Constitution.

(c) Where they rest on scientific, technical, economic, or other specialized factual information, regulations should be supported by the best available evidence and data.

(d) Regulations should be written in plain English, should be straightforward, and should be clear.

(e) Regulations should be technologically neutral, and, to the extent feasible, they should specify performance objectives, rather than prescribing specific conduct that regulated entities must adopt.

(f) Regulations should be designed to minimize burdens and reduce barriers to market entry whenever possible, consistent with the effective promotion of safety. Where they impose burdens, regulations should be narrowly tailored to address identified market failures or specific statutory mandates.

(g) Unless required by law or compelling safety need, regulations should not be issued unless their benefits are expected to exceed their costs. For each new significant regulation issued, agencies must identify at least two existing regulatory burdens to be revoked.

(h) Once issued, regulations and other agency actions should be reviewed periodically and revised to ensure that they continue to meet the needs they were designed to address and remain cost-effective and cost-justified.

(i) Full public participation should be encouraged in rulemaking actions, primarily through written comment and engagement in public meetings. Public participation in the rulemaking process should be conducted and documented, as appropriate, to ensure that the public is given adequate knowledge of

substantive information relied upon in the rulemaking process.

(j) The process for issuing a rule should be sensitive to the economic impact of the rule; thus, the promulgation of rules that are expected to impose greater economic costs should be accompanied by additional procedural protections and avenues for public participation.

§ 5.7 Responsibilities.

(a) The Secretary of Transportation supervises the overall planning, direction, and control of the Department's Regulatory Agenda; approves regulatory documents for issuance and submission to the Office of Management and Budget (OMB) under Executive Order (E.O.) 12866, ''Regulatory Planning and Review'' (Oct. 4, 1993); identifies an approximate regulatory budget for each fiscal year as required by E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs'' (Jan. 30, 2017); establishes the Department's Regulatory Reform Task Force (RRTF); and designates the members of the RRTF and the Department's Regulatory Reform Officer (RRO) in accordance with E.O. 13777, ''Enforcing the Regulatory Reform Agenda'' (Feb. 24, 2017).

(b) The Deputy Secretary of Transportation assists the Secretary in overseeing overall planning, direction, and control of the Department's Regulatory Agenda and approves the initiation of regulatory action, as defined in E.O. 12866, by the OAs and components of OST. Unless otherwise designated by the Secretary, the Deputy Secretary serves as the Chair of the Leadership Council of the RRTF and as the Department's RRO.

(c) The General Counsel of DOT is the chief legal officer of the Department with final authority on all questions of law for the Department, including the OAs and components of OST; serves on the Leadership Council of the RRTF; and serves as the Department's Regulatory Policy Officer pursuant to section 6(a)(2) of E.O. 12866.

(d) The RRO of DOT is delegated authority by the Secretary to oversee the implementation of the Department's regulatory reform initiatives and policies to ensure the effective implementation of regulatory reforms, consistent with E.O. 13777 and applicable law.

(e) DOT's noncareer Deputy General Counsel is a member of the RRTF and serves as the Chair of the RRTF Working Group.

(f) DOT's Assistant General Counsel for Regulation supervises the Office of Regulation within the Office of the General Counsel (OGC); oversees the process for DOT rulemakings; provides legal advice on compliance with APA and other administrative law requirements and executive orders, related OMB directives, and other procedures for rulemaking and guidance documents; circulates regulatory documents for departmental review and seeks concurrence from reviewing officials; submits regulatory documents to the Secretary for approval before issuance or submission to OMB; coordinates with the Office of Information and Regulatory Affairs (OIRA) within OMB on the designation and review of regulatory documents and the preparation of the Unified Agenda of Regulatory and Deregulatory Actions; publishes the monthly internet report on significant rulemakings; and serves as a member of the RRTF Working Group.

(g) Pursuant to delegations from the Secretary under part 1 of this title, OA Administrators and Secretarial officers exercise the Secretary's rulemaking authority under 49 U.S.C. 322(a), and they have responsibility for ensuring that the regulatory data included in the Regulatory Management System (RMS), or a successor data management system, for their OAs and OST components is accurate and is updated at least once a month.

(h) OA Chief Counsels supervise the legal staffs of the OAs; interpret and provide guidance on all statutes, regulations, executive orders, and other legal requirements governing the operation and authorities of their respective OAs; and review all rulemaking documents for legal sufficiency.

(i) Each OA or OST component responsible for rulemaking will have a Regulatory Quality Officer, designated by the Administrator or Secretarial office head, who will have responsibility for reviewing all rulemaking documents for plain language, technical soundness, and general quality.

§ 5.9 Regulatory Reform Task Force.

(a) *Purpose.* The Regulatory Reform Task Force (RRTF) evaluates proposed and existing regulations and makes recommendations to the Secretary regarding their promulgation, repeal, replacement, or modification, consistent with applicable law, E.O. 13777, E.O. 13771, and E.O. 12866.

(b) *Structure.* The RRTF comprises a Leadership Council and a Working Group.

(1) The Working Group coordinates with leadership in the Secretarial offices and OAs, reviews and develops recommendations for regulatory and deregulatory action, and presents recommendations to the Leadership Council.

(2) The Leadership Council reviews the Working Group's recommendations and advises the Secretary.

(c) *Membership.* (1) The Leadership Council comprises the following:

(i) The Regulatory Reform Officer (RRO), who serves as Chair;

(ii) The Department's Regulatory Policy Officer, designated under section 6(a)(2) of E.O. 12866;

(iii) A representative from the Office of the Under Secretary of Transportation for Policy;

(iv) At least three additional senior agency officials as determined by the Secretary.

(2) The Working Group comprises the following:

(i) At least one senior agency official from the Office of the General Counsel, including at a minimum the Assistant General Counsel for Regulation, as determined by the RRO;

(ii) At least one senior agency official from the Office of the Under Secretary of Transportation for Policy, as determined by the RRO;

(iii) Other senior agency officials from the Office of the Secretary, as determined by the RRO.

(d) *Functions and responsibilities.* In addition to the functions and responsibilities enumerated in E.O. 13777, the RRTF performs the following duties:

(1) Reviews each request for a new rulemaking action initiated by an OA or OST component; and

(2) Considers each regulation and regulatory policy question (which may include proposed guidance documents) referred to it and makes a recommendation to the Secretary for its disposition.

(e) *Support.* The Office of Regulation within OGC provides support to the RRTF.

(f) *Meetings.* The Leadership Council meets approximately monthly and will hold specially scheduled meetings when necessary to address particular regulatory matters. The Working Group meets approximately monthly with each OA and each component of OST with regulatory authority, and the Working Group may establish subcommittees, as appropriate, to focus on specific regulatory matters.

(g) *Agenda.* The Office of Regulation prepares an agenda for each meeting and distributes it to the members in advance of the meeting, together with any documents to be discussed at the meeting. The OA or OST component responsible for matters on the agenda

will be invited to attend to respond to questions.

(h) *Minutes.* The Office of Regulation prepares summary minutes following each meeting and distributes them to the meeting's attendees.

§ 5.11 Initiating a rulemaking.

(a) Before an OA or component of OST may proceed to develop a regulation, the Administrator of the OA or the Secretarial officer who heads the OST component must consider the regulatory philosophy and principles of regulation identified in section 1 of E.O. 12866 and the policies set forth in § 5.5 of this subpart. If the OA Administrator or OST component head determines that rulemaking is warranted consistent with those policies and principles, the Administrator or component head may prepare a Rulemaking Initiation Request.

(b) The Rulemaking Initiation Request should specifically state or describe:

(1) A proposed title for the rulemaking;

(2) The need for the regulation, including a description of the market failure or statutory mandate necessitating the rulemaking;

(3) The legal authority for the rulemaking;

(4) Whether the rulemaking is expected to be regulatory or deregulatory;

(5) Whether the rulemaking is expected to be significant or nonsignificant, as defined by E.O. 12866;

(6) Whether the final rule in question is expected to be an economically significant rule or high-impact rule, as defined in § 5.17(a) of this subpart;

(7) A description of the economic impact associated with the rulemaking, including whether the rulemaking is likely to impose quantifiable costs or cost savings;

(8) The tentative target dates for completing each stage of the rulemaking; and

(9) Whether there is a statutory or judicial deadline, or some other urgency, associated with the rulemaking.

(c) The OA or OST component submits the Rulemaking Initiation Request to the Office of Regulation, together with any other documents that may assist in the RRTF's consideration of the request.

(d) The Office of Regulation includes the Rulemaking Initiation Request on the agenda for consideration at the OA's or OST component's next Working Group meeting.

(e) If the Working Group recommends the approval of the Rulemaking Initiation Request, then the Request is referred to the Leadership Council for consideration. In lieu of consideration at a Leadership Council meeting, the Working Group, at its discretion, may submit a memorandum to the RRO seeking approval of the Rulemaking Initiation Request.

(f) The OA or OST component may assign a Regulatory Information Number (RIN) to the rulemaking only upon the Leadership Council's (or RRO's) approval of the Rulemaking Initiation Request.

(g) The Secretary may initiate a rulemaking on his or her own motion. The process for initiating a rulemaking as described herein may be waived or modified for any rule with the approval of the RRO. Unless otherwise determined by the RRO, the Administrator of the Federal Aviation Administration (FAA) may promulgate an emergency rule under 49 U.S.C. 106(f)(3)(B)(ii) or 49 U.S.C. 46105(c), without first submitting a Rulemaking Initiation Request.

(h) Rulemaking Initiation Requests will be considered on a rolling basis; however, the Office of Regulation will establish deadlines for submission of Rulemaking Initiation Requests so that new rulemakings may be included in the Unified Agenda of Regulatory and Deregulatory Actions.

§ 5.13 General rulemaking procedures.

(a) *Definitions*—(1) *Significant rulemaking* means a regulatory action designated by OIRA under E.O. 12866 as likely to result in a rule that may:

(i) Have an annual effect on the U.S. economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(ii) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(iii) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(iv) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

(2) *Nonsignificant rulemaking* means a regulatory action not designated significant by OIRA.

(b) *Departmental review process.* (1) OST review and clearance.

(i) Except as provided herein or as otherwise provided in writing by OGC, all departmental rulemakings are to be reviewed and cleared by the Office of the Secretary.

(ii) The FAA Administrator may promulgate emergency rules pursuant to 49 U.S.C. 106(f)(3)(B)(ii) and 49 U.S.C. 46105(c), without prior approval from OST; provided that, to the maximum extent practicable and consistent with law, the FAA Administrator will give OST advance notice of such emergency rules and will allow OST to review the rules in accordance with the provisions of this subpart at the earliest opportunity after they are promulgated.

(2) Leadership within the proposing OA or component of OST shall:

(i) Ensure that the OA's or OST component's Regulatory Quality Officer reviews all rulemaking documents for plain language, technical soundness, and general quality;

(ii) Ensure that the OA's Office of Chief Counsel (or for OST rules, the Office within OGC responsible for providing programmatic advice) reviews all rulemaking documents for legal support and legal sufficiency; and

(iii) Approve the submission of all rulemaking documents, including any accompanying analyses (*e.g.,* regulatory impact analysis), to the Office of Regulation through the Regulatory Management System (RMS), or a successor data management system, for OST review and clearance.

(3) To effectuate departmental review under this subpart, the following Secretarial offices ordinarily review and approve DOT rulemakings: The Office of the Under Secretary for Policy, the Office of Public Affairs, the Office of Budget and Programs and Chief Financial Officer, OGC, and the Office of Governmental Affairs. The Office of Regulation may also require review and clearance by other Secretarial offices and OAs depending on the nature of the particular rulemaking document.

(4) Reviewing offices should provide comments or otherwise concur on rulemaking documents within 7 calendar days, unless exceptional circumstances apply that require expedited review.

(5) The Office of Regulation provides a passback of comments to the proposing OA or OST component for resolution. Comments should be resolved and a revised draft submitted to the Office of Regulation by the OA or OST component within 14 calendar days.

(6) The Office of Regulation prepares a rulemaking package for the General Counsel to request the Secretary's approval for the rulemaking to be submitted to OMB for review (for significant rulemakings) or to the **Federal Register** for publication (for

nonsignificant rulemakings). These rulemaking packages are submitted through the General Counsel to the Office of the Executive Secretariat.

(7) The Office of Regulation notifies the proposing OA or OST component when the Secretary approves or disapproves the submission of the rulemaking to OMB or to the **Federal Register**.

(8) The Office of Regulation is responsible for coordination with OIRA staff on the designation of all rulemaking documents, submission and clearance of all significant rulemaking documents, and all discussions or meetings with OMB concerning these documents. OAs and OST components should not schedule their own meetings with OIRA without Office of Regulation involvement. Each OA or OST component should coordinate with the Office of Regulation before holding any discussions with OIRA concerning regulatory policy or requests to modify regulatory documents.

(c) *Petitions for rulemaking, exemption, and retrospective review.* (1) Any person may petition an OA or OST component with rulemaking authority to:

(i) Issue, amend, or repeal a rule;

(ii) Issue an exemption, either permanently or temporarily, from any requirements of a rule; or

(iii) Perform a retrospective review of an existing rule.

(2) When an OA or OST component receives a petition under this paragraph (c), the petition should be filed with the Docket Clerk in a timely manner. If a petition is filed directly with the Docket Clerk, the Docket Clerk will submit the petition in a timely manner to the OA or component of OST with regulatory responsibility over the matter described in the petition.

(3) The OA or component of OST should provide clear instructions on its website to members of the public regarding how to submit petitions, including, but not limited to, an email address or Web portal where petitions can be submitted, a mailing address where hard copy requests can be submitted, and an office responsible for coordinating such requests.

(4) Unless otherwise provided by statute or in OA regulations or procedures, the following procedures apply to the processing of petitions for rulemaking, exemption, or retrospective review:

(i) *Contents.* Each petition filed under this section must:

(A) Be submitted, either by paper submission or electronically, to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590;

(B) Describe the nature of the request and set forth the text or substance of the rule or specify the rule that the petitioner seeks to have issued, amended, exempted, repealed, or retrospectively reviewed, as the case may be;

(C) Explain the interest of the petitioner in the action requested, including, in the case of a petition for an exemption, the nature and extent of the relief sought and a description of the persons to be covered by the exemption;

(D) Contain any information and arguments available to the petitioner to support the action sought; and

(E) In the case of a petition for exemption, unless good cause is shown in that petition, be submitted at least 60 days before the proposed effective date of the exemption.

(ii) *Processing.* Each petition received under this paragraph (c) is referred to the head of the office responsible for the subject matter of that petition, the Office of Regulation, and the RRO. No public hearing, argument, or other proceeding must necessarily be held directly on a petition for its disposition under this section.

(iii) *Grants.* If the OA or component of OST with regulatory responsibility over the matter described in the petition determines that the petition contains adequate justification, it may request the initiation of a rulemaking action under § 5.11 or grant the petition, as appropriate.

(iv) *Denials.* If the OA or component of OST determines that the petition is not justified, the OA or component of OST denies the petition in coordination with the Office of Regulation.

(v) *Notification.* Whenever the OA or OST component determines that a petition should be granted or denied, and after consultation with the Office of Regulation in the case of denial, the office concerned prepares a notice of that grant or denial for issuance to the petitioner, and issues it to the petitioner.

(d) *Review of existing regulations.* (1) All departmental regulations are on a 10-year review cycle, except economically significant and high-impact rules, which are reviewed every 5 years in accordance with § 5.17(f) of this subpart.

(2) The OA or OST component that issued the regulation will review it for the following:

(i) *Continued cost justification*: Whether the regulation requires adjustment due to changed market conditions or is no longer cost-effective or cost-justified in accordance with § 5.5(h);

(ii) *Regulatory flexibility*: Whether the regulation has a significant economic impact on a substantial number of small entities and, thus, requires review under 5 U.S.C. 610 (section 610 of the Regulatory Flexibility Act);

(iii) *Innovation*: Whether there are new or emerging technologies, especially those that could achieve current levels of safety at the same or lower levels of cost or achieve higher levels of safety, use of which is precluded or limited by the regulation.

(iv) *General updates*: Whether the regulation may require technical corrections, updates (*e.g.,* updated versions of voluntary consensus standards), revisions, or repeal;

(v) *Plain language*: Whether the regulation requires revisions for plain language; and

(vi) Other considerations as required by relevant executive orders and laws.

(3) The results of each OA's or OST component's review will be reported annually to the public.

(4) Any member of the public may petition the Department to conduct a retrospective review of a regulation by filing a petition in accordance with the procedures contained in paragraph (c) of this section.

(e) *Supporting economic analysis.* (1) Rulemakings shall include, at a minimum:

(i) An assessment of the potential costs and benefits of the regulatory action (which may entail a regulatory impact analysis) or a reasoned determination that the expected impact is so minimal or the safety need so significant and urgent that a formal analysis of costs and benefits is not warranted; and

(ii) If the regulatory action is expected to impose costs, either a reasoned determination that the benefits outweigh the costs or, if the particular rulemaking is mandated by statute or compelling safety need notwithstanding a negative cost-benefit assessment, a detailed discussion of the rationale supporting the specific regulatory action proposed and an explanation of why a less costly alternative is not an option.

(2) To the extent practicable, economic assessments shall quantify the foreseeable annual economic costs and cost savings within the United States that would likely result from issuance of the proposed rule and shall be conducted in accordance with the requirements of sections 6(a)(2)(B) and 6(a)(2)(C) of E.O. 12866 and OMB Circular A–4, as specified by OIRA in consultation with the Office of Regulation. If the proposing OA or OST

component has estimated that the proposed rule will likely impose economic costs on persons outside the United States, such costs should be reported separately.

(3) Deregulatory rulemakings (including nonsignificant rulemakings) shall be evaluated for quantifiable cost savings. If it is determined that quantification of cost savings is not possible or appropriate, then the proposing OA or OST component shall provide a detailed justification for the lack of quantification upon submission of the rulemaking to the Office of Regulation. Other nonsignificant rulemakings shall include, at a minimum, the economic cost-benefit analysis described in paragraph (e)(1) of this section.

(f) *Regulatory flexibility analysis.* All rulemakings subject to the requirements of 5 U.S.C. 603–604 (sections 603–604 of the Regulatory Flexibility Act), and any amendment thereto, shall include a detailed statement setting forth the required analysis regarding the potential impact of the rule on small business entities.

(g) *Advance notices of proposed rulemaking.* Whenever the OA or OST component responsible for a proposed rulemaking is required to publish an advance notice of proposed rulemaking (ANPRM) in the **Federal Register**, or whenever the RRTF determines it appropriate to publish an ANPRM, the ANPRM shall:

(1) Include a written statement identifying, at a minimum:

(i) The nature and significance of the problem the OA or OST component may address with a rule;

(ii) The legal authority under which a rule may be proposed; and

(iii) Any preliminary information available to the OA or OST component that may support one or another potential approach to addressing the identified problem;

(2) Solicit written data, analysis, views, and recommendations from interested persons concerning the information and issues addressed in the ANPRM; and

(3) Provide for a reasonably sufficient period for public comment.

(h) *Notices of proposed rulemaking*—(1) *When required.* Before determining to propose a rule, and following completion of the ANPRM process under paragraph (g) of this section, if applicable, the responsible OA or OST component shall consult with the RRTF concerning the need for the potential rule. If the RRTF thereafter determines it appropriate to propose a rule, the proposing OA or OST component shall publish a notice of proposed rulemaking (NPRM) in the **Federal Register**, unless a controlling statute provides otherwise or unless the RRTF (in consultation with OIRA, as appropriate) determines that an NPRM is not necessary under established exceptions.

(2) *Contents.* The NPRM shall include, at a minimum:

(i) A statement of the time and place for submission of public comments and the time, place, and nature of related public rulemaking proceedings, if any;

(ii) Reference to the legal authority under which the rule is proposed;

(iii) The terms of the proposed rule;

(iv) A description of information known to the proposing OA or OST component on the subject and issues of the proposed rule, including but not limited to:

(A) A summary of material information known to the OA or OST component concerning the proposed rule and the considerations specified in § 5.11(a) of this subpart;

(B) A summary of any preliminary risk assessment or regulatory impact analysis performed by the OA or OST component; and

(C) Information specifically identifying all material data, studies, models, available voluntary consensus standards and conformity assessment requirements, and other evidence or information considered or used by the OA or OST component in connection with its determination to propose the rule;

(v) A reasoned preliminary analysis of the need for the proposed rule based on the information described in the preamble to the NPRM, and an additional statement of whether a rule is required by statute;

(vi) A reasoned preliminary analysis indicating that the expected economic benefits of the proposed rule will meet the relevant statutory objectives and will outweigh the estimated costs of the proposed rule in accordance with any applicable statutory requirements;

(vii) If the rulemaking is significant, a summary discussion of:

(A) The alternatives to the proposed rule considered by the OA or OST component;

(B) The relative costs and benefits of those alternatives;

(C) Whether the alternatives would meet relevant statutory objectives; and

(D) Why the OA or OST component chose not to propose or pursue the alternatives;

(viii) A statement of whether existing rules have created or contributed to the problem the OA or OST component seeks to address with the proposed rule, and, if so, whether or not the OA or OST component proposes to amend or rescind any such rules and why; and

(ix) All other statements and analyses required by law, including, without limitation, the Regulatory Flexibility Act (5 U.S.C. 601–612) or any amendment thereto.

(3) *Information access and quality.* (i) To inform public comment when the NPRM is published, the proposing OA or OST component shall place in the docket for the proposed rule and make accessible to the public, including by electronic means, all material information relied upon by the OA or OST component in considering the proposed rule, unless public disclosure of the information is prohibited by law or the information would be exempt from disclosure under 5 U.S.C. 552(b). Material provided electronically should be made available in accordance with the requirements of 29 U.S.C. 794d (section 508 of the Rehabilitation Act of 1973, as amended).

(ii) If the proposed rule rests upon scientific, technical, or economic information, the proposing OA or OST component shall base the proposal on the best and most relevant scientific, technical, and economic information reasonably available to the Department and shall identify the sources and availability of such information in the NPRM.

(iii) A single copy of any relevant copyrighted material (including consensus standards and other relevant scientific or technical information) should be placed in the docket for public review if such material was relied on as a basis for the rulemaking.

(i) *Public comment.* (1) Following publication of an NPRM, the Department will provide interested persons a fair and sufficient opportunity to participate in the rulemaking through submission of written data, analysis, views, and recommendations.

(2) The Department, in coordination with OIRA for significant rulemakings, will ensure that the public is given an adequate period for comment, taking into account the scope and nature of the issues and considerations involved in the proposed regulatory action.

(3) Generally, absent special considerations, the comment period for nonsignificant DOT rules should be at least 30 days, and the comment period for significant DOT rules should be at least 45 days.

(4) Any person may petition the responsible OA or OST component for an extension of time to submit comments in response to a notice of proposed rulemaking. Petitions must be received no later than 3 days before the expiration of the time stated in the notice. The filing of the petition does not automatically extend the time for

comments. The OA or OST component may grant the petition only if the petitioner shows a substantive interest in the proposed rule and good cause for the extension, or if the extension is otherwise in the public interest. If an extension is granted, it is granted as to all persons and published in the **Federal Register**.

(5) All timely comments are considered before final action is taken on a rulemaking proposal. Late-filed comments may be considered so far as possible without incurring additional expense or delay.

(j) *Exemptions from notice and comment.* (1) Except when prior notice and an opportunity for public comment are required by statute or determined by the Secretary to be advisable for policy or programmatic reasons, the responsible OA or OST component may, subject to the approval of the RRTF (in consultation with OIRA, as appropriate), publish certain final rules in the **Federal Register** without prior notice and comment. These may include:

(i) Rules of interpretation and rules addressing only DOT organization, procedure, or practice, provided such rules do not alter substantive obligations for parties outside the Department;

(ii) Rules for which notice and comment is unnecessary to inform the rulemaking, such as rules correcting de minimis technical or clerical errors or rules addressing other minor and insubstantial matters, provided the reasons to forgo public comment are explained in the preamble to the final rule; and

(iii) Rules that require finalization without delay, such as rules to address an urgent safety or national security need, and other rules for which it would be impracticable or contrary to public policy to accommodate a period of public comment, provided the responsible OA or OST component makes findings that good cause exists to forgo public comment and explains those findings in the preamble to the final rule.

(2) Except when required by statute, issuing substantive DOT rules without completing notice and comment, including as interim final rules (IFRs) and direct final rules (DFRs), must be the exception. IFRs and DFRs are not favored. DFRs must follow the procedures in paragraph (l) of this section. In most cases where an OA or OST component has issued an IFR, the RRTF will expect the OA or OST component to proceed at the earliest opportunity to replace the IFR with a final rule.

(k) *Final rules.* The responsible OA or OST component shall adopt a final rule only after consultation with the RRTF. The final rule, which shall include the text of the rule as adopted along with a supporting preamble, shall be published in the **Federal Register** and shall satisfy the following requirements:

(1) The preamble to the final rule shall include:

(i) A concise, general statement of the rule's basis and purpose, including clear reference to the legal authority supporting the rule;

(ii) A reasoned, concluding determination by the adopting OA or OST component regarding each of the considerations required to be addressed in an NPRM under paragraphs (h)(2)(v) through (ix) of this section;

(iii) A response to each significant issue raised in the comments to the proposed rule;

(iv) If the final rule has changed in significant respects from the rule as proposed in the NPRM, an explanation of the changes and the reasons why the changes are needed or are more appropriate to advance the objectives identified in the rulemaking; and

(v) A reasoned, final determination that the information upon which the OA or OST component bases the rule complies with the Information Quality Act (section 515 of Pub. L. 106–554—Appendix C, 114 Stat. 2763A–153–54 (2001)), or any subsequent amendment thereto.

(2) If the rule rests on scientific, technical, economic, or other specialized factual information, the OA or OST component shall base the final rule on the best and most relevant evidence and data known to the Department and shall ensure that such information is clearly identified in the preamble to the final rule and is available to the public in the rulemaking record, subject to reasonable protections for information exempt from disclosure under 5 U.S.C. 552(b). If the OA or OST component intends to support the final rule with specialized factual information identified after the close of the comment period, the OA or OST component shall allow an additional opportunity for public comment on such information.

(3) All final rules issued by the Department:

(i) Shall be written in plain and understandable English;

(ii) Shall be based on a reasonable and well-founded interpretation of relevant statutory text and shall not depend upon a strained or unduly broad reading of statutory authority; and

(iii) Shall not be inconsistent or incompatible with, or unnecessarily duplicative of, other Federal regulations.

(4) Effective dates for final rules must adhere to the following:

(i) Unless required to address a safety emergency or otherwise required by law, approved by the RRTF (or RRO), or approved by the Director of OMB (as appropriate), no regulation may be issued by an OA or component of OST if it was not included on the most recent version or update of the published Unified Agenda.

(ii) No significant regulatory action may take effect until it has appeared in either the Unified Agenda or the monthly internet report of significant rulemakings for at least 6 months prior to its issuance, unless good cause exists for an earlier effective date or the action is otherwise approved by the RRTF (or RRO).

(iii) Absent good cause, major rules (as defined by the Congressional Review Act, 5 U.S.C. 801–808) cannot take effect until 60 days after publication in the **Federal Register** or submission to Congress, whichever is later. Nonmajor rules cannot take effect any sooner than submission to Congress.

(l) *Direct final rules.* (1) Rules that the OA or OST component determines to be noncontroversial and unlikely to result in adverse public comment may be published as direct final rules. These include noncontroversial rules that:

(i) Affect internal procedures of the Department, such as filing requirements and rules governing inspection and copying of documents,

(ii) Are nonsubstantive clarifications or corrections to existing rules,

(iii) Update existing forms,

(iv) Make minor changes in the substantive rules regarding statistics and reporting requirements,

(v) Make changes to the rules implementing the Privacy Act, or

(vi) Adopt technical standards set by outside organizations.

(2) The **Federal Register** document will state that any adverse comment must be received in writing by the OA or OST component within the specified time after the date of publication and that, if no written adverse comment is received, the rule will become effective a specified number of days after the date of publication.

(3) If no written adverse comment is received by the OA or OST component within the original or extended comment period, the OA or OST component will publish a notice in the **Federal Register** indicating that no adverse comment was received and confirming that the rule will become effective on the date that was indicated in the direct final rule.

(4) If the OA or OST component receives any written adverse comment

within the specified time of publication in the **Federal Register**, the OA or OST component may proceed as follows:

(i) Publish a document withdrawing the direct final rule in the rules and regulations section of the **Federal Register** and, if the OA or OST component decides a rulemaking is warranted, a proposed rule; or

(ii) Any other means permitted under the Administrative Procedure Act. (5) An ''adverse'' comment for the purpose of this subpart means any comment that the OA or OST component determines is critical of the rule, suggests that the rule should not be adopted or suggests a material change that should be made in the rule. A comment suggesting that the policy or requirements of the rule should or should not also be extended to other Departmental programs outside the scope of the rule is not adverse. A notice of intent to submit an adverse comment is not, in and of itself, an adverse comment.

(m) *Reports to Congress and GAO.* For each final rule adopted by DOT, the responsible OA or OST component shall submit the reports to Congress and the U.S. Government Accountability Office to comply with the procedures specified by 5 U.S.C. 801 (the Congressional Review Act), or any subsequent amendment thereto.

(n) *Negotiated rulemakings.* (1) DOT negotiated rulemakings are to be conducted in accordance with the Negotiated Rulemaking Act, 5 U.S.C. 561–571, and the Federal Advisory Committee Act, 5 U.S.C. App. 2, as applicable.

(2) Before initiating a negotiated rulemaking process, the OA or OST component should:

(i) Assess whether using negotiated rulemaking procedures for the proposed rule in question is in the public interest, in accordance with 5 U.S.C. 563(a), and present these findings to the RRTF;

(ii) Consult with the Office of Regulation on the appropriateness of negotiated rulemaking and the procedures therefor; and

(iii) Receive the approval of the RRTF for the use of negotiated rulemaking.

(3) Unless otherwise approved by the General Counsel, all DOT negotiated rulemakings should involve the assistance of a convener and a facilitator, as provided in the Negotiated Rulemaking Act. A convener is a person who impartially assists the agency in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate in a particular rulemaking. A facilitator is a person who impartially aids in the discussions and negotiations among members of a negotiated rulemaking committee to develop a proposed rule. The same person may serve as both convener and facilitator.

(4) All charters, membership appointments, and **Federal Register** notices must be approved by the Secretary. Any operating procedures (*e.g.,* bylaws) for negotiated rulemaking committees must be approved by OGC.

§ 5.15 Unified Agenda of Regulatory and Deregulatory Actions (Unified Agenda).

(a) Fall editions of the Unified Agenda include the Regulatory Plan, which presents the Department's statement of regulatory priorities for the coming year. Fall editions also include the outcome and status of the Department's reviews of existing regulations, conducted in accordance with § 5.13(d).

(b) The OAs and components of OST with rulemaking authority must:

(1) Carefully consider the principles contained in E.O. 13771, E.O. 13777, and E.O. 12866 in the preparation of all submissions for the Unified Agenda;

(2) Ensure that all data pertaining to the OA's or OST component's regulatory and deregulatory actions are accurately reflected in the Department's Unified Agenda submission; and

(3) Timely submit all data to the Office of Regulation in accordance with the deadlines and procedures communicated by that office.

§ 5.17 Special procedures for economically significant and high-impact rulemakings.

(a) *Definitions*—(1) *Economically significant rule* means a significant rule likely to impose:

(i) A total annual cost on the U.S. economy (without regard to estimated benefits) of $100 million or more, or

(ii) A total net loss of at least 75,000 full-time jobs in the U.S. over the five years following the effective date of the rule (not counting any jobs relating to new regulatory compliance).

(2) *High-impact rule* means a significant rule likely to impose:

(i) A total annual cost on the U.S. economy (without regard to estimated benefits) of $500 million or more, or

(ii) A total net loss of at least 250,000 full-time jobs in the U.S. over the five years following the effective date of the rule (not counting any jobs relating to new regulatory compliance).

(b) *ANPRM required.* Unless directed otherwise by the RRTF or otherwise required by law, in the case of a rulemaking for an economically significant rule or a high-impact rule, the proposing OA or OST component shall publish an ANPRM in the **Federal Register**.

(c) *Additional requirements for NPRM.* (1) In addition to the requirements set forth in § 5.13, an NPRM for an economically significant rule or a high-impact rule shall include a discussion explaining an achievable objective for the rule and the metrics by which the OA or OST component will measure progress toward that objective.

(2) Absent unusual circumstances and unless approved by the RRTF (in consultation with OIRA, as appropriate), the comment period for an economically significant rule shall be at least 60 days and for a high-impact rule at least 90 days. If a rule is determined to be an economically significant rule or high-impact rule after the publication of the NPRM, the responsible OA or OST component shall publish a notice in the **Federal Register** that informs the public of the change in classification and discusses the achievable objective for the rule and the metrics by which the OA or OST component will measure progress toward that objective, and shall extend or reopen the comment period by not less than 30 days and allow further public comment as appropriate, including comment on the change in classification.

(d) *Procedures for formal hearings*—(1) *Petitions for hearings.* Following publication of an NPRM for an economically significant rule or a high-impact rule, and before the close of the comment period, any interested party may file in the rulemaking docket a petition asking the proposing OA or OST component to hold a formal hearing on the proposed rule in accordance with this subsection.

(2) *Mandatory hearing for high-impact rule.* In the case of a proposed high-impact rule, the responsible OA or OST component shall grant the petition for a formal hearing if the petition makes a plausible prima facie showing that:

(i) The proposed rule depends on conclusions concerning one or more specific scientific, technical, economic, or other complex factual issues that are genuinely in dispute or that may not satisfy the requirements of the Information Quality Act;

(ii) The ordinary public comment process is unlikely to provide the OA or OST component an adequate examination of the issues to permit a fully informed judgment on the dispute; and

(iii) The resolution of the disputed factual issues would likely have a material effect on the costs and benefits of the proposed rule or on whether the proposed rule would achieve the statutory purpose.

(3) *Authority to deny hearing for economically significant rule.* In the case of a proposed economically significant rule, the responsible OA or

OST component may deny a petition for a formal hearing that includes the showing described in paragraph (d)(2) of this section but only if the OA or OST component reasonably determines that:

(i) The requested hearing would not advance the consideration of the proposed rule and the OA's or OST component's ability to make the rulemaking determinations required under this subpart; or

(ii) The hearing would unreasonably delay completion of the rulemaking in light of a compelling safety need or an express statutory mandate for prompt regulatory action.

(4) *Denial of petition.* If the OA or OST component denies a petition for a formal hearing under this subsection in whole or in part, the OA or OST component shall include a detailed explanation of the factual basis for the denial in the rulemaking record, including findings on each of the relevant factors identified in paragraph (d)(2) or (3) of this section. The denial of a good faith petition for a formal hearing under this section shall be disfavored.

(5) *Notice and scope of hearing.* If the OA or OST component grants a petition for a formal hearing under this section, the OA or OST component shall publish notification of the hearing in the **Federal Register** not less than 45 days before the date of the hearing. The document shall specify the proposed rule at issue and the specific factual issues to be considered in the hearing. The scope of the hearing shall be limited to the factual issues specified in the notice.

(6) *Hearing process.* (i) A formal hearing for purposes of this section shall be conducted using procedures borrowed from 5 U.S.C. 556 and 5 U.S.C. 557, or similar procedures as approved by the Secretary, and interested parties shall have a reasonable opportunity to participate in the hearing through the presentation of testimony and written submissions.

(ii) The OA or OST component shall arrange for an administrative judge or other neutral administrative hearing officer to preside over the hearing and shall provide a reasonable opportunity for cross-examination of witnesses at the hearing.

(iii) After the formal hearing and before the record of the hearing is closed, the presiding hearing officer shall render a report containing findings and conclusions addressing the disputed issues of fact identified in the hearing notice and specifically advising on the accuracy and sufficiency of the factual information in the record relating to those disputed issues on which the OA or OST component proposes to base the rule.

(iv) Interested parties who have participated in the hearing shall be given an opportunity to file statements of agreement or objection in response to the hearing officer's report, and the complete record of the proceeding shall be made part of the rulemaking record.

(7) *Actions following hearing.* (i) Following completion of the formal hearing process, the responsible OA or OST component shall consider the record of the hearing and, subject to the approval of the RRTF (in consultation with OIRA, as appropriate), shall make a reasoned determination whether:

(A) To terminate the rulemaking;

(B) To proceed with the rulemaking as proposed; or

(C) To modify the proposed rule.

(ii) If the decision is made to terminate the rulemaking, the OA or OST component shall publish a notice in the **Federal Register** announcing the decision and explaining the reasons therefor.

(iii) If the decision is made to finalize the proposed rule without material modifications, the OA or OST component shall explain the reasons for its decision and its responses to the hearing record in the preamble to the final rule, in accordance with paragraph (e) of this section.

(iv) If the decision is made to modify the proposed rule in material respects, the OA or OST component shall, subject to the approval of the RRTF (in consultation with OIRA, as appropriate), publish a new or supplemental NPRM in the **Federal Register** explaining the OA's or OST component's responses to and analysis of the hearing record, setting forth the modifications to the proposed rule, and providing an additional reasonable opportunity for public comment on the proposed modified rule.

(8) *Relationship to interagency process.* The formal hearing procedures under this subsection shall not impede or interfere with OIRA's interagency review process for the proposed rulemaking.

(e) *Additional requirements for final rules.* (1) In addition to the requirements set forth in § 5.13(k), the preamble to a final economically significant rule or a final high-impact rule shall include:

(i) A discussion explaining the OA's or OST component's reasoned final determination that the rule as adopted is necessary to achieve the objective identified in the NPRM in light of the full administrative record and does not deviate from the metrics previously identified by the OA or OST component for measuring progress toward that objective; and

(ii) In accordance with paragraph (d)(7)(iii) of this section, the OA's or OST component's responses to and analysis of the record of any formal hearing held under paragraph (d) of this section.

(2) Absent exceptional circumstances and unless approved by the RRTF or Secretary (in consultation with OIRA, as appropriate), the OA or OST component shall adopt as a final economically significant rule or final high-impact rule the least costly regulatory alternative that achieves the relevant objectives.

(f) *Additional requirements for retrospective reviews.* For each economically significant rule or high-impact rule, the responsible OA or OST component shall publish a regulatory impact report in the **Federal Register** every 5 years after the effective date of the rule while the rule remains in effect. The regulatory impact report shall include, at a minimum:

(1) An assessment of the impacts, including any costs, of the rule on regulated entities;

(2) A determination about how the actual costs and benefits of the rule have varied from those anticipated at the time the rule was issued; and

(3) An assessment of the effectiveness and benefits of the rule in producing the regulatory objectives it was adopted to achieve.

(g) *Waiver and modification.* The procedures required by this section may be waived or modified as necessary with the approval of the RRO or the Secretary.

§ 5.19 Public contacts in informal rulemaking.

(a) *Agency contacts with the public during informal rulemakings conducted in accordance with 5 U.S.C. 553.* (1) DOT personnel may have meetings or other contacts with interested members of the public concerning an informal rulemaking under 5 U.S.C. 553 or similar procedures at any stage of the rulemaking process, provided the substance of material information submitted by the public that DOT relies on in proposing or finalizing the rule is adequately disclosed and described in the public rulemaking docket such that all interested parties have notice of the information and an opportunity to comment on its accuracy and relevance.

(2) After the issuance of the NPRM and pending completion of the final rule, DOT personnel should avoid giving persons outside the Executive Branch information regarding the rulemaking that is not available generally to the public.

(3) If DOT receives an unusually large number of requests for meetings with interested members of the public during the comment period for a proposed rule or after the close of the comment period, the issuing OA or component of OST should consider whether there is a need to extend or reopen the comment period, to allow for submission of a second round of ''reply comments,'' or to hold a public meeting on the proposed rule.

(4) If the issuing OA or OST component meets with interested persons on the rulemaking after the close of the comment period, it should be open to giving other interested persons a similar opportunity to meet.

(5) If DOT learns of significant new information, such as new studies or data, after the close of the comment period that the issuing OA or OST component wishes to rely upon in finalizing the rule, the OA or OST component should reopen the comment period to give the public an opportunity to comment on the new information. If the new information is likely to result in a change to the rule that is not within the scope of the NPRM, the OA or OST component should consider issuing a Supplemental NPRM to ensure that the final rule represents a logical outgrowth of DOT's proposal.

(b) *Contacts during OIRA review.* (1) E.O. 12866 and E.O. 13563 lay out the procedures for review of significant regulations by OIRA, which include a process for members of the public to request meetings with OIRA regarding rules under OIRA review. Per E.O. 12866, OIRA invites the Department to attend these meetings. The Office of Regulation will forward these invitations to the appropriate regulatory contact in the OA or component of OST responsible for issuing the regulation.

(2) If the issuing OA or OST component wishes to attend the OIRA-sponsored meeting or if its participation is determined to be necessary by the Office of Regulation, the regulatory contact should identify to the Office of Regulation up to two individuals from the OA or OST component who will attend the meeting along with a representative from the Office of Regulation. Attendance at these meetings can be by phone or in person. These OIRA meetings are generally listening sessions for DOT.

(3) The attending DOT personnel should refrain from debating particular points regarding the rulemaking and should avoid disclosing the contents of a document or proposed regulatory action that has not yet been disclosed to the public, but may answer questions of fact regarding a public document.

(4) Following the OIRA meeting, the attendee(s) from the issuing OA or OST component will draft a summary report of the meeting and submit it to the Office of Regulation for review. After the report is reviewed and finalized in coordination with the Office of Regulation, the responsible OA or OST component will place the final report in the rulemaking docket.

§ 5.21 Policy updates and revisions.

This subpart shall be reviewed from time to time to reflect improvements in the rulemaking process or changes in Administration policy.

§ 5.23 Disclaimer.

This subpart is intended to improve the internal management of the Department. It is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its agencies or other entities, officers or employees, or any other person. In addition, this subpart shall not be construed to create any right to judicial review involving the compliance or noncompliance with this subpart by the Department, its OAs or OST components, its [8] officers or employees, or any other person.

Subpart C—Guidance Procedures

§ 5.25 General.

(a) This subpart governs all DOT employees and contractors involved with all phases of issuing DOT guidance documents.

(b) Subject to the qualifications and exemptions contained in this subpart and in appendix A to the Memorandum on the Review and Clearance of Guidance Documents (available online at the website of the Office of the General Counsel's Office of Regulation [1]), these procedures apply to all guidance documents issued by all components of the Department after December 20, 2018.

(c) For purposes of this subpart, the term *guidance document* includes any statement of agency policy or interpretation concerning a statute, regulation, or technical matter within the jurisdiction of the agency that is intended to have general applicability and future effect, but which is not intended to have the force or effect of law in its own right and is not otherwise required by statute to satisfy the rulemaking procedures specified in 5 U.S.C. 553 or 5 U.S.C. 556. The term is not confined to formal written documents; guidance may come in a variety of forms, including (but not limited to) letters, memoranda, circulars, bulletins, advisories, and may include video, audio, and Web-based formats. *See* OMB Bulletin 07–02, ''Agency Good Guidance Practices,'' (January 25, 2007) (''OMB Good Guidance Bulletin'').

(d) This subpart does not apply to:

(1) Rules exempt from rulemaking requirements under 5 U.S.C. 553(a);

(2) Rules of agency organization, procedure, or practice;

(3) Decisions of agency adjudications under 5 U.S.C. 554 or similar statutory provisions;

(4) Internal executive branch legal advice or legal advisory opinions addressed to executive branch officials;

(5) Agency statements of specific applicability, including advisory or legal opinions directed to particular parties about circumstance-specific questions (*e.g.,* case or investigatory letters responding to complaints, warning letters), notices regarding particular locations or facilities (*e.g.,* guidance pertaining to the use, operation, or control of a government facility or property), and correspondence with individual persons or entities (*e.g.,* congressional correspondence), except documents ostensibly directed to a particular party but designed to guide the conduct of the broader regulated public;

(6) Legal briefs, other court filings, or positions taken in litigation or enforcement actions;

(7) Agency statements that do not set forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statute or regulation, including speeches and individual presentations, editorials, media interviews, press materials, or congressional testimony that do not set forth for the first time a new regulatory policy;

(8) Guidance pertaining to military or foreign affairs functions;

(9) Grant solicitations and awards;

(10) Contract solicitations and awards; or

(11) Purely internal agency policies or guidance directed solely to DOT employees or contractors or to other Federal agencies that are not intended to have substantial future effect on the behavior of regulated parties.

§ 5.27 Review and clearance by Chief Counsels and the Office of the General Counsel.

All DOT guidance documents, as defined in § 5.25(c), require review and

[8]

[1] See Appendix A to ''Memorandum on the Review and Clearance of Guidance Documents,'' available at *https://www.transportation.gov/sites/dot.gov/files/docs/regulations/328566/gen-counsel-mem-guidance-documents-signed-122018.pdf.*

clearance in accordance with this subpart.

(a) Guidance proposed to be issued by an OA of the Department must be reviewed and cleared by the OA's Office of Chief Counsel. In addition, as provided elsewhere in this subpart, some OA guidance documents will require review and clearance by OGC.

(b) Guidance proposed to be issued by a component of OST must be reviewed and cleared by OGC.

§ 5.29 Requirements for clearance.

DOT's review and clearance of guidance shall ensure that each guidance document proposed to be issued by an OA or component of OST satisfies the following requirements:

(a) The guidance document complies with all relevant statutes and regulation (including any statutory deadlines for agency action);

(b) The guidance document identifies or includes:

(1) The term ''guidance'' or its functional equivalent;

(2) The issuing OA or component of OST;

(3) A unique identifier, including, at a minimum, the date of issuance and title of the document and its Z–RIN, if applicable;

(4) The activity or entities to which the guidance applies;

(5) Citations to applicable statutes and regulations;

(6) A statement noting whether the guidance is intended to revise or replace any previously issued guidance and, if so, sufficient information to identify the previously issued guidance; and

(7) A short summary of the subject matter covered in the guidance document at the top of the document.

(c) The guidance document avoids using mandatory language, such as ''shall,'' ''must,'' ''required,'' or ''requirement,'' unless the language is describing an established statutory or regulatory requirement or is addressed to DOT staff and will not foreclose the Department's consideration of positions advanced by affected private parties;

(d) The guidance document is written in plain and understandable English;

(e) All guidance documents include a clear and prominent statement declaring that the contents of the document do not have the force and effect of law and are not meant to bind the public in any way, and the document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

§ 5.31 Public access to effective guidance documents.

Each OA and component of OST responsible for issuing guidance documents shall:

(a) Ensure all effective guidance documents, identified by a unique identifier which includes, at a minimum, the document's title and date of issuance or revision and its Z–RIN, if applicable, are on its website in a single, searchable, indexed database, and available to the public in accordance with 49 CFR 7.12(a)(2);

(b) Note on its website that guidance documents lack the force and effect of law, except as authorized by law or as incorporated into a contract;

(c) Maintain and advertise on its website a means for the public to comment electronically on any guidance documents that are subject to the notice-and-comment procedures described in § 5.39 and to submit requests electronically for issuance, reconsideration, modification, or rescission of guidance documents in accordance with § 5.41; and

(d) Designate an office to receive and address complaints from the public that the OA or OST component is not following the requirements of OMB's Good Guidance Bulletin or is improperly treating a guidance document as a binding requirement.

§ 5.33 Good faith cost estimates.

Even though not legally binding, some agency guidance may result in a substantial economic impact. For example, the issuance of agency guidance may induce private parties to alter their conduct to conform to recommended standards or practices, thereby incurring costs beyond the costs of complying with existing statutes and regulations. While it may be difficult to predict with precision the economic impact of voluntary guidance, the proposing OA or component of OST shall, to the extent practicable, make a good faith effort to estimate the likely economic cost impact of the guidance document to determine whether the document might be significant. When an OA or OST component is assessing or explaining whether it believes a guidance document is significant, it should, at a minimum, provide the same level of analysis that would be required for a major determination under the Congressional Review Act.[2] When an agency determines that a guidance document will be economically significant, the OA or OST component should conduct and publish a Regulatory Impact Analysis of the sort that would accompany an economically significant rulemaking, to the extent reasonably possible.

§ 5.35 Approved procedures for guidance documents identified as ''significant'' or ''otherwise of importance to the Department's interests.''

(a) For guidance proposed to be issued by an OA, if there is a reasonable possibility the guidance may be considered ''significant'' or ''otherwise of importance to the Department's interests'' within the meaning of § 5.37 or if the OA is uncertain whether the guidance may qualify as such, the OA should email a copy of the proposed guidance document (or a summary of it) to the Office of Regulation for review and further direction before issuance. Unless exempt under appendix A to the Memorandum on the Review and Clearance of Guidance Documents,[3] each proposed DOT guidance document determined to be significant or otherwise of importance to the Department's interests must be approved by the Secretary before issuance. In such instances, the Office of Regulation will request that the proposing OA or component of OST obtain a Z–RIN for departmental review and clearance through the Regulatory Management System (RMS), or a successor data management system, and OGC will coordinate submission of the proposed guidance document to the Secretary for approval.

(b) As with significant regulations, OGC will submit significant DOT guidance documents to OMB for coordinated review. In addition, OGC may determine that it is appropriate to coordinate with OMB in the review of guidance documents that are otherwise of importance to the Department's interests.

(c) If the guidance document is determined not to be either significant or otherwise of importance to the Department's interests within the meaning of § 5.37, the Office of Regulation will advise the proposing OA or component of OST to proceed with issuance of the guidance either through the Office of the Executive Secretariat (for **Federal Register** notices) or through its standard clearance process. For each guidance document coordinated through the Office of the Executive Secretariat, the issuing OA or component of OST should include a

[2] See OMB Memorandum M–19–14, Guidance on Compliance with the Congressional Review Act (April 11, 2019).

[3] See Appendix A to ''Memorandum on the Review and Clearance of Guidance Documents,'' available at *https://www.transportation.gov/sites/dot.gov/files/docs/regulations/328566/gen-counsel-mem-guidance-documents-signed-122018.pdf.*

statement in the action memorandum indicating that the guidance document has been reviewed and cleared in accordance with this process.

§ 5.37 Definitions of "significant guidance document" and guidance documents that are "otherwise of importance to the Department's interests."

(a) The term ''significant guidance document'' means a guidance document that will be disseminated to regulated entities or the general public and that may reasonably be anticipated:

(1) To lead to an annual effect on the economy of $100 million or more or adversely affect in a material way the U.S. economy, a sector of the U.S. economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) To create serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency;

(3) To alter materially the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) To raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866, as further amended.

(b) The term ''significant guidance document'' does not include the categories of documents excluded by § 5.25(b) or any other category of guidance documents exempted in writing by OGC in consultation with OMB's Office of Information and Regulatory Affairs (OIRA).

(c) Significant and economically significant guidance documents must be reviewed by OIRA under E.O. 12866 before issuance; and and must demonstrate compliance with the applicable requirements for regulations or rules, including significant regulatory actions, set forth in E.O. 12866, E.O. 13563, E.O. 13609, E.O. 13771, and E.O. 13777.

(d) Even if not ''significant,'' a guidance document will be considered ''otherwise of importance to the Department's interests'' within the meaning of this paragraph if it may reasonably be anticipated:

(1) To relate to a major program, policy, or activity of the Department or a high-profile issue pending for decision before the Department;

(2) To involve one of the Secretary's top policy priorities;

(3) To garner significant press or congressional attention; or

(4) To raise significant questions or concerns from constituencies of importance to the Department, such as Committees of Congress, States or Indian tribes, the White House or other departments of the Executive Branch, courts, consumer or public interest groups, or leading representatives of industry.

§ 5.39 Designation procedures.

(a) The Office of Regulation may request an OA or OST component to prepare a designation request for certain guidance documents. Designation requests must include the following information:

(1) A summary of the guidance document; and

(2) The OA or OST component's recommended designation of ''not significant,'' ''significant,'' or ''economically significant,'' as well as a justification for that designation.

(b) Except as otherwise provided in paragraph (c) of this section, the Office of Regulation will seek significance determinations from OIRA for certain guidance documents, as appropriate, in the same manner as for rulemakings. Prior to publishing these guidance documents, and with sufficient time to allow OIRA to review the document in the event that a significance determination is made, the Office of Regulation should provide OIRA with an opportunity to review the designation request or the guidance document, if requested, to determine if it meets the definition of ''significant'' or ''economically significant'' under Executive Order 13891.

(c) Unless they present novel issues, significant risks, interagency considerations, unusual circumstances, or other unique issues, the categories of guidance documents found in appendix A [4] do not require designation by OIRA.

§ 5.41 Notice-and-comment procedures.

(a) Except as provided in paragraph (b) of this section, all proposed DOT guidance documents determined to be a ''significant guidance document'' within the meaning of § 5.37 shall be subject to the following informal notice-and-comment procedures. The issuing OA or component of OST shall publish a notice in the **Federal Register** announcing that a draft of the proposed guidance document is publicly available, shall post the draft guidance document on its website, shall invite public comment on the draft document for a minimum of 30 days, and shall prepare and post a public response to major concerns raised in the comments, as appropriate, on its website, either before or when the guidance document is finalized and issued.

(b) The requirements of paragraph (a) of this section will not apply to any significant guidance document or categories of significant guidance documents for which OGC finds, in consultation with OIRA, the proposing OA or component of OST, and the Secretary, good cause that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest (and incorporates the finding of good cause and a brief statement of reasons therefor in the guidance issued). Unless OGC advises otherwise in writing, the categories of guidance documents listed in appendix A [5] will be exempt from the requirements of paragraph (a) of this section.

(c) Where appropriate, OGC or the proposing OA or component of OST may recommend to the Secretary that a particular guidance document that is otherwise of importance to the Department's interests shall also be subject to the informal notice-and-comment procedures described in paragraph (a) of this section.

§ 5.43 Petitions for guidance.

Any person may petition an OA or OST component to withdraw or modify a particular guidance document by using the procedures found in § 5.13(c). The OA or OST component should respond to all requests in a timely manner, but no later than 90 days after receipt of the request.

§ 5.45 Rescinded guidance.

No OA or component of OST may cite, use, or rely on guidance documents that are rescinded, except to establish historical facts.

§ 5.47 Exigent circumstances.

In emergency situations or when the issuing OA or component of OST is required by statutory deadline or court order to act more quickly than normal review procedures allow, the issuing OA or component of OST shall coordinate with OGC to notify OIRA as soon as possible and, to the extent practicable, shall comply with the requirements of this subpart at the earliest opportunity. Wherever practicable, the issuing OA or component of OST should schedule its proceedings to permit sufficient time to

[4] See Appendix A to ''Memorandum on the Review and Clearance of Guidance Documents,'' available at *https://www.transportation.gov/sites/dot.gov/files/docs/regulations/328566/gen-counsel-mem-guidance-documents-signed-122018.pdf.*

[5] See Appendix A to ''Memorandum on the Review and Clearance of Guidance Documents,'' available at *https://www.transportation.gov/sites/dot.gov/files/docs/regulations/328566/gen-counsel-mem-guidance-documents-signed-122018.pdf.*

comply with the procedures set forth in this subpart.

§ 5.49 Reports to Congress and GAO.

Unless otherwise determined in writing by OGC, it is the policy of the Department that upon issuing a guidance document determined to be ''significant'' within the meaning of § 5.37, the issuing OA or component of OST will submit a report to Congress and GAO in accordance with the procedures described in 5 U.S.C. 801 (the ''Congressional Review Act'').

§ 5.51 No judicial review or enforceable rights.

This subpart is intended to improve the internal management of the Department of Transportation. As such, it is for the use of DOT personnel only and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its agencies or other entities, its officers or employees, or any other person.

Subpart D—Enforcement Procedures

§ 5.53 General.

The requirements set forth in this subpart apply to all enforcement actions taken by each DOT operating administration (OA) and each component of the Office of the Secretary of Transportation (OST) with enforcement authority.

§ 5.55 Enforcement attorney responsibilities.

All attorneys of OST and the OAs involved in enforcement activities are responsible for carrying out and adhering to the policies set forth in this subpart. All supervising attorneys with responsibility over enforcement adjudications, administrative enforcement proceedings, and other enforcement actions are accountable for the successful implementation of these policies and for reviewing and monitoring compliance with this subpart by the employees under their supervision. These responsibilities include taking all steps necessary to ensure that the Department provides a fair and impartial process at each stage of enforcement actions. The Office of Litigation and Enforcement within the Office of the General Counsel (OGC) is delegated authority to interpret this subpart and provide guidance on compliance with the policies contained herein. The Office of Litigation and Enforcement shall exercise this authority in coordination with the Chief Counsels of the OAs and subject to the direction and supervision of the General Counsel.

§ 5.57 Definitions.

Administrative enforcement proceeding is to be interpreted broadly, consistent with applicable law and regulations, and includes, but is not limited to, administrative civil penalty proceedings; proceedings involving potential cease-and-desist or corrective action orders; preemption proceedings; safety rating appeals; pilot and mechanic revocation proceedings; grant suspensions, terminations, or other actions to remedy violations of grant conditions; and similar enforcement-related proceedings.

Administrative law judges (ALJs) are adjudicatory hearing officers appointed by a department head to serve as triers of fact in formal and informal administrative proceedings and to issue recommended decisions in adjudications. At DOT, ALJs are to be appointed by the Secretary of Transportation and assigned to the Office of Hearings.

Adversarial personnel are those persons who represent a party (including the agency) or a position or interest at issue in an enforcement action taken or proposed to be taken by or for an agency. They include the agency's employees who investigate, prosecute, or advocate on behalf of the agency in connection with the enforcement action.

Decisional personnel are employees of the agency responsible for issuing decisions arising out of the agency's enforcement actions, which include formal or informal enforcement adjudications. These employees include ALJs, hearing officers, Administrative Judges (AJs), and agency employees who advise and assist such decision makers.

Due process means procedural rights and protections afforded by the Government to affected parties to provide for a fair process in the enforcement of legal obligations, including in connection with agency actions determining a violation of law, assessing a civil penalty, requiring a party to take corrective action or to cease and desist from conduct, or otherwise depriving a party of a property or liberty interest. Due process always includes two essential elements for a party subject to an agency enforcement action: adequate notice of the proposed agency enforcement action and a meaningful opportunity to be heard by the agency decision maker.

Enabling act means the Federal statute that defines the scope of an agency's authority and authorizes it to undertake an enforcement action.

Enforcement action means an action taken by the Department upon its own initiative or at the request of an affected party in furtherance of its statutory authority and responsibility to execute and ensure compliance with applicable laws. Such actions include administrative enforcement proceedings, enforcement adjudications, and judicial enforcement proceedings.

Enforcement adjudication is the administrative process undertaken by the agency to resolve the legal rights and obligations of specific parties with regard to a particular enforcement issue pending before an agency. The outcome of an enforcement adjudication is a formal or informal decision issued by an appropriate decision maker. Enforcement adjudications require the opportunity for participation by directly affected parties and the right to present a response to a decision maker, including relevant evidence and reasoned arguments.

Formal enforcement adjudication means an adjudication required by statute to be conducted ''on the record.'' The words ''on the record'' generally refer to a decision issued by an agency after a proceeding conducted before an ALJ (or the agency head sitting as judge or other presiding employee who is not an ALJ) using trial-type procedures. It is usually the agency's enabling act, not the APA, that determines whether a formal hearing is required.

Informal enforcement adjudication means an adjudication that is not required to be conducted ''on the record'' with trial-like procedures. The APA provides agencies with a substantial degree of flexibility in establishing practices and procedures for the conduct of informal adjudications.

Investigators, inspectors, and special agents refer to those agency employees or agents responsible for the investigation and review of an affected party's compliance with the regulations and other legal requirements administered by the agency.

Judicial enforcement proceeding means a proceeding conducted in an Article III court, in which the Department is seeking to enforce an applicable statute, regulation, or order.

Procedural regulations are agency regulations setting forth the procedures to be followed during adjudications consistent with the agency's enabling act, the APA, and other applicable laws.

§ 5.59 Enforcement policy generally.

It is the policy of the Department to provide affected parties appropriate due process in all enforcement actions. In the course of such actions and

proceedings, the Department's conduct must be fair and free of bias and should conclude with a well-documented decision as to violations alleged and any violations found to have been committed, the penalties or corrective actions to be imposed for such violations, and the steps needed to ensure future compliance. It is in the public interest and fundamental to good government that the Department carry out its enforcement responsibilities in a fair and just manner. No person should be subject to an administrative enforcement action or adjudication absent prior public notice of both the enforcing agency's jurisdiction over particular conduct and the legal standards applicable to that conduct. The Department should, where feasible, foster greater private-sector cooperation in enforcement, promote information sharing with the private sector, and establish predictable outcomes for private conduct.

§ 5.61 Investigative functions.

DOT's investigative powers must be used in a manner consistent with due process, basic fairness, and respect for individual liberty and private property. Congress has granted the Secretary (and by delegation from the Secretary to the OAs) and the FAA Administrator broad investigative powers, and it is an essential part of DOT's safety and consumer protection mission to investigate compliance with the statutes and regulations administered by the Department, including through periodic inspections. The OAs and components of OST with enforcement authority are appropriately given broad discretion in determining whether and how to conduct investigations, periodic inspections, and other compliance reviews, and these investigative functions are often performed by agency investigators or inspectors in the field. The employees and contractors of DOT responsible for inspections and other investigative functions must not use these authorities as a game of ''gotcha'' with regulated entities and should follow existing statutes and regulations. Rather, to the maximum extent consistent with protecting the integrity of the investigation, the representatives of DOT should promptly disclose to the affected parties the reasons for the investigative review and any compliance issues identified or findings made in the course of the review. The responsible enforcement attorneys within the relevant OA or component of OST shall provide effective legal guidance to investigators and inspectors to ensure adherence to the policies and procedures set forth herein.

§ 5.63 Clear legal foundation.

All DOT enforcement actions against affected parties seeking redress for asserted violations of a statute or regulation must be founded on a grant of statutory authority in the relevant enabling act. The authority to prosecute the asserted violation and the authority to impose monetary penalties, if sought, must be clear in the text of the statute. Unless the terms of the relevant statute or regulation with government-wide applicability, such as 2 CFR part 180, clearly and expressly authorize the OA or component of OST to enforce the relevant legal requirement directly through an administrative enforcement proceeding, the proper forum for the enforcement action is Federal court, and the enforcement action must be initiated in court by attorneys of the Department of Justice acting in coordination with DOT counsel.

§ 5.65 Proper exercise of prosecutorial and enforcement discretion.

The Department's attorneys and policy makers have broad discretion in deciding whether to initiate an enforcement action. Nevertheless, in exercising discretion to initiate an enforcement action and in the pursuit of that action, agency counsel must not adopt or rely upon overly broad or unduly expansive interpretations of the governing statutes or regulations, and should ensure that the law is interpreted and applied according to its text. DOT will not rely on judge-made rules of judicial discretion, such as the *Chevron* doctrine, as a device or excuse for straining the limits of a statutory grant of enforcement authority. All decisions by DOT to prosecute or not to prosecute an enforcement action should be based upon a reasonable interpretation of the law about which the public has received fair notice and should be made with due regard for fairness, the facts and evidence adduced through an appropriate investigation or compliance review, the availability of scarce resources, the administrative needs of the responsible OA or OST component, Administration policy, and the importance of the issues involved to the fulfillment of the Department's statutory responsibilities.

§ 5.67 Duty to review for legal sufficiency.

In accordance with established agency procedures, enforcement actions should be reviewed by the responsible agency component for legal sufficiency under applicable statutes and regulations, judicial decisions, and other appropriate authorities.[6] If, in the opinion of the responsible agency component or its counsel, the evidence is sufficient to support the assertion of violation(s), then the agency may proceed with the enforcement action. If the evidence is not sufficient to support the proposed enforcement action, the agency may modify or amend the charges and bring an enforcement action in line with the evidence or return the case to the enforcement staff for additional investigation. The reviewing attorney or agency component may also recommend the closure of the case for lack of sufficient evidence.[7] The Department will not initiate enforcement actions as a ''fishing expedition'' to find potential violations of law in the absence of sufficient evidence in hand to support the assertion of a violation.

§ 5.69 Fair notice.

Notice to the regulated party is a due process requirement. All documents initiating an enforcement action shall ensure notice reasonably calculated to inform the regulated party of the nature and basis for the action being taken to allow an opportunity to challenge the action and to avoid unfair surprise. The notice should include legal authorities, statutes or regulations allegedly violated, basic issues, key facts alleged, a clear statement of the grounds for the agency's action, and a reference to or recitation of the procedural rights available to the party to challenge the agency action, including appropriate procedure for seeking administrative and judicial review.

§ 5.71 Separation of functions.

For those OAs or OST components whose regulations provide for a separation of decisional personnel from adversarial personnel in an

[6] Though it may not always be feasible or necessary for agency personnel to consult with counsel before initiating an enforcement action, particularly since the OAs utilize a variety of enforcement personnel to staff their enforcement programs, including personnel located in the fields, agency personnel should ensure that the basis for an enforcement action is legally sufficient before initiating it.

[7] Attorneys at many of the OAs issue Notices of Probable Violations, Notice of Claims, or Demand Letters to initiate enforcement proceedings. At other OAs, these documents are issued by non-attorney program officials. The duty to review applies equally to all agency attorneys whether deciding to issue a document to initiate enforcement proceedings or to continue to prosecute based upon a document previously issued by a non-attorney program official. In the latter situation, it is important that attorneys provide legal input, training, and review of the work product of the program office. At all times, DOT attorneys are encouraged to exercise their best professional judgment in deciding to initiate, continue, or recommend closing a case, consistent with applicable legal and ethical standards.

administrative enforcement proceeding, any agency personnel who have taken an active part in investigating, prosecuting, or advocating in the enforcement action should not serve as a decision maker and should not advise or assist the decision maker in that same or a related case. In such proceedings, the agency's adversarial personnel should not furnish ex parte advice or factual materials to decisional personnel. When and as necessary, agency employees involved in enforcement actions should consult legal counsel and applicable regulations and ethical standards for further guidance on these requirements.

§ 5.73 Avoiding bias.

Consistent with all applicable laws and ethical standards relating to recusals and disqualifications, no Federal employee or contractor may participate in a DOT enforcement action in any capacity, including as ALJ, adjudication counsel, adversarial personnel, or decisional personnel, if that person has:

(a) A financial or other personal interest that would be affected by the outcome of the enforcement action;

(b) Personal animus against a party to the action or against a group to which a party belongs;

(c) Prejudgment of the adjudicative facts at issue in the proceeding; or

(d) Any other prohibited conflict of interest.

§ 5.75 Formal enforcement adjudications.

When a case is referred by the decision maker to the Office of Hearings or another designated hearing officer for formal adjudication (an ''on the record'' hearing), the assigned ALJ or hearing officer should use trial-type procedures consistent with applicable legal provisions. In formal adjudication, the APA requires findings and reasons on all material issues of fact, law, or discretion (policy). In all formal adjudications, the responsible OA or component of OST shall adhere faithfully and consistently to the procedures established in the relevant procedural regulations. Agency counsel engaged in formal adjudications on behalf of DOT are accountable for compliance with the requirements of this subpart.

§ 5.77 Informal enforcement adjudications.

Even though informal adjudications do not require trial-type procedures, the responsible OA or component of OST should ordinarily afford the applicant or the regulated entity that is the subject of the adjudication (as the case may be), as well as other directly affected parties (if any), adequate notice and an opportunity to be heard on the matter under review, either through an oral presentation or through a written submission. Except in cases of a safety emergency or when the clear text of the relevant enabling act or government-wide regulation, such as 2 CFR part 180, expressly authorizes exigent enforcement action without a prior hearing, the responsible OA or component of OST shall give the regulated entity appropriate advance notice of the proposed enforcement action and shall advise the entity of the opportunity for an informal hearing in a manner and sufficiently in advance that the entity's representatives have a fair opportunity to prepare for and to participate in the hearing, whether in person or by writing. The notice should be in plain language and, when appropriate, contain basic information about the applicable adjudicatory process. In all informal adjudications, the responsible OA or component of OST shall adhere faithfully and consistently to the procedures established in any applicable procedural regulations.

§ 5.79 The hearing record.

In formal hearings, the agency shall comply with the APA and shall include in the record of the hearing the testimony, exhibits, papers, and requests that are filed by parties to the hearing, in addition to the ALJ's or hearing officer's decision or the decision on appeal. For informal hearings, the record shall include the information that the agency considered ''at the time it reached the decision'' and its contemporaneous findings. The administrative record does not include privileged documents, such as attorney-client communications or deliberative or draft documents. Agencies are encouraged to make the record available to all interested parties to the fullest extent allowed by law, consistent with appropriate protections for the handling of confidential information.

§ 5.81 Contacts with the public.

After the initiation of an enforcement proceeding, communications between persons outside the agency and agency decisional personnel should occur on the record. Consistent with applicable regulations and procedures, if oral, written, or electronic ex parte communications occur, they should be placed on the record as soon as practicable. Notice should be given to the parties that such communications are being placed into the record. When performing departmental functions, all DOT employees should properly identify themselves as employees of the Department, including the OA or component of OST in which they work; they should properly show official identification if the contact is made in person; and they should clearly state the nature of their business and the reasons for the contact. All contacts by DOT personnel with the public shall be professional, fair, honest, direct, and consistent with all applicable ethical standards.

§ 5.83 Duty to disclose exculpatory evidence.

It is the Department's policy that each responsible OA or component of OST will voluntarily follow in its civil enforcement actions the principle articulated in *Brady* v. *Maryland,*[8] in which the Supreme Court held that the Due Process Clause of the Fifth Amendment requires disclosure of exculpatory evidence ''material to guilt or punishment'' known to the government but unknown to the defendant in criminal cases. Adopting the ''Brady rule'' and making affirmative disclosures of exculpatory evidence in all enforcement actions will contribute to the Department's goal of open and fair investigations and administrative enforcement proceedings. This policy requires the agency's adversarial personnel to disclose materially exculpatory evidence in the agency's possession to the representatives of the regulated entity whose conduct is the subject of the enforcement action. These affirmative disclosures should include any material evidence known to the Department's adversarial personnel that may be favorable to the regulated entity in the enforcement action—including evidence that tends to negate or diminish the party's responsibility for a violation or that could be relied upon to reduce the potential fine or other penalties. The regulated entity need not request such favorable information; it should be disclosed as a matter of course. Agency counsel should recommend appropriate remedies to DOT decision makers where a *Brady* rule violation has occurred, using the factors identified by courts when applying the *Brady* rule in the criminal context.

§ 5.85 Use of guidance documents in administrative enforcement cases.

Guidance documents cannot create binding requirements that do not already exist by statute or regulation. Accordingly, the Department may not use its enforcement authority to convert agency guidance documents into

[8] *Brady* v. *Maryland,* 373 U.S. 83 (1963).

binding rules. Likewise, enforcement attorneys may not use noncompliance with guidance documents as a basis for proving violations of applicable law. Guidance documents can do no more, with respect to prohibition of conduct, than articulate the agency or Department's understanding of how a statute or regulation applies to particular circumstances. The Department may cite a guidance document to convey this understanding in an administrative enforcement action or adjudication only if it has notified the public of such document in advance through publication in the **Federal Register** or on the Department's website. Additional procedures related to guidance documents are contained in part 5, subpart C, of this chapter.

§ 5.87 Alternative Dispute Resolution (ADR).

The OAs and the components of OST with enforcement authority are encouraged to use ADR to resolve enforcement cases where appropriate. The Department's ADR policy describes a variety of problem-solving processes that can be used in lieu of litigation or other adversarial proceedings to resolve disputes over compliance.

§ 5.89 Duty to adjudicate proceedings promptly.

Agency attorneys should promptly initiate proceedings or prosecute matters referred to them. In addition, cases should not be allowed to linger unduly after the adjudicatory process has begun. Attorneys should seek to settle matters where possible or refer the case to a decision maker for proper disposition when settlement negotiations have reached an impasse.

§ 5.91 Agency decisions.

Agency counsel may be used in the conduct of informal hearings and to prepare initial recommended decisions for the agency decision maker. The agency must notify the directly affected parties of its decision, and the decision must reasonably inform the parties in a timely manner of the additional procedural rights available to them.

§ 5.93 Settlements.

Settlement conferences may be handled by appropriate agency counsel without the involvement of the agency's decision maker. Once a matter is settled by compromise, that agreement should be reviewed and accepted by an appropriate supervisor. The responsible OA or component of OST should issue an order adopting the terms of the settlement agreement as the final agency decision, where and as authorized by statute or regulation. No DOT settlement agreement, consent order, or consent decree should be used to adopt or impose new regulatory obligations for entities that are not parties to the settlement. Unless required by law, settlement agreements are not confidential and are subject to public disclosure.

§ 5.95 OGC approval required for certain settlement terms.

Whenever a proposed settlement agreement, consent order, or consent decree would impose behavioral commitments or obligations on a regulated entity that go beyond the requirements of relevant statutes and regulations, including the appointment of an independent monitor or the imposition of novel, unprecedented, or extraordinary obligations, the responsible OA or OST component should obtain the approval of OGC before finalizing the settlement agreement, consent order, or consent decree.

§ 5.97 Basis for civil penalties and disclosures thereof.

No civil penalties will be sought in any DOT enforcement action except when and as supported by clear statutory authority and sufficient findings of fact. Where applicable statutes vest the agency with discretion with regard to the amount or type of penalty sought or imposed, the penalty should reflect due regard for fairness, the scale of the violation, the violator's knowledge and intent, and any mitigating factors (such as whether the violator is a small business). The assessment of proposed or final penalties in a DOT enforcement action shall be communicated in writing to the subject of the action, along with a full explanation of the basis for the calculation of asserted penalties. In addition, the agency shall voluntarily share penalty calculation worksheets, manuals, charts, or other appropriate materials that shed light on the way penalties are calculated to ensure fairness in the process and to encourage a negotiated resolution where possible.

§ 5.99 Publication of decisions.

The agency's decisions in informal adjudications are not required to be published under the APA. However, where the agency intends to rely on its opinions in future cases, those opinions must generally be made available on agency websites or in agency reading rooms (and publication on Westlaw, Lexis, or similar legal services is also highly recommended). The APA has been read to require that opinions in formal adjudications must be made ''available for public inspection and copying.'' Agencies are strongly encouraged to publish all formal decisions on Westlaw, Lexis, or similar legal services.

§ 5.101 Coordination with the Office of Inspector General on criminal matters.

All Department employees must comply with the operative DOT Order(s) addressing referrals of potential criminal matters to the Office of Inspector General (OIG), consistent with the respective roles of the OIG and DOT OAs and components of OST in criminal investigations and the OIG's investigative procedures under the Inspector General Act of 1978, as amended.

§ 5.103 Standard operating procedures.

All legal offices that participate in or render advice in connection with enforcement actions should, to the extent practicable, operate under standard operating procedures. Such offices include, but are not limited to, those that oversee investigatory matters and serve as adversarial personnel in the agency's enforcement matters. These standard operating procedures, which can be contained in manuals, can be used to outline step-by-step requirements for attorney actions in the investigative stage and the prosecution stage; the role of an attorney as counselor, adjudicator, or litigator; the rulemaking process; and the process for issuance of guidance documents, letters of interpretation, preemption decisions, legislative guidance, contract administration, and a variety of other legal functions performed in the legal office. Each DOT OA and each OST component that conducts administrative inspections shall operate under those procedures governing such inspections and shall adopt such administrative inspection procedures if they do not exist. Those procedures shall be updated in a timely manner as needed.

§ 5.105 Cooperative Information Sharing.

The Department, as appropriate and to the extent practicable and permitted by law, shall:

(a) Encourage voluntary self-reporting of regulatory violations by regulated parties in exchange for reduction or waivers of civil penalties;

(b) Encourage voluntary information sharing by regulated parties; and

(c) Provide pre-enforcement rulings to regulated parties (formal and informal interpretations).

§ 5.107 Small Business Regulatory Enforcement Fairness Act Compliance (SBREFA).

The Department shall comply with the terms of SBREFA when conducting administrative inspections and adjudications, including section 223 of SBREFA (reduction or waivers of civil penalties, where appropriate). The Department will also cooperate with the Small Business Administration (SBA) when a small business files a comment or complaint related to DOT's inspection authority and when requested to answer SBREFA compliance requests.

§ 5.109 Referral of matters for judicial enforcement.

In considering whether to refer a matter for judicial enforcement by the Department of Justice, DOT attorneys should consult the applicable procedures set forth by the General Counsel, including in the document entitled ''Partnering for Excellence: Coordination of Legal Work Within the U.S. Department of Transportation,'' and any update or supplement to such document issued hereafter by the General Counsel. The specific procedures for initiating an affirmative litigation request are currently found in the coordination document at Section 11.B.l., ''Affirmative Litigation Requests to the Department of Justice.'' In most instances, requests to commence affirmative litigation must be reviewed by OGC, with such reviews coordinated through the Office of Litigation and Enforcement.

§ 5.111 No third-party rights or benefits.

This subpart is intended to improve the internal management of the Department. As such, it is for the use of DOT personnel only and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its agencies, officers, or any person.

Title 49—Transportation

PART 7—PUBLIC AVAILABILITY OF INFORMATION

■ 11. The authority citation for part 7 continues to read as follows:

Authority: 5 U.S.C. 552; 31 U.S.C. 9701; 49 U.S.C. 322; E.O. 12600; E.O. 13392.

■ 12. Amend § 7.12 by revising paragraph (a)(2) to read as follows:

§ 7.12 What records are available in reading rooms, and how are they accessed?

(a) * * *

(2) Statements of policy and interpretations, including guidance documents as defined in 49 CFR 5.25(c), that have been adopted by DOT;

* * * * *

PART 106—RULEMAKING PROCEDURES

■ 13. The authority citation for part 106 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 14. Amend § 106.40 by revising the introductory text, the first sentence of paragraph (c), and paragraph (d)(1) to read as follows:

§ 106.40 Direct final rule.

A direct final rule makes regulatory changes and states that the regulatory changes will take effect on a specified date unless PHMSA receives an adverse comment within the comment period—generally 60 days after the direct final rule is published in the **Federal Register**.

* * * * *

(c) *Confirmation of effective date.* We will publish a confirmation document in the **Federal Register**, generally within 15 days after the comment period closes, if we have not received an adverse comment. * * *

(d) * * *

(1) If we receive an adverse comment, we will either publish a document withdrawing the direct final rule before it becomes effective and may issue an NPRM, or proceed by any other means permitted under the Administrative Procedure Act, consistent with procedures at 49 CFR 5.13(l).

* * * * *

PART 211—RULES OF PRACTICE

■ 15. The authority citation for part 211 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20114, 20306, 20502–20504, and 49 CFR 1.89.

■ 16. Amend § 211.33 by revising paragraph (b) to read as follows:

§ 211.33 Direct final rulemaking procedures.

* * * * *

(b) The **Federal Register** document will state that any adverse comment must be received in writing by the Federal Railroad Administration within the specified time after the date of publication and that, if no written adverse comment or request for oral hearing (if such opportunity is required by statute) is received, the rule will become effective a specified number of days after the date of publication.

* * * * *

PART 389—RULEMAKING PROCEDURES—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

■ 17. The authority citation for part 389 continues to read as follows:

Authority: 49 U.S.C. 113, 501 *et seq.,* subchapters I and III of chapter 311, chapter 313, and 31502; 42 U.S.C. 4917; and 49 CFR 1.87.

■ 18. Amend § 389.39 by revising the introductory text and paragraphs (c) and (d)(1) to read as follows:

§ 389.39 Direct final rulemaking procedures.

A direct final rule makes regulatory changes and states that those changes will take effect on a specified date unless FMCSA receives an adverse comment by the date specified in the direct final rule published in the **Federal Register**.

* * * * *

(c) *Confirmation of effective date.* FMCSA will publish a confirmation rule document in the **Federal Register**, if it has not received an adverse comment by the date specified in the direct final rule. The confirmation rule document tells the public the effective date of the rule.

(d) * * *

(1) If FMCSA receives an adverse comment within the comment period, it will either publish a document withdrawing the direct final rule before it becomes effective and may issue an NPRM, or proceed by any other means permitted under the Administrative Procedure Act, consistent with procedures at 49 CFR 5.13(l).

* * * * *

PART 553—RULEMAKING PROCEDURES

■ 19. The authority citation for part 553 is revised to read as follows:

Authority: 49 U.S.C. 322, 30103, 30122, 30124, 30125, 30127, 30146, 30162, 32303, 32502, 32504, 32505, 32705, 32901, 32902, 33102, 33103, and 33107; delegation of authority at 49 CFR 1.95.

■ 20. Amend § 553.14 by revising paragraphs (b), (c), and (d) to read as follows:

§ 553.14 Direct final rulemaking.

* * * * *

(b) The **Federal Register** document will state that any adverse comment must be received in writing by NHTSA within the specified time after the date of publication of the direct final rule

and that, if no written adverse comment is received in that period, the rule will become effective a specified number of days (no less than 45) after the date of publication of the direct final rule. NHTSA will provide a minimum comment period of 30 days.

(c) If no written adverse comment is received by NHTSA within the specified time after the date of publication in the **Federal Register**, NHTSA will publish a document in the **Federal Register** indicating that no adverse comment was received and confirming that the rule will become effective on the date that was indicated in the direct final rule.

(d) If NHTSA receives any written adverse comment within the specified time after publication of the direct final rule in the **Federal Register**, the agency will either publish a document withdrawing the direct final rule before it becomes effective and may issue an NPRM, or proceed by any other means permitted under the Administrative Procedure Act, consistent with procedures at 49 CFR 5.13(l).

* * * * *

PART 601—ORGANIZATION, FUNCTIONS, AND PROCEDURES

■ 21. The authority citation for part 601 is revised to read as follows:

Authority: 5 U.S.C. 552; 49 U.S.C. 5334; 49 CFR 1.91.

■ 22. Amend § 601.36 by revising paragraphs (b), (c), and (d) to read as follows:

§ 601.36 Procedures for direct final rulemaking.

* * * * *

(b) The **Federal Register** document will state that any adverse comment must be received in writing by FTA within the specified time after the date of publication and that, if no written adverse comment is received, the rule will become effective a specified number of days after the date of publication.

(c) If no written adverse comment is received by FTA within the specified time of publication in the **Federal Register**, FTA will publish a notice in the **Federal Register** indicating that no adverse comment was received and confirming that the rule will become effective on the date that was indicated in the direct final rule.

(d) If FTA receives any written adverse comment within the specified time of publication in the **Federal Register**, FTA will either publish a document withdrawing the direct final rule before it becomes effective and may issue an NPRM, or proceed by any other means permitted under the Administrative Procedure Act, consistent with procedures at 49 CFR 5.13(l).

* * * * *

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