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FEDERAL REGISTER

Vol. 85 Thursday,
No. 25 February 6, 2020

Pages 6731–7190

OFFICE OF THE FEDERAL REGISTER

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

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Presidential Documents

Title 3—

The President

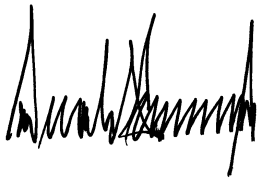
Presidential Determination No. 2020–05 of January 6, 2020

Presidential Determination on Waiving a Restriction on United States Assistance to Bolivia Under Section 706 of the Foreign Relations Authorization Act, Fiscal Year 2003

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States, including section 706(3)(A) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228) (FRAA), I hereby determine that the provision of United States assistance to Bolivia in Fiscal Year 2020 is vital to the national interests of the United States.

You are authorized and directed to submit this determination, with its memorandum of justification, under section 706 of the FRAA, to the Congress, and to publish it in the *Federal Register.*



THE WHITE HOUSE,
Washington, January 6, 2020

[FR Doc. 2020–02473
Filed 2–5–20; 8:45 am]
Billing code 4710–10–P

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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

Statement of Policy Regarding Prohibition on Abusive Acts or Practices

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Policy statement.

SUMMARY: Section 1031(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) provides that the Bureau of Consumer Financial Protection (Bureau) may use its supervisory and enforcement authority, among other things, to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. Section 1031(d) of the Dodd-Frank Act sets forth general standards for when the Bureau may declare that an act or practice is abusive for purposes of the Dodd-Frank Act. Uncertainty remains as to the scope and meaning of abusiveness. This uncertainty creates challenges for covered persons in complying with the law. The Bureau wants to make sure that such uncertainty does not impede or deter the provision of otherwise lawful financial products or services that could be beneficial to consumers. To convey and foster greater certainty about the meaning of abusiveness, this general statement of policy (Policy Statement) provides a framework for the Bureau's exercise of its supervisory and enforcement authority to address abusive acts or practices.

DATES: This Policy Statement is applicable on January 24, 2020.

FOR FURTHER INFORMATION CONTACT: Colin Reardon, Division of Supervision, Enforcement, and Fair Lending, at (202) 435–9668. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1031(a) of the Dodd-Frank Act provides that the Bureau may use its supervisory and enforcement authority, among other things, to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.[1] Since its inception, the Bureau has used its supervisory and enforcement authority to identify and seek relief where covered persons [2] engage in unfair, deceptive, or abusive acts or practices (UDAAPs).

The statutory standard for what the Bureau has authority to declare an ''abusive act or practice'' is set forth in section 1031(d) of the Dodd-Frank Act. Specifically, section 1031(d) states that the Bureau shall have no authority under this section to declare an act or practice abusive in connection with the provision of a consumer financial product or service, unless the act or practice—(1) Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or (2) takes unreasonable advantage of—(A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service; (B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or (C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.[3]

Through the language in section 1031(d), Congress defined the abusiveness standard in general terms and did not attempt to include a complete list of abusive practices. To demonstrate a violation of section 1031(d), the Bureau therefore must satisfy the specific elements of sections 1031(d)(1), 1031(d)(2)(A), 1031(d)(2)(B), or 1031(d)(2)(C). This Policy Statement refers to these provisions collectively as the ''abusiveness standard.''

The Dodd-Frank Act is the first Federal law to prohibit abusive acts or practices with respect to consumer financial products and services generally.[4] Although Congress, through the language in section 1031(d), provided some indication of the abusiveness standard, the Dodd-Frank Act does not further elaborate on the meaning of the terms used in section 1031(d), and there is relatively limited legislative history discussing the meaning of the language in section 1031(d) (including in distinguishing the abusiveness standard from the

[1] Public Law 111–203, Tit. X, sec. 1031(a), 124 Stat. 1376, 2005 (2010) (codified at 12 U.S.C. 5531(a)).

[2] The Bureau intends this Policy Statement to apply with respect to any person against whom the Bureau cites conduct as abusive in supervision or challenges conduct as abusive in enforcement, including, where applicable, covered persons, service providers, and persons that provide substantial assistance to abusive conduct by a covered person or service provider. *See* 12 U.S.C. 5514 through 5516, 5531, 5536. For brevity, this Policy Statement refers simply to ''covered persons'' throughout.

[3] 12 U.S.C. 5531(d).

[4] Certain other Federal consumer financial laws, including the Fair Debt Collection Practices Act (FDCPA) and the Home Ownership and Equity Protection Act (HOEPA), reference either the term ''abusive'' or ''abuse.'' *See* 15 U.S.C. 1692d (FDCPA), 12 U.S.C. 1639(p)(2)(B) (HOEPA). The Telemarketing and Consumer Fraud and Abuse Prevention Act also directed the Federal Trade Commission (FTC) to ''prescribe rules prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices.'' *See* 15 U.S.C. 6102(a)(1).

deception and unfairness standards).[5] Moreover, the abusiveness standard does not have the long and rich history of the deception and unfairness standards. The FTC has used its authority under the FTC Act to address unfair and deceptive acts or practices (UDAPs) for more than 80 years, over which time policy statements, administrative and judicial precedent, and statutory amendments have provided important clarifications about the meaning of unfairness and deception.[6] Federal prudential regulators have also enforced the UDAP prohibitions in the FTC Act since before the Bureau's existence.

The Bureau has applied the abusiveness standard since it commenced operation in 2011. The Bureau has brought 32 enforcement actions that included an abusiveness claim, including as recently as fall 2019. But 30 of those 32 enforcement actions had both an abusiveness and an unfairness or deception claim (*i.e.,* only two enforcement actions contained just an abusiveness claim). And in many of those 30 actions, the abusiveness claim arose from the same course of conduct as the unfairness or deception claim. It is difficult to discern from those actions unique fact patterns to which only the abusiveness standard would apply. Given the prevalence of dual-pleading, along with the relatively nascent nature of this legal authority (and of the Bureau itself) and the number of matters the Bureau has resolved via settlement agreement, this enforcement activity has resulted in few reported judicial or Bureau administrative decisions that address the contours of the abusiveness standard.[7] Regarding supervision, the Bureau's UDAAP examination procedures largely restate the language of the Dodd-Frank Act. And although the Bureau has issued 18 editions of Supervisory Highlights since 2012, these documents only rarely have described citations of abusive acts or practices in a manner that would provide guidance as to how the Bureau concluded the statutory language used in section 1031(d) applied to the conduct at issue. Additionally, the Bureau has mentioned the risk of abusive acts or practices in non-binding guidance documents but has not set forth a detailed explication of the abusiveness standard in such documents.[8]

The Bureau's 2017 Final Rule on Payday, Vehicle Title, and Certain High-Cost Installment Loans (2017 Final Rule) included identification of two abusive practices: The first with respect to making a covered loan without determining a consumer's ability to repay (remedied by stringent underwriting requirements prescribed by the Bureau), and the second with respect to making repeated failed attempts to debit a consumer's account to collect payment on a covered loan.[9] In the 2017 Final Rule, the Bureau identified the same two practices as unfair practices. The Bureau has proposed to rescind the ability-to-repay provisions of the 2017 Final Rule and the identification of the abusive and unfair practice on which those provisions are based (2019 Rescission Proposal).[10] One of the Bureau's rationales for the 2019 Rescission Proposal was its preliminary conclusion that legal grounds do not sustain the 2017 Final Rule's identification as an abusive practice the making of a covered loan without determining the consumer's ability to repay (remedied by stringent underwriting requirements prescribed by the Bureau).

Substantial concerns have been raised about the uncertain meaning of the abusiveness standard. For example, in response to the Bureau's Spring 2018 Call for Evidence, the Bureau received comments from stakeholders about these concerns.[11]

[5] *See, e.g.,* S. Rep. No. 111–176, at 172 (Apr. 30, 2010) (''Current law prohibits unfair or deceptive acts or practices. The addition of 'abusive' will ensure that the Bureau is empowered to cover practices where providers unreasonably take advantage of consumers.''); Public Law 111–203, pmbl. (listing, in the preamble to the Dodd-Frank Act, one of the purposes of the Act as ''protect[ing] consumers from abusive financial services practices''); *see also* S. Rep. No. 111–176, at 9 n.19 (''Today's consumer protection regime . . . could not stem a plague of abusive and unaffordable mortgages.''); *id.* at 11 (''This financial crisis was precipitated by the proliferation of poorly underwritten mortgages with abusive terms.''); H.R. Rep. No. 111–376, at 91 (Dec. 9, 2009) (''Th[e] disparate regulatory system has been blamed in part for the lack of aggressive enforcement against abusive and predatory loan products that contributed to the financial crisis, such as subprime and nontraditional mortgages.''); H.R. Rep. No. 111–517, at 876–77 (June 29, 2010) (Conf. Rep.) (''The Act also prohibits financial incentives . . . that may encourage mortgage originators . . . to steer consumers to higher-cost and more abusive mortgages.'').

[6] *See, e.g.,* Letter from the FTC to Hon. Wendell Ford and Hon. John Danforth, Comm. on Commerce, Science and Transportation, U.S. Senate, Commission Statement of Policy on the Scope of Consumer Unfairness Jurisdiction (Dec. 17, 1980), *reprinted in In re Int'l Harvester Co.,* 104 F.T.C. 949, 1070, 1073 (1984); Letter from the FTC to Hon. John D. Dingell, Chairman, Comm. on Energy and Commerce, U.S. House of Representatives (Oct. 14, 1983) (FTC policy statement on deception), *reprinted in In re Cliffdale Assocs., Inc.,* 103 F.T.C. 110, 174 (1984); *Int'l Harvester Co.,* 104 F.T.C. at 949; *Am. Fin. Servs. Ass'n* v. *FTC,* 767 F.2d 957 (D.C. Cir. 1985); section 5(n) of the FTC Act, 15 U.S.C. 45(n), as enacted by Congress in the Federal Trade Commission Act Amendments of 1994, Public Law 103–312, sec. 9, 108 Stat. 1691, 1695.

[7] These few reported decisions are all from Federal district courts. *See, e.g., CFPB* v. *ITT Educ. Servs., Inc.,* 219 F. Supp. 3d 878 (S.D. Ind. 2015).

[8] *See, e.g.,* CFPB Bulletin 2014–02, *Marketing of Credit Card Promotional APR Offers* (Sept. 3, 2014), *https://files.consumerfinance.gov/f/201409_cfpb_bulletin_marketing-credit-card-promotional-apr-offers.pdf* (describing ''risk of engaging in an abusive practice'').

[9] Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 FR 54472 (Nov. 17, 2017).

[10] Payday, Vehicle Title, and Certain High-Cost Installment Loans, 84 FR 4252, 4276 (Feb. 14, 2019).

[11] In response to the Bureau's Requests for Information on the Bureau's Adopted Regulations and New Rulemaking Authorities and the Bureau's Inherited Regulations and Inherited Rulemaking Authorities, the Bureau received approximately 15 comments that addressed the Bureau's UDAAP authorities (nearly all from trade associations or other industry stakeholders). *See generally* Request for Information Regarding the Bureau's Adopted Regulations and New Rulemaking Authorities, Mar. 21, 2018, Docket CFPB–2018–0011, *https://www.regulations.gov/?D=CFPB-2018-0011,* and Request for Information Regarding the Bureau's Inherited Regulations and Inherited Rulemaking Authorities, Mar. 26, 2018, Docket CFPB–2018–0012, *https://www.regulations.gov/?D=CFPB-2018-0012.* The most common UDAAP-related issue identified by these commenters was the lack of clarity presented by the abusiveness standard. For example, a credit card issuer commented that the unclear statutory definition of ''abusive'' practices combined with a lack of Bureau guidance on the standard ''creates uncertainty, chills beneficial innovation, and leads to unnecessary compliance burdens for institutions trying in good faith to comply with the law.'' A trade association representing credit unions wrote that ''[c]onsumers and industry need more certainty about exactly what the rules and requirements are and how the Bureau plans to engage in enforcement actions surrounding them.'' A policy and research organization commented that the abusiveness standard leaves financial institutions ''mired in confusion'' and that ''[a]n ambiguous abusive standard is not conducive to a well-functioning financial market or regulatory system.'' Note that some stakeholders raised these concerns in response to other Spring 2018 Call for Evidence dockets. For example, a trade association commented in response to the Request for Information Regarding Bureau Enforcement Processes that the Bureau should address the ''great deal of uncertainty'' around the abusiveness standard ''by describing in rulemaking or public guidance the circumstances under which the Bureau will bring 'abusive' cases under its UDAAP authority.'' *See generally* Request for Information Regarding Bureau Enforcement Processes, Feb. 12, 2018, CFPB–2018–0003, *https://www.regulations.gov/docket?D=CFPB-2018-0003.*

Many commentators and other stakeholders have raised similar concerns dating back to the early years of the Bureau,[12] although the viewpoints have not been uniform.[13]

To obtain further information about these concerns, in June 2019 the Bureau held a Symposium on Abusive Acts or Practices (Symposium).[14] At the Symposium, eight academics and practitioners with expertise in UDAAP issues engaged in dialogue on a number of topics, including the necessity of clarifying the abusiveness standard (and if so, whether rulemaking or another tool should be used), the degree of uncertainty posed by the statutory language, the particular aspects of the standard most in need of clarification, the practical consequences of this uncertainty on consumer financial markets, and how the Bureau should enforce the abusiveness standard. These experts also submitted written statements as part of their participation in the Symposium.[15]

The Symposium participants provided a variety of perspectives. Most urged the Bureau to take action to clarify the abusiveness standard to help entities comply with the law.[16] Others expressed the alternative view that the statutory definition of abusiveness is sufficiently clear and that, to the extent further clarification may be warranted, the Bureau should wait until a more extensive body of precedent interpreting the standard has developed.[17] In short, although not unanimous, most of the experts agreed that there is uncertainty as to the scope and meaning of abusiveness that the Bureau should seek to resolve.

The Symposium participants' feedback has been an important part of the process of determining whether the Bureau should use its rulemaking or other tools to provide clarity about the general meaning of the abusiveness standard—and, if so, which principles should be applied to determine the scope of the standard. The Bureau appreciates the differing perspectives shared by these experts—and by the many other stakeholders who have expressed views on this issue.

The Bureau has concluded that there is uncertainty as to the scope and meaning of the abusiveness standard.[18] The current uncertainty is not beneficial. Businesses that want to comply with the law face significant challenges in doing so, and these

[12] *See, e.g.,* Joshua L. Roquemore, *The CFPB's Ambiguous ''Abusive'' Standard,* 22 N.C. Banking Inst. 191, 196 (2018) (''While there may be benefits to greater regulatory oversight, there are also risks associated with vague and arbitrary legal standards, and this is even more pronounced in the highly regulated consumer finance industry. One factor that has fueled uncertainty surrounding the new standard is the CFPB's tendency to allege two or more standards for the same act or practice, thus blurring any lines of distinction between the terms.''); Patrick M. Corrigan, *''Abusive'' Acts and Practices: Dodd-Frank's Behaviorally Informed Authority Over Consumer Credit Markets and its Application to Teaser Rates,* 18 N.Y.U. J. Legis. & Pub. Policy 125, 151 (2015) (noting that ''the CFPB has yet to demonstrate a coherent and consistent understanding of its own abuse authority'' which has led to ''conceptual confusion'' and resulted in ''an articulation of the abuse standard that blurs into the deception and unfairness standards''); Rob Blackwell, *U.S. Chamber Pressures CFPB to Define ''Abusive,''* Am. Banker (July 3, 2012), *https://www.americanbanker.com/news/us-chamber-pressures-cfpb-to-define-quot-abusive-quot* (describing a letter from the president and chief executive of the U.S. Chamber of Commerce's Center for Capital Markets Competitiveness to former Bureau Director Richard Cordray asserting that a ''policy statement defining the term . . . will help prevent divergent interpretations of the 'abusive' standard); Joshua Wright, *Dodd-Frank's Abusive Standard: A Call for Certainty,* 8 Berkeley Bus. L.J. 164, 169 (2011) (asserting that unless the Bureau clarifies its enforcement intentions and creates regulatory safe harbors regarding the abusiveness standard, ''[b]anks may begin to limit themselves to 'plain vanilla' products and services to avoid scrutiny by the Bureau and the risk that explanations of more complex products will not be adequate under the new standards of the Act'').

[13] *See, e.g.,* Stephen J. Canzona, *I'll Know It When I See It: Defending the Consumer Financial Protection Bureau's Approach of Interpreting the Scope of Unfair, Deceptive, or Abusive Acts or Practices (''UDAAP'') through Enforcement Actions,* 45 J. Legis. 60, 61, 79 (2018) (arguing that ''the CFPB's practice of interpreting UDAAP standards through enforcement actions strikes the proper balance between safeguarding the interests of consumers and responsible providers of financial services'' and that to date the Bureau has applied its UDAAP enforcement authority to a ''narrow range of conduct that . . . is clearly proscribed by the plain meaning of the terms 'unfair,' 'deceptive,' and 'abusive' . . . [and] does not present meaningful due process concerns to responsible financial services providers''); Christopher L. Peterson, *Consumer Financial Protection Bureau Law Enforcement: An Empirical Review,* 90 Tul. L. Rev. 1057, 1100–01 (2016) (characterizing the Bureau's approach toward the abusiveness standard as ''cautiously incremental, focused on peripheral companies with highly offensive practices, oriented toward protecting vulnerable consumers, largely concomitant with traditional deception or unfairness claims, and entirely advanced through either negotiated settlements or under the adjudication of federal judges'').

[14] *https://www.consumerfinance.gov/about-us/events/archive-past-events/cfpb-symposium-abusive-acts-or-practices/*(last visited Jan. 16, 2020). The Symposium included two panels, each featuring four outside experts and a Bureau moderator. The first panel included academics specializing in consumer protection issues. The second panel featured practitioners with significant experience applying UDAP laws at the Federal and State levels. Among the panelists were several former Bureau and FTC officials. The Bureau selected the panelists to represent diverse viewpoints on the topics under discussion.

[15] *See id.*

[16] *See, e.g.,* William MacLeod, *Interpreting Abusive Practices* at 8, submission for CFPB Symposium, *https://files.consumerfinance.gov/f/documents/cfpb_macleod-written-statement_symposium-abusive.pdf* (''[C]lients continue to tell us that the ambiguity surrounding the authority contributes to regulatory uncertainty that results in certain products and services being curtailed or not offered to certain populations altogether. Simply adding some certainty and predictability to the abusiveness standard could yield significant benefits. There should be no need to cite authority for the proposition that uncertainty is an impediment to investment and innovation. When uncertainty applies to the legality of a business practice, the reaction in markets is predictable. Legitimate businesses shy away.''); Letter from Lucy Morris to Bureau Director Kathleen Kraninger Regarding Abusive Acts or Practices Symposium, at 3 (June 17, 2019), *https://files.consumerfinance.gov/f/documents/cfpb_morris-written-statement_symposium-abusive.pdf* (noting that ''[t]here are different ways that the Bureau could provide guidance, without limiting its broad legal authority to protect consumers,'' that ''[a]t a minimum, the Bureau should use its abusiveness authority carefully and sparingly, to show through cases (and its other tools) how abusiveness is unique and different from unfairness and deception'' and to avoid '''overlapping UDAAP claims,''' and suggesting alternatively that the Bureau issue a policy statement or other guidance on the abusiveness standard).

[17] *See, e.g.,* Adam J. Levitin, *''Abusive'' Acts and Practices: Towards a Definition?,* Written Submission Prepared for CFPB Symposium on ''Abusive'' at 6–7, 9, *https://.consumerfinance.gov//documents/cfpb_levitin-written-statement_symposium-abusive.pdf* (arguing that the ''statutory language of the [Dodd-Frank Act] and the Bureau's enforcement actions to date provide a sense of the scope of 'abusive,' '' that ''[t]he Bureau would do better to allow the term to be better defined through the common law process,'' and that ''there is no evidence that uncertainty on the issue is affecting business practices at all; the claims of certain trade associations on the matter are completely unsubstantiated''); Nicholas F.B. Smyth, presenting on behalf of Pennsylvania Attorney General Josh Shapiro, Statement submitted to the Bureau for the symposium on Abusive Acts or Practices at 1, 5 (June 25, 2019), *https://files.consumerfinance.gov/f/documents/cfpb_smyth-written-statement_symposium-abusive.pdf* (asserting that ''the purported cloud of uncertainty created by the [abusiveness standard] has been exaggerated,'' that the abusiveness standard ''does not stifle innovation any more than the prohibitions on unfairness or deception do,'' and that ''[e]very time Congress creates a new standard, there is a period of time when some uncertainty may exist as to what conduct violates that standard and what does not. This is perfectly normal, and the Courts are well equipped to interpret new standards.'').

[18] Although the Bureau seeks to foster greater certainty regarding the abusiveness standard through this Policy Statement, it should be noted that courts have consistently found that the statutory language in section 1031(d) provides sufficient notice for due process purposes. *See, e.g., Consumer Fin. Prot. Bureau* v. *All Am. Check Cashing, Inc.,* No. 16–cv–356, 2018 WL 9812125, at *3 (S.D. Miss. Mar. 21, 2018) (rejecting vagueness challenge to the abusiveness prohibition); *ITT Educ. Servs.,* 219 F. Supp. 3d at 906 (''Because the CFPA itself elaborates the conditions under which a business's conduct may be found abusive—and because agencies and courts have successfully applied the term as used in closely related consumer protection statutes and regulations—we conclude that the language in question provides at least the minimal level of clarity that the due process clause demands of non-criminal economic regulation.''); *Illinois* v. *Alta Colleges, Inc.,* No. 14–cv–3786, 2014 WL 4377579, at *4 (N.D. Ill. Sept. 4, 2014) (rejecting vagueness challenge to abusiveness prohibition). Nothing in this Policy Statement should be interpreted to suggest that the assertion of abusiveness claims in the Bureau's prior or future enforcement actions was or will be contrary to due process.

challenges can impose substantial costs, including impeding innovation. As a result of those costs, consumers may lose the benefits of improved products or services and lower prices. In light of this uncertainty, the Bureau has decided to provide greater clarity on how the Bureau plans to implement and apply the abusiveness standard in its supervisory and enforcement work. In issuing this Policy Statement, the Bureau does not foreclose the possibility of engaging in a future rulemaking to further define the abusiveness standard.

II. Policy Statement

Clarifying the abusiveness standard is in the public interest and the issuance of a supervision and enforcement policy statement regarding the abusiveness standard is beneficial to all stakeholders. Among other things, greater certainty as to how the Bureau intends to use the abusiveness standard in supervision and enforcement furthers the Bureau's purpose in implementing and enforcing the prohibition on abusiveness in the Dodd-Frank Act.[19] In addition, an approach to the abusiveness standard that provides greater certainty and fosters the development of a clearer standard will promote compliance with that standard. This compliance, in turn, assists the Bureau in achieving its objective under the Dodd-Frank Act of protecting consumers from abusive acts or practices.[20] The Bureau therefore issues this Policy Statement to describe certain aspects of how it intends to approach its use of the abusiveness standard in its supervision and enforcement matters going forward.[21]

First, consistent with the priority it accords to the prevention of harm, the Bureau intends to focus on citing conduct as abusive in supervision or challenging conduct as abusive in enforcement if the Bureau concludes that the harms[22] to consumers from the conduct outweigh its benefits to consumers.[23] Second, the Bureau will generally avoid challenging conduct as abusive that relies on all or nearly all of the same facts that the Bureau alleges are unfair or deceptive. Where the Bureau nevertheless decides to include an alleged abusiveness violation, the Bureau intends to plead such claims in a manner designed to clearly demonstrate the nexus between the cited facts and the Bureau's legal analysis of the claim. In its supervision activity, the Bureau similarly intends to provide more clarity as to the specific factual basis for determining that a covered person has violated the abusiveness standard. Third, the Bureau generally does not intend to seek certain types of monetary relief for abusiveness violations where the covered person was making a good-faith effort to comply with the abusiveness standard.

A. Prevention of Consumer Harm From Abusive Acts or Practices

The Dodd-Frank Act authorizes the Bureau to exercise its authorities under Federal consumer financial law, including the authority to issue supervision and enforcement policy statements, for the purpose of ensuring that ''consumers are protected from unfair, deceptive, and abusive acts and practices,'' [24] thereby preventing the harm to consumers from the conduct. The Dodd-Frank Act also states that the Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that ''all consumers have access to markets for consumer financial products and services'' and that such markets are ''fair, transparent, and competitive.'' [25] To fulfill these statutory mandates, the Bureau has made it a priority to direct its supervisory, enforcement, and other tools to the prevention of harm to consumers from unlawful acts and practices.[26]

Consistent with the priority it accords to the prevention of harm, the Bureau intends to focus on citing conduct as abusive in supervision and challenging conduct as abusive in enforcement if the Bureau concludes that the harms to consumers from the conduct outweigh its benefits to consumers (including its effects on access to credit).[27] Explicitly incorporating this focus into the Bureau's supervision and enforcement decisions concerning abusiveness not only ensures that the Bureau is committed to using its scarce resources to address conduct that harms consumers, but also ensures that the Bureau's supervisory and enforcement decisions are consistent across matters.

B. Articulating Acts or Practices That Violate the Abusiveness Standard

Whether conduct constitutes an unfair, deceptive, or abusive act or practice often is dependent upon the facts and circumstances of a particular matter. In enforcement, the Bureau's experience indicates that a single course of conduct may provide the factual basis for allegations of unfair, deceptive, or abusive acts or practices. Where such circumstances arise, the Bureau intends generally to avoid alleging an abusiveness violation that relies on all or nearly all the same facts as an unfairness or deception violation.[28] The Bureau nevertheless intends to allege ''stand-alone'' abusiveness violations (*i.e.,* violations that are not accompanied by related unfairness or deception violations) where doing so would be consistent with the abusiveness standard and this Policy Statement. Where the Bureau alleges ''stand-alone'' abusiveness violations, it intends to plead such claims in a manner designed to demonstrate clearly the nexus between the cited facts and

[19] 12 U.S.C. 5511(a).

[20] 12 U.S.C. 5511(b)(2).

[21] The Bureau intends to apply this Policy Statement going forward in its enforcement and supervisory activities. Where the Bureau has previously asserted an abusiveness claim in an enforcement action that remains pending in court, the Bureau in its discretion will determine how to proceed in light of this Policy Statement based on the facts and circumstances of the particular case. In general, the Bureau intends to take this Policy Statement into account when seeking monetary relief in pending cases asserting abusiveness claims.

[22] The Bureau's consideration of the harms and benefits of the conduct (*i.e.,* its effects) on consumers can be qualitative as well as quantitative. That is, a quantitative analysis is not necessary for every citation or challenge to conduct as being a violation of the abusiveness standard.

[23] Competition among firms can lead to lower prices for and innovation in consumer financial products and services. Consequently, conduct that fosters competition can benefit consumers, while conduct that impedes competition can harm consumers.

[24] 12 U.S.C. 5511(b)(2).

[25] 12 U.S.C. 5511(a).

[26] *See, e.g.,* Kathleen L. Kraninger's Speech at the Exchequer Club (July 18, 2019), *https://www.consumerfinance.gov/about-us/newsroom/kathleen-l-kraningers-speech-exchequer-club/.*

[27] The Bureau's focus on the effects of conduct on consumers is consistent with the FTC's approach to unfairness and deception. Section 5(n) of the FTC Act expressly codifies, in its unfairness standard, a weighing of the costs and benefits of the conduct at issue. 15 U.S.C. 45(n). Section 5 of the FTC Act does not expressly direct the FTC to consider costs and benefits as part of its deception standard. 15 U.S.C. 45(a)(1). As a leading commentator has explained, however, ''the primary difference between full-blown unfairness analysis and deception analysis is that deception does not ask about offsetting benefits. Instead, it presumes that false or misleading statements either have no benefits, or that the injury they cause to consumers can be avoided by the company at very low cost. In other words, deception analysis essentially creates a shortcut, assuming that when a material falsehood exists, the practice would not pass the full benefit/cost analysis of unfairness, because there are rarely, if ever, countervailing benefits to deception.'' J. Howard Beales, *The FTC's Use of Unfairness Authority: Its Rise, Fall, and Resurrection* (May 30, 2005), *https://www.ftc.gov/public-statements/2003/05/ftcs-use-unfairness-authority-its-rise-fall-and-resurrection.*

[28] In limited circumstances, the Bureau intends to allege both an abusiveness violation and a related unfairness or deception violation where it would help clarify the scope of the abusiveness standard. Where the Bureau alleges both an abusiveness violation and a related unfairness or deception violation, the Bureau intends to allege the abusiveness violation with sufficient detail to distinguish it from the related unfairness or deception violation.

the Bureau's legal analysis of the claims.[29]

The Bureau believes that this approach to pleading will provide more certainty to covered persons as to the metes and bounds of conduct the Bureau determines is abusive. It also will facilitate the development of a body of jurisprudence as to the conduct courts conclude is abusive.[30]

In its supervision activity, the Bureau similarly intends to provide more clarity as to the factual basis for determining that a covered person has violated the abusiveness standard. In citing covered persons during examinations for having engaged in abusive acts or practices, the Bureau intends to apply the same approach as set forth above with regard to pleading abusiveness in enforcement actions. In addition, in future editions of Supervisory Highlights, the Bureau intends to describe the basis for abusiveness citations with greater clarity (consistent with the need to keep the identity of the supervised entities confidential). Additional clarity in supervisory materials about how the Bureau views particular facts and how those facts support an abusiveness violation will result in more transparency as to the conduct the Bureau determined violates the abusiveness standard, thereby providing more certainty, especially as to covered persons who are subject to Bureau supervisory authority.

C. Limits on Monetary Relief in Abusiveness Enforcement Actions

The Bureau recognizes that covered persons must make decisions about whether to engage in conduct notwithstanding uncertainty as to whether the Bureau will allege that conduct violates the abusiveness standard and will seek substantial amounts in monetary relief based on the alleged violation. This uncertainty and its consequences may chill or overly deter covered persons from engaging in conduct that may be beneficial to consumers.

Accordingly, to ensure that uncertainty regarding the abusiveness standard does not impede beneficial conduct, the Bureau generally does not intend to seek certain monetary remedies for abusive acts or practices if the covered person made a good-faith effort to comply with the law based on a reasonable—albeit mistaken—interpretation of the abusiveness standard.[31] Similarly, in supervisory actions, the Bureau will apply the same standard when requesting action as a result of violations in Matters Requiring Attention or other supervisory requests. However, if a covered person makes a good-faith but unsuccessful effort to comply with the abusiveness standard, the Bureau still intends to seek legal or equitable remedies, such as damages and restitution, to redress identifiable consumer injury caused by the abusive acts or practices that would not otherwise be redressed. Absent unusual circumstances, the Bureau does not intend to seek civil penalties or disgorgement if a covered person made good-faith efforts to comply with the abusiveness standard.

Further, the Bureau emphasizes that it is committed to aggressively pursuing the full range of monetary remedies against bad actors who were not acting in good faith in violating the abusiveness standard, such as those who engage in fraudulent practices or consumer scams. The Bureau's seeking such relief will prevent and deter the continuation or recurrence of such abusive acts or practices.

In determining whether a covered person made a good-faith effort to comply with the abusiveness standard, the Bureau intends to consider all relevant factors, including but not limited to the considerations outlined in CFPB Bulletin 2013–06 regarding Responsible Business Conduct.[32] A ''reasonable'' interpretation for purposes of this Policy Statement is one based on the text of the abusiveness standard set forth in the Dodd-Frank Act, as well as prior precedent and guidance, including judicial precedent, the Bureau's administrative decisions, rulemakings, supervisory guidance, and past allegations of abusive acts or practices in public enforcement actions.

Covered persons that believe that regulatory uncertainty is hindering the development of new products or services are also reminded that the Bureau has created the Office of Innovation to focus on encouraging consumer-beneficial innovation. The Bureau, primarily through the Office of Innovation, has issued policies to reduce regulatory uncertainty and processes applications from entities under those policies.[33]

D. Conclusion

For the reasons set forth above, in alleging an act or practice as abusive in violation of the Dodd-Frank Act, the Bureau intends to apply the following principles: (1) Consistent with the priority it accords to the prevention of harm, the Bureau intends to focus on citing conduct as abusive in supervision or challenging conduct as abusive in enforcement if the Bureau concludes that the harms to consumers from the conduct outweigh its benefits to consumers; (2) the Bureau will generally avoid challenging conduct as abusive that relies on all or nearly all of the same facts that the Bureau alleges are unfair or deceptive. Where the Bureau nevertheless decides to include an alleged abusiveness violation, the Bureau intends to plead such claims in a manner designed to clearly demonstrate the nexus between the cited facts and the Bureau's legal analysis of the claim. In its supervision activity, the Bureau similarly intends to provide more clarity as to the specific factual basis for determining that a covered person has violated the abusiveness standard; and (3) the Bureau generally does not intend to seek certain types of monetary relief for abusiveness violations where the covered person was making a good-faith effort to comply with the abusiveness standard. Nothing in these principles affect whether and how the Bureau will proceed in taking supervisory or enforcement action to address violations of any other provision of the Dodd-Frank Act (including its prohibition of unfair or deceptive acts or practices), or any of the other statutes, rules, or orders that the Bureau enforces.

III. Regulatory Requirements

This Policy Statement constitutes a general statement of policy that is exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act.[34] It is intended to provide information regarding the Bureau's general plans to exercise its discretion and does not impose any legal requirements on

[29] Because the Bureau will be guided by the facts in determining which claims to bring, examinations and investigations may seek information that could relate to unfair, deceptive, or abusive acts or practices without distinguishing among the potential claims. The Bureau may also use its supervisory and enforcement processes to seek an institution's written response where the facts indicate that the institution's conduct may qualify as abusive or unfair or deceptive.

[30] To the extent practicable, the Bureau in the future intends to develop model pleadings and updates to its UDAAP examination procedures in order to provide greater specificity and clarity as to the abusiveness standard.

[31] Although the covered person's good-faith efforts to comply would be relevant to whether the Bureau seeks monetary remedies, it would not be an affirmative defense to an alleged violation.

[32] *See https://files.consumerfinance.gov/f/201306_cfpb_bulletin_responsible-conduct.pdf. See also* 12 U.S.C. 5565(c)(3)(A).

[33] *See CFPB Issues Policies to Facilitate Compliance and Promote Innovation* (Sept. 10, 2019), *https://www.consumerfinance.gov/about-us/newsroom/bureau-issues-policies-facilitate-compliance-promote-innovation/.*

[34] 5 U.S.C. 553(b). However, this is not a ''statement of policy'' as that term is specifically used in Regulation X, 12 CFR 1024.4(a)(1)(ii).

external parties, nor does it create or confer any substantive rights on external parties that could be enforceable in any administrative or civil proceeding. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. The Bureau has also determined that this Policy Statement does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.,* the Bureau will submit a report containing this Policy Statement and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to its applicability date. The Office of Information and Regulatory Affairs has designated this Policy Statement as not a ''major rule'' as defined by 5 U.S.C. 804(2).

Dated: January 21, 2020.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2020–01661 Filed 2–5–20; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0442; Product Identifier 2018–NM–171–AD; Amendment 39–19826; AD 2020–02–12]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2017–15–04, which applied to certain The Boeing Company Model 787–8 and 787–9 airplanes. AD 2017–15–04 required replacement of affected electromechanical actuators (EMAs). This AD retains the requirements of AD 2017–15–04; expands the applicability to include all The Boeing Company Model 787 series airplanes; and adds a new requirement to identify, for certain airplanes, the part number of EMAs and to replace affected EMAs. This AD was prompted by wire harness chafing on the EMAs for certain spoilers due to insufficient separation with adjacent structure. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 12, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 12, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of August 25, 2017 (82 FR 33785, July 21, 2017).

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0442.

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–2019–0442; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Douglas Tsuji, Senior Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3548; email: *douglas.tsuji@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2017–15–04, Amendment 39–18964 (82 FR 33785, July 21, 2017) (''AD 2017–15–04''). AD 2017–15–04 applied to certain The Boeing Company Model 787–8 and 787–9 airplanes. The NPRM published in the **Federal Register** on July 2, 2019 (84 FR 31526). The NPRM was prompted by a determination that discrepant EMAs could be installed on airplanes outside the original applicability of AD 2017–15–04. The NPRM proposed to continue to require replacement of affected EMAs. The NPRM also proposed to expand the applicability to include all The Boeing Company Model 787 series airplanes, and add a new requirement to identify, for certain airplanes, the part number of EMAs and to replace affected EMAs. The FAA is issuing this AD to address chafing and consequent wire damage that could result in a potential source of ignition in the flammable leakage zone and a consequent fire or explosion.

Comments

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

Support for the NPRM

United Airlines stated that it has no objection to the NPRM.

Request To Withdraw the NPRM

Boeing requested that the FAA withdraw the NPRM and retain AD 2017–15–04. Boeing stated that the proposal to expand the applicability to include all Boeing Model 787 series airplanes is not necessary. Boeing pointed out that discrepant spoiler EMAs are only applicable to Model 787–8 and 787–9 airplanes, which is the current applicability of AD 2017–15–04. Boeing further pointed out that the changes to the spoiler EMAs, as described in Boeing Service Bulletin B787–81205–SB270030–00, is the baseline for that model, and was incorporated in production on the first Model 787–10 airplane and on. Boeing also stated that the Illustrated Parts Data (IPD) defines the effectivity of the new spoiler EMA part numbers (P/Ns) by line number, and shows that only the C99144–006 P/N is allowed on Model 787–10 airplanes. Boeing asserted that all documentation available to operators specifically states that spoiler EMA P/N C99144–006 is the only approved P/N for Model 787–10 airplanes.

The FAA does not agree with the request to withdraw the NPRM. EMAs are rotable parts that could later be installed on Boeing Model 787 series airplanes that previously did not have affected EMAs installed. Existing in-

service maintenance practices allow for the possibility of discrepant parts being installed on Boeing Model 787 airplanes not affected by AD 2017–15–04. Therefore, the FAA included all Boeing Model 787 series airplanes in the applicability to ensure the unsafe condition is addressed if an affected EMA is installed on a Boeing Model 787–10 airplane. The FAA has not changed this AD in this regard.

Request To Change Applicability of the NPRM

Boeing acknowledges there is a difference between the Boeing service information and the NPRM in capturing airplane effectivity. Boeing noted that there may be instances where operators are rotating parts outside of type design, beyond effectivity limits, or installing EMAs onto airplane configurations in which service information and design changes have already been incorporated. Boeing stated it understands the FAA's concerns regarding the possibility of parts being rotated outside the effectivity contained in the Boeing service information. As a result, Boeing expressed its desire to seek an alternative solution to address the concerns of the FAA. Boeing recommended a collaboration between airline partners, other original equipment manufacturers, and civil aviation authorities to develop an action to implement safe, fair, and consistent policy to address concerns on rotable parts for the industry. Boeing stated it seeks to implement an industry-standard policy on rotable parts.

The FAA is aware that airlines want to maintain the flexibility that is reflected in FAA Advisory Circular (AC) 120–77, dated October 7, 2002 (see paragraph 11(a)(4) of AC 120–77). If this flexibility is no longer allowed with regard to rotable parts, then ADs with an effectivity of ''all'' would not be necessary to address this issue. At this time, however, AC 120–77 is approved FAA policy that provides certain flexibility for rotable parts. Therefore, the applicability of this AD remains all The Boeing Company Model 787 series airplanes. The FAA has not changed this AD in this regard.

Request To Revise Summary and ''Actions Since AD 2017–15–04 Was Issued'' Section

Boeing requested that the FAA revise the wording in the **SUMMARY** from ''. . . discrepant EMAs may have been installed on airplanes outside the original applicability . . .'' to ''. . . discrepant EMAs could be installed on airplanes outside the original applicability . . . .'' Boeing reasoned that the wording in the NPRM implies that the FAA has indication that discrepant EMAs have been installed in-service. Boeing infers that the intent of the phrase in the **SUMMARY** is a hypothetical statement that discrepant EMAs could be installed, and this intent was stated more clearly in the ''Actions Since AD 2017–15–04 Was Issued'' section of the NPRM.

The FAA partially agrees with the commenter's request. The FAA agrees that the proposed wording more closely matches the intent of the wording in the ''Actions Since AD 2017–15–04 Was Issued'' section of the NPRM. However, since neither that section of the **SUMMARY** nor the ''Actions Since AD 2017–15–04 Was Issued'' section of the Discussion appear in the final rule, the FAA has not changed this final rule as requested. The FAA has, however, revised the statement of what prompted the AD in the Discussion section of this final rule to address the commenter's request.

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Service Bulletin B787–81205–SB270030–00, Issue 002, dated April 7, 2017. The service information describes procedures for replacing affected EMAs with new EMAs.

This AD also requires Boeing Service Bulletin B787–81205–SB270030–00, Issue 001, dated October 22, 2015, which the Director of the Federal Register approved for incorporation by reference as of August 25, 2017 (82 FR 33785, July 21, 2017).

These documents are distinct since they apply to different airplanes. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD would affect 93 airplanes of U.S. registry. The agency estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
EMA replacement (retained actions from AD 2017–15–04).	32 work-hours × $85 per hour = $2,720 per EMA replacement.	(*)	$2,720 * per EMA replacement.	$252,960 * per EMA replacement.
Inspection/records check	1 work-hour × $85 per hour = $85.	$0	$85 per inspection cycle	$7,905.

* Parts cost is not included in the service information, but Boeing has indicated that existing parts can be modified to become the new parts.

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.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2017–15–04, Amendment 39–18964 (82 FR 33785, July 21, 2017), and adding the following new AD:

2020–02–12 The Boeing Company: Amendment 39–19826; Docket No. FAA–2019–0442; Product Identifier 2018–NM–171–AD.

(a) Effective Date

This AD is effective March 12, 2020.

(b) Affected ADs

This AD replaces AD 2017–15–04, Amendment 39–18964 (82 FR 33785, July 21, 2017) (''AD 2017–15–04'').

(c) Applicability

This AD applies to all The Boeing Company Model 787 series airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by wire harness chafing on the electro-mechanical actuators (EMAs) for certain spoilers due to insufficient separation with adjacent structure. The FAA is issuing this AD to address chafing and consequent wire damage that could result in a potential source of ignition in the flammable leakage zone and a consequent fire or explosion.

(f) Compliance

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

(g) Retained EMA Replacement, With Revised Compliance Language

This paragraph restates the requirements of paragraph (g) of AD 2017–15–04, with revised compliance language. For airplanes identified in Boeing Service Bulletin B787–81205–SB270030–00, Issue 001, dated October 22, 2015: Within 40 months after August 25, 2017 (the effective date of AD 2017–15–04), replace the EMAs with new EMAs, in accordance with the Accomplishment Instructions of Boeing Service Bulletin B787–81205–SB270030–00, Issue 001, dated October 22, 2015; or Boeing Alert Service Bulletin B787–81205–SB270030–00, Issue 002, dated April 7, 2017.

(h) New Definition

For the purpose of this AD, an ''affected part'' is an EMA for spoiler 4, 5, 10, or 11 having part number (P/N) C99144–004 or C99144–005.

(i) New EMA Identification and Replacement

For airplanes not identified in paragraph (g) of this AD with an original airworthiness certificate or an original export certificate of airworthiness dated before or on the effective date of this AD, do the actions specified in paragraphs (i)(1) and (2) of this AD.

(1) Within 40 months after the effective date of this AD, perform a general visual inspection of the EMAs for spoilers 4, 5, 10, and 11 to determine the part number. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the EMA can be conclusively determined from that review.

(2) If the EMA is an affected part: Within 40 months after the effective date of this AD, replace the EMA in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB270030–00, Issue 002, dated April 7, 2017.

(j) Parts Installation Prohibition

As of the effective date of this AD, do not install on any airplane an EMA having P/N C99144–004 or C99144–005.

(k) Credit for Previous Actions

This paragraph provides credit for the action specified in paragraph (i)(2) of this AD, if that action was performed before the effective date of this AD using Boeing Service Bulletin B787–81205–SB270030–00, Issue 001, dated October 22, 2015.

(l) 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 (m)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

(4) AMOCs approved previously for AD 2017–15–04 are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD.

(5) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (l)(5)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(m) Related Information

(1) For more information about this AD, contact Douglas Tsuji, Senior Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3548; email: *douglas.tsuji@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (n)(5) and (6) of this AD.

(n) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on March 12, 2020.

(i) Boeing Alert Service Bulletin B787–81205–SB270030–00, Issue 002, dated April 7, 2017.

(ii) [Reserved]

(4) The following service information was approved for IBR on August 25, 2017 (82 FR 33785, July 21, 2017).

(i) Boeing Service Bulletin B787–81205–SB270030–00, Issue 001, dated October 22, 2015.

(ii) [Reserved]

(5) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.*

(6) 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.

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

Issued on January 22, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–02202 Filed 2–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–1078; Product Identifier 2019–NM–207–AD; Amendment 39–19822; AD 2020–01–16]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS 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 Airbus SAS Model A330–200 Freighter series airplanes, Model A330–200 series airplanes, Model A330–300 series airplanes, Model A340–200 series airplanes, Model A340–300 series airplanes, Model A340–541 airplanes, and Model A340–642 airplanes. This AD was prompted by the absence of a requirement to remove certain Emergency Procedures in the existing Aircraft Flight Manual (AFM) after accomplishing a certain modification. This AD requires, for airplanes on which a certain modification is done, revising the AFM by removing certain Emergency Procedures in the AFM, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective February 21, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 21, 2020.

We must receive comments on this AD by March 23, 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1078.

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–2019–1078; 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 AD, 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: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email *Vladimir.Ulyanov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0312, dated December 20, 2019 (''EASA AD 2019–0312'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A330–200 Freighter series airplanes; Model A330–200 series airplanes; Model A330–300 series airplanes; Model A340–200 series airplanes; Model A340–300 series airplanes; Airbus SAS Model A340–541 and –542 airplanes; and Airbus SAS Model A340–642 and –643 airplanes. Model A340–542 and –643 airplanes are not certified by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This AD was prompted by the absence of a requirement to remove certain Emergency Procedures relating to the undue activation of Alpha Protection (Alpha Prot) in the existing AFM after accomplishing the AFM revision specified in AD 2014–25–52, Amendment 39–18066 (80 FR 3161, January 22, 2015) (''AD 2014–25–52''). The FAA is issuing this AD to address this condition, which, under certain conditions, could lead to the incorrect application of the procedure by the flight crew, possibly resulting in increased flight crew workload and consequent reduced control of the airplane. See the MCAI for additional background information.

Relationship Between This AD and AD 2014–25–52, AD 2016–12–15, Amendment 39–18564 (81 FR 40160, June 21, 2016) (''AD 2016–12–15''), and AD 2018–21–07, Amendment 39–19465 (83 FR 51825, October 15, 2018) (''AD 2018–21–07'')

AD 2014–25–52 requires revising the AFM to incorporate procedures to advise the flight crew of emergency

procedures for abnormal Alpha Prot. AD 2016–12–15, requires, among other things, replacement of certain angle of attack (AOA) sensors with certain new AOA sensors to prevent erroneous AOA information and Alpha Prot activation due to blocked AOA probes. AD 2016–12–15 also allows the installation of certain alternative parts provided certain conditions are met. AD 2016–12–15 does not specify to remove the Emergency Procedures in the existing AFM after accomplishing the AOA replacement. AD 2018–21–07 requires upgrading certain flight control primary computer (FCPC) software standards, and did specify to remove the Emergency Procedures in the existing AFM after accomplishing the upgrade, but only for airplanes with a certain AOA configuration. This AD requires, for airplanes on which a certain modification is done, revising the AFM by removing Emergency Procedures relating to the undue activation of Alpha Prot from the existing AFM. Accomplishment of this AD on an airplane then terminates the AFM revision required by paragraph (g) of AD 2014–25–52 for that airplane only.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0312 describes procedures, for airplanes on which a certain modification (replacement of certain AOA sensors, and modification or replacement of software standards for certain FCPCs) is done, for revising the existing AFM by removing Emergency Procedures relating to the undue activation of Alpha Prot from the existing AFM. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2019–0312 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under ''Differences Between This AD and the MCAI.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2019–0312 will be incorporated by reference in the FAA final rule. This AD, therefore, requires compliance with EASA AD 2019–0312 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need to comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2019–0312 that is required for compliance with EASA AD 2019–0312 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1078 after the FAA final rule is published.

Differences Between This AD and the MCAI

Where Table 1 of EASA AD 2019–0312 requires actions for ''Airbus A330 MRTT airplanes'' (Airbus SAS Model A330–200 airplanes that were modified in production by Airbus into a multi-role transport tanker (MRTT) configuration), these actions are not applicable to this AD since A330 MRTT airplanes are not certified by the FAA and are not included on the U.S. type certificate data sheet.

Table 1 of EASA AD 2019–0312 references EASA AD 2019–0028, dated February 7, 2019 (''EASA AD 2019–0028'') for determining configuration. EASA AD 2019–0028 is applicable only to Airbus SAS Model A340 series airplanes. There are no U.S. registered Model A340 airplanes, so EASA AD 2019–0028 was added to the Required Airworthiness Actions List (RAAL). As a result, there is no corresponding FAA AD to EASA AD 2019–0028, but U.S. operators are still required to show compliance with EASA AD 2019–0028 if they import an airplane that is affected by EASA AD 2019–0028.

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 it has been determined that for airplanes on which a certain modification is done, the AFM procedure required by AD 2014–25–52 if not removed, could, under certain conditions, lead to the incorrect application of the procedure by the flight crew, possibly resulting in increased flight crew workload and consequent reduced control of the airplane. In addition, the removal of these AFM emergency procedures for applicable airplanes is relieving on the flight crew workload during an emergency situation. 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.

Regulatory Flexibility Act (RFA)

The requirements of the 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.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and the FAA did not precede it by notice and opportunity for public comment. The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–1078; Product Identifier 2019–NM–207–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this AD. The FAA will consider all comments received by the closing date and may amend this AD based on those comments.

We 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 AD.

Costs of Compliance

The FAA estimates that this AD affects 103 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$8,755

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

2020–01–16 Airbus SAS: Amendment 39–19822; Docket No. FAA–2019–1078; Product Identifier 2019–NM–207–AD.

(a) Effective Date

This AD becomes effective February 21, 2020.

(b) Affected ADs

This AD affects AD 2014–25–52, Amendment 39–18066 (80 FR 3161, January 22, 2015) (''AD 2014–25–52'').

(c) Applicability

This AD applies to all Airbus SAS airplanes identified in paragraphs (c)(1) through (7) of this AD, certificated in any category.

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

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

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

(4) Model A340–211, –212, and –213 airplanes.

(5) Model A340–311, –312, and –313 airplanes.

(6) Model A340–541 airplanes.

(7) Model A340–642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Reason

This AD was prompted by the absence of a requirement to remove certain Emergency Procedures in the existing Aircraft Flight Manual (AFM) after accomplishing a certain modification. The FAA is issuing this AD to address this condition, which, under certain conditions, could lead to the incorrect application of the procedure by the flight crew, possibly resulting in increased flight crew workload and consequent reduced control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0312, dated December 20, 2019 (''EASA AD 2019–0312'').

(h) Exceptions to EASA AD 2019–0312

(1) Where EASA AD 2019–0312 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0312 does not apply to this AD.

(3) Where paragraph (1) of EASA AD references EASA Emergency AD 2014–0267–E, for this AD use paragraph (g) of AD 2014–25–52, Amendment 39–18066 (80 FR 3161, January 22, 2015).

(4) Where Table 1 of EASA AD 2019–0312 specifies paragraph (10) of EASA AD 2015–0134 for Airbus SAS Model A330 and Airbus SAS Model A340 airplane configurations, for this AD, use paragraph (m)(2) of AD 2016–12–15, Amendment 39–18564 (81 FR 40160, June 21, 2016).

(5) Where Table 1 of EASA AD 2019–0312 specifies paragraph (1) and Table 2 of EASA AD 2017–0246R1 for Airbus SAS Model A330 airplane configurations, for this AD, use paragraph (h) and Figure 1 to paragraph (i) of AD 2018–21–07, Amendment 39–19465 (83 FR 51825, October 15, 2018).

(6) Where Table 1 of EASA AD 2019–0312 requires actions for Airbus A330 MRTT aircraft, these actions are not applicable to this AD.

(i) Terminating Action for AD 2014–25–52

Accomplishing the actions required by this AD on an airplane terminates all requirements of paragraph (g) of AD 2014–25–52 for that airplane only.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(ii) AMOC letter AIR–676–18–239, dated May 14, 2018, approved previously for AD 2014–25–52, is approved as AMOC for the corresponding provisions of this AD.

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

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2019–0312 that contains RC procedures and tests: Except as required by paragraph (j)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

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

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2019–0312, dated December 20, 2019.

(ii) [Reserved]

(3) For information about EASA AD 2019–0312, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1078.

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

Issued on January 16, 2020.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2020–02200 Filed 2–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0860; Product Identifier 2019–NM–123–AD; Amendment 39–19827; AD 2020–02–13]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2019–03–14, which applied to certain Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes. AD 2019–03–14 required revising the existing maintenance or inspection program, as applicable, to incorporate new maintenance requirements and airworthiness limitations. This AD continues to require, and adds new requirements for, revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 12, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 12, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of April 8, 2019 (84 FR 7269, March 4, 2019).

ADDRESSES: For service information identified in this final rule, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *https://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0860.

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–2019–0860; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *tom.rodriguez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0142, dated June 17, 2019 (''EASA AD 2019–0142'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct

an unsafe condition for certain Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G 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–2019–0860.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2019–03–14, Amendment 39–19566 (84 FR 7269, March 4, 2019) (''AD 2019–03–14''). AD 2019–03–14 applied to certain Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes. The NPRM published in the **Federal Register** on November 4, 2019 (84 FR 59315). The NPRM was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The NPRM proposed continue to require, and adds new requirements for, revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is issuing this AD to address, among other things, fatigue cracking and damage in principal structural elements; such fatigue cracking and damage could result in reduced structural integrity of the airplane. See the MCAI for additional background information.

Comments

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

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

Dassault Aviation has issued Chapter 5–40–01, Airworthiness Limitations, Revision 10, effective January 1, 2019, of the Dassault Aviation Falcon 20 Maintenance Manual, specifically for aircraft that have incorporated the supplemental structural inspection program (SSIP). This service information describes airworthiness limitations for safe life limits.

This AD also requires Chapter 5–40–01, Airworthiness Limitations, DMD 44729, Revision 9, dated November 29, 2017, of the Dassault Aviation Falcon 20 Maintenance Manual, which the Director of the Federal Register approved for incorporation by reference as of April 8, 2019 (84 FR 7269, March 4, 2019).

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

Costs of Compliance

The FAA estimates that this AD affects 61 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2019–03–14 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the 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. The FAA estimates the total cost per operator for the new actions to be $7,650 (90 work-hours × $85 per work-hour).

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.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2019–03–14, Amendment 39–19566 (84 FR 7269, March 4, 2019), and adding the following new AD:

2020–02–13 Dassault Aviation: Amendment 39–19827; Docket No. FAA–2019–0860; Product Identifier 2019–NM–123–AD.

(a) Effective Date

This AD is effective March 12, 2020.

(b) Affected ADs

(1) This AD replaces AD 2019–03–14, Amendment 39–19566 (84 FR 7269, March 4, 2019) (''AD 2019–03–14'').

(2) This AD affects AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (''AD 2010–26–05'').

(c) Applicability

This AD applies to Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes, certificated in any category, on which the supplemental structural inspection program (SSIP) has been incorporated into the airplane's maintenance program.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time limits/maintenance checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address, among other things, fatigue cracking and damage in principal structural elements; such fatigue cracking and damage could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Revision, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2019–03–14, with no changes. Within 90 days after April 8, 2019 (the effective date of AD 2019–03–14), revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40–01, Airworthiness Limitations, DMD 44729, Revision 9, dated November 29, 2017, of the Dassault Aviation Falcon 20 Maintenance Manual. The initial compliance time for doing the tasks is at the time specified in Chapter 5–40–01, Airworthiness Limitations, DMD 44729, Revision 9, dated November 29, 2017, of the Dassault Aviation Falcon 20 Maintenance Manual, or within 90 days after April 8, 2019 (the effective date of AD 2019–03–14), whichever occurs later. Where the threshold column in the table in paragraph B, Mandatory Maintenance Operations, of Chapter 5–40–01, Airworthiness Limitations, DMD 44729, Revision 9, dated November 29, 2017, of the Dassault Aviation Falcon 20 Maintenance Manual specifies a compliance time in years, those compliance times start from the date of issuance of the original airworthiness certificate or date of issuance of the original export certificate of airworthiness.

(h) Retained Requirement of No Alternative Actions or Intervals, With a New Exception

This paragraph restates the requirements of paragraph (h) of AD 2019–03–14, with a new exception. Except as required by paragraph (i) of this AD, after accomplishing the revision required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

(i) New Requirement of This AD: Maintenance or Inspection Program Revision

Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40–01, Airworthiness Limitations, Revision 10, effective January 1, 2019, of the Dassault Aviation Falcon 20 Maintenance Manual. The initial compliance time for doing the tasks is at the time specified in Chapter 5–40–01, Airworthiness Limitations, Revision 10, effective January 1, 2019, of the Dassault Aviation Falcon 20 Maintenance Manual, or within 90 days after the effective date of this AD, whichever occurs later. Where the threshold column in the table in paragraph B, Mandatory Maintenance Operations, of Chapter 5–40–01, Airworthiness Limitations, Revision 10, dated January 1, 2019, of the Dassault Aviation Falcon 20 Maintenance Manual specifies a compliance time in years, those compliance times start from the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness. Accomplishing the actions required by this paragraph terminates the actions required by paragraph (g) of this AD.

(j) New No Alternative Actions or Intervals

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

(k) Terminating Actions for Certain Actions in AD 2010–26–05

Accomplishing the actions required by paragraph (g) or (i) of this AD terminates the requirements of paragraph (g)(1) of AD 2010–26–05, for Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(ii) AMOCs approved previously for AD 2019–03–14 are approved as AMOCs for the corresponding provisions of this AD.

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

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2019–0142, dated June 17, 2019 (''EASA AD 2019–0142''), 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–2019–0860.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *tom.rodriguez@faa.gov.*

(n) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on March 12, 2020.

(i) Chapter 5–40–01, Airworthiness Limitations, Revision 10, effective January 1, 2019, of the Dassault Aviation Falcon 20 Maintenance Manual.

(ii) [Reserved]

(4) The following service information was approved for IBR on April 8, 2019 (84 FR 7269, March 4, 2019).

(i) Chapter 5–40–01, Airworthiness Limitations, DMD 44729, Revision 9, dated November 29, 2017, of the Dassault Aviation Falcon 20 Maintenance Manual.

(ii) [Reserved]

(5) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *https://www.dassaultfalcon.com.*

(6) 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.

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

Issued on January 23, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–02199 Filed 2–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0858; Product Identifier 2019–NM–145–AD; Amendment 39–19816; AD 2020–01–10]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 airplanes. This AD was prompted by a determination that ram air turbine (RAT) performance may be below the expected (certificated) level when the landing gear is extended. This AD requires installing flight control and guidance system (FCGS) software (SW) X11 Standard (STD), as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 12, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 12, 2020.

ADDRESSES: For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0858.

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–2019–0858; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0203, dated August 20, 2019 (''EASA AD 2019–0203'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A350–941 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A350–941 airplanes. The NPRM published in the **Federal Register** on October 30, 2019 (84 FR 58073). The NPRM was prompted by a determination that RAT performance may be below the expected (certificated) level when the landing gear is extended. The NPRM proposed to require installing FCGS SW X11 STD.

The FAA is issuing this AD to address this condition, which, if not corrected, could lead to partial or total loss of RAT electrical power generation when the RAT is deployed in an emergency situation, possibly resulting in reduced control of the airplane. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA has considered the comment received. The Air Line Pilots Association, International (ALPA) stated that it supports the NPRM.

Conclusion

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

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

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0203 describes procedures for installing FCGS SW X11 STD. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Interim Action

The FAA considers this AD interim action. If final action is later identified, the FAA might consider further rulemaking then.

Costs of Compliance

The FAA estimates that this AD affects 13 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
8 work-hours × $85 per hour = $680	$4,650	$5,330	$69,290

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

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I,

section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–01–10 Airbus SAS: Amendment 39–19816; Docket No. FAA–2019–0858; Product Identifier 2019–NM–145–AD.

(a) Effective Date

This AD is effective March 12, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2019–0203, dated August 20, 2019 (''EASA AD 2019–0203'').

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical power.

(e) Reason

This AD was prompted by a determination through testing that ram air turbine (RAT) performance may be below the expected (certificated) level when the landing gear is extended. The FAA is issuing this AD to address this condition, which, if not corrected, could lead to partial or total loss of RAT electrical power generation when the RAT is deployed in an emergency situation, possibly resulting in reduced control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0203.

(h) Exceptions to EASA AD 2019–0203

(1) Where EASA AD 2019–0203 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0203 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2019–0203 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

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

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2019–0203, dated August 20, 2019.

(ii) [Reserved]

(3) For information about EASA AD 2019–0203, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0858.

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

Issued on January 10, 2020.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2020–02321 Filed 2–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0702; Product Identifier 2019–NM–118–AD; Amendment 39–19825; AD 2020–02–10]

RIN 2120–AA64

Airworthiness Directives; De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain De Havilland Aircraft of Canada Limited Model DHC–8–400 series airplanes. This AD was prompted by a report of a quality escape in the manufacturing of advanced pneumatic detector (APD) switches, which consisted of the presence of contamination on the switch contact pin. This AD requires identification and testing, and reidentification or replacement if necessary, of affected APDs. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 12, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 12, 2020.

ADDRESSES: For service information identified in this final rule, contact De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd@dehavilland.com;* internet *https://dehavilland.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. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0702.

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–2019–0702; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2019–13, dated April 4, 2019 (''Canadian AD CF–2019–13'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain De Havilland Aircraft of Canada Limited Model DHC–8–400, –401, and –402 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–2019–0702.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain De Havilland Aircraft of Canada Limited Model DHC–8–400 series airplanes. The NPRM was published in the **Federal Register** on October 4, 2019 (84 FR 53070). The NPRM was prompted by a report of a quality escape in the manufacturing of APD switches, which consisted of the presence of contamination on the switch contact pin. The NPRM proposed to require identification and testing, and reidentification or replacement if necessary, of affected APDs. The FAA is issuing this AD to address such contamination that could insulate the contact pin from the diaphragm and result in an undetected fire or late detection of a fire. See the MCAI for additional background information.

Comments

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

Request To Update Type Certificate (TC) Holder

Bombardier Aviation reported that ownership of the affected airplanes was transferred to De Havilland Aircraft of Canada Limited. Bombardier requested that the FAA revise the NPRM to identify De Havilland as the U.S. TC holder.

The FAA acknowledges the change of ownership identified by the commenter and has revised this final rule accordingly. The FAA also notes that any future revisions to the referenced service information, Bombardier Service Bulletin 84–26–19, Revision 'A,' dated February 11, 2019, will be issued by De Havilland Aircraft of Canada Limited.

Request To Limit Required Actions

Horizon Air requested that the FAA revise the proposed AD to limit the required actions to those specified in paragraph 3.B., ''Procedure,'' of Bombardier Service Bulletin 84–26–19, Revision 'A,' dated February 11, 2019. Horizon noted that the proposed AD would require ''the Accomplishment Instructions'' of the service information, which also includes paragraph 3.A., ''Job Set-Up,'' and paragraph 3.C., ''Close Out.'' Horizon Air stated that those sections do not directly correct the unsafe condition.

The FAA agrees with the commenter's request and has revised paragraph (h) of this AD accordingly.

Request To Remove Requirement To Return Failed APDs

Horizon Air requested that the FAA remove paragraph (i) of the proposed AD (''Return of Failed APDs''). Horizon Air alleged that this requirement would place an unnecessary cost and regulatory burden on operators who must create, track, and maintain records to demonstrate compliance with the required return criteria. Horizon Air added that return of any failed loop (APD) could be done via operators' field service/product support network with Kidde Aerospace and Defense (part of United Technologies Aerospace Systems (UTAS)). Horizon further asserted that

the FAA did not justify the proposed requirement to return failed APDs to Kidde Aerospace and Defense or explain how this would improve the level of safety.

The FAA does not agree that the requirement to return failed APDs to Kidde Aerospace and Defense places an unnecessary cost and regulatory burden on operators. Bombardier Service Bulletin 84–26–19, Revision 'A,' dated February 11, 2019, refers to Kidde Aerospace and Defense Service Bulletin 10–1096–26–511, Paragraph 3.3.F, which specifies returning the part with a Return Authorization form to Kidde Aerospace and Defense so that operators can receive a free-of-charge replacement. The cost of an APD varies from $6,300 to $9,300, depending on the type. With seven APDs on the aircraft, it is actually a cost benefit to return failed APDs to obtain replacements free of charge. In addition, when an unsafe condition involves an escape in a manufacturer's quality control (QC) system, returning failed parts or reporting certain findings can be instrumental in determining the extent and nature of the QC problem, especially in cases where the data may not be available through other established means. The information collected from the return of the failed APDs is necessary to ensure that proper corrective action will be taken. The FAA has not changed this AD regarding this issue.

Additional Change to Proposed AD

Paragraph (j) of the proposed AD (''Parts Installation Limitation'') would allow installation of an affected APD if it is successfully tested and reidentified in accordance with Bombardier Service Bulletin 84–26–19, Revision 'A,' dated February 11, 2019. We have revised paragraph (j) in this AD to also allow installation of an affected APD that is tested and reidentified in accordance with Bombardier Service Bulletin 84–26–19, dated October 24, 2018.

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

Bombardier issued Service Bulletin 84–26–19, Revision 'A,' dated February 11, 2019. This service information describes procedures for identification and testing, and reidentification or replacement if necessary, of affected APDs. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 65 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 10 work-hours × $85 per hour = Up to $850	$0	Up to $850	Up to $55,250.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS *

Labor cost	Parts cost	Cost per product
Up to 124 work-hours × $85 per hour = Up to $10,540	Up to $51,076	Up to $61,616.

* The FAA has received no definitive data to provide cost estimates for the on-condition return of parts, except the FAA estimates that it would take about 1 work-hour per product to comply with the associated paperwork necessary for the return of parts.

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

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 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 current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed 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 AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–02–10 De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.): Amendment 39–19825; Docket No. FAA–2019–0702; Product Identifier 2019–NM–118–AD.

(a) Effective Date

This AD is effective March 12, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4001 and 4003 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire protection.

(e) Reason

This AD was prompted by a report of a quality escape in the manufacturing of advanced pneumatic detector (APD) switches, which consisted of the presence of contamination on the switch contact pin. The FAA is issuing this AD to address such contamination that could insulate the contact pin from the diaphragm and result in an undetected fire or late detection of a fire.

(f) Compliance

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

(g) Affected APDs

For purposes of this AD, an affected APD is manufactured by Kidde Aerospace and Defense (part of United Technologies Aerospace Systems (UTAS)) and has a part number and serial number identified in paragraphs (g)(1) through (10) of this AD.

(1) Part number 10–1096 (all serial numbers).

(2) Part number 10–1096–01 (all serial numbers).

(3) Part number 10–1096–02 (serial numbers before AEM9907).

(4) Part number 10–1097 (all serial numbers).

(5) Part number 10–1097–01 (all serial numbers).

(6) Part number 10–1097–02 (serial numbers before 17–0005).

(7) Part number 10–1098 (all serial numbers).

(8) Part number 10–1098–01 (serial numbers before 17–0110).

(9) Part number 10–1099 (all serial numbers).

(10) Part number 10–1099–01 (serial numbers before 17–0009).

(h) APD Identification and Test

Within 8,000 flight hours or 48 months, whichever occurs first after the effective date of this AD: Do the applicable actions specified in paragraph (h)(1) and (2) of this AD, in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–26–19, Revision 'A,' dated February 11, 2019.

(1) Determine whether any affected APD is installed on the engine nacelles or auxiliary power unit (APU) compartment.

(2) Do the on-aircraft test of all affected APDs.

(i) For any APD that passes the test: Before further flight, reidentify the APD.

(ii) For any APD that fails the test: Before further flight, replace the APD with an unaffected APD, or one provided by Kidde Aerospace and Defense that has been successfully tested and reidentified.

(i) Returning and Reporting Failed APDs

For any APD that fails the test specified in paragraph (h)(2) of this AD: Return the APD at the applicable time specified in paragraph (i)(1) or (2) of this AD to Kidde Aerospace & Defense, 4200 Airport Dr NW, Building B, Wilson, NC 27896–8630, Attention Keith Fail, Supervisor, Service Center.

(1) If the test was done on or after the effective date of this AD: Send the APD within 30 days after completion of the test.

(2) If the test was done before the effective date of this AD: Send the APD within 30 days after the effective date of this AD.

(j) Parts Installation Limitation

As of the effective date of this AD, no person may install an affected APD, unless the APD has been successfully tested and reidentified in accordance with Bombardier Service Bulletin 84–26–19, dated October 24, 2018; or Revision 'A,' dated February 11, 2019.

(k) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–26–19, dated October 24, 2018.

(l) 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 corrective actions from a manufacturer, the action must

be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or De Havilland Aircraft of Canada Limited's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(3) *Reporting Requirements:* 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 current 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 1 hour per response, including the time for reviewing instructions, 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.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2019–13, dated April 4, 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–2019–0702.

(2) For more information about this AD, contact Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (n)(3) and (4) of this AD.

(n) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 84–26–19, Revision 'A,' dated February 11, 2019.

(ii) [Reserved]

(3) For service information identified in this AD, contact De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd@dehavilland.com;* internet *https://dehavilland.com.*

(4) 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.

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

Issued on January 16, 2020.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2020–02201 Filed 2–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0725; Product Identifier 2019–NM–099–AD; Amendment 39–19829; AD 2020–02–15]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. This AD was prompted by a report that easy removal of the portable oxygen bottle from its support bracket may not always be possible on certain installations. This AD requires installation of a modified top bracket and new middle bracket on all affected portable oxygen bottle installations. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 12, 2020.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 12, 2020.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; phone: 514–855–5000; fax: 514–855–7401; email: *thd.crj@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. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0725.

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–2019–0725; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Darren Gassetto, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7323; fax: 516–794–5531; email: *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2019–18, dated May 10, 2019 (''Canadian AD CF–2019–18'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 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–2019–0725.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. The NPRM published in the **Federal Register** on October 29, 2019 (84 FR 57829). The NPRM was prompted by a report that easy removal of the portable oxygen bottle from its support bracket may not always be possible on certain installations. The NPRM proposed to require installation of a modified top bracket and new middle bracket on all affected portable oxygen bottle installations. The FAA is issuing this AD to address inaccessible

portable oxygen bottles, which may not be available to the flightcrew in emergency situations. See the MCAI for additional background information.

Comments

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

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information. The service information describes procedures for installation of a modified top bracket and new middle bracket on all affected portable oxygen bottle installations. These documents are distinct since they apply to different airplane models in different configurations.

- Service Bulletin 700–1A11–35–013, dated July 3, 2018.
- Service Bulletin 700–35–014, dated July 3, 2018.
- Service Bulletin 700–35–5003, Revision 01, dated November 23, 2018.
- Service Bulletin 700–35–6003, Revision 02, dated November 23, 2018.

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

Costs of Compliance

The FAA estimates that this AD affects 108 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTION

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2 work-hours × $85 per hour = $170 per installation.	$1,575 per installation	$1,745 per installation	$188,460 per installation.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–02–15 Bombardier, Inc.: Amendment 39–19829; Docket No. FAA–2019–0725; Product Identifier 2019–NM–099–AD.

(a) Effective Date

This AD is effective March 12, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Bombardier, Inc., airplanes, certificated in any category.

(1) Model BD–700–1A10, serial numbers 9002, 9006 through 9010 inclusive, 9012, 9016, 9018 through 9023 inclusive, 9029 through 9031 inclusive, 9033, 9035 through 9037 inclusive, 9039 through 9048 inclusive, 9058, 9059, 9061, 9063, 9066 through 9068 inclusive, 9070, 9071, 9073 through 9075 inclusive, 9078, 9085, 9090, 9092, 9093, 9097, 9105, 9106, 9108, 9112, 9121, 9122, 9124, 9137, 9139, 9143, 9145, 9153, 9167, 9177, 9181, 9183, 9185, 9187, 9191, 9203, 9205, 9210, 9223, 9234, 9236, 9244, 9250, 9264, 9270, 9272, 9283, 9286, 9294, 9304, 9312, 9314, 9326, 9333, 9364, 9368, 9378, 9381, 9388, 9407, 9419, 9438, 9460, 9470, 9475, 9478, 9479, 9481, 9484, 9485, 9499, 9524, 9529, 9530, 9533, 9538, 9551, 9553, 9568, 9598, 9615, 9624, 9632, 9638, 9640, 9641, 9648, 9657, 9670, 9680, 9682, 9689, 9700, 9706, 9723, 9726, 9730, 9731, 9745, 9752, 9753, 9757, 9759, 9773, 9775, 9804, 9814, 9816, and 9817.

(2) Model BD–700–1A11, serial numbers 9176, 9178, 9182, 9207, 9212, 9216, 9217, 9227, 9255, 9285, 9376, 9389, 9401, 9427, 9480, 9483, 9498, 9513, 9531, 9536, 9555, 9558, 9569, 9581, 9589, 9592, 9597, 9613, 9618, 9660, 9710, 9722, 9732, 9734, 9737, 9768, 9777, and 9790.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Reason

This AD was prompted by a report that easy removal of the portable oxygen bottle from its support bracket may not always be possible on certain installations. The FAA is issuing this AD to address inaccessible portable oxygen bottles, which may not be available to the flightcrew in emergency situations.

(f) Compliance

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

(g) Definition

For the purposes of this AD, an affected portable oxygen bottle installation is defined as one that is installed in any of the airplanes specified in paragraphs (c)(1) and (2) of this AD.

(h) Installation of Modified Top Bracket and New Middle Bracket

Within 60 months after the effective date of this AD, install a modified top bracket and new middle bracket on all affected portable oxygen bottle installations in accordance with paragraph 2.B. of the Accomplishment Instructions of the applicable service information specified in figure 1 to paragraph (h) of this AD.

Figure 1 to paragraph (h): *Service information*

Airplane Model	Service Information
Model BD-700-1A10	Bombardier Service Bulletin 700-35-014, dated July 3, 2018
Model BD-700-1A10	Bombardier Service Bulletin 700-35-6003, Revision 02, dated November 23, 2018
Model BD-700-1A11	Bombardier Service Bulletin 700-1A11-35-013, dated July 3, 2018
Model BD-700-1A11	Bombardier Service Bulletin 700-35-5003, Revision 01, dated November 23, 2018

(i) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 700–35–5003, dated July 3, 2018; or Bombardier Service Bulletin 700–35–6003, dated July 3, 2018; or Bombardier Service Bulletin 700–35–6003, Revision 01, dated September 5, 2018; as applicable.

(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; phone: 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 corrective actions from a manufacturer, the action 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–2019–18, dated May 10, 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–2019–0725.

(2) For more information about this AD, contact Darren Gassetto, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7323; fax: 516–794–5531; email: *9-avs-nyaco-cos@faa.gov.*

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (l)(3) and (4) of this AD.

(l) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 700–1A11–35–013, dated July 3, 2018.

(ii) Bombardier Service Bulletin 700–35–014, dated July 3, 2018.

(iii) Bombardier Service Bulletin 700–35–5003, Revision 01, dated November 23, 2018.

(iv) Bombardier Service Bulletin 700–35–6003, Revision 02, dated November 23, 2018.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; phone: 514–855–5000; fax: 514–855–7401; email: *thd.crj@aero.bombardier.com;* internet: *http://www.bombardier.com.*

(4) 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.

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

Issued on January 24, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–02197 Filed 2–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0610; Product Identifier 2019–NM–094–AD; Amendment 39–21022; AD 2019–26–11]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A319–112, A319–115, A319–132, A320–214, A320–216, A320–232, A320–233, A320–251N, A320–271N, A321–211, A321–231, A321–232, A321–251N, and A321–253N airplanes. This AD was prompted by reports of finding container/galley end stop bumpers damaged in service. This AD requires replacement of the affected bumpers with serviceable bumpers, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 12, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 12, 2020.

ADDRESSES: For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0610.

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–2019–0610; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0106, dated May 15, 2019 (''EASA AD 2019–0106'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A319–112, A319–115, A319–132, A320–214, A320–216, A320–232, A320–233, A320–251N, A320–271N, A321–211, A321–231, A321–232, A321–251N, and A321–253N airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A319–112, A319–115, A319–132, A320–214, A320–216, A320–232, A320–233, A320–251N, A320–271N, A321–211, A321–231, A321–232, A321–251N, and A321–253N airplanes. The NPRM published in the **Federal Register** on August 30, 2019 (84 FR 45692). The NPRM was prompted by reports of finding container/galley end stop bumpers damaged in service. The NPRM proposed to require replacement of the affected bumpers with serviceable bumpers.

The FAA is issuing this AD to address deformed end stops, which could break or lose their function to maintain the container/galley in position on the airplane. This condition, if not corrected, could lead to container/galley detachment under certain forward loading conditions, possibly resulting in injury to airplane occupants. See the MCAI for additional background information.

Comments

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

Request To Change the Service Information

American Airlines (AAL) requested that certain service information be changed to restrict installation of the containers in related compartments only during the adhesive cure time, rather than the specified 168 hours (7 days) after completion of certain tasks and to provide an alternative adhesive compound with a faster cure time that does not require heat. AAL stated that requirements related to the specified adhesive cure time would necessitate an unacceptable amount of aircraft downtime, which could jeopardize its ability to comply within the proposed compliance time.

The FAA disagrees. The FAA and EASA both have concluded that 48 months after the effective date of the AD is sufficient time for operators to plan and execute compliance requirements to mitigate the unsafe condition. Regarding the requirement to wait 168 hours before installing containers, the FAA notes that only certain compartments are affected. Operators who wish to install containers in those affected compartments in less than 168 hours may request an alternative method of compliance (AMOC) in accordance with paragraph (i)(1) of this AD, including providing sufficient data to substantiate that installing the containers in less than 168 hours would provide an acceptable level of safety. In addition, Safran is reportedly in the process of certifying an alternative adhesive with accelerated cure time, followed by changes to their service bulletin. However, to delay this AD action while Safran works toward certification of an alternative adhesive and releases revised service information would be inappropriate, since the FAA has determined that an unsafe condition exists and that sufficient technology currently exists to accomplish the required actions within the required compliance time. Once the alternative adhesive and revised service information are approved, operators may request to use the alternative adhesive and revised service information by using the AMOC provision provided in paragraph (i)(1) of this AD and submitting sufficient data to substantiate that the alternative adhesive would provide an acceptable level of safety. The FAA has not changed this AD in this regard.

Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this

final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

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

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0106 describes procedures for modification of the affected galleys by replacement of the affected bumpers with serviceable bumpers.

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

Costs of Compliance

The FAA estimates that this AD affects 274 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 54 work-hours × $85 per hour = Up to $4,590.	$0	Up to $4,590	Up to $1,257,660.

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–26–11 Airbus SAS: Amendment 39–21022; Docket No. FAA–2019–0610; Product Identifier 2019–NM–094–AD.

(a) Effective Date

This AD is effective March 12, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus SAS airplanes specified in paragraphs (c)(1) through (3) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2019–0106, dated May 15, 2019 (''EASA AD 2019–0106'').

(1) Model A319–112, –115, and –132 airplanes.

(2) Model A320–214, –216, –232, –233, –251N, and –271N airplanes.

(3) Model A321–211, –231, –232, –251N, and –253N airplanes

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Reason

This AD was prompted by reports of finding container/galley end stop bumpers damaged in service. The FAA is issuing this AD to address deformed end stops, which could break or lose their function to maintain the container/galley in position on the airplane. This condition, if not corrected, could lead to container/galley detachment under certain forward loading conditions, possibly resulting in injury to airplane occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0106.

(h) Exceptions to EASA AD 2019–0106

(1) Where EASA AD 2019–0106 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0106 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2019–0106 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2019–0106, dated May 15, 2019.

(ii) [Reserved]

(3) For information about EASA AD 2019–0106, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0610.

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

Issued on January 3, 2020.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2020–02322 Filed 2–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0721; Product Identifier 2019–NM–150–AD; Amendment 39–19828; AD 2020–02–14]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 and –1041 airplanes. This AD was prompted by a report indicating that during inspection of the installation of oxygen containers, certain fasteners of the oxygen containers and adjacent panels in the passenger supply channels (PSCs) were found damaged or unlocked, which could result in insufficient clearance between the oxygen container and adjacent panels. This AD requires a one-time inspection of the oxygen containers and adjacent panels and applicable corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 12, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 12, 2020.

ADDRESSES: For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0721.

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–2019–0721; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0210, dated August 26, 2019 (''EASA AD 2019–0210'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A350–941 and –1041 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A350–941 and –1041 airplanes. The NPRM published in the **Federal Register** on October 30, 2019 (84 FR 58060). The NPRM was prompted by a report indicating that during inspection of the installation of oxygen containers on the production line, certain fasteners of oxygen containers and adjacent panels in the PSCs were found damaged or unlocked; unlocked fasteners could

move on the rails, which could result in insufficient clearance between the oxygen container and adjacent panels. The NPRM proposed to require a one-time inspection of the oxygen containers and adjacent panels and applicable corrective actions. The FAA is issuing this AD to address this condition, which could prevent the opening of the oxygen containers and result in failure of the oxygen masks to deploy and provide supplemental oxygen in case of an in-flight decompression, possibly resulting in injury to cabin occupants. See the MCAI for additional background information.

Comments

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

Request To Extend Compliance Time

Delta Air Lines, Inc., (Delta) asked that the compliance time for the inspection specified in the proposed AD be extended to 5, 6, or 7 months, in lieu of 4 months, in order to align with the 5-month compliance time specified in Airbus Alert Operators Transmission (AOT) A35P015–19, Revision 01, dated June 19, 2019. Delta stated that this would allow extra planning time to properly schedule the inspection for the affected fleet at suitable maintenance stations, and to obtain the correct amount of contingency parts (locking fasteners) to correct any discrepancies found. Delta also stated that Airbus or its supplier may be unable to provide all the required parts in such a short compliance time; but the actual fallout rate remains unknown. Delta added that the quantity of parts required is critical for accomplishing any necessary corrective action. Delta noted that if the corrective action cannot be accomplished before further flight, as required by EASA AD 2019–0210, operators could be forced to ground airplanes until the parts are available, causing an undue burden on customers.

The FAA does not agree with the commenter's request to extend the compliance time. The FAA has determined that the 4-month compliance time identified in EASA AD 2019–0210 addresses the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection. In light of all of these factors, the FAA finds the compliance times specified in EASA AD 2019–0210, represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. However, under the provisions of paragraph (j) of this AD, the FAA will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety. The AD has not been changed in this regard.

Conclusion

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

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

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0210 describes procedures for inspecting the oxygen containers and the installation of adjacent panels located in all PSCs, to check that each fastener of each panel/component is locked and to measure the clearance between the oxygen container door lid and the adjacent panel/component. EASA AD 2019–0210 also describes procedures for applicable corrective actions, including attaining minimum clearance, locking any unlocked fasteners, and replacing damaged parts.

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

Costs of Compliance

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

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × $85 per hour = $340	$0	$340	$3,740

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	$0	$85

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.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–02–14 Airbus SAS: Amendment 39–19828; Docket No. FAA–2019–0721; Product Identifier 2019–NM–150–AD.

(a) Effective Date

This AD is effective March 12, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2019–0210, dated August 26, 2019 (''EASA AD 2019–0210'').

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Reason

This AD was prompted by a report that during inspection of the installation of oxygen containers, certain fasteners of the oxygen containers and adjacent panels in the passenger supply channels (PSCs) were found damaged or unlocked; which could result in insufficient clearance between the oxygen container and adjacent panels. The FAA is issuing this AD to address this condition, which could prevent the opening of the oxygen containers and result in failure of the oxygen masks to deploy and provide supplemental oxygen in case of an in-flight decompression, possibly resulting in injury to cabin occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0210.

(h) Exceptions to EASA AD 2019–0210

(1) Where EASA AD 2019–0210 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0210 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2019–0210 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2019–0210 that contains RC procedures and tests: RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218; email *kathleen.arrigotti@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2019–0210, dated August 26, 2019.

(ii) [Reserved]

(3) For information about EASA AD 2019–0210, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0721.

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

Issued on January 23, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–02198 Filed 2–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM11–6–000]

Annual Update to Fee Schedule for the Use of Government Lands by Hydropower Licensees

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: In accordance with the Commission's regulations, the Commission, by its designee, the Executive Director, issues this annual update to the fee schedule in the appendix to the part, which lists per-acre rental fees by county (or other geographic area) for use of government lands by hydropower licensees.

DATES: This rule is effective February 6, 2020. The updates to appendix A to part 11, with the fee schedule of per-acre rental fees by county (or other geographic area), are from October 1, 2019, through September 30, 2020 (Fiscal Year 2020).

FOR FURTHER INFORMATION CONTACT: Raven A. Rodriguez, Financial Management Division, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6276, *Raven.Rodriguez@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Annual Update to Fee Schedule

Section 11.2 of the Commission's regulations provides a method for computing reasonable annual charges for recompensing the United States for the use, occupancy, and enjoyment of its lands by hydropower licensees.[1] Annual charges for the use of government lands are payable in advance, and are based on an annual schedule of per-acre rental fees published in appendix A to part 11 of the Commission's regulations.[2] This document updates the fee schedule in appendix A to part 11 for fiscal year 2020 (October 1, 2019, through September 30, 2020).

Effective Date

This final rule is effective February 6, 2020. The provisions of 5 U.S.C. 804, regarding Congressional review of final rules, do not apply to this final rule because the rule concerns agency procedure and practice and will not substantially affect the rights or obligations of non-agency parties. This final rule merely updates the fee schedule published in the Code of Federal Regulations to reflect scheduled adjustments, as provided for in § 11.2 of the Commission's regulations.

List of Subjects in 18 CFR Part 11

Public lands.

By the Executive Director.

Issued: January 21, 2020.

Anton C. Porter,

Executive Director, Office of the Executive Director.

In consideration of the foregoing, the Commission amends appendix A to part 11, chapter I, title 18, *Code of Federal Regulations,* as follows.

PART 11—[AMENDED]

■ 1. The authority citation for part 11 is revised to read as follows:

Authority: 16 U.S.C. 792–828c; 42 U.S.C. 7101–7352.

■ 2. Appendix A to part 11 is revised to read as follows:

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020

State	County	Fee/acre/yr
Alabama	Autauga	$65.66
	Baldwin	114.37
	Barbour	64.98
	Bibb	60.27
	Blount	104.38
	Bullock	62.57
	Butler	69.79
	Calhoun	87.54
	Chambers	74.79
	Cherokee	98.24
	Chilton	84.27
	Choctaw	53.81
	Clarke	58.77
	Clay	71.09
	Cleburne	78.88
	Coffee	75.76
	Colbert	81.04
	Conecuh	57.22
	Coosa	59.56
	Covington	64.80
	Crenshaw	58.30
	Cullman	120.01
	Dale	72.13
	Dallas	52.73
	DeKalb	108.91
	Elmore	91.24
	Escambia	65.27
	Etowah	102.26
	Fayette	61.03
	Franklin	60.45
	Geneva	62.11
	Greene	58.33

[1] *Annual Charges for the Use of Government Lands,* Order No. 774, 78 FR 5256 (January 25, 2013), FERC Stats. & Regs. ¶ 31,341 (2013).

[2] 18 CFR part 11 (2018).

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Hale	60.09
	Henry	64.23
	Houston	74.82
	Jackson	75.07
	Jefferson	129.53
	Lamar	42.46
	Lauderdale	85.35
	Lawrence	87.90
	Lee	108.48
	Limestone	116.88
	Lowndes	49.61
	Macon	70.62
	Madison	106.75
	Marengo	51.22
	Marion	63.83
	Marshall	108.95
	Mobile	116.74
	Monroe	56.54
	Montgomery	75.40
	Morgan	107.26
	Perry	50.43
	Pickens	59.41
	Pike	65.45
	Randolph	80.75
	Russell	64.98
	Shelby	120.66
	St. Clair	110.31
	Sumter	40.88
	Talladega	83.59
	Tallapoosa	69.36
	Tuscaloosa	85.20
	Walker	74.07
	Washington	48.53
	Wilcox	48.35
	Winston	74.75
Alaska	Aleutian Islands	1.08
	Statewide	38.87
Arizona	Apache	3.24
	Cochise	23.60
	Coconino	3.52
	Gila	5.52
	Graham	9.73
	Greenlee	26.29
	La Paz	21.64
	Maricopa	95.37
	Mohave	8.13
	Navajo	4.36
	Pima	8.78
	Pinal	40.06
	Santa Cruz	25.73
	Yavapai	26.55
	Yuma	121.60
Arkansas	Arkansas	60.66
	Ashley	66.44
	Baxter	61.01
	Benton	101.43
	Boone	58.83
	Bradley	79.87
	Calhoun	56.23
	Carroll	58.15
	Chicot	60.95
	Clark	42.25
	Clay	73.13
	Cleburne	62.61
	Cleveland	89.08
	Columbia	49.34
	Conway	59.18
	Craighead	73.36
	Crawford	68.64
	Crittenden	63.52
	Cross	58.15
	Dallas	36.59

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Desha	63.78
	Drew	57.63
	Faulkner	74.99
	Franklin	52.09
	Fulton	36.62
	Garland	84.33
	Grant	51.52
	Greene	78.16
	Hempstead	46.83
	Hot Spring	58.72
	Howard	53.92
	Independence	47.88
	Izard	40.39
	Jackson	57.55
	Jefferson	66.32
	Johnson	55.00
	Lafayette	46.26
	Lawrence	61.12
	Lee	63.95
	Lincoln	63.92
	Little River	38.45
	Logan	51.37
	Lonoke	63.61
	Madison	62.15
	Marion	46.06
	Miller	45.43
	Mississippi	65.15
	Monroe	54.97
	Montgomery	57.32
	Nevada	43.40
	Newton	50.46
	Ouachita	50.94
	Perry	55.75
	Phillips	59.69
	Pike	48.77
	Poinsett	70.18
	Polk	60.64
	Pope	62.78
	Prairie	57.20
	Pulaski	78.62
	Randolph	46.08
	Saline	80.48
	Scott	50.26
	Searcy	38.14
	Sebastian	60.89
	Sevier	53.40
	Sharp	41.57
	St. Francis	54.12
	Stone	44.63
	Union	57.95
	Van Buren	56.75
	Washington	94.03
	White	58.81
	Woodruff	57.06
	Yell	51.94
California	Alameda	47.60
	Alpine	37.00
	Amador	33.94
	Butte	65.56
	Calaveras	28.15
	Colusa	46.86
	Contra Costa	72.69
	Del Norte	75.20
	El Dorado	70.98
	Fresno	71.49
	Glenn	39.62
	Humboldt	22.29
	Imperial	60.42
	Inyo	6.72
	Kern	38.26
	Kings	52.04
	Lake	52.53

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Lassen	16.63
	Los Angeles	107.49
	Madera	65.69
	Marin	53.74
	Mariposa	18.15
	Mendocino	34.62
	Merced	66.76
	Modoc	14.85
	Mono	24.31
	Monterey	42.21
	Napa	188.10
	Nevada	93.47
	Orange	188.55
	Placer	92.00
	Plumas	15.33
	Riverside	88.11
	Sacramento	61.56
	San Benito	24.54
	San Bernardino	116.09
	San Diego	154.99
	San Francisco	1,088.06
	San Joaquin	87.05
	San Luis Obispo	36.34
	San Mateo	97.48
	Santa Barbara	63.54
	Santa Clara	57.91
	Santa Cruz	106.90
	Shasta	24.17
	Sierra	12.97
	Siskiyou	17.59
	Solano	47.95
	Sonoma	126.14
	Stanislaus	83.14
	Sutter	57.10
	Tehama	25.69
	Trinity	9.84
	Tulare	65.01
	Tuolumne	39.96
	Ventura	134.78
	Yolo	48.68
	Yuba	49.98
Colorado	Adams	27.32
	Alamosa	27.72
	Arapahoe	32.05
	Archuleta	40.85
	Baca	10.58
	Bent	8.84
	Boulder	108.70
	Broomfield	37.28
	Chaffee	57.51
	Cheyenne	14.79
	Clear Creek	52.19
	Conejos	28.86
	Costilla	20.90
	Crowley	6.51
	Custer	28.96
	Delta	63.12
	Denver	1,031.44
	Dolores	27.44
	Douglas	95.53
	Eagle	74.92
	El Paso	22.97
	Elbert	21.33
	Fremont	44.48
	Garfield	52.83
	Gilpin	53.88
	Grand	43.49
	Gunnison	53.59
	Hinsdale	100.67
	Huerfano	16.43
	Jackson	19.83
	Jefferson	104.47

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Kiowa	12.98
	Kit Carson	21.54
	La Plata	35.33
	Lake	55.47
	Larimer	58.63
	Las Animas	7.70
	Lincoln	9.08
	Logan	16.52
	Mesa	64.05
	Mineral	82.60
	Moffat	13.88
	Montezuma	21.07
	Montrose	54.61
	Morgan	27.13
	Otero	12.41
	Ouray	54.02
	Park	25.32
	Phillips	34.43
	Pitkin	106.47
	Prowers	13.08
	Pueblo	13.96
	Rio Blanco	25.27
	Rio Grande	44.96
	Routt	42.18
	Saguache	28.27
	San Juan	24.35
	San Miguel	27.72
	Sedgwick	24.18
	Summit	63.22
	Teller	38.16
	Washington	18.59
	Weld	37.64
	Yuma	26.06
Connecticut	Fairfield	333.62
	Hartford	347.35
	Litchfield	313.12
	Middlesex	386.60
	New Haven	345.05
	New London	283.80
	Tolland	272.67
	Windham	209.52
Delaware	Kent	228.60
	New Castle	283.94
	Sussex	224.42
Florida	Alachua	109.21
	Baker	131.53
	Bay	105.36
	Bradford	84.84
	Brevard	109.85
	Broward	464.98
	Calhoun	43.09
	Charlotte	102.82
	Citrus	134.35
	Clay	71.42
	Collier	90.95
	Columbia	92.04
	Dade	515.83
	DeSoto	95.29
	Dixie	79.99
	Duval	140.71
	Escambia	99.02
	Flagler	86.01
	Franklin	39.41
	Gadsden	89.89
	Gilchrist	67.62
	Glades	62.01
	Gulf	84.89
	Hamilton	58.56
	Hardee	83.70
	Hendry	82.33
	Hernando	170.31
	Highlands	59.60

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Hillsborough	183.68
	Holmes	57.27
	Indian River	78.24
	Jackson	68.33
	Jefferson	85.47
	Lafayette	83.67
	Lake	152.96
	Lee	192.45
	Leon	111.62
	Levy	121.18
	Liberty	54.89
	Madison	68.33
	Manatee	113.42
	Marion	189.76
	Martin	133.54
	Monroe	385.06
	Nassau	97.11
	Okaloosa	73.60
	Okeechobee	93.18
	Orange	169.73
	Osceola	80.10
	Palm Beach	143.86
	Pasco	137.21
	Pinellas	611.60
	Polk	111.19
	Putnam	112.18
	Santa Rosa	159.73
	Sarasota	133.03
	Seminole	96.53
	St. Johns	71.80
	St. Lucie	97.67
	Sumter	108.55
	Suwannee	81.44
	Taylor	77.20
	Union	72.51
	Volusia	124.53
	Wakulla	71.07
	Walton	58.36
	Washington	58.31
Georgia	Appling	64.39
	Atkinson	73.39
	Bacon	79.65
	Baker	75.49
	Baldwin	67.31
	Banks	151.08
	Barrow	151.05
	Bartow	121.83
	Ben Hill	69.75
	Berrien	72.95
	Bibb	89.86
	Bleckley	64.01
	Brantley	79.55
	Brooks	90.82
	Bryan	80.65
	Bulloch	66.59
	Burke	61.95
	Butts	95.81
	Calhoun	60.26
	Camden	59.95
	Candler	65.52
	Carroll	121.97
	Catoosa	155.90
	Charlton	56.10
	Chatham	141.97
	Chattahoochee	57.20
	Chattooga	84.67
	Cherokee	260.88
	Clarke	155.31
	Clay	45.48
	Clayton	153.25
	Clinch	74.53
	Cobb	336.47

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Coffee	72.40
	Colquitt	80.78
	Columbia	135.03
	Cook	75.66
	Coweta	135.92
	Crawford	84.81
	Crisp	57.48
	Dade	86.97
	Dawson	214.03
	Decatur	78.58
	DeKalb	76.45
	Dodge	60.57
	Dooly	64.49
	Dougherty	90.13
	Douglas	181.27
	Early	59.06
	Echols	72.57
	Effingham	76.42
	Elbert	97.28
	Emanuel	58.65
	Evans	71.16
	Fannin	178.89
	Fayette	168.03
	Floyd	107.18
	Forsyth	302.37
	Franklin	148.85
	Fulton	186.46
	Gilmer	168.89
	Glascock	50.81
	Glynn	107.87
	Gordon	131.94
	Grady	84.63
	Greene	88.72
	Gwinnett	284.22
	Habersham	158.03
	Hall	225.85
	Hancock	94.16
	Haralson	115.85
	Harris	132.07
	Hart	142.49
	Heard	95.50
	Henry	157.72
	Houston	85.18
	Irwin	69.92
	Jackson	152.32
	Jasper	95.22
	Jeff Davis	91.34
	Jefferson	54.93
	Jenkins	51.67
	Johnson	49.40
	Jones	87.35
	Lamar	105.53
	Lanier	93.71
	Laurens	56.41
	Lee	79.13
	Liberty	58.10
	Lincoln	76.25
	Long	67.72
	Lowndes	97.28
	Lumpkin	247.34
	Macon	61.77
	Madison	78.82
	Marion	70.99
	McDuffie	70.47
	McIntosh	154.45
	Meriwether	87.21
	Miller	67.79
	Mitchell	78.65
	Monroe	93.78
	Montgomery	47.51
	Morgan	120.21
	Murray	117.91

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Muscogee	141.29
	Newton	116.16
	Oconee	198.63
	Oglethorpe	89.07
	Paulding	179.96
	Peach	109.97
	Pickens	184.67
	Pierce	65.49
	Pike	100.38
	Polk	99.18
	Pulaski	71.98
	Putnam	104.57
	Quitman	58.65
	Rabun	194.64
	Randolph	53.21
	Richmond	72.88
	Rockdale	192.03
	Schley	62.50
	Screven	58.68
	Seminole	74.32
	Spalding	143.80
	Stephens	145.00
	Stewart	53.97
	Sumter	62.26
	Talbot	57.31
	Taliaferro	60.57
	Tattnall	76.38
	Taylor	55.69
	Telfair	52.32
	Terrell	65.01
	Thomas	91.96
	Tift	87.35
	Toombs	65.21
	Towns	162.60
	Treutlen	49.33
	Troup	109.49
	Turner	65.56
	Twiggs	68.79
	Union	165.42
	Upson	86.90
	Walker	107.46
	Walton	147.61
	Ware	67.86
	Warren	55.52
	Washington	56.86
	Wayne	75.52
	Webster	48.75
	Wheeler	41.05
	White	188.83
	Whitfield	133.28
	Wilcox	67.07
	Wilkes	76.38
	Wilkinson	58.68
	Worth	71.06
Hawaii	Hawaii	176.86
	Honolulu	446.78
	Kauai	168.34
	Maui	217.87
Idaho	Ada	65.60
	Adams	18.91
	Bannock	22.47
	Bear Lake	17.67
	Benewah	19.73
	Bingham	27.78
	Blaine	35.52
	Boise	17.64
	Bonner	54.28
	Bonneville	28.81
	Boundary	42.51
	Butte	19.14
	Camas	18.44
	Canyon	66.29

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Caribou	17.42
	Cassia	29.12
	Clark	18.10
	Clearwater	23.40
	Custer	28.62
	Elmore	25.44
	Franklin	24.95
	Fremont	27.75
	Gem	34.32
	Gooding	47.61
	Idaho	17.34
	Jefferson	32.57
	Jerome	47.73
	Kootenai	51.45
	Latah	22.41
	Lemhi	27.63
	Lewis	17.43
	Lincoln	32.63
	Madison	41.19
	Minidoka	43.10
	Nez Perce	20.91
	Oneida	14.76
	Owyhee	15.26
	Payette	37.56
	Power	18.80
	Shoshone	74.33
	Teton	40.93
	Twin Falls	38.41
	Valley	30.73
	Washington	12.42
Illinois	Adams	143.74
	Alexander	96.20
	Bond	188.26
	Boone	199.28
	Brown	116.02
	Bureau	213.35
	Calhoun	110.60
	Carroll	198.95
	Cass	162.72
	Champaign	231.65
	Christian	220.44
	Clark	142.94
	Clay	138.61
	Clinton	170.14
	Coles	205.13
	Cook	304.68
	Crawford	145.41
	Cumberland	158.29
	De Witt	209.13
	DeKalb	228.48
	Douglas	221.39
	DuPage	202.15
	Edgar	191.09
	Edwards	117.08
	Effingham	168.65
	Fayette	129.66
	Ford	220.59
	Franklin	107.91
	Fulton	152.72
	Gallatin	127.84
	Greene	164.03
	Grundy	221.64
	Hamilton	105.33
	Hancock	166.61
	Hardin	102.89
	Henderson	180.11
	Henry	198.77
	Iroquois	197.89
	Jackson	114.57
	Jasper	147.41
	Jefferson	104.86
	Jersey	171.56

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Jo Daviess	141.26
	Johnson	87.94
	Kane	258.20
	Kankakee	192.40
	Kendall	252.63
	Knox	199.82
	La Salle	229.57
	Lake	302.50
	Lawrence	142.50
	Lee	220.19
	Livingston	209.13
	Logan	208.99
	Macon	227.90
	Macoupin	180.91
	Madison	185.67
	Marion	122.24
	Marshall	201.46
	Mason	170.11
	Massac	104.09
	McDonough	204.48
	McHenry	234.81
	McLean	238.01
	Menard	184.00
	Mercer	176.69
	Monroe	150.68
	Montgomery	173.31
	Morgan	194.44
	Moultrie	223.68
	Ogle	201.71
	Peoria	201.35
	Perry	118.46
	Piatt	251.80
	Pike	143.05
	Pope	75.80
	Pulaski	117.04
	Putnam	183.13
	Randolph	129.73
	Richland	127.88
	Rock Island	181.42
	Saline	122.72
	Sangamon	214.37
	Schuyler	127.37
	Scott	169.38
	Shelby	175.67
	St. Clair	183.71
	Stark	216.41
	Stephenson	197.89
	Tazewell	216.44
	Union	103.15
	Vermilion	204.91
	Wabash	154.54
	Warren	201.39
	Washington	150.72
	Wayne	130.06
	White	130.43
	Whiteside	199.06
	Will	227.90
	Williamson	128.24
	Winnebago	184.15
	Woodford	225.50
Indiana	Adams	168.47
	Allen	179.52
	Bartholomew	170.91
	Benton	187.77
	Blackford	122.93
	Boone	179.45
	Brown	116.38
	Carroll	198.49
	Cass	157.38
	Clark	122.93
	Clay	126.71
	Clinton	194.02

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Crawford	74.48
	Daviess	188.39
	Dearborn	118.38
	Decatur	154.73
	DeKalb	128.78
	Delaware	154.11
	Dubois	130.05
	Elkhart	234.59
	Fayette	135.14
	Floyd	155.02
	Fountain	139.50
	Franklin	133.10
	Fulton	146.08
	Gibson	154.95
	Grant	162.22
	Greene	114.64
	Hamilton	186.90
	Hancock	166.25
	Harrison	107.04
	Hendricks	169.63
	Henry	144.01
	Howard	184.72
	Huntington	158.55
	Jackson	133.25
	Jasper	178.32
	Jay	190.90
	Jefferson	102.94
	Jennings	113.29
	Johnson	177.12
	Knox	164.18
	Kosciusko	170.58
	LaGrange	216.56
	Lake	164.94
	LaPorte	176.90
	Lawrence	92.25
	Madison	175.27
	Marion	186.75
	Marshall	151.28
	Martin	117.40
	Miami	147.39
	Monroe	140.48
	Montgomery	162.40
	Morgan	143.14
	Newton	164.98
	Noble	140.56
	Ohio	103.52
	Orange	101.41
	Owen	98.76
	Parke	121.22
	Perry	87.20
	Pike	124.20
	Porter	174.25
	Posey	139.50
	Pulaski	149.82
	Putnam	122.05
	Randolph	147.93
	Ripley	118.60
	Rush	177.05
	Scott	104.43
	Shelby	178.10
	Spencer	112.53
	St. Joseph	178.54
	Starke	127.43
	Steuben	130.45
	Sullivan	121.47
	Switzerland	102.57
	Tippecanoe	195.73
	Tipton	212.38
	Union	144.08
	Vanderburgh	123.04
	Vermillion	138.16
	Vigo	112.71

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Wabash	150.26
	Warren	171.27
	Warrick	141.21
	Washington	96.57
	Wayne	150.55
	Wells	184.06
	White	198.82
	Whitley	149.39
Iowa	Adair	136.33
	Adams	125.07
	Allamakee	123.98
	Appanoose	86.50
	Audubon	194.13
	Benton	210.34
	Black Hawk	232.19
	Boone	219.88
	Bremer	224.72
	Buchanan	213.65
	Buena Vista	212.74
	Butler	198.97
	Calhoun	223.92
	Carroll	219.22
	Cass	159.20
	Cedar	208.95
	Cerro Gordo	193.22
	Cherokee	216.27
	Chickasaw	208.55
	Clarke	98.41
	Clay	215.18
	Clayton	139.46
	Clinton	206.95
	Crawford	201.56
	Dallas	196.02
	Davis	85.74
	Decatur	87.05
	Delaware	209.97
	Des Moines	162.40
	Dickinson	205.75
	Dubuque	177.52
	Emmet	212.12
	Fayette	200.43
	Floyd	186.52
	Franklin	193.65
	Fremont	178.94
	Greene	202.87
	Grundy	234.01
	Guthrie	168.92
	Hamilton	236.63
	Hancock	202.72
	Hardin	215.18
	Harrison	169.69
	Henry	143.61
	Howard	192.09
	Humboldt	222.25
	Ida	197.73
	Iowa	176.35
	Jackson	155.34
	Jasper	181.16
	Jefferson	133.78
	Johnson	200.10
	Jones	195.18
	Keokuk	145.21
	Kossuth	221.66
	Lee	124.34
	Linn	195.88
	Louisa	167.32
	Lucas	83.73
	Lyon	240.24
	Madison	142.85
	Mahaska	163.83
	Marion	130.03
	Marshall	192.96

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Mills	184.04
	Mitchell	214.82
	Monona	160.00
	Monroe	92.40
	Montgomery	163.46
	Muscatine	183.24
	O'Brien	248.76
	Osceola	205.09
	Page	146.60
	Palo Alto	219.19
	Plymouth	214.23
	Pocahontas	222.46
	Polk	205.49
	Pottawattamie	204.91
	Poweshiek	177.16
	Ringgold	99.65
	Sac	216.20
	Scott	236.52
	Shelby	197.33
	Sioux	265.30
	Story	228.36
	Tama	189.47
	Taylor	111.52
	Union	100.27
	Van Buren	101.25
	Wapello	120.19
	Warren	149.00
	Washington	177.96
	Wayne	94.19
	Webster	214.23
	Winnebago	196.60
	Winneshiek	173.62
	Woodbury	174.06
	Worth	179.05
	Wright	210.04
Kansas	Allen	40.00
	Anderson	44.61
	Atchison	61.69
	Barber	34.80
	Barton	44.90
	Bourbon	41.46
	Brown	93.71
	Butler	50.42
	Chase	38.85
	Chautauqua	33.09
	Cherokee	53.35
	Cheyenne	45.37
	Clark	26.07
	Clay	60.48
	Cloud	57.04
	Coffey	43.72
	Comanche	26.39
	Cowley	41.03
	Crawford	47.98
	Decatur	43.68
	Dickinson	57.79
	Doniphan	103.09
	Douglas	81.75
	Edwards	61.12
	Elk	36.34
	Ellis	38.17
	Ellsworth	37.99
	Finney	41.21
	Ford	34.88
	Franklin	66.49
	Geary	55.54
	Gove	36.84
	Graham	37.78
	Grant	38.17
	Gray	38.24
	Greeley	42.61
	Greenwood	40.35

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Hamilton	28.97
	Harper	43.47
	Harvey	73.62
	Haskell	39.46
	Hodgeman	30.79
	Jackson	50.42
	Jefferson	64.09
	Jewell	55.29
	Johnson	124.32
	Kearny	37.17
	Kingman	40.93
	Kiowa	35.31
	Labette	42.57
	Lane	36.84
	Leavenworth	92.67
	Lincoln	42.79
	Linn	50.42
	Logan	33.80
	Lyon	44.69
	Marion	60.41
	Marshall	77.13
	McPherson	64.67
	Meade	34.95
	Miami	89.70
	Mitchell	64.17
	Montgomery	44.33
	Morris	42.07
	Morton	24.24
	Nemaha	80.85
	Neosho	42.90
	Ness	29.83
	Norton	37.95
	Osage	46.58
	Osborne	39.24
	Ottawa	53.92
	Pawnee	52.21
	Phillips	35.84
	Pottawatomie	54.64
	Pratt	45.83
	Rawlins	49.95
	Reno	51.45
	Republic	75.95
	Rice	45.76
	Riley	52.38
	Rooks	37.60
	Rush	37.17
	Russell	32.73
	Saline	56.61
	Scott	43.47
	Sedgwick	68.07
	Seward	32.98
	Shawnee	71.29
	Sheridan	54.96
	Sherman	48.91
	Smith	46.48
	Stafford	50.63
	Stanton	31.72
	Stevens	39.28
	Sumner	51.35
	Thomas	61.09
	Trego	37.60
	Wabaunsee	42.11
	Wallace	36.13
	Washington	66.85
	Wichita	38.89
	Wilson	41.18
	Woodson	39.42
	Wyandotte	137.75
Kentucky	Adair	74.21
	Allen	85.66
	Anderson	90.33
	Ballard	98.63

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Barren	85.37
	Bath	56.56
	Bell	56.38
	Boone	178.85
	Bourbon	123.38
	Boyd	67.61
	Boyle	98.70
	Bracken	60.73
	Breathitt	41.45
	Breckinridge	69.53
	Bullitt	105.66
	Butler	58.63
	Caldwell	79.28
	Calloway	86.02
	Campbell	127.33
	Carlisle	82.00
	Carroll	76.45
	Carter	50.94
	Casey	58.88
	Christian	100.11
	Clark	95.15
	Clay	46.16
	Clinton	75.18
	Crittenden	62.39
	Cumberland	49.50
	Daviess	112.58
	Edmonson	68.95
	Elliott	39.35
	Estill	53.55
	Fayette	264.14
	Fleming	60.76
	Floyd	42.68
	Franklin	106.78
	Fulton	101.16
	Gallatin	87.72
	Garrard	71.63
	Grant	88.70
	Graves	93.99
	Grayson	65.80
	Green	65.66
	Greenup	51.31
	Hancock	81.53
	Hardin	101.60
	Harlan	38.34
	Harrison	79.13
	Hart	64.31
	Henderson	105.84
	Henry	96.89
	Hickman	100.87
	Hopkins	84.13
	Jackson	52.68
	Jefferson	250.23
	Jessamine	158.63
	Johnson	50.73
	Kenton	126.38
	Knott	39.20
	Knox	50.69
	Larue	99.21
	Laurel	99.97
	Lawrence	41.05
	Lee	55.15
	Leslie	125.98
	Letcher	67.03
	Lewis	42.57
	Lincoln	72.14
	Livingston	61.67
	Logan	97.07
	Lyon	58.70
	Madison	87.47
	Magoffin	42.97
	Marion	78.05
	Marshall	88.63

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Martin	145.91
	Mason	74.71
	McCracken	89.21
	McCreary	51.89
	McLean	108.99
	Meade	94.03
	Menifee	51.81
	Mercer	97.94
	Metcalfe	65.40
	Monroe	68.37
	Montgomery	79.50
	Morgan	36.99
	Muhlenberg	67.36
	Nelson	97.47
	Nicholas	62.58
	Ohio	70.95
	Oldham	181.10
	Owen	66.85
	Owsley	39.10
	Pendleton	68.63
	Perry	34.97
	Pike	38.66
	Powell	46.09
	Pulaski	83.95
	Robertson	52.39
	Rockcastle	58.92
	Rowan	61.81
	Russell	89.28
	Scott	132.54
	Shelby	141.49
	Simpson	120.66
	Spencer	90.84
	Taylor	80.66
	Todd	106.96
	Trigg	85.80
	Trimble	91.49
	Union	118.96
	Warren	104.53
	Washington	74.21
	Wayne	65.91
	Webster	92.58
	Whitley	62.83
	Wolfe	43.12
	Woodford	236.39
Louisiana	Acadia	60.98
	Allen	57.75
	Ascension	96.70
	Assumption	83.75
	Avoyelles	62.35
	Beauregard	68.64
	Bienville	65.37
	Bossier	92.41
	Caddo	74.82
	Calcasieu	70.53
	Caldwell	68.05
	Cameron	48.33
	Catahoula	66.71
	Claiborne	69.19
	Concordia	63.41
	De Soto	74.44
	East Baton Rouge	157.92
	East Carroll	75.27
	East Feliciana	81.93
	Evangeline	58.30
	Franklin	62.66
	Grant	58.64
	Iberia	86.16
	Iberville	49.54
	Jackson	77.77
	Jefferson	104.54
	Jefferson Davis	62.45
	La Salle	70.49

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Lafayette	131.09
	Lafourche	59.02
	Lincoln	91.45
	Livingston	157.95
	Madison	67.81
	Morehouse	65.06
	Natchitoches	66.71
	Orleans	425.66
	Ouachita	80.14
	Plaquemines	34.70
	Pointe Coupee	75.40
	Rapides	69.87
	Red River	53.69
	Richland	63.11
	Sabine	87.39
	St. Bernard	45.69
	St. Charles	59.53
	St. Helena	91.96
	St. James	96.74
	St. John the Baptist	79.97
	St. Landry	66.09
	St. Martin	67.95
	St. Mary	68.91
	St. Tammany	201.03
	Tangipahoa	113.16
	Tensas	60.39
	Terrebonne	61.63
	Union	79.94
	Vermilion	71.42
	Vernon	86.84
	Washington	97.42
	Webster	95.71
	West Baton Rouge	103.06
	West Carroll	58.67
	West Feliciana	72.52
	Winn	66.44
Maine	Androscoggin	70.37
	Aroostook	39.18
	Cumberland	134.70
	Franklin	59.63
	Hancock	92.46
	Kennebec	78.67
	Knox	104.23
	Lincoln	95.76
	Oxford	69.79
	Penobscot	55.31
	Piscataquis	47.07
	Sagadahoc	103.72
	Somerset	58.15
	Waldo	51.19
	Washington	42.92
	York	133.64
Maryland	Allegany	99.84
	Anne Arundel	330.99
	Baltimore	269.85
	Calvert	215.43
	Caroline	174.62
	Carroll	232.79
	Cecil	207.39
	Charles	184.45
	Dorchester	148.97
	Frederick	217.11
	Garrett	120.27
	Harford	236.22
	Howard	313.33
	Kent	194.74
	Montgomery	290.75
	Prince George's	225.51
	Queen Anne's	212.78
	Somerset	156.40
	St. Mary's	188.74
	Talbot	189.02

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Washington	170.98
	Wicomico	179.63
	Worcester	170.69
Massachusetts	Barnstable	893.31
	Berkshire	175.96
	Bristol	365.36
	Dukes	245.51
	Essex	521.62
	Franklin	152.38
	Hampden	183.95
	Hampshire	202.20
	Middlesex	479.38
	Nantucket	667.87
	Norfolk	608.21
	Plymouth	288.35
	Suffolk	5,135.53
	Worcester	233.93
Michigan	Alcona	68.83
	Alger	58.45
	Allegan	135.26
	Alpena	68.69
	Antrim	101.20
	Arenac	78.57
	Baraga	52.17
	Barry	112.39
	Bay	113.44
	Benzie	117.72
	Berrien	157.88
	Branch	100.35
	Calhoun	103.81
	Cass	111.82
	Charlevoix	104.02
	Cheboygan	70.10
	Chippewa	45.82
	Clare	80.05
	Clinton	122.69
	Crawford	93.40
	Delta	55.10
	Dickinson	62.44
	Eaton	105.11
	Emmet	89.27
	Genesee	109.21
	Gladwin	79.63
	Gogebic	74.09
	Grand Traverse	150.58
	Gratiot	127.35
	Hillsdale	97.24
	Houghton	50.05
	Huron	146.91
	Ingham	115.17
	Ionia	117.75
	Iosco	75.47
	Iron	56.16
	Isabella	107.48
	Jackson	107.94
	Kalamazoo	131.38
	Kalkaska	85.95
	Kent	165.40
	Keweenaw	71.05
	Lake	73.35
	Lapeer	129.12
	Leelanau	190.07
	Lenawee	114.57
	Livingston	136.92
	Luce	64.81
	Mackinac	58.66
	Macomb	155.94
	Manistee	81.18
	Marquette	57.53
	Mason	80.62
	Mecosta	84.36
	Menominee	56.65

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Midland	101.66
	Missaukee	85.42
	Monroe	128.55
	Montcalm	94.21
	Montmorency	64.17
	Muskegon	144.86
	Newaygo	100.46
	Oakland	242.07
	Oceana	90.96
	Ogemaw	74.83
	Ontonagon	47.83
	Osceola	71.62
	Oscoda	74.23
	Otsego	71.34
	Ottawa	182.34
	Presque Isle	60.57
	Roscommon	74.16
	Saginaw	107.76
	Sanilac	123.86
	Schoolcraft	45.85
	Shiawassee	101.02
	St. Clair	105.50
	St. Joseph	134.23
	Tuscola	128.27
	Van Buren	125.52
	Washtenaw	143.87
	Wayne	210.16
	Wexford	80.41
Minnesota	Aitkin	51.21
	Anoka	175.28
	Becker	78.92
	Beltrami	49.36
	Benton	99.81
	Big Stone	113.35
	Blue Earth	186.32
	Brown	160.32
	Carlton	54.41
	Carver	168.31
	Cass	55.50
	Chippewa	150.15
	Chisago	126.50
	Clay	102.24
	Clearwater	48.78
	Cook	137.83
	Cottonwood	159.63
	Crow Wing	75.18
	Dakota	164.89
	Dodge	178.62
	Douglas	89.42
	Faribault	163.40
	Fillmore	133.29
	Freeborn	158.46
	Goodhue	157.41
	Grant	105.07
	Hennepin	239.28
	Houston	100.32
	Hubbard	65.48
	Isanti	108.20
	Itasca	54.73
	Jackson	177.53
	Kanabec	66.68
	Kandiyohi	139.65
	Kittson	50.96
	Koochiching	34.18
	Lac qui Parle	127.45
	Lake	95.45
	Lake of the Woods	43.29
	Le Sueur	161.19
	Lincoln	112.66
	Lyon	151.02
	Mahnomen	59.13
	Marshall	61.27

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Martin	178.22
	McLeod	156.47
	Meeker	120.87
	Mille Lacs	79.98
	Morrison	80.59
	Mower	173.97
	Murray	163.98
	Nicollet	188.54
	Nobles	171.94
	Norman	86.95
	Olmsted	159.01
	Otter Tail	72.79
	Pennington	52.77
	Pine	58.62
	Pipestone	152.54
	Polk	84.33
	Pope	106.53
	Ramsey	266.59
	Red Lake	50.85
	Redwood	183.78
	Renville	175.93
	Rice	166.53
	Rock	204.26
	Roseau	34.50
	Scott	180.95
	Sherburne	124.98
	Sibley	174.15
	St. Louis	54.63
	Stearns	113.35
	Steele	174.30
	Stevens	129.81
	Swift	148.66
	Todd	68.68
	Traverse	129.23
	Wabasha	136.49
	Wadena	51.83
	Waseca	170.89
	Washington	239.35
	Watonwan	177.57
	Wilkin	113.39
	Winona	136.16
	Wright	155.78
	Yellow Medicine	133.00
Mississippi	Adams	61.02
	Alcorn	52.48
	Amite	94.63
	Attala	50.65
	Benton	44.89
	Bolivar	68.02
	Calhoun	51.85
	Carroll	52.83
	Chickasaw	51.95
	Choctaw	55.47
	Claiborne	56.56
	Clarke	66.30
	Clay	46.08
	Coahoma	70.94
	Copiah	64.29
	Covington	82.71
	DeSoto	74.28
	Forrest	96.07
	Franklin	72.06
	George	94.52
	Greene	61.16
	Grenada	51.39
	Hancock	111.47
	Harrison	174.32
	Hinds	64.47
	Holmes	58.99
	Humphreys	62.11
	Issaquena	53.92
	Itawamba	56.45

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Jackson	106.23
	Jasper	56.17
	Jefferson	59.58
	Jefferson Davis	55.82
	Jones	89.67
	Kemper	48.86
	Lafayette	63.06
	Lamar	101.31
	Lauderdale	67.14
	Lawrence	75.61
	Leake	75.30
	Lee	53.78
	Leflore	56.74
	Lincoln	84.29
	Lowndes	59.69
	Madison	73.64
	Marion	83.42
	Marshall	55.47
	Monroe	49.18
	Montgomery	50.02
	Neshoba	86.65
	Newton	58.56
	Noxubee	60.78
	Oktibbeha	61.94
	Panola	54.10
	Pearl River	89.99
	Perry	80.50
	Pike	99.90
	Pontotoc	51.15
	Prentiss	44.12
	Quitman	56.63
	Rankin	84.08
	Scott	71.08
	Sharkey	64.47
	Simpson	77.02
	Smith	83.13
	Stone	102.78
	Sunflower	54.87
	Tallahatchie	63.24
	Tate	56.45
	Tippah	45.77
	Tishomingo	52.10
	Tunica	75.96
	Union	58.28
	Walthall	84.15
	Warren	52.80
	Washington	59.79
	Wayne	81.94
	Webster	50.79
	Wilkinson	63.20
	Winston	61.09
	Yalobusha	51.18
	Yazoo	59.06
Missouri	Adair	70.17
	Andrew	101.78
	Atchison	139.12
	Audrain	109.36
	Barry	72.60
	Barton	60.23
	Bates	64.87
	Benton	59.80
	Bollinger	57.61
	Boone	104.25
	Buchanan	98.74
	Butler	91.09
	Caldwell	65.09
	Callaway	93.49
	Camden	62.26
	Cape Girardeau	89.62
	Carroll	89.66
	Carter	47.57
	Cass	94.92

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Cedar	52.14
	Chariton	85.05
	Christian	89.37
	Clark	75.93
	Clay	122.53
	Clinton	98.06
	Cole	83.33
	Cooper	81.29
	Crawford	59.51
	Dade	62.73
	Dallas	66.56
	Daviess	79.65
	DeKalb	80.61
	Dent	45.85
	Douglas	46.46
	Dunklin	107.86
	Franklin	106.50
	Gasconade	70.13
	Gentry	75.43
	Greene	105.36
	Grundy	65.88
	Harrison	71.35
	Henry	60.76
	Hickory	55.54
	Holt	108.69
	Howard	72.60
	Howell	53.86
	Iron	46.06
	Jackson	115.52
	Jasper	66.88
	Jefferson	97.49
	Johnson	75.68
	Knox	85.30
	Laclede	62.94
	Lafayette	120.88
	Lawrence	73.32
	Lewis	82.79
	Lincoln	111.58
	Linn	69.13
	Livingston	83.44
	Macon	70.88
	Madison	52.64
	Maries	55.83
	Marion	101.89
	McDonald	66.20
	Mercer	63.48
	Miller	63.55
	Mississippi	118.81
	Moniteau	77.18
	Monroe	89.41
	Montgomery	98.78
	Morgan	75.71
	New Madrid	126.89
	Newton	73.74
	Nodaway	93.02
	Oregon	44.53
	Osage	58.58
	Ozark	46.46
	Pemiscot	103.50
	Perry	76.46
	Pettis	78.29
	Phelps	65.84
	Pike	99.03
	Platte	111.22
	Polk	59.12
	Pulaski	55.72
	Putnam	59.01
	Ralls	91.84
	Randolph	75.25
	Ray	78.11
	Reynolds	41.84
	Ripley	51.32

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Saline	115.09
	Schuyler	63.69
	Scotland	84.01
	Scott	116.66
	Shannon	47.78
	Shelby	101.64
	St. Louis	118.09
	St. Charles	121.31
	St. Clair	47.39
	St. Francois	71.88
	Ste. Genevieve	65.95
	Stoddard	125.67
	Stone	67.77
	Sullivan	53.14
	Taney	56.11
	Texas	46.96
	Vernon	61.69
	Warren	111.01
	Washington	54.90
	Wayne	43.70
	Webster	74.75
	Worth	64.48
	Wright	51.43
Montana	Beaverhead	25.52
	Big Horn	10.10
	Blaine	13.68
	Broadwater	26.18
	Carbon	26.95
	Carter	12.30
	Cascade	24.15
	Chouteau	18.37
	Custer	9.21
	Daniels	11.82
	Dawson	10.24
	Deer Lodge	36.91
	Fallon	10.04
	Fergus	19.80
	Flathead	114.30
	Gallatin	60.48
	Garfield	11.30
	Glacier	15.62
	Golden Valley	12.90
	Granite	29.21
	Hill	14.82
	Jefferson	25.95
	Judith Basin	20.43
	Lake	36.57
	Lewis and Clark	34.68
	Liberty	13.91
	Lincoln	85.89
	Madison	28.67
	McCone	10.99
	Meagher	22.00
	Mineral	101.80
	Missoula	63.37
	Musselshell	11.30
	Park	58.42
	Petroleum	10.04
	Phillips	13.16
	Pondera	18.57
	Powder River	12.62
	Powell	21.66
	Prairie	12.90
	Ravalli	111.16
	Richland	13.68
	Roosevelt	14.48
	Rosebud	9.44
	Sanders	27.18
	Sheridan	13.56
	Silver Bow	35.91
	Stillwater	31.96
	Sweet Grass	24.61

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Teton	24.06
	Toole	16.42
	Treasure	11.50
	Valley	11.36
	Wheatland	11.73
	Wibaux	10.70
	Yellowstone	17.48
Nebraska	Adams	140.11
	Antelope	112.93
	Arthur	11.22
	Banner	20.44
	Blaine	13.61
	Boone	117.01
	Box Butte	28.34
	Boyd	36.50
	Brown	19.01
	Buffalo	99.22
	Burt	138.48
	Butler	131.35
	Cass	153.78
	Cedar	117.01
	Chase	52.20
	Cherry	14.10
	Cheyenne	23.69
	Clay	136.26
	Colfax	140.47
	Cuming	142.40
	Custer	50.37
	Dakota	127.40
	Dawes	19.74
	Dawson	82.46
	Deuel	26.51
	Dixon	110.11
	Dodge	148.97
	Douglas	165.06
	Dundy	36.07
	Fillmore	146.35
	Franklin	78.81
	Frontier	38.96
	Furnas	62.16
	Gage	92.69
	Garden	16.23
	Garfield	26.32
	Gosper	84.02
	Grant	14.67
	Greeley	85.72
	Hall	118.67
	Hamilton	171.13
	Harlan	81.83
	Hayes	34.35
	Hitchcock	34.25
	Holt	55.55
	Hooker	11.75
	Howard	78.28
	Jefferson	104.27
	Johnson	67.56
	Kearney	140.24
	Keith	49.35
	Keya Paha	20.57
	Kimball	23.03
	Knox	73.64
	Lancaster	121.59
	Lincoln	38.13
	Logan	30.17
	Loup	19.68
	Madison	127.89
	McPherson	11.88
	Merrick	101.88
	Morrill	24.49
	Nance	90.73
	Nemaha	107.98
	Nuckolls	100.15

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Otoe	114.02
	Pawnee	68.69
	Perkins	60.30
	Phelps	119.56
	Pierce	114.79
	Platte	135.06
	Polk	157.76
	Red Willow	42.31
	Richardson	101.21
	Rock	28.61
	Saline	127.89
	Sarpy	158.19
	Saunders	139.84
	Scotts Bluff	49.58
	Seward	133.57
	Sheridan	18.38
	Sherman	62.89
	Sioux	15.20
	Stanton	116.15
	Thayer	109.44
	Thomas	13.34
	Thurston	134.03
	Valley	58.64
	Washington	159.92
	Wayne	116.08
	Webster	75.13
	Wheeler	32.52
	York	149.50
Nevada	Carson City	56.13
	Churchill	20.34
	Clark	46.95
	Douglas	24.13
	Elko	4.14
	Esmeralda	14.99
	Eureka	5.41
	Humboldt	8.29
	Lander	6.21
	Lincoln	24.32
	Lyon	18.36
	Mineral	3.59
	Nye	17.90
	Pershing	7.80
	Storey	321.14
	Washoe	6.81
	White Pine	6.84
New Hampshire	Belknap	149.38
	Carroll	129.93
	Cheshire	80.06
	Coos	65.26
	Grafton	81.32
	Hillsborough	177.62
	Merrimack	108.67
	Rockingham	203.12
	Strafford	134.10
	Sullivan	107.68
New Jersey	Atlantic	320.54
	Bergen	1,096.60
	Burlington	252.02
	Camden	327.37
	Cape May	300.09
	Cumberland	209.05
	Essex	1,651.40
	Gloucester	309.84
	Hudson	332.84
	Hunterdon	426.73
	Mercer	528.43
	Middlesex	512.20
	Monmouth	561.50
	Morris	602.25
	Ocean	401.88
	Passaic	811.83
	Salem	205.41

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Somerset	533.30
	Sussex	277.68
	Union	3,280.55
	Warren	266.16
New Mexico	Bernalillo	23.01
	Catron	8.68
	Chaves	7.31
	Cibola	6.34
	Colfax	8.04
	Curry	11.75
	De Baca	5.02
	Dona Ana	36.34
	Eddy	9.08
	Grant	7.61
	Guadalupe	5.40
	Harding	5.73
	Hidalgo	5.02
	Lea	6.88
	Lincoln	7.18
	Los Alamos	309.92
	Luna	8.60
	McKinley	6.39
	Mora	11.27
	Otero	8.53
	Quay	6.80
	Rio Arriba	14.69
	Roosevelt	9.90
	San Juan	7.05
	San Miguel	7.66
	Sandoval	10.61
	Santa Fe	17.18
	Sierra	5.81
	Socorro	10.00
	Taos	23.80
	Torrance	7.38
	Union	7.46
	Valencia	19.13
New York	Albany	87.70
	Allegany	49.53
	Bronx	73.58
	Broome	74.22
	Cattaraugus	53.52
	Cayuga	90.99
	Chautauqua	58.44
	Chemung	68.13
	Chenango	51.93
	Clinton	57.31
	Columbia	147.80
	Cortland	53.95
	Delaware	70.54
	Dutchess	146.81
	Erie	83.73
	Essex	59.71
	Franklin	47.54
	Fulton	60.78
	Genesee	74.50
	Greene	105.74
	Hamilton	51.58
	Herkimer	54.55
	Jefferson	46.41
	Kings	22,428.05
	Lewis	47.26
	Livingston	82.00
	Madison	57.80
	Monroe	100.50
	Montgomery	65.06
	Nassau	518.82
	New York	73.58
	Niagara	64.88
	Oneida	56.35
	Onondaga	89.29
	Ontario	91.20

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Orange	156.71
	Orleans	73.51
	Oswego	57.24
	Otsego	63.53
	Putnam	154.73
	Queens	145.11
	Rensselaer	97.25
	Richmond	4,989.67
	Rockland	2,451.27
	Saratoga	135.59
	Schenectady	97.74
	Schoharie	64.49
	Schuyler	80.87
	Seneca	83.34
	St. Lawrence	40.12
	Steuben	51.90
	Suffolk	331.04
	Sullivan	104.22
	Tioga	55.68
	Tompkins	78.04
	Ulster	142.70
	Warren	113.13
	Washington	68.66
	Wayne	70.15
	Westchester	455.71
	Wyoming	74.08
	Yates	111.96
North Carolina	Alamance	133.61
	Alexander	168.58
	Alleghany	136.09
	Anson	105.56
	Ashe	161.17
	Avery	197.45
	Beaufort	86.61
	Bertie	76.58
	Bladen	93.27
	Brunswick	121.92
	Buncombe	243.74
	Burke	150.69
	Cabarrus	207.58
	Caldwell	156.46
	Camden	80.52
	Carteret	93.16
	Caswell	81.54
	Catawba	153.03
	Chatham	140.59
	Cherokee	162.84
	Chowan	89.80
	Clay	141.41
	Cleveland	116.65
	Columbus	85.93
	Craven	87.67
	Cumberland	88.45
	Currituck	115.83
	Dare	109.31
	Davidson	173.92
	Davie	175.06
	Duplin	115.51
	Durham	243.07
	Edgecombe	74.64
	Forsyth	235.45
	Franklin	121.04
	Gaston	171.80
	Gates	98.62
	Graham	170.77
	Granville	116.40
	Greene	110.52
	Guilford	175.27
	Halifax	67.20
	Harnett	151.57
	Haywood	179.49
	Henderson	221.25

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Hertford	67.80
	Hoke	90.79
	Hyde	69.71
	Iredell	170.42
	Jackson	273.64
	Johnston	138.36
	Jones	75.59
	Lee	118.45
	Lenoir	95.64
	Lincoln	157.88
	Macon	216.25
	Madison	153.41
	Martin	79.88
	McDowell	163.47
	Mecklenburg	583.51
	Mitchell	149.38
	Montgomery	116.15
	Moore	150.90
	Nash	108.04
	New Hanover	403.29
	Northampton	74.17
	Onslow	108.22
	Orange	189.65
	Pamlico	81.54
	Pasquotank	89.51
	Pender	119.83
	Perquimans	91.96
	Person	107.61
	Pitt	90.15
	Polk	207.79
	Randolph	135.81
	Richmond	116.72
	Robeson	83.24
	Rockingham	114.63
	Rowan	160.32
	Rutherford	114.34
	Sampson	112.64
	Scotland	102.02
	Stanly	145.69
	Stokes	109.03
	Surry	130.00
	Swain	178.28
	Transylvania	250.44
	Tyrrell	72.12
	Union	160.04
	Vance	98.05
	Wake	271.34
	Warren	72.62
	Washington	85.51
	Watauga	211.79
	Wayne	116.86
	Wilkes	137.23
	Wilson	108.18
	Yadkin	149.27
	Yancey	183.70
North Dakota	Adams	23.44
	Barnes	64.98
	Benson	37.58
	Billings	22.90
	Bottineau	39.29
	Bowman	21.88
	Burke	24.39
	Burleigh	40.92
	Cass	83.30
	Cavalier	55.31
	Dickey	65.53
	Divide	18.79
	Dunn	26.53
	Eddy	38.89
	Emmons	34.24
	Foster	54.30
	Golden Valley	24.50

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Grand Forks	61.09
	Grant	26.82
	Griggs	53.03
	Hettinger	32.60
	Kidder	26.89
	LaMoure	62.87
	Logan	29.73
	McHenry	26.13
	McIntosh	34.20
	McKenzie	21.44
	McLean	38.16
	Mercer	27.69
	Morton	29.73
	Mountrail	26.46
	Nelson	34.16
	Oliver	29.69
	Pembina	74.94
	Pierce	29.87
	Ramsey	40.49
	Ransom	53.13
	Renville	47.03
	Richland	86.35
	Rolette	32.67
	Sargent	68.98
	Sheridan	27.18
	Sioux	25.99
	Slope	24.79
	Stark	39.47
	Steele	53.79
	Stutsman	50.77
	Towner	37.29
	Traill	84.35
	Walsh	69.13
	Ward	44.70
	Wells	47.03
	Williams	21.66
Ohio	Adams	83.08
	Allen	153.36
	Ashland	132.86
	Ashtabula	95.06
	Athens	80.72
	Auglaize	175.42
	Belmont	97.05
	Brown	104.56
	Butler	169.65
	Carroll	107.90
	Champaign	155.54
	Clark	149.11
	Clermont	148.21
	Clinton	144.03
	Columbiana	141.10
	Coshocton	99.55
	Crawford	135.87
	Cuyahoga	496.68
	Darke	206.00
	Defiance	130.10
	Delaware	172.33
	Erie	136.63
	Fairfield	138.52
	Fayette	158.84
	Franklin	178.54
	Fulton	161.27
	Gallia	94.44
	Geauga	205.89
	Greene	174.51
	Guernsey	83.34
	Hamilton	211.37
	Hancock	137.32
	Hardin	141.86
	Harrison	87.29
	Henry	163.84
	Highland	105.03

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Hocking	104.05
	Holmes	169.00
	Huron	130.18
	Jackson	68.57
	Jefferson	79.96
	Knox	138.70
	Lake	219.14
	Lawrence	70.86
	Licking	142.04
	Logan	144.51
	Lorain	136.34
	Lucas	167.69
	Madison	147.81
	Mahoning	144.18
	Marion	138.52
	Medina	184.67
	Meigs	70.46
	Mercer	227.95
	Miami	165.51
	Monroe	66.97
	Montgomery	170.01
	Morgan	69.73
	Morrow	135.91
	Muskingum	94.69
	Noble	73.94
	Ottawa	137.94
	Paulding	140.70
	Perry	105.21
	Pickaway	139.10
	Pike	92.19
	Portage	150.78
	Preble	152.56
	Putnam	145.96
	Richland	144.03
	Ross	104.71
	Sandusky	136.67
	Scioto	81.63
	Seneca	141.42
	Shelby	172.77
	Stark	160.03
	Summit	245.29
	Trumbull	116.32
	Tuscarawas	111.20
	Union	149.08
	Van Wert	182.17
	Vinton	70.46
	Warren	207.53
	Washington	77.68
	Wayne	181.04
	Williams	111.09
	Wood	168.96
	Wyandot	145.96
Oklahoma	Adair	56.90
	Alfalfa	40.87
	Atoka	40.15
	Beaver	19.19
	Beckham	31.77
	Blaine	34.22
	Bryan	50.93
	Caddo	38.46
	Canadian	55.39
	Carter	45.40
	Cherokee	68.15
	Choctaw	42.31
	Cimarron	14.52
	Cleveland	89.86
	Coal	36.23
	Comanche	39.72
	Cotton	32.39
	Craig	45.79
	Creek	51.40
	Custer	38.53

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Delaware	66.68
	Dewey	29.11
	Ellis	22.93
	Garfield	41.23
	Garvin	45.43
	Grady	46.30
	Grant	39.25
	Greer	24.62
	Harmon	27.39
	Harper	21.89
	Haskell	43.53
	Hughes	35.87
	Jackson	28.79
	Jefferson	29.08
	Johnston	38.64
	Kay	38.89
	Kingfisher	39.18
	Kiowa	27.64
	Latimer	38.32
	Le Flore	57.08
	Lincoln	49.57
	Logan	54.17
	Love	49.75
	Major	32.28
	Marshall	48.09
	Mayes	60.74
	McClain	58.73
	McCurtain	50.11
	McIntosh	44.32
	Murray	39.86
	Muskogee	50.75
	Noble	40.98
	Nowata	47.66
	Okfuskee	36.70
	Oklahoma	89.10
	Okmulgee	51.79
	Osage	30.34
	Ottawa	66.32
	Pawnee	38.28
	Payne	54.38
	Pittsburg	39.14
	Pontotoc	50.57
	Pottawatomie	50.50
	Pushmataha	32.71
	Roger Mills	29.65
	Rogers	70.85
	Seminole	40.58
	Sequoyah	57.58
	Stephens	36.45
	Texas	23.00
	Tillman	28.86
	Tulsa	104.52
	Wagoner	69.80
	Washington	48.09
	Washita	34.47
	Woods	31.20
	Woodward	31.85
Oregon	Baker	20.75
	Benton	121.45
	Clackamas	276.09
	Clatsop	113.57
	Columbia	112.44
	Coos	66.02
	Crook	18.60
	Curry	69.76
	Deschutes	143.61
	Douglas	63.13
	Gilliam	10.18
	Grant	16.48
	Harney	11.21
	Hood River	388.97
	Jackson	95.86

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Jefferson	13.13
	Josephine	205.80
	Klamath	30.20
	Lake	20.83
	Lane	139.70
	Lincoln	98.16
	Linn	99.08
	Malheur	24.03
	Marion	162.60
	Morrow	19.47
	Multnomah	244.18
	Polk	125.72
	Sherman	12.21
	Tillamook	128.13
	Umatilla	33.42
	Union	31.68
	Wallowa	25.85
	Wasco	15.41
	Washington	191.85
	Wheeler	13.26
	Yamhill	187.58
Pennsylvania	Adams	178.38
	Allegheny	150.79
	Armstrong	82.28
	Beaver	137.63
	Bedford	105.68
	Berks	253.54
	Blair	130.65
	Bradford	106.00
	Bucks	351.46
	Butler	135.87
	Cambria	93.80
	Cameron	55.95
	Carbon	187.39
	Centre	155.01
	Chester	374.07
	Clarion	84.47
	Clearfield	75.81
	Clinton	154.94
	Columbia	134.30
	Crawford	80.78
	Cumberland	223.02
	Dauphin	129.97
	Delaware	394.89
	Elk	97.88
	Erie	98.38
	Fayette	95.05
	Forest	68.90
	Franklin	190.22
	Fulton	104.14
	Greene	86.08
	Huntingdon	109.69
	Indiana	80.10
	Jefferson	74.31
	Juniata	144.21
	Lackawanna	140.06
	Lancaster	358.57
	Lawrence	117.49
	Lebanon	302.30
	Lehigh	238.37
	Luzerne	128.47
	Lycoming	122.06
	McKean	59.03
	Mercer	97.88
	Mifflin	140.45
	Monroe	224.95
	Montgomery	402.15
	Montour	156.91
	Northampton	235.19
	Northumberland	140.17
	Perry	144.57
	Philadelphia	1,297.57

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Pike	52.52
	Potter	78.67
	Schuylkill	184.21
	Snyder	166.57
	Somerset	75.31
	Sullivan	88.26
	Susquehanna	116.73
	Tioga	98.38
	Union	154.30
	Venango	88.51
	Warren	67.15
	Washington	130.44
	Wayne	106.75
	Westmoreland	136.16
	Wyoming	114.80
	York	216.01
Puerto Rico	All Areas	185.31
Rhode Island	Bristol	630.91
	Kent	212.86
	Newport	548.98
	Providence	358.30
	Washington	292.91
South Carolina	Abbeville	78.52
	Aiken	107.53
	Allendale	62.57
	Anderson	123.59
	Bamberg	62.68
	Barnwell	68.97
	Beaufort	95.72
	Berkeley	100.95
	Calhoun	79.06
	Charleston	176.40
	Cherokee	85.81
	Chester	79.80
	Chesterfield	77.50
	Clarendon	52.07
	Colleton	76.33
	Darlington	69.75
	Dillon	73.64
	Dorchester	97.34
	Edgefield	83.65
	Fairfield	78.98
	Florence	62.68
	Georgetown	66.60
	Greenville	183.86
	Greenwood	68.13
	Hampton	67.84
	Horry	85.35
	Jasper	76.90
	Kershaw	86.52
	Lancaster	111.39
	Laurens	95.89
	Lee	64.09
	Lexington	112.73
	Marion	65.86
	Marlboro	61.37
	McCormick	50.02
	Newberry	76.72
	Oconee	150.19
	Orangeburg	71.52
	Pickens	157.76
	Richland	99.36
	Saluda	80.72
	Spartanburg	140.46
	Sumter	65.65
	Union	62.32
	Williamsburg	59.04
	York	142.37
South Dakota	Aurora	68.50
	Beadle	83.07
	Bennett	16.39
	Bon Homme	84.71

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Brookings	123.61
	Brown	84.63
	Brule	66.07
	Buffalo	34.30
	Butte	17.95
	Campbell	36.99
	Charles Mix	68.24
	Clark	73.50
	Clay	128.29
	Codington	77.85
	Corson	18.96
	Custer	33.25
	Davison	98.41
	Day	55.44
	Deuel	85.61
	Dewey	16.61
	Douglas	82.78
	Edmunds	63.60
	Fall River	14.94
	Faulk	56.42
	Grant	86.81
	Gregory	35.43
	Haakon	17.44
	Hamlin	103.63
	Hand	55.33
	Hanson	108.64
	Harding	12.18
	Hughes	56.93
	Hutchinson	95.37
	Hyde	40.32
	Jackson	23.06
	Jerauld	57.08
	Jones	21.10
	Kingsbury	96.27
	Lake	118.39
	Lawrence	41.16
	Lincoln	157.81
	Lyman	29.08
	Marshall	64.83
	McCook	123.22
	McPherson	44.38
	Meade	19.54
	Mellette	20.74
	Miner	93.19
	Minnehaha	149.29
	Moody	147.76
	Pennington	20.27
	Perkins	15.59
	Potter	57.98
	Roberts	73.43
	Sanborn	68.97
	Shannon	13.34
	Spink	86.34
	Stanley	26.62
	Sully	45.25
	Todd	14.83
	Tripp	32.42
	Turner	125.21
	Union	145.41
	Walworth	42.97
	Yankton	120.17
	Ziebach	13.78
Tennessee	Anderson	169.66
	Bedford	110.71
	Benton	64.93
	Bledsoe	101.58
	Blount	197.33
	Bradley	157.57
	Campbell	108.24
	Cannon	89.74
	Carroll	70.98
	Carter	151.74

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Cheatham	123.71
	Chester	55.84
	Claiborne	88.83
	Clay	80.50
	Cocke	106.25
	Coffee	102.56
	Crockett	82.17
	Cumberland	110.31
	Davidson	180.24
	Decatur	62.29
	DeKalb	92.96
	Dickson	96.44
	Dyer	72.65
	Fayette	91.01
	Fentress	92.93
	Franklin	112.92
	Gibson	89.52
	Giles	85.10
	Grainger	110.16
	Greene	117.41
	Grundy	82.97
	Hamblen	135.66
	Hamilton	163.80
	Hancock	66.56
	Hardeman	73.99
	Hardin	73.33
	Hawkins	102.05
	Haywood	104.51
	Henderson	63.95
	Henry	80.50
	Hickman	69.35
	Houston	65.73
	Humphreys	82.39
	Jackson	83.84
	Jefferson	156.44
	Johnson	138.01
	Knox	222.21
	Lake	95.35
	Lauderdale	90.61
	Lawrence	76.74
	Lewis	75.40
	Lincoln	97.67
	Loudon	157.10
	Macon	99.19
	Madison	73.01
	Marion	85.25
	Marshall	87.42
	Maury	105.71
	McMinn	118.71
	McNairy	62.51
	Meigs	101.98
	Monroe	130.59
	Montgomery	124.87
	Moore	102.20
	Morgan	99.30
	Obion	92.31
	Overton	94.16
	Perry	57.40
	Pickett	84.16
	Polk	129.50
	Putnam	125.41
	Rhea	101.36
	Roane	147.32
	Robertson	141.05
	Rutherford	141.31
	Scott	81.81
	Sequatchie	93.76
	Sevier	171.69
	Shelby	132.87
	Smith	76.99
	Stewart	76.16
	Sullivan	160.10

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Sumner	140.91
	Tipton	85.97
	Trousdale	111.65
	Unicoi	159.67
	Union	83.65
	Van Buren	107.81
	Warren	103.39
	Washington	185.92
	Wayne	58.34
	Weakley	86.23
	White	109.11
	Williamson	213.70
	Wilson	128.42
Texas	Anderson	67.55
	Andrews	9.04
	Angelina	87.19
	Aransas	47.05
	Archer	27.17
	Armstrong	29.03
	Atascosa	54.09
	Austin	112.84
	Bailey	22.23
	Bandera	74.38
	Bastrop	103.21
	Baylor	28.68
	Bee	51.53
	Bell	84.57
	Bexar	118.22
	Blanco	130.54
	Borden	16.15
	Bosque	66.83
	Bowie	62.65
	Brazoria	83.84
	Brazos	104.14
	Brewster	12.94
	Briscoe	23.02
	Brooks	29.34
	Brown	56.50
	Burleson	79.32
	Burnet	91.78
	Caldwell	91.30
	Calhoun	48.46
	Callahan	41.70
	Cameron	81.12
	Camp	71.86
	Carson	25.40
	Cass	56.88
	Castro	30.31
	Chambers	55.12
	Cherokee	68.21
	Childress	21.23
	Clay	43.56
	Cochran	18.57
	Coke	28.86
	Coleman	41.77
	Collin	146.42
	Collingsworth	22.99
	Colorado	91.37
	Comal	144.90
	Comanche	66.31
	Concho	43.70
	Cooke	90.23
	Coryell	67.17
	Cottle	17.09
	Crane	16.29
	Crockett	17.40
	Crosby	23.61
	Culberson	9.46
	Dallam	26.03
	Dallas	127.33
	Dawson	21.78
	Deaf Smith	27.30

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Delta	50.43
	Denton	168.75
	DeWitt	72.14
	Dickens	20.23
	Dimmit	43.04
	Donley	29.75
	Duval	36.04
	Eastland	54.88
	Ector	13.36
	Edwards	34.69
	El Paso	53.50
	Ellis	87.85
	Erath	88.78
	Falls	53.78
	Fannin	70.73
	Fayette	116.94
	Fisher	29.89
	Floyd	31.62
	Foard	20.40
	Fort Bend	113.08
	Franklin	79.22
	Freestone	57.99
	Frio	56.40
	Gaines	26.79
	Galveston	99.51
	Garza	19.16
	Gillespie	117.63
	Glasscock	24.71
	Goliad	57.09
	Gonzales	89.23
	Gray	24.51
	Grayson	103.76
	Gregg	107.18
	Grimes	106.73
	Guadalupe	99.27
	Hale	32.72
	Hall	21.30
	Hamilton	68.55
	Hansford	25.54
	Hardeman	24.16
	Hardin	85.40
	Harris	147.53
	Harrison	78.56
	Hartley	27.75
	Haskell	20.43
	Hays	171.21
	Hemphill	20.43
	Henderson	82.25
	Hidalgo	83.88
	Hill	62.20
	Hockley	28.65
	Hood	112.80
	Hopkins	61.13
	Houston	61.96
	Howard	20.95
	Hudspeth	15.53
	Hunt	84.39
	Hutchinson	21.06
	Irion	25.92
	Jack	54.02
	Jackson	58.37
	Jasper	86.95
	Jeff Davis	13.25
	Jefferson	45.77
	Jim Hogg	36.86
	Jim Wells	50.46
	Johnson	112.60
	Jones	30.72
	Karnes	71.73
	Kaufman	93.85
	Kendall	132.20
	Kenedy	18.16

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Kent	23.58
	Kerr	72.73
	Kimble	48.95
	King	16.78
	Kinney	33.21
	Kleberg	52.02
	Knox	21.33
	La Salle	53.92
	Lamar	59.71
	Lamb	31.96
	Lampasas	69.35
	Lavaca	80.94
	Lee	88.33
	Leon	69.21
	Liberty	69.17
	Limestone	52.22
	Lipscomb	22.30
	Live Oak	52.91
	Llano	74.70
	Loving	5.49
	Lubbock	51.15
	Lynn	24.85
	Madison	77.28
	Marion	61.41
	Martin	28.51
	Mason	65.38
	Matagorda	54.74
	Maverick	32.55
	McCulloch	51.15
	McLennan	71.55
	McMullen	38.80
	Medina	71.73
	Menard	40.28
	Midland	39.56
	Milam	98.89
	Mills	61.37
	Mitchell	21.78
	Montague	69.03
	Montgomery	163.06
	Moore	25.92
	Morris	57.99
	Motley	20.37
	Nacogdoches	69.62
	Navarro	56.68
	Newton	55.33
	Nolan	31.03
	Nueces	42.77
	Ochiltree	27.65
	Oldham	16.29
	Orange	91.75
	Palo Pinto	66.48
	Panola	58.02
	Parker	138.41
	Parmer	28.72
	Pecos	14.01
	Polk	75.45
	Potter	15.12
	Presidio	12.74
	Rains	69.66
	Randall	27.72
	Reagan	13.43
	Real	40.80
	Red River	45.91
	Reeves	7.42
	Refugio	25.20
	Roberts	18.16
	Robertson	66.10
	Rockwall	161.16
	Runnels	35.73
	Rusk	60.37
	Sabine	75.04
	San Augustine	63.79

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	San Jacinto	78.29
	San Patricio	44.11
	San Saba	67.31
	Schleicher	25.58
	Scurry	23.47
	Shackelford	30.17
	Shelby	80.84
	Sherman	29.75
	Smith	104.55
	Somervell	107.52
	Starr	48.88
	Stephens	38.62
	Sterling	14.57
	Stonewall	19.85
	Sutton	26.06
	Swisher	25.44
	Tarrant	175.04
	Taylor	31.27
	Terrell	10.73
	Terry	31.45
	Throckmorton	33.10
	Titus	71.11
	Tom Green	31.48
	Travis	105.97
	Trinity	63.99
	Tyler	80.74
	Upshur	79.04
	Upton	16.22
	Uvalde	55.19
	Val Verde	15.74
	Van Zandt	88.12
	Victoria	63.30
	Walker	91.92
	Waller	172.45
	Ward	10.22
	Washington	153.22
	Webb	29.89
	Wharton	70.17
	Wheeler	22.68
	Wichita	32.93
	Wilbarger	27.61
	Willacy	50.46
	Williamson	107.28
	Wilson	82.50
	Winkler	10.01
	Wise	105.35
	Wood	78.77
	Yoakum	22.33
	Young	38.21
	Zapata	32.27
	Zavala	42.39
Utah	Beaver	22.60
	Box Elder	13.61
	Cache	39.93
	Carbon	13.78
	Daggett	24.17
	Davis	73.36
	Duchesne	9.42
	Emery	19.23
	Garfield	25.73
	Grand	6.55
	Iron	21.34
	Juab	13.58
	Kane	15.95
	Millard	15.90
	Morgan	17.82
	Piute	33.17
	Rich	11.39
	Salt Lake	53.53
	San Juan	4.23
	Sanpete	24.35
	Sevier	34.16

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Summit	25.81
	Tooele	13.51
	Uintah	7.16
	Utah	60.32
	Wasatch	43.19
	Washington	41.37
	Wayne	45.68
	Weber	65.88
Vermont	Addison	86.83
	Bennington	119.13
	Caledonia	90.78
	Chittenden	122.59
	Essex	53.13
	Franklin	79.91
	Grand Isle	108.58
	Lamoille	103.98
	Orange	88.36
	Orleans	69.39
	Rutland	77.52
	Washington	114.46
	Windham	114.03
	Windsor	108.26
Virginia	Accomack	105.46
	Albemarle	251.95
	Alleghany	89.41
	Amelia	88.19
	Amherst	104.92
	Appomattox	81.93
	Arlington	1,546.99
	Augusta	180.02
	Bath	119.88
	Bedford	127.47
	Bland	92.80
	Botetourt	125.74
	Brunswick	60.07
	Buchanan	76.03
	Buckingham	88.55
	Campbell	85.89
	Caroline	118.76
	Carroll	98.01
	Charles City	108.08
	Charlotte	65.35
	Chesapeake City	125.31
	Chesterfield	153.33
	Clarke	226.74
	Craig	91.21
	Culpeper	185.59
	Cumberland	103.23
	Dickenson	85.39
	Dinwiddie	86.39
	Essex	87.62
	Fairfax	436.10
	Fauquier	228.32
	Floyd	104.23
	Fluvanna	146.67
	Franklin	101.97
	Frederick	169.84
	Giles	76.03
	Gloucester	144.66
	Goochland	157.03
	Grayson	120.71
	Greene	197.96
	Greensville	58.37
	Halifax	66.11
	Hanover	160.16
	Henrico	189.26
	Henry	77.69
	Highland	97.26
	Isle of Wight	102.33
	James City	252.24
	King and Queen	88.87
	King George	144.80

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	King William	107.43
	Lancaster	131.75
	Lee	63.37
	Loudoun	344.64
	Louisa	164.66
	Lunenburg	68.48
	Madison	181.74
	Mathews	178.18
	Mecklenburg	74.09
	Middlesex	110.92
	Montgomery	140.34
	Nelson	131.82
	New Kent	158.98
	Northampton	124.27
	Northumberland	86.36
	Nottoway	89.77
	Orange	194.12
	Page	169.23
	Patrick	96.00
	Pittsylvania	69.92
	Powhatan	164.84
	Prince Edward	92.15
	Prince George	120.92
	Prince William	254.00
	Pulaski	88.44
	Rappahannock	242.92
	Richmond	82.94
	Roanoke	123.01
	Rockbridge	123.62
	Rockingham	203.00
	Russell	62.48
	Scott	59.74
	Shenandoah	160.56
	Smyth	80.24
	Southampton	76.75
	Spotsylvania	176.38
	Stafford	263.78
	Suffolk	130.09
	Surry	103.05
	Sussex	65.53
	Tazewell	63.73
	Virginia Beach City	153.00
	Warren	205.37
	Washington	113.26
	Westmoreland	102.90
	Wise	79.31
	Wythe	97.44
	York	143.62
Washington	Adams	21.75
	Asotin	15.04
	Benton	48.35
	Chelan	154.73
	Clallam	220.15
	Clark	223.48
	Columbia	19.01
	Cowlitz	153.54
	Douglas	17.99
	Ferry	7.51
	Franklin	51.71
	Garfield	16.74
	Grant	60.54
	Grays Harbor	37.14
	Island	251.46
	Jefferson	161.37
	King	378.56
	Kitsap	467.12
	Kittitas	78.09
	Klickitat	25.17
	Lewis	111.17
	Lincoln	19.65
	Mason	146.51
	Okanogan	23.43

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Pacific	61.05
	Pend Oreille	53.94
	Pierce	251.21
	San Juan	233.64
	Skagit	133.97
	Skamania	179.57
	Snohomish	283.56
	Spokane	50.23
	Stevens	27.78
	Thurston	153.47
	Wahkiakum	82.88
	Walla Walla	36.85
	Whatcom	204.07
	Whitman	24.68
	Yakima	31.84
West Virginia	Barbour	56.65
	Berkeley	166.84
	Boone	50.31
	Braxton	47.38
	Brooke	56.43
	Cabell	86.86
	Calhoun	44.08
	Clay	54.26
	Doddridge	54.55
	Fayette	71.21
	Gilmer	42.67
	Grant	68.89
	Greenbrier	82.22
	Hampshire	104.36
	Hancock	84.98
	Hardy	82.22
	Harrison	61.40
	Jackson	63.97
	Jefferson	199.15
	Kanawha	62.74
	Lewis	57.05
	Lincoln	58.57
	Logan	56.47
	Marion	62.45
	Marshall	63.71
	Mason	61.25
	McDowell	69.51
	Mercer	64.40
	Mineral	87.11
	Mingo	41.08
	Monongalia	89.54
	Monroe	66.14
	Morgan	129.53
	Nicholas	73.97
	Ohio	67.01
	Pendleton	67.41
	Pleasants	56.00
	Pocahontas	63.79
	Preston	71.50
	Putnam	74.07
	Raleigh	72.08
	Randolph	52.59
	Ritchie	46.33
	Roane	49.73
	Summers	63.68
	Taylor	71.90
	Tucker	88.64
	Tyler	53.21
	Upshur	67.23
	Wayne	54.48
	Webster	63.57
	Wetzel	52.92
	Wirt	47.60
	Wood	67.59
	Wyoming	60.06
Wisconsin	Adams	110.38
	Ashland	52.40

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Barron	79.64
	Bayfield	57.80
	Brown	154.38
	Buffalo	95.76
	Burnett	69.97
	Calumet	157.08
	Chippewa	77.62
	Clark	88.96
	Columbia	143.50
	Crawford	77.01
	Dane	172.38
	Dodge	152.39
	Door	115.82
	Douglas	49.44
	Dunn	94.37
	Eau Claire	85.44
	Florence	88.64
	Fond du Lac	142.32
	Forest	58.59
	Grant	118.45
	Green	124.50
	Green Lake	129.30
	Iowa	113.58
	Iron	65.66
	Jackson	88.00
	Jefferson	147.51
	Juneau	87.61
	Kenosha	143.35
	Kewaunee	123.82
	La Crosse	95.19
	Lafayette	139.30
	Langlade	78.79
	Lincoln	70.32
	Manitowoc	150.22
	Marathon	82.99
	Marinette	86.37
	Marquette	97.57
	Menominee	36.57
	Milwaukee	269.17
	Monroe	91.24
	Oconto	93.13
	Oneida	119.24
	Outagamie	150.00
	Ozaukee	159.57
	Pepin	93.52
	Pierce	112.62
	Polk	81.14
	Portage	93.70
	Price	54.10
	Racine	155.09
	Richland	85.69
	Rock	157.15
	Rusk	57.95
	Sauk	110.45
	Sawyer	65.24
	Shawano	102.23
	Sheboygan	149.19
	St. Croix	119.59
	Taylor	62.29
	Trempealeau	90.99
	Vernon	93.94
	Vilas	152.32
	Walworth	174.55
	Washburn	70.64
	Washington	165.98
	Waukesha	185.75
	Waupaca	109.31
	Waushara	98.43
	Winnebago	119.63
	Wood	89.57
Wyoming	Albany	10.23
	Big Horn	27.79

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2020—Continued

State	County	Fee/acre/yr
	Campbell	10.53
	Carbon	10.23
	Converse	6.87
	Crook	16.15
	Fremont	15.83
	Goshen	14.14
	Hot Springs	12.71
	Johnson	11.05
	Laramie	13.08
	Lincoln	32.75
	Natrona	11.35
	Niobrara	9.76
	Park	25.49
	Platte	13.08
	Sheridan	14.99
	Sublette	24.47
	Sweetwater	3.68
	Teton	57.88
	Uinta	13.37
	Washakie	16.15
	Weston	8.51

[FR Doc. 2020–01455 Filed 2–5–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 25

[TD 9884]

RIN 1545–B072

Estate and Gift Taxes; Difference in the Basic Exclusion Amount

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to Treasury Decision 9884, which was published in the **Federal Register** for Tuesday, November 26, 2019. Treasury Decision 9884 contained final regulations addressing the effect of recent legislative changes to the basic exclusion amount allowable in computing Federal gift and estate taxes. The final regulations affect donors of gifts made after 2017 and the estates of decedents dying after 2017.

DATES:

Effective Date: These final regulations are effective on and after February 6, 2020.

Applicability Date: For date of applicability, see § 20.2010–1(f)(2).

FOR FURTHER INFORMATION CONTACT: John D. MacEachen, (202) 317–6859 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulation (TD 9884) that is the subject of this correction is under section 2010 of the Internal Revenue Code.

Need for Correction

As published November 26, 2019 (84 FR 64995), the final regulation (TD 9884; FR Doc. 2019–25601) contained an omission that may prove misleading and therefore should be corrected.

List of Subjects in 26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 25 is corrected by making the following corrective amendment:

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

■ **Par. 1.** The authority citation for part 25 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

* * * * *

§ 25.2505–2 [Amended]

■ **Par. 2.** Section 25.2505–2 is amended by removing ''§ 20.2010–1(d)(5)'' wherever it appears and adding in its place ''§ 20.2010–1(e)(5)''.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2020–01392 Filed 2–5–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 1288

[Docket ID: DOD–2018–OS–0066]

RIN 0790–AK15

Registration of Privately Owned Motor Vehicles

AGENCY: Defense Logistics Agency (DLA), DoD.

ACTION: Final rule.

SUMMARY: This part was established to prescribe the Department of Defense (DoD) policy and procedures for the registration, inspection, and marking of privately owned vehicles (POV) on Defense Logistics Agency (DLA) activities. Since the requirement to register, inspect, and mark privately-owned vehicles on DLA activities was rescinded in 2012, the need for this part no longer exists, and it should be removed from the CFR.

DATES: This rule is effective on February 6, 2020.

FOR FURTHER INFORMATION CONTACT: Bruce A. Thomas, Deputy Staff Director, Security & Emergency Services, DLA Installation Management, 571–767–1279.

SUPPLEMENTARY INFORMATION: It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing obsolete DoD policies and procedures.

DLA activities historically registered and marked vehicles accessing DLA

activities as a force protection measure to ensure only authorized vehicles were granted access. DLA ceased registering vehicles accessing DLA activities in November 2011 following policy direction from the Department of Defense. DoD Directive-Type Memorandum (DTM) 09–012, ''Interim Policy Guidance for DoD Physical Access Control'' (available at *http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dtm/DTM-09-012.pdf?ver=2018-08-23-074619-957*), was published in September 2009 and defined new minimum standards for controlling access to DoD installations. Access control shifted from vehicle identification to personnel identification and validation of personnel identification credentials. DLA formally rescinded its policy, DLA Instruction 4309, ''Vehicle Registration,'' on August 2, 2012.

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review.'' Therefore, E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' does not apply.

List of Subjects in 32 CFR Part 1288

Motor vehicles.

PART 1288—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 1288 is removed.

Dated: January 27, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–01686 Filed 2–5–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 3, 100, and 165

[Docket Number USCG–2019–0943]

Coast Guard Sector Virgina; Sector Name Conforming Amendment

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This rule makes non-substantive amendments to Coast Guard regulations in association with a change in the Coast Guard's internal organization. The amendment describes the name change of ''Sector Hampton Roads Marine Inspection Zone and Captain of the Port Zone'' to ''Sector Virginia Marine Inspection Zone and Captain of the Port Zone.'' This rule will have no substantive effect on the regulated public.

DATES: This rule is effective February 6, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0943 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Commander Eric Matthies, Sector Logistics Division Chief, U.S. Coast Guard; telephone 757–483–8515, email *Eric.J.Matthies@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

Sector Hampton Roads leadership made the strategic decision to submit an Orgnization Modification Request to change the existing unit name from ''Sector Hampton Roads Marine Insepction Zone and Captain of the Port Zone'' (Sector Hampton Roads) to ''Sector Virginia Marine Inspection Zone and Captain of the Port Zone'' (Sector Virginia). The action was necessary to more accurately reflect the Sector's geographic operational responsibility and jurisdiction as well as to elimante confusion and bolster community relations. From a strategic communications and community relations perspective, keeping the name ''Sector Hampton Roads'' created a unique challenge when working and coordinating efforts with communities, the media, and government officials outside of the Hampton Roads region. The name Sector Hampton Roads created confusion with outlying communities such as those in the Upper Middle Peninsulas of Virginia as well as the Eastern Shore of Virginia. By renaming the unit to ''Sector Virginia,'' it more appropriately identifies the unit to our federal, state, and local government agency partners, who cohesively service the state of Virginia, with the exception of the Maryland-National Capital Region. Also, the name change to ''Sector Virginia'' enhances communications and formal Coast Guard name recoginition with our port partners who attend statewide meetings in support of the Area Maritime Security Committees, Area Committes and Harbor Safety Committees as well as coordinating incident response during natural disasters and National Special Security Events. The name change to ''Sector Virginia'' has no effect on the area of operation boundary lines or existing organizational structure.

The purpose of this rulemaking is to align the text of Coast Guard regulations, with a change in the Coast Guard's internal organization. Specifically, this rule amends 33 CFR 3.25–10, to reflect the changed sector name from ''Sector Hampton Roads Marine Insepction Zone and Captain of the Port Zone'' to ''Sector Virginia Marine Inspection Zone and Captain of the Port Zone'', and makes corresponding changes to 33 CFR 100.501, 165.501, 165.503, 165.504, 165.506, 165.518, and 165.550.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under both 5 U.S.C. 553(b)(A) and (B), the Coast Guard finds that this rule is exempt from notice and comment rulemaking requirements because these changes involve rules of agency organization, and good cause exists for not publishing an NPRM because the changes made are all non-substantive. This rule consists only of organizational amendments. These changes will have no substantive effect on the public; therefore, it is unnecessary to publish an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The rule makes non-substantive amendments to Coast Guard regulations, in order to align with a change in the Coast Guard's internal organization. The amendment describes the name change from Sector Hampton Roads to Sector Virginia. This rule will have no substantive effect on the regulated public.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 14 U.S.C. 504(a)(2), as delegated, to establish, change the location of, maintain, and operate Coast Guard shore establishments. The rule is needed to reflect a change in the Coast Guard's internal organization.

IV. Regulatory Analyses

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

Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the finding that the name change will have no substantive effect on the public.

B. Impact on Small Entities

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

For the reasons stated in section IV.A above, this rule will not have a significant economic impact on any member of the public, including ''small entities.''

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule consists only of an organizational amendment. It is categorically excluded from further review under paragraph L55 in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects

33 CFR Part 3

Organization and functions (Government agencies).

33 CFR Part 100

Marine safety, Navigation (Water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 3, 100, and 165 as follows:

PART 3—SAFETY COAST GUARD AREAS, DISTRICTS, SECTORS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT ZONES

■ 1. The authority citation for part 3 continues to read as follows:

Authority: 14 U.S.C. 92 & 93; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.1, para. 2(23).

§ 3.25–10 [Amended]

■ 2. In § 3.25–10, remove the words ''Hampton Roads'' wherever they appear and add in their place the word ''Virginia''.

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 3. The authority for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

§ 100.501 [Amended]

■ 4. In § 100.501, remove the words ''Hampton Roads'' wherever they appear and add in their place the word ''Virginia''.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 5. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

§ 165.501 [Amended]

■ 6. In § 165.501(b), remove the words ''Hampton Roads'' wherever they appear and add in their place the word ''Virginia''.

§ 165.503 [Amended]

■ 7. In § 165.503:

■ a. In paragraph (a) amend the definition of ''Designated Representative'' by removing the words ''Hampton Roads,''; and

■ b. Amend paragraphs (b) and (c) by removing the words ''Hampton Roads'' and adding their place ''Virginia.''

§ 165.504 [Amended]

■ 8. In § 165.504(c)(1)(vii)(A), remove the words ''Hampton Roads,''.

§ 165.506 [Amended]

■ 9. In § 165.506, remove the words ''Hampton Roads'' wherever they appear and add in their place the word ''Virginia''.

§ 165.518 [Amended]

■ 10. In § 165.518(c)(7), remove the words ''Hampton Roads'' wherever they appear and add in their place the word ''Virginia''.

§ 165.550 [Amended]

■ 11. In § 165.550 (a)(3) and (d)(2)(iii), remove the words ''Hampton Roads'' wherever they appear and add in their place the word ''Virginia''.

Dated: January 30, 2020.

K.M. Carroll,

Captain, U.S. Coast Guard, Sector Commander.

[FR Doc. 2020–02214 Filed 2–5–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2019–0178]

RIN 1625–AA09

Drawbridge Operation Regulation; Fox River, Green Bay, WI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the Main Street Bridge, mile 1.58, the Walnut Street Bridge, mile 1.81, and the Tilleman Memorial Bridge, mile 2.27, all over the Fox River at Green Bay, WI to allow them to operate remotely.

DATES: This rule is effective March 9, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov.* Type USCG–2019–0178 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email: Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, email *Lee.D.Soule@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
HDCCTV High Definition Closed Circuit Television
IGLD85 International Great Lakes Datum of 1985
IRCCTV Infrared Closed Circuit Television
LWD Low Water Datum based on IGLD 85
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
OMB Office of Management and Budget
PLC Programmable Logic Control
§ Section
U.S.C. United States Code
WI–FI Wireless Fidelity
WISDOT Wisconsin Department of Transportation

II. Background Information and Regulatory History

On April 29, 2019, we published a notice of proposed rulemaking entitled: Drawbridge Operation Regulation; Fox River, Green Bay, WI in the **Federal Register** (84 FR 17979). We received five comments on this rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

There are three bascule bridges operated by WISDOT and the City of Green Bay: Main Street Bridge, mile 1.58, provides 120 feet horizontal and 12 feet vertical clearance in the closed position; the Walnut Street Bridge, mile 1.81, provides 124 feet horizontal and 11 feet vertical clearance in the closed position; and the Tilleman Memorial Bridge, mile 2.27, provides 124 feet horizontal and 32 feet vertical clearance in the closed position.

IV. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided a 180 day comment period and received five comments. During the comment period the bridges were managed by WISDOT with city of Green Bay personnel operating the three bridges. As of December 1, 2019 Brown County began operating the bridges with personnel from the snow plow division. This prevented snow plow drivers from being laid off in the summer and drawtenders from being laid off in the winter. The current drawtenders lost their jobs unless they could obtain a commercial driver's license to operate a snow plow in the winter. We believe this may have influenced some of the comments we received; however, below we address each comment provided:

The first comment: ''The Main Street Bridge was renamed the Ray Nitschke Memorial Bridge in 1998''. We reached out to the State of Wisconsin and the City of Green Bay and asked them to send us a letter requesting the name change to be made and they have declined to do so.

The second comment addressed several factors: ''As long as vehicles are still crashing through the gates there should be a live presence, *i.e.,* a Bridge Tender, on every bridge that is being operated.'' We asked WISDOT for the last three years of vehicle incidents. There were zero incidents in 2017, two in 2018, and two in 2019. All three years indicated live drawtenders manning the bridges. We do not have any data from other remotely operated bridges to support the claim that remote bridges have a higher incidents of vehicles hitting barriers during the opening cycle of the bridge or that responses to vehicles hitting the barriers have been lessened. ''Instead of the risk and cost of an experimental wireless remote operation, just establish a call-in period. By making Tilleman bridge a 4 hour call-in, 24–7, and by making Walnut and Nitschke bridges a 4 hour call-in from 11 p.m. to 7 a.m., you could reduce the number of Bridge Tenders to 6 (half of what they have now). You would still have a live Bridge Tender on each bridge when they require an opening.'' This suggested schedule would place an additional burden on the mariners. The wireless equipment is not experimental. It is a commercial grade wireless system developed for city wide municipal use with a 20 mile range.

The third comment: ''As a tour boat company we feel it is in the best interest of auto, pedestrian and boat traffic to keep bridgetenders at Main Street

Bridge, Walnut Street Bridge and the Tilleman Memorial Bridge. We have seen firsthand the need for a bridgetender to keep a pedestrian from walking over the bridge as it was going up. In addition, a recent incident in Menasha with a bicyclist attempting to cross the open doors made national news (as it was videotaped). This may save money, but it won't offer the safety required at these drawbridges.'' The bridgetenders rely on physical barriers along with visual and audible alarms to keep pedestrians from accessing the bridge span while in motion. These same devices will be employed during remote operations. The bicyclist incident occurred in Menasha, WI at a bridge with a drawtender in attendance and the bicyclist was arrested for intoxication. This was an isolated incident. The remotely operated bridges will have enough cameras to monitor every pedestrian, and vehicular approach.

The fourth comment provided copies of the Remote Bridge Study provided in 2009 with additional notes concerning upgrades made up until 2019. This study provided the basis on why remote operations were not authorized prior to 2019 by the U.S. Coast Guard. The older analog camera systems and basic bridge controls were not adequate to perform as if a drawtender was on the bridge. The equipment that has been installed on the bridges has been represented by WISDOT to be state of the art and ready to meet the challenges of these bridges. WISDOT does intend to have additional drawtenders available during special events and heavy pedestrian and vehicle attendance at the bridges. The wireless equipment has a 20 mile range and is a capable unit designed for city service and not a wireless service a person may have in their home. Even with a large freighter between the wireless units the units continue to communicate to each other. We do not intend to diminish this comment but the materials provided have been vetted through various meetings and the equipment currently on the bridge meets the same benchmarks as defined by the Coast Guard on other successful remotely operated bridges in the Great Lakes.

The fifth comment: ''Having operated the Green Bay bridges remotely through the summer, I believe the Ray Nitschke Memorial Bridge (Main Street) is not ready for Full Remote Operation (no Bridge Tender on the remotely operated bridge). The equipment and programming are still being troubleshot and the camera placements were influenced by convenience (existing poles) instead of desired results.

My major concern about going Full Remote is the recent decision by WISDOT to replace the current Green Bay City Bridge Tenders with Brown County Snow Plow Operators. The plan calls for no overlap. Therefore, 100 years of Bridge Tender experience will be replaced with 45 minutes if a lift needs to be done on any of the three bridges in Green Bay at midnight on December 1, 2019. Making such a drastic personnel change this far into the process and on the tail end of the NPRM is irresponsible with respect to the public and maritime safety, and shows a certain disregard towards the Coast Guards approval process. The four senior City Bridge Tenders were moved to Walnut Street Bridge in March, 2019 to facilitate and prepare for future Full Remote Operations. The Tilleman Memorial and Ray Nitschke Memorial bridges have been operated remotely through the summer without major incidents. There were a couple of gate crashes but that is a normal, infrequent occurrence. Now, new operators, who have been trained in Sturgeon Bay and not Green Bay, will be responsible for all openings as of midnight on December 1, 2019. As a current City Bridge Tender and a retired Coast Guard Officer, I strongly recommend that Full Remote Operations be delayed at least one more summer so these new operators can gain some experience. Openings on a foggy morning, a dark rainy night, or a crowded Farmers Market evening are all situations the new operators should not be required or allowed to do alone for the first time.'' This was a serious concern and WISDOT requested we allow the bridges to operate remotely with tenders present to allow the drawtenders adequate time to learn how to operate the new system. This delayed the remote operations until the end of 2019. WISDOT intends to continue training the new drawtenders through the winter of 2019–2020 and they remain confident the drawtenders will be ready for the 2020 navigation season. Because WISDOT has done an excellent job at the three remotely operated bridges in Sturgeon Bay, WI, we do not see any reasons to delay another year.

IV. Discussion of Final Rule

The bridges will continue to operate as they have been except this rule will allow them to be operated remotely.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This rule allows the drawtender to operate the bridge remotely and will not affect the schedule of the bridge and therefore is not a significant regulatory action.

B. Impact on Small Entities

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to

the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

We did not receive any comments from Indian Tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, U.S. Coast Guard Environmental Planning Policy COMDTINST 5090.1 (series) and U.S. Coast Guard Environmental Planning Implementation Procedures (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). We have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 117 Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 117.1087 by adding paragraph (a)(4) to read as follows:

§ 117.1087 Fox River.

(a) * * *

(4) The Main Street Bridge, mile 1.58, the Walnut Street Bridge, mile 1.81, and the Tilleman Memorial Bridge, mile 2.27, are operated remotely.

* * * * *

Dated: January 24, 2020.

D.L. Cottrell,

Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 2020–01767 Filed 2–5–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0014; FRL–10004–68–Region 4]

Air Plan Approval; AL and SC: Infrastructure Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of the Alabama and South Carolina State Implementation Plan (SIP) submissions provided on August 20, 2018, and September 7, 2018, respectively, for inclusion into their respective SIPs. These approvals pertain to the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 8-hour ozone national ambient air quality standard (NAAQS). Whenever EPA promulgates a new or revised NAAQS, the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA. Alabama and South Carolina certified that their SIPs contain provisions that ensure the 2015 8-hour ozone NAAQS is implemented, enforced, and maintained in their State. EPA has determined that Alabama and South Carolina infrastructure SIP submissions satisfy certain required infrastructure elements for the 2015 8-hour ozone NAAQS.

DATES: This rule will be effective March 9, 2020.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2019–0014. 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 or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person

listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, 30303–8960. Mr. Lakeman can be reached via electronic mail at *lakeman.sean@epa.gov* or via telephone at (404) 562–9043.

SUPPLEMENTARY INFORMATION:

I. Background

On October 1, 2015 (published October 26, 2015, *see* 80 FR 65292), EPA promulgated a revised primary and secondary NAAQS for ozone, revising the 8-hour ozone standards from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIP revisions meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP is commonly referred to as an ''infrastructure SIP.'' States were required to submit such SIPs for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.[1]

This action is approving Alabama's August 20, 2018,[2] SIP revision provided to EPA through the Alabama Department of Environmental Management (ADEM) and South Carolina's September 7, 2018, SIP revision provided to EPA through the Department of Health and Environmental Control (DEHC), for the applicable infrastructure SIP requirements of the 2015 8-hour ozone NAAQS, with the exception of the interstate transport provisions of section 110(a)(2)(D)(i)(I), pertaining to contribution to nonattainment or interference with maintenance in other states. With respect to the interstate transport provisions of section 110(a)(2)(D)(i)(I), EPA will address these provisions in separate rulemaking actions.

In a notice of proposed rulemaking (NPRM) published on November 26, 2019 (84 FR 65051), EPA proposed to approve the Alabama and South Carolina SIP submissions provided on August 20, 2018 and September 7, 2018 respectively, for the certain applicable infrastructure SIP requirements of the 2015 8-hour ozone NAAQS. The NPRM provides additional detail regarding the background and rationale for EPA's action. Comments on the NPRM were due on or before December 26, 2019. EPA received no adverse comments on the NPRM.

II. Final Action

With the exception of interstate transport provisions pertaining to contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2), EPA is approving Alabama's August 20, 2018 and South Carolina's September 7, 2018, SIP submissions for the 2015 8-hour ozone NAAQS. EPA is approving Alabama's and South Carolina's infrastructure SIP submissions for certain infrastructure elements for the 2015 8-hour ozone NAAQS because these elements are consistent with section 110 of the CAA.

III. Statutory and Executive Order Reviews

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

- Are not significant regulatory actions 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);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The Alabama SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

Because this SIP action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law, this SIP action for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, this action will not impose substantial direct costs on Tribal governments or preempt Tribal law. The Catawba Indian Nation (CIN) Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120 (Settlement Act), ''all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' The CIN also retains authority to impose

[1] In these infrastructure SIP submissions States generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

[2] The August 20, 2018, SIP submission provided by ADEM was received by EPA on August 27, 2018.

regulations applying higher environmental standards to the Reservation than those imposed by state law or local governing bodies, in accordance with the Settlement Act.

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 April 6, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 15, 2020.

Mary S. Walker,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart B—Alabama

■ 2. Section 52.50(e) is amended by adding entry ''110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS'' at the end of the table to read as follows:

§ 52.50 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED ALABAMA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanation
*	*	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS.	Alabama	8/27/2018	2/6/2020 [Insert **Federal Register** citation].	With the exception of 110(a)(2)(D)(i)(I) (prongs 1 and 2).

Subpart PP—South Carolina

■ 3. Section 52.2120(e) is amended by adding entry ''110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS'' at the end of the table to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(e) * * *

Provision	State effective date	EPA approval date	Explanation
*	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS.	9/7/2018	2/6/2020 [Insert **Federal Register** citation].	With the exception of 110(a)(2)(D)(i)(I) (prongs 1 and 2).

[FR Doc. 2020–01581 Filed 2–5–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[EPA–R06–RCRA–2019–0343; FRL–10001–54–Region 6]

Oklahoma: Incorporation by Reference of Approved State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule codifies in the regulations the prior approval of Oklahoma's hazardous waste management program and incorporates by reference authorized provisions of the State's statutes and regulations. The Environmental Protection Agency (EPA) uses the regulations entitled ''Approved State Hazardous Waste Management Programs'' to provide notice of the authorization status of State programs and to incorporate by reference those provisions of the State statutes and regulations that are authorized and that

EPA will enforce under the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act (RCRA). The EPA previously provided notifications and opportunity for comments on the Agency's decisions to authorize the State of Oklahoma program and the EPA is not now reopening the decisions, nor requesting comments, on the Oklahoma authorizations as previously published in the **Federal Register** documents specified in Section I.C of this final rule document.

DATES: This regulation is effective March 9, 2020. The Director of the Federal Register approves this incorporation by reference as of March 9, 2020 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–RCRA–2019–0343. All documents in the docket are listed in *www.regulations.gov* index. Although listed in the index, some of the information is not publicly available. *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically through *www.regulations.gov.*

You can view and copy the documents that form the basis for this codification and associated publicly available materials from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following location: EPA Region 6, 1201 Elm Street, Suite 500, Dallas, Texas, 75270, phone number (214) 665–8533. Interested persons wanting to examine these documents should make an appointment with the office.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Regional Authorization/Codification Coordinator, RCRA Permit Section (LCR–RP), Land, Chemicals and Redevelopment Division, EPA Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270, phone number: (214) 665–8533, email address: *patterson.alima@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Incorporation by Reference

A. What is codification?

Codification is the process of placing a State's statutes and regulations that comprise the State's authorized hazardous waste management program into the Code of Federal Regulations (CFR). Section 3006(b) of RCRA, as amended, allows the EPA to authorize State hazardous waste management programs to operate in lieu of the Federal hazardous waste management regulatory program. The EPA codifies its authorization of State programs in 40 CFR part 272 and incorporates by reference State statutes and regulations that the EPA will enforce under sections 3007 and 3008 of RCRA and any other applicable statutory provisions.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and State requirements that can be federally enforced. This effort provides clear notice to the public of the scope of the authorized program in each State.

B. Why wasn't there a proposed rule before this rule?

The EPA is publishing this rule to codify Oklahoma's authorized hazardous waste management program without a prior proposal because we believe this action is not controversial. The reason being that, in accordance with section 3006(b) of RCRA, EPA has already evaluated the State's regulatory and statutory requirements and has determined that the State's program meets the statutory and regulatory requirements established by RCRA. The EPA previously provided notifications and opportunity for comments on the Agency's decisions to authorize the Oklahoma program. The EPA is not now reopening the decisions, nor requesting new comments, on the Oklahoma authorizations as previously published in the **Federal Register** documents specified in Section I.C of this final rule document. The previous authorizations form the basis for the codification addressed in this final rule.

C. What is the history of the authorization and codification of Oklahoma's hazardous waste management program?

Oklahoma initially received final authorization on December 27, 1984, effective January 10, 1985, (49 FR 50362) to implement its Base Hazardous Waste Management program. We granted authorization for changes to their program on April 17, 1990 (55 FR 14280), effective June 18, 1990; September 26, 1990 (55 FR 39274), effective November 27, 1990; April 2, 1991 (56 FR 13411), effective June 3, 1991; September 20, 1991 (56 FR 47675), effective November 19, 1991; September 29, 1993 (58 FR 50854), effective November 29, 1993; October 7, 1994 (59 FR 51116), effective December 21, 1994; January 11, 1995 (60 FR 2699), effective April 27, 1995; October 9, 1996 (61 FR 52884), effective December 23, 1996, as corrected on March 14, 1997 (62 FR 12100), effective March 14, 1997; April 30, 1998 63 FR 23673), effective July 14, 1998; September 22, 1998 (63 FR 50528), effective November 23, 1998; December 9, 1998 (63 FR 67800), effective February 8, 1999; March 29, 2000 (65 FR 16528), effective May 30, 2000; May 10, 2000 (65 FR 29981), effective July 10, 2000; January 2, 2001 (66 FR 28), effective March 5, 2001; April 9, 2003 (68 FR 17308), effective June 9, 2003; February 4, 2009 (74 FR 5994), effective April 6, 2009; April 6, 2011 (76 FR 18927), effective June 6, 2011; March 15, 2012 (77 FR 15273), effective May 14, 2012; May 29, 2013 (78 FR 32161), effective July 29, 2013; August 29, 2014 (79 FR 51497), effective October 28, 2014; July 13, 2017 (82 FR 32249), effective September 11, 2017, and March 13, 2019 (84 FR 8988), effective March 13, 2019.

The EPA incorporated by reference Oklahoma's then authorized hazardous waste program effective December 13, 1993 (58 FR 52679), July 14, 1998 (63 FR 23673), October 25, 1999 (64 FR 46567), October 27, 2003 (68 FR 51488), August 27, 2010 (75 FR 36546), July 16, 2012 (77 FR 29231), October 9, 2012 (77 FR 46964), September 2, 2014 (79 FR 37226), and December 27, 2016 (81 FR 73347). In this document, the EPA is revising subpart LL of 40 CFR part 272 to include the recent authorization revision actions effective September 11, 2017 (82 FR 32249) and March 13, 2019 (84 FR 8988).

D. What codification decisions have we made in this rule?

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference of the authorized hazardous waste management program of the State of Oklahoma. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Oklahoma rules described in the amendments to 40 CFR part 272 set forth in § 272.1851. The EPA has made, and will continue to make, these documents available electronically through *http://www.regulations.gov* and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

The purpose of this **Federal Register** document is to codify Oklahoma's base hazardous waste management program and its revisions to that program. The EPA provided notifications and opportunity for comments on the Agency's decisions to authorize the Oklahoma program, and the EPA is not now reopening the decisions, nor requesting comments, on the Oklahoma

authorizations as published in the **Federal Register** documents specified in Section I.C of this document.

This document incorporates by reference Oklahoma's hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and federally enforceable program. By codifying Oklahoma's authorized program and by amending the CFR, the public will be more easily able to discern the status of federally approved requirements of the Oklahoma hazardous waste management program.

The EPA is incorporating by reference the Oklahoma authorized hazardous waste program in subpart LL of 40 CFR part 272. Section 272.1851 incorporates by reference Oklahoma's authorized hazardous waste statutes and regulations. Section 272.1851 also references the statutory and regulatory provisions (including procedural and enforcement provisions) which provide the legal basis for the State's implementation of the hazardous waste management program, the Memorandum of Agreement, the Attorney General's Statements and the Program Description, which are approved as part of the hazardous waste management program under Subtitle C of RCRA.

E. What is the effect of Oklahoma's codification on enforcement?

The EPA retains its authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013 and 7003, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in authorized States. With respect to these actions, the EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than any authorized State analogs to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved Oklahoma procedural and enforcement authorities. Section 272.1851(c)(2) of 40 CFR lists the statutory and regulatory provisions which provide the legal basis for the State's implementation of the hazardous waste management program, as well as those procedural and enforcement authorities that are part of the State's approved program, but these are not incorporated by reference.

F. What State provisions are not part of the codification?

The public needs to be aware that some provisions of Oklahoma's hazardous waste management program are not part of the federally authorized State program. These provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are ''broader in scope'' than RCRA subtitle C (see 40 CFR 271.1(i));

(2) Federal rules for which Oklahoma is not authorized, but which have been incorporated into the State regulations because of the way the State adopted Federal regulations by reference; and

(3) A Federal program which has since been terminated by the U.S. EPA.

State provisions that are ''broader in scope'' than the Federal program are not part of the RCRA authorized program and the EPA will not enforce them. Therefore, they are not incorporated by reference in 40 CFR part 272. For reference and clarity, 40 CFR 272.1851(c)(3) lists the Oklahoma regulatory provisions which are ''broader in scope'' than the Federal program and which are not part of the authorized program being incorporated by reference. ''Broader in scope'' provisions cannot be enforced by the EPA; the State, however, may enforce such provisions under State law.

Oklahoma has adopted but is not authorized for the Federal rules published in the **Federal Register** on August 3, 1987 (52 FR 28697); June 1, 1990 (55 FR 22520, 261.33(c) only); October 5, 1990 (55 FR 40834); February 1, 1991 (56 FR 3978); February 13, 1991 (56 FR 5910); April 2, 1991 (56 FR 13406); May 1, 1991 (56 FR 19951); December 23, 1991 (56 FR 66365); September 19, 1994 (59 FR 47980); May 12, 1995 (60 FR 25619); June 29, 1995 (60 FR 33912), April 9, 2002 (67 FR 17119); June 14, 2005 (70 FR 34538), August 1, 2005 (70 FR 44150); and January 13, 2015 (80 FR 1694). Therefore, these Federal amendments included in Oklahoma's adoption by reference at 252:205–3–2(b) through 252:205–3–2(m) of the Oklahoma Administrative Code, are not part of the State's authorized program and are not part of the incorporation by reference addressed by this **Federal Register** document. After review and analysis of the State's regulations, the EPA has notified the State to seek authorization for the unauthorized rules that the State has adopted and are documented in this **Federal Register** document. The EPA expects the State to include these rules as part of their next Program Revision Application package.

Oklahoma adopted and was authorized for (1) the Federal Performance Track program, as published in the **Federal Register** on April 22, 2004 (69 FR 21737), and amended on October 25, 2004 (69 FR 62217), and (2) the following provisions regarding Performance Track in the April 4, 2006 (71 FR 16862) Burden Reduction Initiative amendments: 40 CFR 260.10, 264.15, 264.174, 264.195, 264.1101, 265.15, 265.174, 265.195, 265.201, 265.1101, 270.42(l) and Item O.1 of Appendix I to 270.42. The Performance Track program has since been terminated by the U.S. EPA. Oklahoma is in the process of revising their regulations to adopt the removal of the Performance Track provisions from the Federal regulations, as addressed in the Generator Improvement rule (81 FR 85732; May 30, 2017).

With respect to any requirement pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) for which the State has not yet been authorized, the EPA will continue to enforce the Federal HSWA standards until the State is authorized for these provisions.

G. What will be the effect of Federal HSWA requirements on the codification?

The EPA is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are implemented by the EPA. Section 3006(g) of RCRA provides that any HSWA requirement or prohibition (including implementing regulations) takes effect in authorized and non-authorized States at the same time. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by the EPA (50 FR 28702, July 15, 1985). The EPA has the authority to implement HSWA requirements in all States, including authorized States, until the States become authorized for such requirement or prohibition. Authorized States are required to revise their programs to adopt the HSWA requirements and prohibitions, and then to seek authorization for those revisions pursuant to 40 CFR part 271.

Instead of amending the 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), the EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. Until then, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

Some existing State requirements may be similar to the HSWA requirement implemented by the EPA. However, until the EPA authorizes those State requirements, the EPA can only enforce

the HSWA requirements and not the State analogs. The EPA will not codify those State requirements until the State receives authorization for those requirements.

II. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action incorporates by reference Oklahoma's authorized hazardous waste management regulations and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as this codification of Oklahoma's revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action incorporates by reference pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely incorporates by reference existing authorized requirements as part of the State RCRA hazardous waste management program without altering the relationship or the distribution of power and responsibilities established by RCRA.

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. The requirements being codified are the result of Oklahoma's voluntary participation in the EPA's State program authorization process under RCRA Subtitle C. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). ''Burden'' is defined at 5 CFR 1320.3(b).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Because this rule codifies pre-existing State rules which are at least equivalent to, and no less stringent than existing federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

The Congressional Review Act, 5 U.S.C. 801–808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document 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 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).

List of Subjects in 40 CFR Part 272

Environmental protection, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Intergovernmental relations, Water pollution control, Water supply.

Dated: January 23, 2020.

Kenley McQueen,

Regional Administrator, Region 6.

For the reasons set forth in the preamble, EPA is amending 40 CFR part 272 as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

■ 1. The authority citation for part 272 continues to read as follows:

Authority: Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

■ 2. Revise § 272.1851 to read as follows:

§ 272.1851 Oklahoma State-Administered program: Final authorization.

(a) *History of the State of Oklahoma authorization.* Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), the EPA granted Oklahoma final authorization for the following elements as submitted to EPA in Oklahoma's base program application for final authorization which was approved by EPA effective on January 10, 1985. Subsequent program revision applications were approved effective on June 18, 1990, November 27, 1990, June 3, 1991, November 19, 1991, November 29, 1993, December 21, 1994, April 27, 1995, December 23, 1996 (as corrected effective March 14, 1997), July 14, 1998 and November 23, 1998, February 8, 1999, May 30, 2000, July 10, 2000, March 5, 2001, June 9, 2003, April 6, 2009, June 6, 2011, May 14, 2012, July 29, 2013, October 28, 2014, September 11, 2017, and March 13, 2019.

(b) *Enforcement authority.* The State of Oklahoma has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State statutes and regulations*—(1) *Incorporation by reference.* The Oklahoma statutes and regulations cited in paragraph (c)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the Oklahoma regulations that are incorporated by reference in this paragraph (c)(1) from the State's Office of Administrative Rules, Secretary of State, P.O. Box 53390, Oklahoma City, OK 73152–3390; Phone number: 405–521–4911; website: *https://www.sos.ok.gov/oar/Default.aspx.* The statutes are available from Thomson Reuters, 610 Opperman Drive, Eagan, Minnesota 55123; Phone: 1–888–728–7677; website: *http://legalsolutions.thomsonreuters.com.* You may inspect a copy at EPA Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270 (Phone number (214) 665–8533), or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(i) The compilation entitled ''EPA-Approved Oklahoma Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program'', March 2019. Only those provisions that have been authorized by EPA are incorporated by reference. Those provisions are listed in appendix A to this part.

(ii) [Reserved]

(2) *Legal basis.* The following provisions provide the legal basis for the State's implementation of the hazardous waste management program, but they are not being incorporated by reference and do not replace Federal authorities:

(i) Oklahoma Environmental Crimes Act, as amended through August 26, 2016, 21 Oklahoma Statutes (O.S.), Sections 1230.1 *et seq.*

(ii) Oklahoma Open Meeting Act, as amended through August 26, 2016, 25 Oklahoma Statutes (O.S.), Sections 301 *et seq.*

(iii) Oklahoma Statutes (O.S.), Title 27A, ''Environment and Natural Resources'', as amended through August 26, 2016: Chapter 1, ''Oklahoma Environmental Quality Act'', Sections 1–1–101 *et seq.;* Chapter 2, ''Oklahoma Environmental Quality Code'', Sections 2–2–101, 2–2–104, 2–2–201, 2–3–101(F)(1), 2–3–104, 2–3–202, and 2–3–501 through 2–3–504; ''Oklahoma Hazardous Waste Management Act'', Sections 2–7–102, 2–7–104, 2–7–105 (except 2–7–105(27), 2–7–105(29) and 2–7–105(34)), 2–7–106, 2–7–107, 2–7–108(B)(2), 2–7–109, 2–7–110(A), 2–7–111(C)(2)(b) and (c), 2–7–111(C)(3), 2–7–113.1, 2–7–114, 2–7–115, 2–7–116(A), 2–7–116(G), 2–7–116(I)(1), 2–7–117, 2–7–123 (except 2–7–123(F), 2–7–126, and 2–7–129 through 2–7–133; ''Oklahoma Uniform Environmental Permitting Act'', Sections 2–14–101 *et seq.*

(iv) Oklahoma Open Records Act, as amended through August 26, 2016, 51 Oklahoma Statutes (O.S.), Sections 24A.1 *et seq.*

(v) Oklahoma Administrative Procedures Act, as amended through August 26, 2016, 75 Oklahoma Statutes (O.S.), Sections 250 *et seq.*

(vi) The Oklahoma Administrative Code (OAC), Title 252, Chapter 205, Hazardous Waste Management, effective September 15, 2017 (2016 Edition, as amended by the 2017 Supplement): Subchapter 1, Sections 252:205–1–1(b), 252:205–1–3(a) and (b), 252:205–1–4(a) through (d); Subchapter 3, Sections 252:205–3–2(a) introductory paragraph, (a)(1), and (a)(3); Subchapter 11, Section 252:205–11–3.

(3) *Related legal provisions.* The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statutes (O.S.) as amended through August 26, 2016, Sections 2–7–119, 2–7–121, 2–7–121.1, and 2–7–134.

(ii) The Oklahoma Administrative Code (OAC), Title 252, Chapter 205, effective September 15, 2017 (2016 Edition, as amended by the 2017 Supplement): Subchapter 1, Sections 252:205–1–1(c)(2) and (3), 252:205–1–2 ''RRSIA''. 252:205–1–2 ''Reuse'', 252:205–1–2 ''Speculative accumulation'', 252:205–1–2 ''Transfer facility'', 252:205–1–2 ''Transfer station'', 252:205–1–4(e); Subchapter 5, Section 252:205–5–1(4); Subchapter 15; Subchapter 17; Subchapter 21; Subchapter 23; and 252:205 Appendices B, C and D.

(4) *Unauthorized State Amendments.* (i) Oklahoma has adopted, but is not authorized to implement, the Federal rules that are listed in the table in this paragraph (c)(4)(i). The EPA will continue to implement the Federal Hazardous and Solid Waste Act Amendments of 1984 (HSWA) requirements for which Oklahoma is not authorized until the State receives specific authorization for those requirements. The EPA will not enforce the non-HSWA Federal rules although they may be enforceable under State law. For those Federal rules that contain both HSWA and non-HSWA requirements, the EPA will enforce only the HSWA portions of the rules.

TABLE 1 TO PARAGRAPH (c)(4)(i)

Federal requirement	**Federal Register reference**	Publication date
Listing of Spent Pickle Liquor (K062), (Correction 2) (Non-HSWA) (Rule 26.2)	55 FR 28697	8/3/87
Land Disposal Restrictions for Third Third Scheduled Wastes (40 CFR 261.33(c) only) (Non-HSWA) (Rule 78N).	55 FR 22520	6/1/90
Toxicity Characteristics; Hydrocarbon Recovery Operations (HSWA) (Checklist 80)	55 FR 40834	10/5/90
	56 FR 3978	2/1/91
	56 FR 13406	4/2/91
Toxicity Characteristics; Chlorofluorocarbon Refrigerants (HSWA) (Checklist 84)	56 FR 5910	2/13/91
Administrative Stay for K069 Listing (Non-HSWA) (Checklist 88)	56 FR 19951	5/1/91
Amendments to Interim Status Standards for Downgradient Ground-water Monitoring Well Locations (Non-HSWA) (Checklist 99).	56 FR 66365	12/23/91

TABLE 1 TO PARAGRAPH (c)(4)(i)—Continued

Federal requirement	Federal Register reference	Publication date
Hazardous Waste Management System; Testing and Monitoring Activities, Land Disposal Restrictions Correction (Non-HSWA) (Rule 126.1).	59 FR 47980	9/19/94
Hazardous Waste Management System; Carbamate Production Identification and Listing of Hazardous Waste; Correction (Non-HSWA) (Rule 140.2).	60 FR 25619	5/12/95
Removal of Legally Obsolete Rules (HSWA/Non-HSWA) (Checklist 144)	60 FR 33912	6/29/95
Inorganic Chemical Manufacturing Wastes; Land Disposal Restrictions for Newly Identified Wastes; Correction (HSWA/Non-HSWA) (Rule 195.1).	67 FR 17119	4/9/02
Methods Innovation: SW–846 (HSWA/Non-HSWA) (Checklist 208)	70 FR 34538 70 FR 44150	6/14/05 8/1/05
Definition of Solid Waste (Non-HSWA) (Checklist 233)	80 FR 1694	1/13/15

(ii) The Federal rules listed in the table in this paragraph (c)(4)(ii) are not delegable to States. Oklahoma has excluded the rules from its incorporation by reference of the Federal regulations. EPA retains its authority for the implementation and enforcement of these rules.

TABLE 2 TO PARAGRAPH (c)(4)(ii)

Federal requirement	Federal Register reference	Publication date
Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision (HSWA) (Checklist 152).	61 FR 16290	April 12, 1996.
OECD Requirements; Export Shipments of Spent Lead-Acid Batteries (Non-HSWA) (Checklist 222)	75 FR 1236	January 8, 2010.

(5) *Terminated Federal program.* Oklahoma adopted and was authorized for the following Federal program as amended, which has since been terminated by the U.S. EPA:

TABLE 3 TO PARAGRAPH (c)(5)

Federal requirement	Federal Register reference	Publication date
National Environmental Performance Track Program (Checklist 204)	69 FR 21737	April 22, 2004.
National Environmental Performance Track Program; Corrections (Rule 204.1)	69 FR 62217	October 25, 2004.
Burden Reduction Initiative (Checklist 213); amendments to the following provisions regarding Performance Track: 40 CFR 260.10, 264.15, 264.174, 264.195, 264.1101, 265.15, 265.174, 265.195, 265.201, 265.1101, 270.42(l) and Item O.1 of Appendix I to 270.42..	71 FR 16862	April 4, 2006.

(6) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 6 and the State of Oklahoma, signed by the EPA Regional Administrator on May 15, 2013, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921, *et seq.*

(7) *Statement of Legal Authority.* ''Attorney General's Statement for Final Authorization'', signed by the Attorney General of Oklahoma January 20, 1984 and revisions, supplements, and addenda to that Statement dated January 14, 1988 (as amended July 20, 1989); December 22, 1988 (as amended June 7, 1989 and August 13, 1990); November 20, 1989; November 16, 1990; November 6, 1992; June 24, 1994; December 8, 1994; March 4, 1996; April 15, 1997; February 6, 1998, December 2, 1998, October 15, 1999, May 31, 2000, October 15, 2001, June 27, 2003, March 1, 2005, July 12, 2005, July 03, 2006, August 25, 2008, December 23, 2009, October 11, 2010, October 31, 2011, July 27, 2012, July 1, 2013, June 22, 2015, and March 22, 2017 are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(8) *Program Description.* The Program Description and any other materials submitted as supplements thereto are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

■ 3. Appendix A to part 272 is amended by revising the listing for ''Oklahoma'' to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Oklahoma

The statutory provisions include:

Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statutes (O.S.) 2011 Main Volume and where indicated, amendments through August 26, 2016 as published in the 2017 Cumulative Annual Pocket Part, Sections 2–7–103, 2–7–108(A), 2–7–108(B)(1), 2–7–108(B)(3), 2–7–108(C), 2–7–110(B), 2–7–110(C), 2–7–111(A), 2–7–111(B), 2–7–111(C)(1), 2–7–111(C)(2)(a), 2–7–111(D), 2–7–111(E), 2–7–112, 2–7–116(B) through 2–7–116(F) (2017 Pocket Part), 2–7–116(I)(2) (2017 Pocket Part), 2–7–118 (2017 Pocket Part), 2–7–124, 2–7–125, 2–7–127, and 2–10–301(G), as published by Thomson Reuters, 610 Opperman Drive, Eagan, Minnesota 55123; Phone: 1–888–728–7677; website: *http://legalsolutions.thomsonreuters.com.*

The regulatory provisions include:

The Oklahoma Administrative Code (OAC), Title 252, Chapter 205, effective September 15, 2017 (2016 Edition, as amended by the 2017 Supplement): Subchapter 1, Sections 252:205–1–1(a),

252:205–1–1(c) introductory paragraph, 252:205–1–1(c)(1), 252:205–1–2 introductory paragraph, 252:205–1–2 ''OHWMA'', 252:205–1–2 ''Post-closure permit'', 252:205–1–3(c); Subchapter 3, Sections 252:205–3–1 introductory paragraph, 252:205–3–1(1), 252:205–3–2(a)(2), 252:205–3–2(b), 252:205–3–2(c) (2017 Supplement), 252:205–3–2(d) through (n), 252:205–3–4 through 252:205–3–6; Subchapter 5, Sections 252:205–5–1 (except 252:205–5–1(4)), 252:205–5–2 through 252:205–5–5; Subchapter 7, Sections 252:205–7–2, 252:205–7–4 (except the phrase ''or in accordance with 252:205–15–1(d)''); Subchapter 9, Sections 252:205–9–1 through 252:205–9–4; Subchapter 11, Sections 252:205–11–1(a) (except the word ''recycling''), 252:205–11–1(b) through (e), 252:205–11–2; and Subchapter 13, Sections 252:205–13–1(a) through (e), as published by the State's Office of Administrative Rules, Secretary of State, P.O. Box 53390, Oklahoma City, OK 73152–3390; Phone number: 405–521–4911; website: *https://www.sos.ok.gov/oar/Default.aspx.*

* * * * *

[FR Doc. 2020–01478 Filed 2–5–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200123–0027]

RIN 0648–BI96

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Amendment 18

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 18 to the Fishery Management Plan (FMP) for the Shrimp Fishery of the Gulf of Mexico U.S. Waters (Amendment 18), as prepared and submitted by the Gulf of Mexico (Gulf) Fishery Management Council (Council). This final rule will modify the target reduction goal for juvenile red snapper mortality in the Federal Gulf penaeid shrimp trawl fishery, and will modify the FMP framework procedures. The purposes of Amendment 18 are to promote economic stability, to achieve optimum yield in the Federal Gulf shrimp fishery by reducing effort constraints, and to equitably distribute the benefits from red snapper rebuilding, while continuing to protect the Gulf red snapper stock.

DATES: This final rule is effective March 9, 2020.

ADDRESSES: Electronic copies of Amendment 18, which includes a fishery impact statement, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/amendment-18-modifying-shrimp-effort-threshold.*

FOR FURTHER INFORMATION CONTACT: Frank Helies, telephone: 727–824–5305, or email: *Frank.Helies@noaa.gov.*

SUPPLEMENTARY INFORMATION: The shrimp fishery in the Gulf is managed under the FMP. The FMP was prepared by the Council and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On August 1, 2019, NMFS published a notice of availability for Amendment 18 and requested public comment (84 FR 37611). NMFS approved Amendment 18 on October 25, 2019. On August 29, 2019, NMFS published a proposed rule for Amendment 18 and requested public comment (84 FR 45459). The proposed rule and Amendment 18 outline the rationale for the action contained in this final rule. A summary of the management measures described in Amendment 18 and implemented by this final rule is provided below.

The 2005 Southeast Data, Assessment, and Review (SEDAR) 7 stock assessment for Gulf red snapper identified bycatch of red snapper by the Gulf shrimp fishery as a primary factor affecting the recovery of the stock (SEDAR 7 2005). The assessment indicated a need to reduce the red snapper bycatch mortality attributed to shrimp trawls by 74 percent, compared to levels of effort and mortality experienced during the baseline 2001–2003 period.

To end overfishing of red snapper and rebuild the stock by 2032 in compliance with the rebuilding plan, the Council developed Amendment 14 to the FMP to cap shrimp fishing effort in statistical zones 10–21 in the 10–30 fathom (18.29 m–54.86 m) depth zone of the western Gulf (*i.e.,* the area monitored for juvenile red snapper bycatch). The reduction goal for juvenile red snapper mortality was linked to a reduction in shrimp fishing effort of 74 percent below fishing effort during the baseline 2001–2003 period. Consistent with Amendment 14, NMFS reduced the threshold level to 67 percent of the baseline in 2011. Amendment 14 also stated that the target reduction goal should decrease to 60 percent (*i.e.,* shrimp effort could increase) by 2032 (the final year of the red snapper rebuilding plan).

The Gulf red snapper stock is no longer overfished or undergoing overfishing, and continues to rebuild, consistent with the rebuilding plan (SEDAR 52 2018). Also, as described in Amendment 18, recent research indicates that the effect of the shrimp fishery on red snapper mortality is less than previously determined. In response to a request by the Council, the NMFS Southeast Fisheries Science Center (SEFSC) conducted an analysis to determine if effort in the shrimp fishery could increase without affecting red snapper rebuilding. The analysis indicated that increasing shrimp effort to the level considered in Amendment 14 (60 percent below the baseline years of 2001–2003) is unlikely to affect the rebuilding timeline of red snapper, and would have little impact on red snapper annual catch limits.

Management Measures Codified in This Final Rule

This final rule implements measures to modify the target reduction goal for juvenile red snapper mortality in the Federal Gulf shrimp trawl fishery, and modifies the FMP framework procedures.

Target Reduction Goal

This final rule implements a reduction for trawl bycatch mortality on red snapper to 60 percent below the baseline effort in the years 2001–2003. As discussed in Amendment 18 and the proposed rule, the analysis done by the SEFSC indicates that allowing shrimp effort to increase consistent with the lower threshold would not impact the red snapper rebuilding plan established in Amendment 22 to the Reef Fish FMP (70 FR 32266; June 2, 2005), and would have only a small impact on red snapper catch levels. The projected reduction in the red snapper acceptable biological catch (ABC) in the short term (over the next 3 years) is no more than 100,000 lb (45,359 kg) per year and, in the long term, no more than 200,000 lb (90,719 kg) per year.

FMP Framework Procedures

This final rule revises the FMP framework procedure to allow changes to the target reduction goal for juvenile red snapper mortality through the standard open framework documentation process. This final rule also modifies the FMP abbreviated documentation process to allow specification of an ABC recommended by the Council's Scientific and

Statistical Committee (SSC) based on results of a new stock assessment and using the Council's ABC control rule. The changes to the framework procedure in Amendment 18 provide for consistency across all abbreviated framework procedures under the Council's jurisdiction and could facilitate faster management action, if necessary, for the Council by providing a more streamlined approach to modify any future effort reduction goals.

Measures in This Final Rule Not Contained in Amendment 18

This final rule replaces the term ''Letter of Authorization (LOA)'' with ''Gear Test Authorization (GTA)'' in 50 CFR 622.53, *Bycatch Reduction Device Requirements,* paragraphs (a)(2)(i)(B) and (ii). This change was made in Bycatch Reduction Device Testing Manual when it was revised in 2016 (81 FR 95056; December 27, 2016), and this change makes the terminology in the regulations consistent with the terminology in the manual.

Changes From the Proposed Rule

In the proposed rule, paragraph (d)(1) of § 622.55 did not specify the correct number of annual days fished associated with the 60-percent target reduction. Therefore, NMFS replaces ''27,328 days fished'' with the correct number of ''33,124 days fished'' in the regulatory text of this final rule. The entirety of the affected sentence reads as follows: ''The RA's determination of the need for such closure and its geographical scope and duration will be based on an annual assessment, by the Southeast Fisheries Science Center, of the shrimp effort and associated shrimp trawl bycatch mortality on red snapper in the 10–30 fathom area of statistical zones 10–21, compared to the 60-percent target reduction of shrimp trawl bycatch mortality on red snapper from the benchmark years of 2001–2003 established in the FMP (which corresponds in terms of annual shrimp effort to 33,124 days fished).''

Comments and Responses

NMFS received 593 comments on Amendment 18 and the proposed rule from recreational fishers, the general public, commercial fishing organizations, and non-governmental organizations. Two comments supported the actions in Amendment 18. The majority of comments opposed modifying the shrimp fishing effort threshold. Some comments suggested management measures to address bycatch in the shrimp trawl fishery including implementing fishing seasons, adding more gear restrictions, adjusting catch limits, and transferring management of the Gulf shrimp fishery to the Gulf states. However, as stated earlier, one of the purposes of this action is to achieve optimum yield in the Federal Gulf shrimp fishery (as required by National Standard 1) by reducing effort constraints, as well as to equitably distribute the benefits from red snapper rebuilding, while continuing to protect the Gulf red snapper stock. Thus, these comments regarding additional measures to address bycatch in the shrimp trawl fishery are beyond the scope of Amendment 18 and the proposed rule, and are not addressed further. Comments specific to Amendment 18 and the proposed rule are grouped as appropriate and summarized below, each followed by NMFS' respective response.

Comment 1: NMFS should not modify the target reduction goal for juvenile red snapper mortality in the Federal Gulf shrimp trawl fishery because there is no scientific information to support the conclusion that this change will not result in unacceptable levels of bycatch of fish, sea turtles, and other species.

Response: The best scientific information available indicates that this action will not have substantial impacts to levels of bycatch for fish, sea turtles, or other species. The reduction in the effort threshold in this final rule may allow more shrimp fishing effort to occur in the statistical zones 10–21 in the 10–30 fathom (18.29 m–54.86 m) depth zone of the western Gulf. However, effort in this area has not met the current threshold and NMFS does not expect a substantial increase in Gulf-wide effort to result from reducing the threshold. As explained in Amendment 18, Gulf-wide effort in the shrimp fishery has been constrained by a permit moratorium that has been in place since 2007, as well as economic factors, such as high fuel costs and reduced prices caused by competition with imports.

In addition, the Council and NMFS have reduced finfish bycatch by requiring the use of bycatch reduction devices and, as explained in more detail in the response to Comment 2, an SEFSC analysis concluded that the maximum possible increase in shrimp effort permitted under this rule would not impact red snapper rebuilding. Potential impacts to sea turtles have been addressed in an Endangered Species Act (ESA) formal consultation. The reduction in the effort threshold implemented through this final rule will not change the amount of sea turtle take authorized under the ESA. The fishery's impact on sea turtles is monitored by turtle excluder device (TED) compliance levels and through an effort metric separate from that addressed in this final rule.

Comment 2: Allowing an increase in shrimp trawl effort will delay recovery of the Gulf red snapper stock and result in future lower recreational catch limits.

Response: NMFS disagrees that the moderate increase in shrimp trawl effort possible through this final rule will alter the Gulf red snapper rebuilding plan time period. The SEFSC analysis contained in Amendment 18 concluded that the maximum possible increase in shrimp effort permitted under this rule would not impact red snapper rebuilding. This analysis noted that red snapper mortality due to discards during the closed red snapper recreational season is much greater than was predicted at the time the initial shrimp effort reduction threshold was put in place in 2008. In addition, recent research shows that natural mortality of juvenile red snapper is greater than previously indicated, which means that mortality due to shrimp trawl bycatch has a smaller influence on the red snapper population than previously thought.

With respect to red snapper catch limits, NMFS agrees that a reduction in total red snapper allowable catch is predicted over the remainder of the rebuilding time period if the maximum possible increase in shrimp effort occurs. However, shrimp effort has not exceeded the current allowable level in more than 10 years. Further, the reduction of the total allowable catch is predicted to be only 100,000 lb (45,359 kg), annually over the next 3 years, or 0.66 percent of the overall quota. For the recreational private angling component, the greatest possible reduction in the catch level would be approximately 28,273 lb (12,824 kg), annually, or less than 1 percent of the Gulf-wide private-angling component quota. For the recreational for-hire component, the greatest possible reduction in the catch level would be approximately 20,727 lb (9,402 kg), annually, or less than one percent of the for-hire component quota. However, any change in red snapper catch levels would not occur until the completion of a new stock assessment, which is scheduled to begin in 2021.

Comment 3: The proposed target reduction goal should be phased in over several fishing seasons.

Response: The Council initially considered an alternative that would have phased-in the implementation of the target reduction. However, the Council removed this alternative from further consideration because Amendment 18 also modifies the

framework procedure to allow a more streamlined approach to modify any future effort reduction goals. This will allow the Council to more timely address any new information that indicates the threshold should be changed. The Council also considered an alternative that would have reduced the threshold to 63 percent rather then to 60 percent, but the SEFSC analysis concluded that there would be negligible changes in red snapper catch levels under any of the reduction targets alternatives (63, 60, and 56 percent) considered in Amendment 18. Therefore, the Council determined, and NMFS agrees, that is appropriate to reduce the threshold directly to 60 percent through this final rule.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule is consistent with Amendment 18, the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866. This final rule is considered an Executive Order 13771 deregulatory action. The potential cost savings from this final rule are estimated to be $3.51 million in 2016 dollars, discounted at 7 percent in perpetuity.

The Magnuson-Stevens Act provides the legal basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting and record-keeping requirements are introduced by this rule. Accordingly, the Paperwork Reduction Act does not apply to this rule. A description of this final rule, why it is being implemented, and the purposes of this rule are contained in the preamble and in the **SUMMARY** section of the preamble. The objectives of this rule are to promote economic stability in the Federal Gulf shrimp fishery by reducing effort constraints and to equitably distribute the benefits from red snapper rebuilding, while continuing to protect the Gulf red snapper stock.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) during the proposed rule stage that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. NMFS did not receive any comments from SBA's Office of Advocacy or the public regarding the economic analysis of Amendment 18 or the certification in the proposed rule. No changes to this final rule were made in response to public comments. The factual basis for the certification was published in the proposed rule and is not repeated here. Because this final rule is not expected to have a significant economic impact on a substantial number of small entities, a final regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Bycatch, Commercial, Fisheries, Fishing, Framework, Gulf, Red snapper, Shrimp, Target reduction goal.

Dated: January 24, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.53, revise paragraphs (a)(2)(i)(B) and (a)(2)(ii) to read as follows:

§ 622.53 Bycatch reduction device (BRD) requirements.

(a) * * *

(2) * * *

(i) * * *

(B) After reviewing the application, the RA will determine whether to issue a Gear Test Authorization (GTA) to conduct pre-certification trials upon the vessel specified in the application. If the RA authorizes pre-certification, the RA's GTA must be on board the vessel during any trip involving the BRD testing.

(ii) *Certification.* A person who proposes a BRD for certification for use in the Gulf EEZ must submit an application to test such BRD, conduct the testing, and submit the results of the test in accordance with the ''Bycatch Reduction Device Testing Manual.'' The RA will issue a GTA to conduct certification trials upon the vessel specified in the application if the RA finds that: The operation plan submitted with the application meets the requirements of the ''Bycatch Reduction Device Testing Manual''; the observer identified in the application is qualified; and the results of any pre-certification trials conducted have been reviewed and deemed to indicate a reasonable scientific basis for conducting certification testing. If an application for a GTA is denied, the RA will provide a letter of explanation to the applicant, together with relevant recommendations to address the deficiencies that resulted in the denial. To be certified for use in the fishery, the BRD candidate must successfully demonstrate a 30 percent reduction in total weight of finfish bycatch. In addition, the BRD candidate must satisfy the following conditions: There is at least a 50-percent probability the true reduction rate of the BRD candidate meets the bycatch reduction criterion and there is no more than a 10-percent probability the true reduction rate of the BRD candidate is more than 5 percentage points less than the bycatch reduction criterion. If a BRD meets both conditions, consistent with the ''Bycatch Reduction Device Testing Manual,'' NMFS, through appropriate rulemaking procedures, will add the BRD to the list of certified BRDs in paragraph (a)(3) of this section; and provide the specifications for the newly certified BRD, including any special conditions deemed appropriate based on the certification testing results.

* * * * *

■ 3. In 622.55, revise paragraph (d)(1) to read as follows:

§ 622.55 Closed areas.

* * * * *

(d) * * *

(1) Procedure for determining need for and extent of closures. Each year, in accordance with the applicable framework procedure established by the Gulf Shrimp FMP, the RA will, if necessary, establish a seasonal area closure for the shrimp fishery in all or a portion of the areas of the Gulf EEZ specified in paragraphs (d)(2) through (4) of this section. The RA's determination of the need for such closure and its geographical scope and duration will be based on an annual assessment, by the Southeast Fisheries Science Center, of the shrimp effort and associated shrimp trawl bycatch mortality on red snapper in the 10–30 fathom area of statistical zones 10–21, compared to the 60-percent target reduction of shrimp trawl bycatch mortality on red snapper from the benchmark years of 2001–2003 established in the FMP (which corresponds in terms of annual shrimp effort to 33,124 days fished). The framework procedure provides for adjustment of this target reduction level, consistent with the red snapper stock rebuilding plan and the findings of subsequent stock assessments, via appropriate rulemaking. The assessment will use shrimp effort data for the most recent 12-month period available and will include a recommendation

regarding the geographical scope and duration of the closure. The Southeast Fisheries Science Center's assessment will be provided to the RA on or about March 1 of each year. If the RA determines that a closure is necessary, the closure falls within the scope of the potential closures evaluated in the Gulf Shrimp FMP, and good cause exists to waive notice and comment, NMFS will implement the closure by publication of a final rule in the **Federal Register**. If such good cause waiver is not justified, NMFS will implement the closure via appropriate notice and comment rulemaking. NMFS intends that any closure implemented consistent with this paragraph (d)(l) will begin on the same date and time as the Texas closure, as described in paragraph (a) of this section, unless circumstances dictate otherwise.

* * * * *

■ 4. In § 622.60, revised paragraphs (a) and (b) to read as follows:

§ 622.60 Adjustment of management measures.

* * * * *

(a) *Gulf penaeid shrimp.* For a species or species group: Reporting and monitoring requirements, permitting requirements, size limits, vessel trip limits, closed seasons or areas and reopenings, quotas (including a quota of zero), MSY (or proxy), OY, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, acceptable biological catch (ABC) and ABC control rules, rebuilding plans, restrictions relative to conditions of harvested shrimp (maintaining shrimp in whole condition, use as bait), target effort and fishing mortality reduction levels, bycatch reduction criteria, BRD certification and decertification criteria, BRD testing protocol and certified BRD specifications, and target effort reduction for juvenile red snapper mortality.

(b) *Gulf royal red shrimp.* Reporting and monitoring requirements, permitting requirements, size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, ABC and ABC control rules, rebuilding plans, and restrictions relative to conditions of harvested shrimp (maintaining shrimp in whole condition, use as bait), and target effort reduction for juvenile red snapper mortality.

[FR Doc. 2020–01533 Filed 2–5–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200124–0029]

RIN 0648–BI84

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendments 50A–F

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures described in Amendments 50A, 50B, 50C, 50D, 50E, and 50F to the Fishery Management Plan for Reef Fish Resources in the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council) (Amendments 50A–F). This final rule delegates authority to Louisiana, Mississippi, Alabama, Florida, and Texas (Gulf states), to establish specific management measures for the harvest of red snapper in Federal waters in the Gulf of Mexico (Gulf) by the private angling component of the recreational sector. The purposes of this final rule and Amendments 50A–F are to increase fishing opportunities and economic benefits by allowing each Gulf state to establish specific management measures for the recreational harvest of red snapper in Federal waters by private anglers landing in that state.

DATES: This final rule is effective February 6, 2020.

ADDRESSES: Electronic copies of Amendments 50A–F may be obtained from the website: *https://www.fisheries.noaa.gov/action/amendment-50a-f-state-management-program-recreational-red-snapper*. Amendments 50A–F include an environmental impact statement, environmental assessments, a fishery impact statement, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis.

FOR FURTHER INFORMATION CONTACT: Lauren Waters, NMFS Southeast Regional Office, telephone: 727–824–5305; email: *lauren.waters@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery, which includes red snapper, under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On August 6, 2019, NMFS published a notice of availability for Amendments 50A–F and requested public comment (84 FR 38198). On October 2, 2019, NMFS published a proposed rule for Amendments 50A–F and requested public comment (84 FR 52438). NMFS approved Amendments 50A–F on November 6, 2019. The proposed rule and Amendments 50A–F outline the rationale for the actions contained in this final rule. A summary of the management measures described in Amendments 50A–F and implemented by this final rule is described below.

All weights described in this final rule are in round weight.

Background

The red snapper stock annual catch limit (ACL) is divided into commercial (51 percent) and recreational (49 percent) sector allocations. In 2015, through Amendment 40 to the FMP, the recreational sector was separated into a private angling component and a Federal charter vessel and headboat (for-hire) component until 2022 (80 FR 22422, April 22, 2015). Within the recreational sector, the recreational ACL is allocated 57.7 percent to the private angling component and 42.3 percent to the for-hire component. Recreational harvest of red snapper in Gulf Federal waters is managed through a two-fish bag limit, a 16-inch (40.6 cm), total length (TL), minimum size limit, and fishing seasons for each component that begin on June 1 and close when the annual catch target (ACT) of the respective recreational component is projected to be reached. However, for the 2018 and 2019 fishing years, NMFS issued exempted fishing permits (EFP) to each of the five Gulf states to allow each state to set the fishing season for private anglers landing in that state. The fishing season for the for-hire component continues to be set by NMFS. The Gulf red snapper stock is not undergoing overfishing, and is not overfished but continues to be managed under a rebuilding plan that ends in 2032.

From 1996 through 2014, the recreational fishing season for red snapper in Gulf Federal waters became progressively shorter, and increased catch rates and inconsistent (longer) Gulf state water recreational fishing seasons contributed to recreational harvest overages. Recreational fishermen throughout the Gulf have requested more flexibility from the Council and NMFS in recreational red snapper management to provide greater socio-economic benefits to their local areas.

In 2017, the Council began developing Amendments 50A–F to establish state management programs for the harvest of red snapper in the Gulf by the recreational sector. State management refers to allowing a state to set some regulations applicable to anglers landing red snapper in that state (*e.g.,* recreational bag limits and season length), or in some circumstances applicable to anglers fishing for red snapper in Federal waters off that state (*e.g.,* closed areas). Amendment 50A includes actions affecting all Gulf states and the overall Federal management of recreational red snapper, regardless of whether all Gulf states participate in a state management program. Amendments 50B–F are individual amendments for each Gulf state (Louisiana, Mississippi, Alabama, Florida, and Texas, respectively) and contain the Council's selection of preferred alternatives for each individual state management plan.

Management measures under a state's management program must achieve the same conservation goals as the current Federal management measures (*e.g.,* constrain harvest to the state's allocated portion of the recreational ACL). Although under state management for measures controlling certain harvest activities, red snapper would remain a federally managed species. The Council's Scientific and Statistical Committee would continue to recommend the acceptable biological catch for red snapper, while the Council would determine the total recreational sector, component, and state ACLs.

Management Measures Contained in This Final Rule

This final rule delegates authority to each of the Gulf states to establish specific management measures applicable to private anglers in Gulf Federal waters who are landing red snapper in that state. This rule also allows Texas, Alabama, and Florida to request that NMFS close areas of Federal waters to the harvest and possession of red snapper by private anglers, consistent with the analysis provided in Amendment 50A.

Recreational Components Included in State Management Programs

Currently, the Council and NMFS specify all management measures for both the Federal private angling and for-hire components in Gulf Federal waters. This final rule delegates to each state the authority to establish specific management measures applicable to the private angling component only. The Council and NMFS will continue to specify all management measures applicable to the Federal for-hire component. The provision ending sector separation after the 2022 fishing year is removed, and separate ACLs will continue to be set for each recreational component indefinitely.

NMFS notes that while Amendments 50A–F and this final rule apply to the recreational red snapper private angling component, a vessel with only state-issued for-hire permits, that fishes under a state's private angling component ACL, may not fish in Federal waters.

Delegation

Each state will be required to establish the private angling season structure for harvest of its assigned portion of the ACL, monitor landings, and prohibit further landings of red snapper when the state-specific component ACL is reached or projected to be reached. Each state will also be required to specify a bag limit and a minimum size limit within the range of 14 to 18 inches (35.6 cm to 45.7 cm), TL. In combination, these measures must be expected to maintain harvest levels within the state's ACL. A state could also establish a maximum size limit.

Unless an area of Federal waters is closed to the harvest and possession of red snapper, NMFS expects that enforcement will primarily be conducted in state waters and dockside. However, under the delegation, private anglers will be required to comply with the fishing license or permit requirements of the state in which they intend to land the fish and may possess red snapper in Federal waters only if in compliance with that state's season, bag limit, minimum size limit, and, if applicable, maximum size limit.

If NMFS determines that a state's red snapper private angling-component regulations are inconsistent with the FMP and the state fails to correct the inconsistency after notice and an opportunity to do so, or a state does not specify the required management measures, then NMFS would suspend that state's delegation and publish a notice in the **Federal Register** stating that the default management measures for the red snapper private angling component apply in Federal waters off that state. The default management measures are the current season (June 1 until the projected closure date), bag limit (2 fish per person per day), and minimum size limit (16 inches (40.6 cm), TL). The areas of Federal waters off Florida and off Texas are currently defined in 50 CFR 622.2. This final rule adds definitions of ''off Alabama,'' ''off Mississippi,'' and ''off Louisiana,'' so that each Gulf state will have a defined Federal water boundary off that state.

Allocation

Currently, the red snapper private angling component ACL is managed as a single unit for all of the Gulf states. This final rule apportions the private angling component ACL to each state. The allocation is based on the allocations requested by each state in its EFP application, which totaled 96.22 percent of the overall component ACL. The remaining 3.78 percent is apportioned between Florida and Alabama, proportionally, based on their EFP allocation request. Therefore, this final rule establishes the apportionment of the private angling ACL to each Gulf state as follows: Alabama 26.298 percent (1,122,662 lb (509,231 kg)), Florida 44.822 percent (1,913,451 lb (867,927 kg)), Louisiana 19.120 percent (816,233 lb (370,237 kg)), Mississippi 3.550 percent (151,550 lb (68,742 kg)), and Texas 6.210 percent (265,105 lb (120,250 kg)).

If NMFS suspends one or more state's delegation, NMFS would project the private angling season in Federal waters off the applicable states based on the remaining aggregate portion of the ACL reduced by the established 20 percent buffer that is used to determine the Federal annual catch target. Anglers who fish in Federal waters off a state without an active delegation of authority would fish under the default Federal regulations (season, size limit, and bag limit) as described previously.

Post-Season ACL Adjustments

The final rule establishes post-season accountability measures (AM). An overage adjustment, or payback provision, is an AM that reduces the following year's ACL by a specified amount. The current recreational red snapper post-season AM applies when the stock is classified as overfished and an overage of the total recreational sector's ACL occurs. If red snapper is overfished, the current AM requires NMFS to reduce the recreational sector ACL and ACT, and applicable

component ACL and ACT, in the year following an overage of the total recreational ACL by the full amount of the overage, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary. This final rule establishes additional post-season ACL overage adjustments for states with an active delegation, regardless of stock status. If the landings of a state exceed that state's ACL, then in the following fishing year that state's ACL would be reduced by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary. The total recreational ACL and the total private angling component ACL would also be reduced.

Area Closures

This final rule will allow a Gulf state, consistent with the terms of an active delegation, to request that NMFS close all, or an area of, Federal waters to the harvest and possession of red snapper by private anglers. The state would request the closure by letter to NMFS, providing dates and geographic coordinates for the closure. If the request is within the scope of the analysis in Amendment 50A, NMFS would publish a notice in the **Federal Register** implementing the closure in Federal waters off that state for the fishing year.

Based on the analysis in Amendment 50A, Texas would be able to request a closure of all Federal waters off the state to allow a year-round fishing season in state waters and a limited season in Federal waters by decreasing the catch rate. Florida would be able to request a closure of Federal waters off the west coast of the state, seaward of coordinates approximating the 20-fathom (36.6-m) depth contour or the 35-fathom (64.0-m) depth contour, for the duration of Florida's open private angling component season. Alabama would be able to request a closure of Federal waters off the state, seaward of coordinates approximating the 20-fathom (36.6-m) depth contour or the 35-fathom (64.0-m) depth contour, for the duration of Alabama's open private angling component season. Florida and Alabama want the ability to close deeper waters to potentially extend their seasons by reducing the average size of fish landed. The coordinates for any closure off Texas, Florida, or Alabama are provided in Appendix H of Amendment 50A and would be included in the **Federal Register** notice implementing the closure. Neither Louisiana nor Mississippi provided any potential closures to analyze in Amendment 50A and these states would not be able to request Federal waters closures through this process without further action by the Council.

Comments and Responses

NMFS received a total of 31 comments on the notice of availability and proposed rule for Amendments 50A–F. Of these, 29 agreed with portions of, or the entirety of, the actions in Amendments 50A–F and the proposed rule and 2 were opposed to Amendments 50A–F. Comments specific to Amendments 50A–F and the proposed rule are grouped as appropriate and summarized below, followed by NMFS' specific response.

Comment 1: Private recreational anglers will not be aware of the location of state boundaries that extend into Federal waters and could land fish in a state different than where they were caught. This could lead to overfishing.

Response: The areas of Federal waters off Florida and off Texas are currently defined in 50 CFR 622.2, and this final rule adds definitions of ''off Alabama,'' ''off Mississippi,'' and ''off Louisiana,'' so that each Gulf state will have a defined Federal water boundary off that state. Regardless of where a red snapper is caught, it will be counted towards the ACL of the state in which it is landed. Thus, all red snapper caught by the private angling component will be accounted for under the state management programs. The combined ACLs of the Gulf states are equivalent to the current Federal ACL for private angling component. Therefore, NMFS does not expect overfishing to occur as a result of fishermen fishing in waters off a state other than the state in which the fish are landed.

Comment 2: The AMs in Amendments 50A–F are inadequate to ensure the states stay within their respective ACLs, which could result in exceeding the recreational sector ACL and negatively affecting for-hire fishermen. If the total ACL is also exceeded this could negatively affect the red snapper commercial sector.

Response: NMFS disagrees that the AMs established through Amendments 50A–F are inadequate to ensure that each state's landings are within the state ACL. Amendments 50B–F require each state to monitor landings by the private angling component and to prohibit further landings when the state's ACL is reached or projected to be reached. NMFS expects that each state's ability to constrain landings to its respective ACL will improve with experience, which will make this in-season AM more effective over time. Further, each state has an additional incentive to constrain landings to it's ACL because Amendments 50B–F establish state-specific post-season AMs. Regardless of stock status, if a state's private angling component landings exceeds its allocated ACL, then in the following year that state's private angling component ACL would be reduced by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

Comment 3: Amendments 50A–F and the proposed rule could lead to competition between states to allow private anglers to harvest more fish than neighboring states. This competition could result in overfishing of red snapper.

Response: NMFS disagrees that giving each state the ability to establish specific management measures applicable to red snapper landed in that state will lead to overfishing. Each state must have a recreational bag limit and a minimum size limit between 14 to 18 inches (35.6 cm to 45.7 cm), TL, and may establish a maximum size limit. While this allows each state some management flexibility, that flexibility is limited in scope because each state is also allocated a portion of the total private recreational ACL and is required to monitor landings and prohibit harvest when its respective ACL has been met. If NMFS determines that a state's red snapper private angling-component regulations are inconsistent with the FMP and the state fails to correct the inconsistency after NMFS provides notice and an opportunity to do so, or a state does not specify the required management measures described in this final rule, then NMFS would suspend that state's delegation and the default management measures for the red snapper private angling component would then apply in the Federal waters off that state.

Comment 4: States should improve the accuracy and completeness of private angling component landings data by adopting requirements similar to those used in the commercial sector, such as electronic reporting prior to landing and penalties for inaccurate reporting.

Response: The Council did not consider requiring more stringent reporting requirements for the private angling component in Amendments 50A–F. Each state is required to establish the private angling season structure for harvest of its assigned portion of the ACL, monitor landings, and prohibit further landings of red snapper when the state-specific

component ACL is reached or projected to be reached. Each state has a program to monitor recreational red snapper landings and has the ability to enforce its reporting requirements.

Comment 5: It is unclear how NMFS will assess whether the state ACLs and the overfishing limit have been exceeded because each state's ACL was calculated using MRIP-based landings, but each state is monitoring its landings using its own reporting system, and none of the state reporting systems are directly comparable to the ACL. Therefore, NMFS should implement state ACLs that are calibrated to each state's data collection program or reduce the states' ACLs by a buffer that accounts for uncertainty in the different programs. If NMFS fails to address this common currency issue before implementation of this final rule, then Amendments 50A–F and the final rule would be inconsistent with National Standard 1 regarding preventing overfishing while achieving optimum yield, and National Standard 2 regarding management measures being based upon the best scientific information available. Amendments 50A–F and final rule would also be inconsistent with several other provisions of the Magnuson-Stevens Act, such as the requirements to establish ACLs and AMs, have separate quotas for the commercial and recreational sectors, rebuild overfished stocks, and fairly and equitably allocate recovery benefits.

Response: NMFS agrees that the state ACLs should be calibrated to each state's reporting system. The NMFS Office of Science & Technology is working with the Gulf states to develop a peer-reviewed calibration that is expected to be available in the spring of 2020. When the calibration is available, NMFS intends to apply it to the established state ACLs and implement catch levels in the appropriate state currencies through appropriate rulemaking. When implemented, each state's landings will be compared to its revised ACL to determine if there was an overage. As noted previously, this rule requires that each state payback any overage in a fishing year during the following fishing year. Because the rule adjusting the state ACLs may not be complete until late 2020, NMFS intends to inform each state of any anticipated change in its ACL as soon as possible to allow the states to set or modify their management measures, as appropriate. This will help ensure that the private angling ACL is not exceeded and overfishing of the red snapper stock does not occur in 2020. Implementing the calibrated ACLs in 2020 will also help ensure that this final rule is consistent the Magnuson-Stevens Act.

Comment 6: The state ACL allocations should be based on biological factors such as habitat area and the number of fish in that area, not on the number of permit holders or the amount of fish caught in that state. Additionally, the allocation of the ACL among the states is not fair and equitable.

Response: The Council considered several alternatives to allocate the private recreational ACL among the states. Some allocation alternatives were based on historical landings but others were based on spatial abundance of red snapper biomass in combination with a proportion of recreational trips. However, the Council selected the state ACL allocations based on the amounts requested by each state in its EFP application that were submitted for the 2018–2019 fishing seasons, which totaled 96.22 percent of the private-angling component ACL. The remaining 3.78 percent of the component ACL was allocated between Florida and Alabama proportionally based on their EFP requests because these two states had the shortest private angling fishing seasons under the EFPs. The Council determined, and NMFS agrees, that the allocation in the final rule is fair and equitable because Texas, Louisiana, and Mississippi were allocated enough to maintain their private angling fishing seasons under the EFPs, and Florida and Alabama are allocated slightly more than requested under the EFPs to provide the opportunity for those states to increase their private angling fishing season length.

Comment 8: The impact of bycatch, including bycatch of juvenile red snapper by the Gulf shrimp fishery, should be considered in setting red snapper catch levels and state ACL allocations.

Response: The Council did not consider adjusting the red snapper component or sector catch levels in Amendments 50A–F or adjusting the state ACL allocations based on the impacts of red snapper bycatch in another fishery. Bycatch of red snapper, including bycatch attributed to the Gulf shrimp fishery, is addressed in the red snapper stock assessment, which is used to set red snapper catch levels. The most recent stock assessment for red snapper that occurred in 2018 was used to set the current catch levels and was referenced in developing Amendments 50A–F. Future stock assessments will continue to incorporate information on red snapper bycatch and will be used to revise catch levels as appropriate.

Classification

The Regional Administrator, Southeast Regional Office, NMFS has determined that this final rule is consistent with the applicable FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis is not repeated here. No public comments were made related to the economic implications and potential impacts on small entities, and no changes to this final rule were made in response to public comments. As a result, a final regulatory flexibility analysis was not required and none was prepared.

The Assistant Administrator for NMFS finds that there is good cause to waive the 30-day delay of this final rule's effectiveness, pursuant to the authority set forth in 5 U.S.C. 553(d)(3), as such procedure for this final rule would be contrary to the public interest.

Delaying the effectiveness of this final rule would be contrary to the public interest because of the need to implement this action as soon as possible in 2020. The fishing year for Gulf red snapper began on January 1, 2020, and the Gulf states need to specify their private angling management measures, including the fishing season, for this fishing year. Some of the states may want to allow the private angling component to fish for red snapper before June 1, the date the Federal season would open in the absence of this rule. Delaying the implementation of this final rule will decrease the flexibility each Gulf state has to set its season, and the time each Gulf state has to implement its state-specific management measures. Allowing the maximum available time for the state seasons and for the state process to take place is in the public interest because it increases the expected benefits of this final rule with respect to recreational fishing opportunities.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf, Recreational, Red snapper.

Dated: January 24, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.1, paragraph (d), Table 1, add footnote 10 to the entry for ''FMP for the Reef Fish Resources of the Gulf of Mexico'' to read as follows:

§ 622.1 Purpose and scope.

* * * * *

(d) * * *

TABLE 1 TO § 622.1—FMPS IMPLEMENTED UNDER PART 622

FMP title	Responsible fishery management council(s)	Geographical area
* * * * * * *		
FMP for the Reef Fish Resources of the Gulf of Mexico.	GMFMC	Gulf.[1 3 4 7 10]
* * * * * * *		

[1] Regulated area includes adjoining state waters for purposes of data collection and quota monitoring.

* * * * * * *

[3] Regulated area includes adjoining state waters for Gulf red snapper harvested or possessed by a person aboard a vessel for which a Gulf red snapper IFQ vessel account has been established or possessed by a dealer with a Gulf IFQ dealer endorsement.

[4] Regulated area includes adjoining state waters for Gulf groupers and tilefishes harvested or possessed by a person aboard a vessel for which an IFQ vessel account for Gulf groupers and tilefishes has been established or possessed by a dealer with a Gulf IFQ dealer endorsement.

* * * * * * *

[7] Hogfish are managed by the FMP in the Gulf EEZ except south of 25°09′ N lat. off the west coast of Florida. Hogfish in the remainder of the Gulf EEZ south of 25°09′ N lat. off the west coast of Florida are managed under the FMP for the Snapper-Grouper Fishery of the South Atlantic Region.

* * * * * * *

[10] Certain provisions for the management of the private angling component of recreational red snapper in the Gulf EEZ have been delegated to the Gulf states, as specified in § 622.23.

■ 3. In § 622.2, remove the definition of ''Off Louisiana, Mississippi, and Alabama'' and add in alphabetical order definitions for ''Off Alabama'', ''Off Louisiana'', and ''Off Mississippi'' to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Off Alabama means the waters in the Gulf west of a rhumb line at 87°31.1′ W long., which is a line directly south from the Alabama/Florida boundary, to a rhumb line at 88°23.1′ W long., which is a line directly south from the Mississippi/Alabama boundary.

* * * * *

Off Louisiana means the waters in the Gulf west of a rhumb line at 89°10.0′ W long., which is a line extending directly south from South Pass Light, to a rhumb line beginning at 29°32.1′ N lat., 93°47.7′ W long. and extending to 26°11.4′ N lat., 92°53.0′ W long., which line is an extension of the boundary between Louisiana and Texas.

Off Mississippi means the waters in the Gulf west of a rhumb line at 88°23.1′ W long., which is a line directly south from the Mississippi/Alabama boundary, to a rhumb line at 89°10.0′ W long., which is a line extending directly south from South Pass Light.

* * * * *

■ 4. In § 622.3, add paragraph (f) to read as follows:

§ 622.3 Relation to other laws and regulations.

* * * * *

(f) Alabama, Florida, Louisiana, Mississippi, and Texas are delegated the authority to specify certain management measures related to the harvest and possession of red snapper by the private angling component in the Gulf EEZ. See § 622.23 for the Gulf recreational red snapper management measures that have been delegated.

■ 5. Section 622.23 is added to read as follows:

§ 622.23 State management of the red snapper recreational sector private angling component in the Gulf EEZ.

(a) *Delegation.* Alabama, Florida, Louisiana, Mississippi, and Texas (Gulf states) are delegated the authority to manage certain aspects of recreational red snapper harvest by the private angling component in the Gulf EEZ (*i.e.,* delegation). All other management measures for recreational red snapper in the Gulf EEZ not specified in this section continue to apply during state management.

(1) *Delegation of authority.* As described in the FMP for the Reef Fish Resources of the Gulf of Mexico, each Gulf state must specify the red snapper private angling component fishing season start and end dates to maintain harvest levels within the state's ACL, as stated in paragraph (a)(1)(ii) of this section. Each state must also specify a recreational bag limit and a minimum size limit within the range of 14 to 18 inches (35.6 cm to 45.7 cm), total length. Each state may specify a maximum size limit. If NMFS determines that a state's red snapper private angling component regulations are inconsistent with the FMP and the state fails to correct the inconsistency after notice and an opportunity to do so, or a state does not specify the required management measures set forth above, *i.e.,* fishing season start and end dates, a recreational bag limit, and a minimum size limit, then NMFS will publish a notice in the **Federal Register** stating that the default management measures for the red snapper private angling component, as described in paragraph (a)(2) of this section, apply in the EEZ off that state.

(i) *State management areas.* For purposes of the delegation of the authority to establish certain management measures for the red snapper private angling component, five areas in the Gulf EEZ have been established; one off each of the five Gulf states: Alabama, Florida, Louisiana, Mississippi, and Texas. The boundaries off each state are described in § 622.2.

(ii) *State private angling component ACLs.* All ACLs specified below are in round weight.

(A) *Alabama regional management area*—1,122,662 lb (509,231 kg).

(B) *Florida regional management area*—1,913,451 lb (867,927 kg).

(C) *Louisiana regional management area*—816,233 lb (370,237 kg).

(D) *Mississippi regional management area*—151,550 lb (68,742 kg).

(E) *Texas regional management area*—265,105 lb (120,250 kg).

(2) *Default management measures.* If a state's delegation is suspended, the Federal management measures for the private angling season, recreational bag limit, and minimum size limit as described in §§ 622.34(b) (seasonal closure), 622.37(a)(1) (size limit), 622.38(b)(3) (bag limit), and 622.41(q)(2)(i) (season length) apply in the EEZ off that state. All other management measures not specified in this section remain in effect.

(b) *Post-season ACL adjustments for states with an active delegation.* If a state's red snapper private angling component landings exceed the applicable state's component ACL specified in paragraph (a)(1)(ii) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, reducing that state's private angling ACL by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(c) *Area closures.* As described in the FMP, for the red snapper private angling component, a state with an active delegation may request that NMFS establish an area closure in the EEZ off that state that prohibits the private angling component from harvesting or possessing red snapper. If NMFS determines that the request is within the scope of the analysis in the FMP, NMFS will publish a notice in the **Federal Register** to implement the requested closure for the fishing year.

■ 6. In § 622.34, revise paragraph (b) to read as follows:

§ 622.34 Seasonal and area closures designed to protect Gulf reef fish.

* * * * *

(b) *Seasonal closure of the recreational sector for red snapper.* The recreational sector for red snapper in or from the Gulf EEZ is closed from January 1 through May 31, each year. During the closure, the bag and possession limit for red snapper in or from the Gulf EEZ is zero. See § 622.23(a)(1) regarding the fishing season for states with an active delegation of state management of the red snapper private angling component. A person subject to the private angling component bag limit under an active delegation of state management must be in compliance with the fishing license (permit) requirements of the state in which they intend to land the fish and may not possess red snapper in the Gulf EEZ when that state season is closed.

* * * * *

■ 7. In § 622.37, revise paragraph (a)(1) to read as follows:

§ 622.37 Size limits.

* * * * *

(a) * * *

(1) *Red snapper*—16 inches (40.6 cm), TL, for a fish taken by a person subject to the bag limit specified in § 622.38(b)(3) and 13 inches (33.0 cm), TL, for a fish taken by a person not subject to the bag limit. See § 622.23(a)(1) regarding the minimum size limit for states with an active delegation of state management of the red snapper private angling component. A person subject to the private angling component bag limit under an active delegation of state management must be in compliance with the fishing license (permit) requirements of the state in which they intend to land the fish and may not possess red snapper in the Gulf EEZ that are smaller than may be possessed in that state. Additionally, fish taken by persons subject to the private angling component bag limit under state management may not be less than 14 inches (35.6 cm), TL, in the Gulf EEZ.

* * * * *

■ 8. In § 622.38, revise paragraph (b)(3) to read as follows:

§ 622.38 Bag and possession limits.

* * * * *

(b) * * *

(3) *Red snapper*—2. However, no red snapper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero. See § 622.23(a)(1) regarding the bag limit applicability for states with an active delegation of state management of the red snapper private angling component. A person subject to the private angling component bag limit under an active delegation of state management must be in compliance with the fishing license (permit) requirements of the state in which they intend to land the fish and may not possess more red snapper in the Gulf EEZ than may be possessed in that state.

* * * * *

■ 9. In § 622.39, revise paragraphs (a)(2)(i)(B) and (C) to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(2) * * *

(i) * * *

(B) *Federal charter vessel/headboat component quota.* The Federal charter vessel/headboat component quota applies to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. A person aboard a vessel that has been issued a charter vessel/headboat permit for Gulf reef fish any time during the fishing year may not harvest or possess red snapper in or from the Gulf EEZ when the Federal charter vessel/headboat component is closed. The Federal charter vessel/headboat component quota is 3.130 million lb (1.420 million kg), round weight.

(C) *Private angling component quota.* The private angling component quota applies to vessels that fish under the bag limit and have not been issued a Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. The private angling component quota is 4.269 million lb (1.936 million kg), round weight.

* * * * *

■ 10. In § 622.41, add a sentence to the end of paragraph (q)(2)(i) and revise paragraph (q)(2)(iii) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(q) * * *

(2) * * *

(i) * * * See § 622.23 (a)(1) regarding the fishing season for the private angling component for states with an active delegation.

* * * * *

(iii) *Recreational ACTs.*

(A) [Reserved]

(B) *Federal charter vessel/headboat component ACT.* The Federal charter vessel/headboat component ACT applies to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. A person aboard a

vessel that has been issued a charter vessel/headboat permit for Gulf reef fish any time during the fishing year may not harvest or possess red snapper in or from the Gulf EEZ when the Federal charter vessel/headboat component is closed. For the 2019 fishing year, the component ACT is 2.848 million lb (1.292 million kg), round weight. For the 2020 and subsequent fishing years, the component ACT is 2.504 million lb (1.136 million lb), round weight.

(C) *Private angling component ACT.* The private angling component ACT applies to vessels that fish under the bag limit and have not been issued a Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. The component ACT is 3.415 million lb (1.549 million kg), round weight.

[FR Doc. 2020–01653 Filed 2–5–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200128–0033]

RIN 0648–BJ31

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic Region; Regulatory Amendment 30

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Regulatory Amendment 30 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) (Regulatory Amendment 30), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule modifies the spawning season closures for the commercial and recreational sectors in the exclusive economic zone (EEZ) off North Carolina and South Carolina and establishes a commercial trip limit. Additionally, Regulatory Amendment 30 revises the rebuilding schedule for red grouper. The purpose of this final rule and Regulatory Amendment 30 is to modify the rebuilding schedule and extend protections for red grouper during the spawning season.

DATES: This final rule is effective on March 9, 2020.

ADDRESSES: Electronic copies of Regulatory Amendment 30 may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/regulatory-amendment-30-red-grouper-rebuilding-plan.* Regulatory Amendment 30 includes an environmental assessment (EA), a Regulatory Flexibility Act analysis, and a regulatory impact review.

FOR FURTHER INFORMATION CONTACT: Mary Vara, telephone: 727–824–5305; email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the FMP, and includes red grouper along with other snapper-grouper species. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On October 29, 2019, NMFS published a proposed rule for Regulatory Amendment 30 and requested public comment (84 FR 57840). The proposed rule and Regulatory Amendment 30 outline the rationale for the actions contained in this final rule. A summary of the management measures described in Regulatory Amendment 30 and implemented by this final rule is described below.

Background

Red grouper are harvested by both commercial and recreational fishers throughout the South Atlantic. In 2010, a Southeast Data, Assessment and Review (SEDAR) benchmark assessment (SEDAR 19) was completed for South Atlantic red grouper. Based on the results of SEDAR 19, NMFS determined that red grouper was overfished and undergoing overfishing. Amendment 24 to the FMP established a 10-year rebuilding plan that began in 2011, with an end date of 2020 (77 FR 34254; June 11, 2012).

A stock assessment update (SEDAR 53) for red grouper was completed in February 2017 using data through 2015. SEDAR 53 indicated the stock was still overfished and undergoing overfishing, and that stock rebuilding would not be possible by 2020, which is the terminal year of the current rebuilding plan. Therefore, on September 27, 2017, NMFS sent a letter to the Council stating that the South Atlantic red grouper stock was overfished and undergoing overfishing and not making adequate progress towards rebuilding. The Magnuson-Stevens Act requires the implementation of management measures to end overfishing immediately and revise or implement a rebuilding plan within 2 years of notification by NMFS to the Council of this stock status. Therefore, in Abbreviated Framework Amendment 1 to the FMP, NMFS implemented actions to immediately end overfishing of red grouper by reducing the total, commercial, and recreational annual catch limits (ACLs) based on the acceptable biological catch recommendation from the Council's Scientific and Statistical Committee (83 FR 35435; July 26, 2018).

Continued harvest at the levels specified in Abbreviated Framework Amendment 1 is expected to allow for rebuilding the red grouper stock within 10 years, but because the red grouper stock is not projected to fully rebuild by 2020 (SEDAR 53), the Council must also revise the current rebuilding plan so the stock rebuilds in the timeframe mandated by the Magnuson-Stevens Act. Regulatory Amendment 30 addresses the revision to the rebuilding plan.

Management Measures Contained in This Final Rule

For red grouper, this final rule modifies the spawning season closure for the commercial and recreational sectors in the EEZ off North Carolina and South Carolina, and establishes a commercial trip limit.

Commercial and Recreational Spawning Season Closure

Currently, the commercial and recreational spawning season closure for shallow-water groupers, which includes red grouper, is January through April each year throughout the South Atlantic EEZ. In the EEZ off North Carolina and South Carolina, red grouper spawning occurs during February through June and peaks in April. To extend protection for red grouper during spawning season, this final rule extends the January through April spawning season closure for red grouper through May in the EEZ off North Carolina and South Carolina for both the commercial and recreational sectors.

This action was developed in response to stakeholder concerns that red grouper are often found in spawning condition past the January through April shallow-water grouper spawning season closure, particularly in May, in the EEZ off North Carolina and South Carolina. This final rule also extends the prohibition on the commercial sale and purchase of red grouper in the EEZ off

North Carolina and South Carolina from January through May as part of the revised spawning season closure.

Commercial Trip Limit

There is currently no commercial trip limit for red grouper in the South Atlantic. This final rule establishes a commercial trip limit for red grouper harvested in the South Atlantic EEZ of 200 lb (91 kg), gutted weight. The trip limit is expected to help rebuild the red grouper stock by discouraging directed commercial fishing for the species, although it is not likely to substantially reduce the current level of commercial harvest of red grouper. The Council selected a commercial trip limit that in combination with extending the spawning season closure for red grouper off North Carolina and South Carolina would constrain harvest to help rebuild the stock.

Measures in Regulatory Amendment 30 Not Codified in This Final Rule

The Council selected a 10-year rebuilding plan for red grouper in Regulatory Amendment 30, which is the maximum time allowed under the Magnuson-Stevens Act, and which would begin in 2019 (Year 1) and end in 2028 (Year 10).

Implementation of reduced total and sector ACLs, beginning in 2018, which was specified in Abbreviated Framework Amendment 1, is expected to end overfishing of South Atlantic red grouper. Given that poor recruitment appears to be the primary factor currently affecting stock rebuilding, and the projections upon which the rebuilding schedules alternatives in Regulatory Amendment 30 are based assumed long-term average recruitment, the Council selected the alternative for the longest rebuilding schedule (10 years) to account for the possibility that future recruitment might be lower than assumed in the projections.

Comments and Responses

A total of 8 comments were received on Regulatory Amendment 30 and the proposed rule from individuals and fishing organizations. All but one of the comments supported the actions in the proposed rule and Regulatory Amendment 30. Some comments suggested ending fishing subsidies and creating marine protected areas where red grouper occur. The Council does not provide fishing subsidies in the snapper-grouper fishery, and because additional protected areas were not considered by the Council in Regulatory Amendment 30, NMFS is not able to independently add them for consideration at this time; therefore, these comments are not addressed further in this final rule. Comments that specifically relate to the actions contained in the Regulatory Amendment 30 and the proposed rule, are summarized and responded to below.

Comment 1: The proposed seasonal closure is not aggressive enough to extend protection to red grouper during their spawning season. Because red grouper spawn from February to June, adding another month to the harvest prohibition would help rebuild the population.

Response: NMFS agrees that the longer the spawning season closure for red grouper, the greater the biological benefits to the stock from allowing the species to have additional spawning opportunities. Since new stock biomass can be increased through growth and recruitment, reducing fishing pressure and protecting red grouper during their vulnerable spawning stages can be expected to increase stock abundance and biomass. Therefore, a longer spawning season prohibition could create indirect, long-term, positive biological and economic effects presumably through the availability of increased numbers of fish in the future.

In the South Atlantic region, red grouper spawn from February through June off the Carolinas. The Council considered an alternative that would extend the January-April spawning season closure through June off the Carolinas but did not select it as their preferred. Instead, the Council chose to add May to the January-through-April seasonal prohibition of red grouper harvest in and from the EEZ off North Carolina and South Carolina in response to concerns that red grouper are often found in spawning condition during that month. Thus, the Council chose to realize the biological benefits of including the peak spawning month of May in the prohibition off North Carolina and South Carolina, while minimizing short-term adverse socio-economic effects to fishermen by not including June in the closure.

Studies show that red grouper spawn from January through May in Federal waters off east Florida. There was also stakeholder feedback and scientific evidence cited in Amendment 30 that red grouper spawn earlier in the year in the southern part of the Council's jurisdiction; therefore, Georgia and Florida were not included in alternatives for the action to extend the current January-through-April spawning season prohibition. Additionally, there are minimal landings of red grouper in Georgia, which would preclude the need to extend the seasonal closure in Federal waters off that state.

The seasonal closure modification is in addition to the Council's choice of a conservative rebuilding time-frame (10 years), and a 200-lb commercial trip limit. The cumulative effects of these actions are expected to protect the spawning populations and rebuild the red grouper stock.

Comment 2: The implementation of a commercial trip limit of 200 lb (91 kg), gutted weight, is too high and may not result in any beneficial effect on the population, since commercial fishing trips for grouper are usually less than 200 lb (91 kg), gutted weight.

Response: NMFS disagrees. Currently, there is no commercial trip limit for red grouper. Although most commercial trips do land less than 200 lb (91 kg) of red grouper, the Council reviewed data (including SEDAR 53, 2017) and public input, and selected the commercial trip limit of 200 lb (91 kg) which, in combination with extending the spawning season closure for red grouper off North Carolina and South Carolina would constrain harvest and help rebuild the stock. The limit of 200 lb (91 kg), would still be large enough to allow commercial fishers for whom red grouper are an important species (such as those in south Florida and the Florida Keys) to maintain some trip profitability. NMFS expects the trip limit to minimize adverse socio-economic effects by allowing fishers to retain some red grouper caught incidentally when fishing for other snapper-grouper species.

Classification

The Administrator, Southeast Region, NMFS, determined that the Regulatory Amendment 30 is necessary for the conservation and management of the snapper-grouper fishery and that it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866. This final rule is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared. An FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS responses to those comments, and a summary of the analyses completed to support the actions.

No significant issues were raised by public comment in response to the

IRFA. Moreover, there is no new information that would change the estimates and conclusions of the IRFA. The rule concerns commercial and recreational fishing for red grouper in Federal waters of the South Atlantic. It directly effects both anglers (recreational fishers) and commercial fishing businesses that harvest red grouper in the South Atlantic EEZ.

Anglers are not considered small entities as that term is defined in 5 U.S.C. 601(6). Therefore, neither estimates of the number of anglers nor the impacts on them are required or provided in this final rule.

Any business that operates a commercial fishing vessel that harvests red grouper in the South Atlantic EEZ must have a valid Federal snapper-grouper permit assigned to that vessel.

NMFS estimates from 210 to 225 permitted vessels will be directly affected by the rule. NMFS expects all of the businesses with the 210 to 225 vessels operate primarily in the commercial fishing industry. For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily involved in commercial fishing (NAICS 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of $11 million for all of its affiliated operations worldwide. NMFS expects all of the businesses that operate permitted vessels that land red grouper are small.

This rule does not impose additional reporting or record-keeping requirements on small businesses. The action to change the rebuilding schedule has an indirect impact on small businesses and its impact will be dependent on additional action. The action has a direct impact on anglers, and as explained previously, anglers are not small entities. The action to revise the seasonal closure for the recreational sector would have a direct impact on anglers, but as explained previously, anglers are not small entities.

The action to revise the seasonal closure for the commercial sector adds the month of May to the current January through April prohibition on fishing for and possession of red grouper in Federal waters off North Carolina and South Carolina. That additional month is expected to eliminate from 6,956 lb (3,155 kg), gutted weight, to 12,477 lb (6,660 kg), gutted weight, of red grouper commercially landed in May, and the average annual loss per North and South Carolina vessel that lands red grouper in May would range from 141 lb (64 kg), gutted weight, to 210 lb (95 kg), gutted weight, and from $649 to $977 (2017 dollars). However, when differentiated by state, the action reduces the average North Carolina vessel's annual revenue by $497 to $649 (2017 dollars) (1.3 percent to 1.8 percent) and reduces the average South Carolina vessel's annual revenue by $713 to $977 (2017 dollars) (0.6 percent to 0.7 percent).

Finally, this final rule establishes a 200-lb (91 kg), gutted weight, commercial trip limit in Federal waters of the South Atlantic in effect when fishing is allowed. From 2013 through 2017, an annual average of nine vessels landed more than 200 lb (91 kg), gutted weight, of red grouper in North Carolina and South Carolina from June through December. Those nine vessels represent from 9.7 percent to 11.9 percent of the vessels that land red grouper annually in North Carolina and South Carolina. The trip limit is expected to reduce average landings by 107–117 lb (49–53 kg), gutted weight, per trip and reduce average dockside revenue from $498 to $538 (2017 dollars). Those losses represent less than 1 percent of average annual revenues for North Carolina and South Carolina vessels.

An annual average of three vessels make seven trips that land more than 200 lb (91 kg), gutted weight, of red grouper in Georgia and Florida from May through December. Those three Georgia/Florida vessels represent from 2.1 percent to 2.2 percent of permitted vessels that land red grouper in Georgia and Florida annually. NMFS estimates that each of the three vessels will lose from $3,441 to $3,471 (2017 dollars) in dockside revenue annually. Those figures represent from 6.5 percent to 6.6 percent of the average Georgia/Florida vessel's dockside revenue from all landings; however, the three vessels have annual revenues substantially greater than the average for the 134 to 143 Georgia/Florida vessels that land red grouper annually.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Southeast Regional Office, and the guide, *i.e.,* permit holder letter, will be sent to all holders of permits for the snapper-grouper fishery. The guide and this final rule will be available upon request.

A copy of this analysis is available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Red grouper, Seasonal closure, South Atlantic, Trip limits.

Dated: January 28, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.183, revise paragraph (b)(1) to read as follows:

§ 622.183 Area and seasonal closures.

* * * * *

(b) * * *

(1) *Seasonal closure of the commercial and recreational sectors for gag and associated grouper species.* During January through April each year, no person may fish for, harvest, or possess in or from the South Atlantic EEZ any South Atlantic shallow-water grouper (SASWG): Gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, yellowfin grouper, graysby, and coney. For a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, these prohibitions against fishing, harvesting, or possessing apply in the South Atlantic, *i.e.,* in state or Federal waters. Additionally, in the month of May, no person may fish for, harvest, or possess any South Atlantic red grouper in or from the South Atlantic EEZ off North Carolina or off South Carolina. For a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, these prohibitions against fishing, harvesting, or possessing red grouper in May apply in state waters off North Carolina and off South Carolina.

* * * * *

■ 3. In § 622.191, add paragraph (a)(15) to read as follows:

§ 622.191 Commercial trip limits.

(a) * * *

(15) *Red grouper.* Until the commercial ACL specified in § 622.193(d)(1)(iii) is reached—200 lb (91 kg), gutted weight; 236 lb (107 kg), round weight. See § 622.193(d)(1) for the limitations regarding red grouper after the commercial ACL is reached.

* * * * *

■ 4. In § 622.192, revise paragraph (h) to read as follows:

§ 622.192 Restrictions on sale/purchase.

* * * * *

(h) During January through April, no person may sell or purchase a gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, yellowfin grouper, graysby, or coney harvested from or possessed in the South Atlantic EEZ or, if harvested or possessed by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic, *i.e.,* in state or Federal waters. Additionally, in the month of May, no person may sell or purchase South Atlantic red grouper harvested from or possessed in the South Atlantic EEZ off North Carolina or off South Carolina, or, if harvested or possessed by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued, harvested in or from the EEZ or state waters off North Carolina or off South Carolina. The prohibitions on sale and purchase during January through May do not apply to such species that were harvested, landed ashore, and sold prior to January 1 and were held in cold storage by a dealer or processor. These prohibitions also do not apply to a dealer's purchase or sale of such species harvested from an area other than the South Atlantic, provided such fish are accompanied by documentation of harvest outside the South Atlantic. The requirements for such documentation are specified in paragraph (i) of this section.

* * * * *

[FR Doc. 2020–01917 Filed 2–5–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket Nos. 120328229–4949–02 and 180117042–8884–02; RTID 0648–XT032]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; Purse Seine category annual quota adjustment; quota transfer.

SUMMARY: NMFS is adjusting the Atlantic bluefin tuna (BFT) Purse Seine and Reserve category quotas for 2020, as it has done annually since 2015. NMFS also is transferring 51 metric tons (mt) of BFT quota from the Reserve category to the General category January 2020 period (from January 1 through March 31, 2020, or until the available subquota for this period is reached, whichever comes first). The transfer to the General category is based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: Effective February 5, 2020, through December 31, 2020.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 978–281–9260, Nicholas Velseboer 978–675–2168, or Larry Redd, 301–427–8503.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), and amendments. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

Annual Adjustment of the BFT Purse Seine and Reserve Category Quotas

The current baseline Purse Seine, General, and Reserve category quotas are codified as 219.5 mt, 555.7 mt, and 29.5 mt, respectively. Pursuant to § 635.27(a)(4), NMFS has determined the amount of quota available to the Atlantic Tunas Purse Seine category participants in 2020, based on their BFT catch (landings and dead discards) in 2019. In accordance with the regulations, NMFS makes available to each Purse Seine category participant either 100 percent, 75 percent, 50 percent, or 25 percent of the individual baseline quota allocations based on the previous year's catch, as described in § 635.27(a)(4)(ii), and reallocates the remainder to the Reserve category. NMFS has calculated the amounts of quota available to the Purse Seine category participants for 2020 based on their individual catch levels in 2019 and the codified process adopted in Amendment 7. NMFS did not open the Purse Seine fishery in 2019 because there were no purse seine vessels permitted to fish for BFT and thus no catch in 2019. As a result, each Purse Seine category participant will receive 25 percent of the individual baseline quota amount, which is the required distribution even with no fishing activity under the current regulations. The individual baseline amount is 43.9 mt (219.5 mt divided by five Purse Seine category participants), 25 percent of which is 11 mt. Consistent with § 635.27(a)(4)(v)(C), NMFS notifies Atlantic Tunas Purse Seine category participants of the amount of quota available for their use this year through the Individual Bluefin Quota electronic system established under § 635.15 and in writing.

By summing the individual available allocations, NMFS has determined that 55 mt are available to the Purse Seine category for 2020. Thus, the amount of Purse Seine category quota to be reallocated to the Reserve category is 164.5 mt (219.5 mt − 55 mt). This reallocation results in an adjusted 2020 Reserve category quota of 194 mt, before any further transfers to other categories.

Transfer of 51 mt From the Reserve Category to the General Category

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories after considering regulatory determination

criteria at § 635.27(a)(8). For 2020 to date, NMFS has transferred 19.5 mt from the General category December 2020 subquota period to the January 2020 subquota period (85 FR 17, January 2, 2020), resulting in an adjusted General category January period subquota of 49 mt.

NMFS has considered all of the relevant determination criteria and their applicability to the inseason quota transfer. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by BFT dealers continue to provide NMFS with valuable data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT over the longest time-period allowable would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date (including during the winter fishery in the last several years), and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). As of January 28, 2020, the General category has landed 14.9 mt of its adjusted January 2020 subquota of 49 mt. Commercial-size BFT are currently readily available to vessels fishing under the General category quota. Without a quota transfer at this time, General category participants would have to stop BFT fishing activities with very short notice, while commercial-sized BFT remain available in the areas General category permitted vessels operate. Transferring 51 mt of BFT quota from the Reserve category would result in a total of 100 mt being available for the General category for the January 2020 subquota period.

Regarding the projected ability of the vessels fishing under the particular category quota (here, the General category) to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings over the last several years and landings to date this year. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. NMFS anticipates that all 51 mt of transferred quota will be used by March 31. In the unlikely event that any of this quota is unused by March 31, the unused quota will roll forward to the next subperiod within the calendar year (*i.e.,* the June through August time period), and NMFS anticipates that it would be used by the subquota category before the end of the fishing year.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2020 landings and dead discards. In the last several years, total U.S. BFT landings have been below the total available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS will need to account for 2020 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and NMFS anticipates having sufficient quota to do that, even with this 51-mt transfer to the General category.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the transfer on accomplishing the objectives of the FMP (§ 635.27(a)(8)(v) and (vi)). This transfer would be consistent with the current U.S. quota, which was established and analyzed in the 2018 BFT quota final rule, and with objectives of the 2006 Consolidated HMS FMP and amendments, which include measures to meet obligations related to ending overfishing and rebuilding stocks (§ 635.27(a)(8)(v) and (vi)). Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations (related to § 635.27(a)(8)(x)). Specific to the General category, this includes providing opportunity equitably across all time periods.

NMFS also anticipates that some underharvest of the 2019 adjusted U.S. BFT quota will be carried forward to 2020 and placed in the Reserve category, in accordance with the regulations, later this year. This, in addition to the fact that any unused General category quota will roll forward to the next subperiod within the calendar year and NMFS' plan to actively manage the subquotas to avoid any exceedances, makes it likely that General category quota will remain available through the end of 2020 for December fishery participants. NMFS also may transfer unused quota from the Reserve or other categories, inseason, based on consideration of the determination criteria, as it did in 2019 (*i.e.,* transferred 60 mt from the Reserve category effective September 11, 2019 (84 FR 48566, September 16, 2019); 100 mt from the Reserve category effective October 1, 2019 (84 FR 52806, October 3, 2019); and 53.2 mt from the Reserve category effective November 18, 2019 (84 FR 63812, November 19, 2019). NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota in 2020, through active inseason management measures, such as retention limit adjustments and/or the timing of quota transfers, as practicable (§ 635.27(a)(8)(viii)). Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds considering the expected increases in available 2020 quota later in the year, and provide a reasonable opportunity to harvest the full U.S. BFT quota, without precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota.

Based on the considerations above, NMFS is transferring 51 mt from the adjusted Reserve category to the General category for the January 2020 fishery, resulting in a subquota of 100 mt for the January 2020 fishery and 143 mt in the Reserve category.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov* or by using the HMS Catch Reporting app, or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional action (*e.g.,* quota adjustment or closure) is necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent

adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of and an opportunity for public comment on, the transfer from the Reserve category to the General category for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason quota transfers to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. These fisheries are currently underway and the fishery would be closed absent the additional quota. Affording prior notice and opportunity for public comment to implement the quota transfer is impracticable and contrary to the public interest as such a delay would result in exceedance of the General category January fishery subquota or earlier closure of the fishery while fish are available on the fishing grounds. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there also is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under §§ 635.15(b) and 635.27(a)(4), (7), (8), and (9), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: January 30, 2020.

Jennifer M. Wallace,

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

[FR Doc. 2020–02217 Filed 2–5–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 25
Thursday, February 6, 2020

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 ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket Nos. RM19–16–000 and RM19–17–000]

Electric Reliability Organization Proposal To Retire Requirements in Reliability Standards Under the NERC Standards Efficiency Review

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to approve the retirement of 74 Reliability Standard requirements. The North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization, submitted the proposed retirements for Commission approval. The Commission also proposes to remand one requirement submitted for retirement by NERC and seeks additional information from NERC on two requirements submitted for retirement.

DATES: Comments are due April 6, 2020.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through *http://www.ferc.gov*. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT: Andres Lopez (Technical Information), Office of Electric Reliability, Division of Reliability Standards and Security, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, Telephone: (202) 502–6128. Mark Bennett (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, Telephone: (202) 502–8524.

SUPPLEMENTARY INFORMATION:

1. Pursuant to section 215(d)(2) of the Federal Power Act (FPA),[1] the Commission proposes to approve to retire 74 of the 77 Reliability Standard requirements requested for retirement by the North American Electric Reliability Corporation's (NERC).[2] As explained in NERC's two petitions, the 74 requirements we propose to approve: (1) Provide little or no reliability benefit; (2) are administrative in nature or relate expressly to commercial or business practices; or (3) are redundant with other Reliability Standards. NERC's justifications for retiring the 74 requirements are largely consistent with the Commission-approved bases for retiring Reliability Standard requirements articulated in prior proceedings.[3] The Commission also proposes to approve the associated violation risk factors, violation severity levels, implementation plan, and effective dates proposed by NERC.

2. The Commission believes that the proposed retirements will further the efficiency of the Reliability Standards program by reducing duplicative or otherwise unnecessary regulatory burden. Further, we agree with NERC that the retirement of the Reliability Standard provisions will benefit overall reliability by allowing registered entities to focus their resources on complying with those Reliability Standard requirements that more effectively promote the reliable operation and planning of the nation's bulk-power system.[4]

3. With respect to other requirements that NERC seeks to retire, the Commission seeks more information regarding NERC's justification for retiring Reliability Standard FAC–008–3, Requirements R7 and R8. As discussed below, NERC's petition avers that the two requirements are redundant of other Reliability Standards, but NERC does not explain how certain elements of these requirements are redundant. The Commission's final determination on the retirement of these two requirements will be based on the comments received from NERC and others.

4. In addition, pursuant to section 215(d)(4) of the FPA, the Commission proposes to remand Reliability Standard VAR–001–6.[5] The new version of the Reliability Standard would eliminate Requirement R2 from currently-effective Reliability Standard VAR–001–5, which requires transmission operators to schedule sufficient reactive resources to regulate voltage levels under normal and contingency conditions. As discussed below, we disagree with NERC's justification for retirement that Requirement R2 is redundant or not necessary for reliability. Accordingly, we propose to remand Reliability Standard VAR–001–6 in order to retain this requirement.

I. Background

A. Section 215 of the FPA

5. Section 215 of the FPA requires the Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Once approved, the Reliability Standards may be enforced in the United States by the ERO subject to Commission oversight, or by the Commission independently.[6] Pursuant to the requirements of FPA section 215, the Commission established a process to select and certify an ERO[7]

[1] 16 U.S.C. 824o(d)(2).

[2] The proposed retirements will result in the elimination of 10 Reliability Standards and the creation of modified versions of another seven Reliability Standards.

[3] *North American Electric Reliability Corp.,* 138 FERC ¶ 61,193, at P 81 (March 2012 Order), *order on reh'g and clarification,* 139 FERC ¶ 61,168 (2012); *Electric Reliability Organization Proposal to Retire Requirements in Reliability Standards,* Order No. 788, 145 FERC ¶ 61,147, at P 1 (2013).

[4] *See* NERC, Docket No. RM19–17–000, Petition at 7.

[5] 16 U.S.C. 824o(d)(4).

[6] *Id.* 824o(e)(3).

[7] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, 114 FERC ¶ 61,104, *order on reh'g,* Order No. 672–A, 114 FERC ¶ 61,328 (2006).

and, subsequently, certified NERC as the ERO.[8]

B. Prior Retirements of Reliability Standard Requirements

6. In the March 2012 Order, the Commission observed that NERC's compliance program could be made more efficient by removing existing requirements deemed unnecessary for reliability.[9] The Commission explained that if NERC believes certain Reliability Standards or requirements should be revised or removed, ''we invite NERC to make specific proposals to the Commission identifying the Standards or requirements and setting forth in detail the technical basis for its belief.'' [10] Further, the Commission encouraged NERC ''to propose appropriate mechanisms to identify and remove from the Commission-approved Reliability Standards unnecessary or redundant requirements.'' [11]

7. In response, in February 2013, NERC proposed to retire 34 requirements within 19 Reliability Standards based on the justification that the requirements ''are redundant or otherwise unnecessary'' and that ''violations of these requirements . . . pose a lesser risk to the reliability of the Bulk-Power System.'' [12] NERC explained that the proposed retirements were based upon three major criteria: (1) Whether a proposed retirement would create a reliability gap; (2) whether the requirement in question is administrative; involves data collection, retention, documentation, periodic updates or reporting; is a commercial or business practice; or is redundant; and (3) consideration of responses to seven questions regarding the proposed retirement, including whether the requirement was part of a ''find, fix and track'' filing, the requirement's violation risk factor level, and whether the requirement is part of on-going standards development project.[13]

8. On November 21, 2013, the Commission approved the retirements that NERC proposed, and determined that the retirements ''meet the benchmarks'' set forth in the March 2012 Order that ''requirements proposed for retirement either: (1) Provide little protection for Bulk-Power System reliability; or (2) are redundant with other aspects of the Reliability Standards.'' [14]

C. NERC Petitions

1. NERC Standards Efficiency Review Project

9. NERC states that the proposed retirements are the product of its Standards Efficiency Review (SER) Project. NERC explains that the SER Project began in 2017 ''to achieve [NERC's] long-term strategic goal of establishing risk-based controls to minimize [Bulk-Power System] reliability risk while also driving operational efficiencies and effectiveness.'' [15] NERC states that in Phase 1 of the SER Project, teams of industry experts conducted a risk-based analysis of non-CIP Reliability Standards.[16] The purpose of this review, according to NERC, was ''to identify Reliability Standard requirements that provide little or no benefit to reliability and should be retired.'' [17] NERC maintains that, unlike the periodic reviews [18] of Reliability Standards performed by NERC pursuant to the NERC Rules of Procedure, the SER Project involved ''exploring the relationships between the different Reliability Standards in a deeper way than would be feasible during a targeted periodic review . . . [and] allowed NERC to identify requirements that are not necessary for reliability or that are redundant to other requirements.'' [19]

10. NERC contends that the SER Project ''was conducted in an open and transparent manner, with broad industry participation.'' [20] NERC states that it initiated the standards development process to consider the retirement recommendations generated by the SER Project.

2. IRO, TOP and VAR Petition (Docket No. RM19–16–000)

11. On June 7, 2019, in Docket No. RM19–16–000, NERC submitted for Commission approval new versions of three Reliability Standards: IRO–002–7 (Reliability Coordination—Monitoring and Analysis), TOP–001–5 (Transmission Operations), and VAR–001–6 (Voltage and Reactive Control). NERC explains that approval of the new versions would result in the retirement of four requirements from the currently-effective versions of the Reliability Standards.[21] Three of the existing requirements in Reliability Standards IRO–002 and TOP–001 require the reliability coordinator, transmission operator, and balancing authority to have data exchange capabilities with entities having data needed to perform operational planning analyses and to develop operating plans for next-day operations. The fourth requirement, in Reliability Standard VAR–001, requires the transmission operator to schedule the reactive resources needed to regulate voltage levels under normal and contingency conditions. NERC contends that these four requirements are redundant and not necessary ''because the performance required by these requirements is inherent to the performance of other Reliability Standard requirements.'' [22]

12. In particular, NERC maintains that the data exchange capability requirement in Reliability Standard IRO–002–5, Requirement R1 is covered by Reliability Standard IRO–008–2, Requirement R1, which obligates the reliability coordinator to perform operational planning analyses to assess whether the planned operations for the next-day will exceed System Operating Limits and Interconnection Reliability Operating Limits within its Wide Area. NERC asserts that ''to perform the required operational planning analyses, the Reliability Coordinator must have the data it deems necessary from those entities that possess it.'' [23]

13. Additionally, regarding data exchange, NERC cites Reliability Standard IRO–010–2 (Reliability Coordinator Data Specification and

[8] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[9] March 2012 Order, 138 FERC ¶ 61,193 at P 81.

[10] *Id.*

[11] *Id.*

[12] NERC, Petition, Docket No. RM13–8–000, at 2 (filed Feb. 28, 2013).

[13] *Id.* at 4.

[14] *Electric Reliability Organization Proposal to Retire Requirements in Reliability Standards,* Order No. 788, 145 FERC ¶ 61,147 (2013).

[15] Docket No. RM19–16–000 Petition at 3; Docket No. RM19–17–000 Petition at 4.

[16] NERC states that Phase 2 of the SER Project will ''consider recommendations for Reliability Standard revisions that would further improve the efficiency of the body of NERC Reliability Standards, such as through consolidation of Reliability Standard requirements . . . [and will] consider recommendations for standards-based improvements that would further reduce inefficiencies and promote effectiveness.'' Docket No. RM19–16–000 Petition at 6–7; Docket No. RM19–17–000 Petition at 7.

[17] Docket No. RM19–16–000 Petition at 5; Docket No. RM19–17–000 Petition at 6.

[18] The NERC Rules of Procedure require a periodic review of each Reliability Standard; and they provide for a five-year cyclical review of Reliability Standards approved by the American National Standards Institute (ANSI) and ten-year cyclical review for Reliability Standards not approved by ANSI. *See* NERC Rules of Procedure, Section 317 and Appendix 3A (Standards Process Manual), section 13.0.

[19] Docket No. RM19–16–000 Petition at 5; Docket No. RM19–17–000 Petition at 6.

[20] Docket No. RM19–16–000 Petition at 5–6; Docket No. RM19–17–000 Petition at 7.

[21] The proposed revised versions of the IRO, TOP and VAR Reliability Standards are not attached to the NOPR. The complete text of the Reliability Standards is available on the Commission's eLibrary document retrieval system in Docket No. RM19–16–000 and is posted on the ERO's website, *http://www.nerc.com.*

[22] NERC IRO, TOP and VAR Petition at 7.

[23] *Id.* at 14–15.

Collection) and its stated purpose of preventing instability, uncontrolled separation, or cascading outages ''by ensuring the Reliability Coordinator has the data it needs to monitor and assess the operation of its Reliability Coordinator Area.'' [24] NERC states that under Reliability Standard IRO–010–2, Requirements R1, R2 and R3, the reliability coordinator must specify the data necessary for it to perform its operational planning analyses and provide the specifications to the entities from which it needs data who then must comply with the data request using a mutually agreeable format and security protocols.

14. NERC observes that the performance of the requirements it cites is premised on the existence of data exchange capabilities, ''regardless of whether a separate requirement expressly requires the Reliability Coordinator to have data exchange capabilities in place.'' [25] NERC asserts that Reliability Standard IRO–002–5, Requirement R1 provides no additional reliability benefit and ''is therefore unnecessary and redundant and should be retired.'' [26]

15. NERC likewise states that Requirements R19 and R22 of Reliability Standard TOP–001–4 merely require transmission operators and balancing authorities respectively to have data exchange capabilities with entities from which they need data to perform operational planning analyses (transmission operators) and next-day Operating Plans (balancing authorities). NERC maintains, however, that Reliability Standard TOP–002–4 Requirement R1, requires a transmission operator to perform an operational planning analyses to determine whether next-day operations within its area will exceed System Operating Limits. Also, NERC states that Requirement R4 requires each balancing authority to have a next-day Operating Plan addressing expected generation resource commitment and dispatch, Interchange scheduling and related matters. NERC asserts that to satisfy these requirements, ''each Transmission Operator and Balancing Authority must have the data it deems necessary from those entities that possess it.'' [27]

16. NERC also cites to Reliability Standard TOP–003–3 (Operational Reliability Data) whose purpose is ''to ensure that the Transmission Operator and Balancing Authority have data needed to fulfill their operational and planning responsibilities.'' NERC contends that the requirements in Reliability Standard TOP–003–3 largely mirror the requirements in Reliability Standard IRO–010–2 discussed above, and thus, as with Reliability Standard IRO–010–2, transmission operators and balancing authorities must have data exchange capabilities with its reporting entities to satisfy the requirements of Reliability TOP–003–3. Therefore, NERC contends that Reliability Standards TOP–001–4, Requirements R19 and R22 are unnecessary and redundant and should be retired.

17. With respect to proposed Reliability Standard VAR–001–6, NERC maintains that the revised version retires existing requirement R2, which requires each transmission operator to schedule ''sufficient reactive resources to regulate voltage levels under normal and Contingency conditions.'' NERC contends that the reliability need for sufficient reactive resources is adequately addressed by existing requirements in several other Reliability Standards and, therefore, is unnecessary. In particular, NERC states that Reliability Standards TOP–001–4, Requirement R10 and TOP–002–4, Requirement R1, require transmission operators to determine System Operating Limits and perform an operational planning analyses to assess whether planned next-day operations will exceed those limits and plan for addressing them. NERC explains that Reliability Standard TOP–001–4 requires each transmission operator to perform Real-time Assessments every 30 minutes to identify possible System Operating Limit exceedances and initiate its Operating Plan to mitigate them. NERC states that ''Operating Plans address the use of reactive resources if needed to operate within System Operating Limits, as well as any other adjustments that may be needed.'' [28]

18. NERC observes that each transmission operator uses multiple tools to regulate voltage levels, including reactive control and Real-time Contingency Analysis, that ''allow the Transmission Operator to quantify the use of reactive resources. As such, a separate requirement specifying that the Transmission Operator must schedule 'sufficient' reactive resources for normal and Contingency conditions is redundant and unnecessary for reliability.'' [29] Additionally, NERC states that each planning authority and transmission planner must assess a broad range of conditions and probable contingencies, including available reactive resources, under system studies required under Reliability Standard TPL–001–4, and develop a Corrective Action Plan [30] to address reactive resource shortfalls, if needed. NERC concludes that given this ''comprehensive and interdependent framework addressing System voltage needs in the operations and planning horizons . . . there is no need to have a distinct requirement expressly requiring the Transmission Operator to 'schedule' sufficient resources.'' [31]

19. NERC requests that the Commission approve the implementation plan, attached to NERC's petition as Exhibit B, and the associated violation risk factors and violation severity levels described in Exhibit D. The implementation plan provides that proposed Reliability Standards IRO–002–7, TOP–001–5, and VAR–001–6 would become effective on the first day of the first calendar quarter that is three months after regulatory approval. The currently-effective versions of the Reliability Standards would be retired immediately prior to the effective date of the revised Reliability Standards. NERC explains that the requested timeline accounts for the time entities will need to update their systems and related documentation.

3. FAC, INT, MOD and PRC Petition (Docket No. RM19–17–000)

20. On June 7, 2019, in Docket No. RM19–17–000, NERC submitted for Commission approval the proposed retirement of ten currently-effective Reliability Standards in their entirety without replacement.[32] Additionally, NERC's petition includes four proposed revised Reliability Standards reflecting the retirement of certain requirements from the currently-effective versions that NERC asserts are not needed for reliability: FAC–008–4 (Facility Ratings), INT–006–5 (Evaluation of Interchange Transactions), INT–009–3

[24] *Id.* at 15.

[25] *Id.*

[26] *Id.*

[27] *Id.* at 16.

[28] *Id.* at 20.

[29] *Id.* at 20–21.

[30] NERC defines Corrective Action Plan as ''A list of actions and an associated time table for implementation to remedy a specific problem.'' Glossary of Terms Used in NERC Reliability Standards (August 12, 2019).

[31] *Id.* at 21.

[32] Reliability Standards FAC–013–2 (Assessment of Transfer Capability for the Near-term Transmission Planning Horizon), INT–004–3.1 (Dynamic Transfers), INT–010–2.1 (Interchange Initiation and Modification for Reliability), MOD–001–1a (Available Transmission System Capability), MOD–004–1 (Capacity Benefit Margin), MOD–008–1 (Transmission Reliability Margin Calculation Methodology), MOD–020–0 (Providing Interruptible Demands and Direct Control Load Management Data to System Operations and Reliability Coordinators), MOD–028–2 (Area Interchange Methodology), MOD–029–2a (Rated System Path Methodology), and MOD–030–3 (Flowgate Methodology).

(Implementation of Interchange) and PRC–004–6 (Protection System Misoperation Identification and Correction).[33] NERC asserts that its proposals would not adversely impact reliability, but rather they ''would benefit reliability by allowing entities to focus their resources on those Reliability Standard requirements that promote the reliable operation and planning of the BPS [Bulk-Power System] and avoid unnecessary regulatory burden.'' [34]

21. NERC contends that the full FAC, INT, MOD and PRC Reliability Standards proposed for retirement are not necessary and that removing them would not adversely affect reliability.[35] NERC states that retirement of the ten full Reliability Standards is justified because they are primarily administrative in nature or largely related to commercial or business practices, and therefore no longer serve a reliability purpose.[36] For example, NERC states that the transfer capability assessment required under Reliability Standard FAC–013–2 ''serves only a market function'' and ''is not an indicator of [bulk electric system] reliability.'' [37] In supporting its conclusion that Reliability Standard INT–010–2.1 primarily relates to commercial and business practices, NERC notes that in 2013 the NERC Independent Experts Review Panel recommended retiring the previous version of the Reliability Standard ''due to overlap with the NAESB Electronic Tagging Functional Specification.'' [38]

22. Similarly, regarding the MOD Reliability Standards, NERC states that ''[Available Transfer Capability] and [Available Flowgate Methodology], as well as e-Tags, are commercially-focused elements facilitating interchange and balancing of interchange,'' and that system operators maintain reliability by monitoring Real-time flows based on System Operating Limits and Interconnection Reliability Operating Limits.[39] In particular, NERC explains that information on Interruptible Demands and Direct Control Load Management required under Reliability Standard MOD–020–0 is not useful for transmission operators and reliability coordinators, ''who must plan and operate the [Bulk-Power System] within System Operating Limits and Interconnection Reliability Operating Limits under the TOP and IRO Reliability Standards.'' [40]

23. Regarding NERC's proposed revised Reliability Standards, NERC states that the data provision obligations of currently-effective Reliability Standard FAC–008–3, Requirements R7 and R8 are redundant with Reliability Standards MOD–032–1, IRO–010–2 and TOP–003–3. NERC asserts that Requirements R3.1, R4 and R5 of currently-effective Reliability Standard INT–006–4 ''provide little, if any, benefit or protection to the reliability operation of the [Bulk-Power System]'' [41] and that the substance of Requirements R4 and R5 in particular relate to commercial or business practices and are better addressed through the balancing authority's e-Tag Authority Service.[42] Also, NERC states that Requirement R1 of currently-effective Reliability Standard INT–009–2.1 is being revised to remove the reference to Reliability Standard INT–010, which is also proposed for retirement, and Requirement R2 is redundant with Reliability Standard BAL–005–1, Requirement R7.[43] Finally, NERC states that it has determined that rather than the ''specific, recurring and inflexible timeframe'' set forth in Requirement R4 of currently-effective Reliability Standard PRC–004–5 for identifying the cause of a protection system misoperation, ''it would be more effective to have entities investigate the causes of misoperations according to their own internal control policies and procedures.'' [44]

24. NERC requests that the Commission approve the implementation plan, attached to NERC's petition as Exhibit B, and the associated violation risk factors and violation severity levels, attached to NERC's petition as Exhibit D, which are generally unchanged from the currently-effective versions. For the Reliability Standards retired in their entirety, NERC proposes an effective date that is immediately upon regulatory approval of the retirement. NERC also seeks to retire the currently-effective Reliability Standards FAC–008–3, INT–006–4, INT–009–2.1, and PRC–004–5(i) immediately prior to the effective date of their new versions.

II. Discussion

25. Pursuant to section 215(d)(2) of the FPA, the Commission proposes to approve NERC's request to retire 74 Reliability Standard requirements as just, reasonable, not unduly discriminatory or preferential, and in the public interest. NERC's petitions provide an adequate basis to conclude that the requirements proposed for retirement: (1) Provide little or no reliability benefit; (2) are administrative in nature or relate expressly to commercial or business practices; or (3) are redundant with other Reliability Standards. NERC's justifications for retiring the 74 requirements are largely consistent with the retirement standard set forth by the Commission in Order No. 788 and with the determination that ''requirements proposed for retirement can be removed from the Reliability Standards with little effect on reliability and an increase in efficiency of the ERO compliance program.'' [45]

26. The proposal above does not include NERC's request to retire Reliability Standard FAC–008–3, Requirements R7 and R8 and Reliability Standard VAR–001–5, Requirement R2. While NERC asserts that Reliability Standards MOD–032–1, IRO–010–2 and TOP–003–3 provide a basis for retiring Reliability Standard FAC–008–3, Requirements R7 and R8, we seek additional information on these proposed retirements because this rationale does not address elements of Requirements R7 and R8 that do not appear to be redundant.

27. In addition, we disagree with NERC's assertion that Reliability Standard VAR–001–5, Requirement R2 is redundant or not necessary for reliability because we construe the requirement as essential to accomplish the purpose of the Reliability Standard. Accordingly, pursuant to section 215(d)(4) of the FPA, we propose to remand Reliability Standard VAR–001–6 in order to retain Requirement R2 in currently-effective Reliability Standard VAR–001–5.

28. Below, we discuss the following issues: (A) Proposed retirement of Reliability Standard FAC–008–3, Requirements R7 and R8; and (B) proposed retirement of Reliability Standard VAR–001–5, Requirement R2.

[33] The proposed revised versions of the FAC, INT and PRC Reliability Standards are not attached to the NOPR. The complete text of the Reliability Standards is available on the Commission's eLibrary document retrieval system in Docket No. RM19–17–000 and is posted on the ERO's website, *http://www.nerc.com*.

[34] Docket No. RM19–17–000 Petition at 7.

[35] The MOD A Reliability Standards proposed for retirement (MOD–001–1a, MOD–004–1, MOD–008–1, MOD–028–2, MOD–029–2a and MOD–030–3) are expected to be replaced by equivalent North American Energy Standards Board (NAESB) business practice standards. The Commission intends to coordinate the effective dates of the retirement of the MOD A Reliability Standards with the successor NAESB business practice standards.

[36] *Id.* at 13–24.

[37] *Id.* at 13.

[38] *Id.* at 16–19.

[39] *Id.* at 21.

[40] *Id.* at 23.

[41] *Id.* at 29.

[42] *Id.* at 29–31.

[43] *Id.* at 31–32.

[44] *Id.* at 34.

[45] Order No. 788, 145 FERC ¶ 61,147 at P 1.

A. Proposed Retirement of Reliability Standard FAC–008–3, Requirements R7 and R8

NERC Petition

29. Reliability Standard FAC–008–3, Requirements R7 and R8 require generator owners and transmission owners, respectively, to provide facility ratings and related information to requesting reliability coordinators, planning coordinators, transmission planners, transmission owners and transmission operators. NERC asserts that requirements in Reliability Standards MOD–032–1, IRO–010–2, and TOP–003–3 render the data provision obligations of Requirements R7 and R8 in Reliability Standard FAC–008–3 redundant and therefore unnecessary for reliability.

30. To support its redundancy claim, NERC explains that under Reliability Standard MOD–032–1, generator owners and transmission owners must provide information on power capabilities and facility ratings (Requirement R2) to enable planning coordinators and transmission planners to ''jointly develop steady-state, dynamics, and short circuit modeling data requirements and reporting procedures for the Planning Coordinator's planning area'' (Requirement R1). NERC further explains that under Reliability Standard IRO–010–2, reliability coordinators must maintain ''a documented specification for the data necessary to perform its Operational Planning Analyses, Real-time monitoring, and Real-time Assessments. This data necessarily includes Facility Ratings as inputs to System Operating Limit monitoring.'' [46] NERC notes that under Requirement R3, the transmission owner and generator owner must provide such data. Finally, NERC points out that under Reliability Standard TOP–003–3, the transmission operator must maintain data specifications (Requirement R1) and the transmission owner and generation owner must provide the requested data (Requirement R5). Relying on this framework of data specification and provision, NERC concludes that Reliability Standard FAC–008–3, Requirements R7 and R8 ''are now redundant to other more robust Reliability Standards and are no longer needed for reliability.'' [47]

Discussion

31. We agree with NERC that the cited requirements in Reliability Standards MOD–032–1, IRO–010–2, and TOP–003–3 provide a basis for retiring certain elements of Reliability Standard FAC–008–3, Requirements R7 and R8. However, NERC's petition does not address other elements of Requirements R7 and R8 that do not appear to be redundant. In particular, Requirements R7 and R8 of the currently-effective Reliability Standard require generator owners and transmission owners, respectively, to provide facility ratings to several functional entity types, including transmission owners. While NERC is correct that the three Reliability Standards it cites collectively require generator owners and transmission owners to provide facility ratings to reliability coordinators, planning coordinators, transmission planners, and transmission operators, these three Reliability Standards do not require the provision of facility ratings to transmission owners. Therefore, it appears that, if approved, the retirement of Requirements R7 and R8 would eliminate the mandatory exchange of facility rating-related information with transmission owners. This could, in turn, impact reliability since these requirements ensure that all transmission owners have accurate facility-related information in the models that they use to plan and operate the bulk electric system.

32. Separately, Reliability Standards MOD–032–1, IRO–010–2, and TOP–003–3 do not address sub-requirement R8.1.2 of Reliability Standard FAC–008–3, relating to the identity of the next most limiting equipment of a requested facility. Further, these Reliability Standards also do not account for sub-requirement R8.2, which requires the identification and thermal rating of the existing next most limiting equipment of facilities with a thermal rating that limits the use of that facility by causing either an Interconnection Reliability Operating Limit, a limitation of Total Transfer Capability, an impediment to generator deliverability, or an impediment to service to a major load center as specified in FAC–008–3 (Requirement R8.2).[48]

33. Considering the foregoing, while there is some overlap, Reliability Standard FAC–008–3, Requirements R7 and R8 do not appear to be entirely redundant of the other Reliability Standards cited by NERC. The retirement of these requirements would, therefore, result in the gaps described above. These non-redundant elements of Requirements R7 and R8 are not addressed in the petition. Accordingly, the Commission seeks more information from NERC and others regarding how the elements of Reliability Standards MOD–032–1, IRO–010–2 and TOP–003–3 discussed above render Reliability Standard FAC–008–3, Requirements R7 and R8 redundant. The Commission's final determination on the retirement of these two requirements will be based on the comments received from NERC and others.

B. Proposed Retirement of Reliability Standard VAR–001–5, Requirement R2

NERC Petition

34. Reliability Standard VAR–001–5, Requirement R2 requires each transmission operator to schedule ''sufficient reactive resources to regulate voltage levels under normal and Contingency conditions.'' NERC maintains that the reliability need for sufficient reactive resources is adequately addressed by existing requirements in several other Reliability Standards and, therefore, is unnecessary and should be retired.

35. In particular, NERC relies on Reliability Standard TOP–001–4, Requirement R10 and Reliability Standard TOP–002–4, Requirement R1, that require transmission operators to determine System Operating Limits and perform an OPA to assess whether planned next-day operations will exceed those limits and plan for addressing them. Reliability Standard TOP–001–4 requires each transmission operator to perform Real-time Assessments every 30 minutes to identify possible System Operating Limit exceedances and initiate its Operating Plan to mitigate them. NERC states that ''Operating Plans address the use of reactive resources if needed to operate within System Operating Limits, as well as any other adjustments that may be needed.'' [49]

36. NERC explains that each transmission operator uses multiple tools to regulate voltage levels, including reactive control and Real-time Contingency Analysis. NERC maintains that ''[t]hese actions allow the Transmission Operator to quantify the use of reactive resources. As such, a separate requirement specifying that the Transmission Operator must schedule 'sufficient' reactive resources for normal and Contingency conditions is

[46] *Id.* at 28.

[47] *Id.*

[48] This requirement was developed in response to Order No. 693. *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, 118 FERC ¶ 61,218, at P 756, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007); *see also* NERC, Petition, Docket No. RD11–10–000, at 11–13, 20–21 (filed Jun. 15, 2011).

[49] Docket No. RM19–16–000 Petition at 20.

redundant and unnecessary for reliability.'' [50] Additionally, NERC states that each planning authority and transmission planner must assess a broad range of conditions and probable contingencies, including available reactive resources, under System studies required under Reliability Standard TPL–001–4, and it must develop a corrective action plan to address reactive resource shortfalls, if needed.[51]

37. NERC concludes that given this ''comprehensive and interdependent framework addressing System voltage needs in the operations and planning horizons . . . there is no need to have a distinct requirement expressly requiring the Transmission Operator to 'schedule' sufficient resources.'' [52] NERC also states ''that the second sentence of Requirement R2 constitutes guidance or a measure which does not warrant a mandatory requirement provision.'' [53]

Discussion

38. NERC contends that Reliability Standards TOP–001–4 and TOP–002–4 require, among other things, transmission operators to perform an operational planning analyses and determine System Operating Limits to assess whether planned next-day operations will exceed those limits and develop a plan to address those potential exceedances. However, the proposed retirement of Reliability Standard VAR–001–5, Requirement R2 assumes that, even in the absence of a specific requirement, if the transmission operator identifies potential System Operating Limit exceedances based on this analysis, the transmission operator will develop and implement an Operating Plan to mitigate the potential exceedances. We determine that relying on such an assumption may negatively impact reliability given the significant role that scheduling adequate reactive resources plays in the overall operation of Reliability Standard VAR–001–5. We also determine that retiring Requirement R2 is contrary to the stated purpose of Reliability Standard VAR–001–5, which is to ''ensure that voltage levels, reactive flows and reactive resources are monitored, controlled and maintained within limits in Real-time to protect equipment and the reliable operation of the Interconnection.'' Accordingly, we propose to remand proposed Reliability Standard VAR–001–6 in order to retain Requirement R2 because it is the only requirement that explicitly requires transmission operators to schedule reactive resources.[54]

39. While Reliability Standards TOP–001–4 and TOP–002–4 address situations involving the possible need to schedule reactive resources, they are not adequate substitutes for the explicit obligation in Requirement R2 of Reliability Standard VAR–001–5 requiring transmission operators to schedule enough reactive resources to regulate voltage levels under all system conditions. Reliability Standard TOP–001–4, Requirement R10 only requires the transmission operator to monitor facilities within its area (Requirement R10.1); to monitor the status of Remedial Action Schemes within its area (Requirement R10.2), to monitor non-bulk electric system facilities within its area (Requirement R10.3); to obtain and use status, voltages, and flow data for facilities outside its area (Requirement R10.4); to obtain and use the status of Remedial Action Schemes outside its area (Requirement R10.5); and to obtain and use status, voltages, and flow data for non-bulk electric system facilities outside its area (Requirement R10.6). Therefore, we determine that a plain reading of the relevant requirements cited by NERC in its petition indicates that the action of scheduling any type of resources is not required outside of Reliability Standard VAR–001–5, Requirement R2.

40. Additionally, Reliability Standards TOP–001–4 and TOP–002–4 do not require the transmission operator to implement mitigation plans: Instead, the transmission operator need only analyze and develop a plan to address a potential System Operating Limit.

41. Accordingly, we disagree with NERC's assertion that Reliability Standard VAR–001–5, Requirement R2 is duplicative of other existing Reliability Standard requirements, and we believe that eliminating Requirement R2 will create an unacceptable risk that voltage, reactive flows, and reactive resources will not be controlled and maintained within System Operating Limits. Therefore, pursuant to section 215(d)(4) of the FPA, we propose to remand proposed Reliability Standard VAR–001–6 in order to retain Requirement R2 of currently-effective Reliability Standard VAR–001–5.

III. Information Collection Statement

42. The information collection requirements contained in this Proposed Rule are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[55] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[56] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

43. The Commission estimates that the proposed rule, which would retire 74 requirements of Reliability Standards without adding any new obligations on registered entities, would result in a total reduction in burden for industry of 151,340.2 hours. The Commission based the burden reduction estimates on staff experience, knowledge, and expertise.

[50] *Id.* at 20–21.

[51] *Id.* at 21.

[52] *Id.*

[53] The second sentence of Requirements R2 states, ''Transmission Operators can provide sufficient reactive resources through various means including, but not limited to, reactive generation scheduling, transmission line and reactive resource switching, and using controllable load.''

[54] When seeking approval of Reliability Standard VAR–001–4, NERC addressed the significance of Requirement R2, stating that ''the primary factor in maintaining voltage stability is having the appropriate amount of Reactive Power on the system. Proposed Requirement R2 helps ensure that sufficient reactive resources are online and scheduled in Real-time.'' NERC, Petition, Docket No. RD14–11–000, at 20 (filed June 9, 2014). When NERC conducted a periodic review of Reliability Standard VAR–001–4.1 in 2017, periodic review team found that the Reliability Standard met its objective and therefore no revisions were necessary. NERC, Periodic Review Recommendations: VAR–001–4.1—Voltage and Reactive Control (May 19, 2017). Further, the periodic review team determined that no requirements satisfied the criteria for retirement. *Id.* at 4.

[55] 44 U.S.C. 3507(d).

[56] 5 CFR 1320.

PROPOSED REDUCTIONS DUE TO NOPR IN DOCKET NOS. RM19–16 & RM19–17

Reliability standard & requirement	Type[57] and number of entity (1)	Number of annual responses per entity (2)	Total number of responses (1) * (2) = (3)	Average number of burden hours per response (4)	Total burden hours (3) * (4) = (5)
FERC–725A					
FAC–013–2	RC (12)	8.33	100	26.67	2,667
INT–006–4, R3.1, R4, R5, R5.1, R5.2, R5.3, R5.4, R5.5.	BA/TSP (171)	1	171	56.3	9,627
INT–004–3.1	BA (99)	1	99	56.3	5,574
INT–010–2.1	BA (99)	1	99	56.3	5,574
INT–009–2.1, R2	BA (99)	1	99	56.3	5,574
MOD–001–1a	TOP/TSP (240)	2	480	55.3	26,544
MOD–004–1	TOP (168)	1	168	48.9	8,215.2
MOD–008–1	TOP (168)	1	168	48.9	8,215.2
MOD–028–2	TOP/TSP (240)	1	240	48.9	11,736
MOD–020–0	TP/RP/DP/BA (780)	1	780	14.4	11,232
MOD–029–2a	TOP/TSP/TP/BA (533)	1	533	49.8	26,543
MOD–030–3	TOP/TSP/TP/BA (533)	1	533	49.8	26,543
Sub-Total for FERC–725A	3,142		3,470		148,044.4
FERC–725A(1C)					
TOP–001–4, R19 & R22	BA/TO/GO/DP (1,696)	.25	422	0.8	337.6
Sub-Total for FERC–725A(1C).	1,696		422		337.6
FERC–725G1					
PRC–004–5(i), R4	TO/GO/DP (1,597)	.41	659	4.36	2,874.6
Sub-Total for FERC–725G1	1,597		659		2,874.6
FERC–725Z					
IRO–002–6, R1	RC (12)	1.17	14	5.97	83.6
Sub-Total for FERC–725Z	12		14		83.6
Total Reductions Due to NOPR in RM19–16 & RM19–17.			4,565		151,340.2

Titles: FERC–725A, Mandatory Reliability Standards for the Bulk Power System; FERC–725A(1C), Mandatory Reliability Standards for Bulk-Power System: Reliability Standard TOP–001–4; FERC–725G1, Mandatory Reliability Standards for the Bulk-Power System: Reliability Standard PRC–004–5(i); FERC–725Z, Mandatory Reliability Standards: IRO Reliability Standards.

Action: Proposed Reductions to Existing Collections of Information FERC–725A, FERC–725A(1C), and FERC–725Z; and Proposed Elimination of Collections of Information, and FERC–725G1.

OMB Control Nos: 1902–0244 (FERC–725A); 1902–0298 (FERC–725A(1C));1902–0284 (FERC–725G1); and 1902–0276 (FERC–725Z).

Respondents: Business or other for profit, and not for profit institutions.

Frequency of Responses: On occasion (and proposed for deletion).

44. *Necessity of the Information:* This proceeding proposes to approve the retirement of ten Reliability Standards in their entirety and five revised Reliability Standards, reflecting a total of 74 retired requirements identified by NERC. The proposed retirements either: (1) Provide little or no reliability benefit; (2) are administrative in nature or relate expressly to commercial or business practices; or (3) are redundant with other Reliability Standards.

45. *Internal review:* The Commission has reviewed NERC's proposal and determined that its action is necessary to implement section 215 of the FPA. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden reduction estimates associated with the information requirements proposed for retirement.

46. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street NE, Washington, DC 20426 [Attention: Ellen Brown, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

47. Comments concerning the information collections and requirements proposed for retirement in this NOPR and the associated burden estimates, should be sent to the

[57] RC = Reliability Coordinator; BA = Balancing Authority; TSP = Transmission Service Provider; TOP = Transmission Operator; TO = Transmission Owner; GO = Generator Owner; DP = Distribution Provider; TP = Transmission Provider; and RP = Resource Planner.

Commission in this docket and may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at the following email address: *oira_submission@omb.eop.gov.* Please refer to the appropriate OMB Control Number(s) and Docket Nos. RM19–16–000 and RM19–17–000 in your submission.

IV. Regulatory Flexibility Act Certification

48. The Regulatory Flexibility Act of 1980 (RFA) [58] generally requires a description and analysis of rulemakings that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's Office of Size Standards develops the numerical definition of a small business.[59] The Small Business Administration has established size standards, for the types of affected entities (noted in the table above), that range from a maximum of 250–1,000 employees for an entity and its affiliates to be considered small.

49. The Commission seeks comment on the proposed reduction of burden and cost on small business entities. The Commission estimates the total industry reduction in burden for all entities (large and small) to be 151,340.2 hours (or approximately 33 hours (rounded) per response). The Commission believes that this proposal will reduce burden and cost for all affected entities.

50. Based on the information above, the Commission certifies that the proposed reductions will not have a significant impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis is required.

V. Environmental Analysis

51. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[60] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[61] The actions proposed here fall within this categorical exclusion in the Commission's regulations.

VI. Comment Procedures

52. The Commission invites interested persons to submit comments on the matters and issues proposed in this document to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due April 6, 2020. Comments must refer to Docket Nos. RM19–16–000 and RM19–17–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

53. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

54. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

55. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

56. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

57. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

58. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

By direction of the Commission.
Issued: January 23, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–02171 Filed 2–5–20; 8:45 am]

BILLING CODE 6717–01–P

[58] 5 U.S.C. 601–612.

[59] 13 CFR 121.101.

[60] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[61] 18 CFR 380.4(a)(2)(ii).

POSTAL SERVICE

39 CFR Part 501

Authorization To Manufacture and Distribute Postage Evidencing Systems

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to amend its Postage Evidencing Systems regulations. These changes set forth the procedure to become an authorized Postage Evidencing System (PES) provider. The changes also update or create new definitions, update all references of the Office of Payment Technology to the Office of Commercial Payment, and reorganize or reword certain provisions currently in the regulations for clarity.

DATES: Comments must be received on or before March 9, 2020.

ADDRESSES: *Mail or deliver written comments to:* Director, Commercial Payment, 475 L'Enfant Plaza SW, Room 3500, Washington, DC 20260. Email and faxed comments are not accepted. You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review on Monday through Friday, 9 a.m.–4 p.m., by calling 202–268–2904. All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Crystal F. Newman, Business Process Specialist Principal, *Crystal.F.Newman@usps.gov,* 202–268–7072.

SUPPLEMENTARY INFORMATION: The Postal Service has worked over the past 6 months to create a new PES Provider Applicant Guide (Guide). This Guide sets forth the process on how to apply to become a PES Provider. It was developed by gathering feedback from stakeholders across the organization, and from the learnings derived from onboarding PES providers, including the most recent process used. This proposed rule sets forth the process to apply to become a provider, and clarifies the rule and regulations that an applicant is subject to during the application process. While modifying the CFR to refer to the new Guide, two other cleanup activities were accomplished. First, paragraph § 501.3(c) referring to providers allowing the Postal Service to audit their locations as a condition for authorization is being moved as it is more properly placed under section § 501.2. Second, § 501.3(d) was not grammatically correct, so the language was updated grammatically without changing the content of the requirement.

Finally, a few other minor changes were made to keep the regulations current, including removing 'meter imprints' and adding 'intelligent mail indicia' to the definition of Postage Evidencing Systems, and updating the Office of Payment Technology to the Office of Commercial Payment, which is its successor organization after the Mail Entry and Payment Technology group was reorganized in August 2019.

List of Subjects in 39 CFR Part 501

Administrative practice and procedure, Postal Service.

For the reasons stated in the preamble, the Postal Service proposes to amend 39 CFR Section 501 as follows:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE EVIDENCING SYSTEMS

■ 1. The authority citation for part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended); 5 U.S.C. App. 3.

■ 2. Amend § 501.1 to revise paragraph (a) and add paragraph (h) to read as follows:

§ 501.1 Definitions.

(a) *Postage Evidencing Systems* regulated by part 501 produce evidence of prepayment of postage by any method other than postage stamps and permit imprints. A Postage Evidencing System is a device or system of components that a customer uses to generate and print evidence that postage required for mailing has been paid. Postage Evidencing Systems print indicia, such as information-based indicia or intelligent mail indicia to indicate postage payment. They include but are not limited to postage meters and PC Postage systems.

* * * * *

(h) *Postal Requirements* include the Code of Federal Regulations, Title 39 Section 501, the Domestic Mail Manual (DMM), the International Mail Manual (IMM), and the Intelligent Mail Indicia Performance Criteria (IMIPC).

■ 3. Revise § 501.2 to read as follows:

§ 501.2 Postage Evidencing System provider authorization.

(a) The Postal Service considers Postage Evidencing Systems and their respective infrastructure to be essential to the exercise of its specific powers to prescribe postage and provide evidence of payment of postage under 39 U.S.C. 404(a)(2) and (4).

(b) Due to the potential for adverse impact upon Postal Service revenue, the following activities may not be engaged in by any person or entity without prior, written approval of the Postal Service. Persons or entities that perform these activities are referred to collectively as Postage Evidencing System (PES) Providers in this section.

(1) Manufacturing and/or distributing any Postage Evidencing System that generates or produces U.S. postage.

(2) Repairing, refurbishing, remanufacturing, modifying, or destroying any component of a Postage Evidencing System that accounts for or authorizes the printing of U.S. postage.

(3) Owning or operating an infrastructure that maintains operating data for the production of U.S. postage, or accounts for U.S. postage purchased for distribution through a Postage Evidencing System.

(4) Owning or operating an infrastructure that maintains operating data that is used to facilitate registration with the Postal Service of customers of a Postage Evidencing System.

(c) Approval to become a Postage Evidencing System Provider

(1) Any person or entity seeking authorization to become a PES Provider must submit a request to the Postal Service in writing to the Office of Commercial Payment. Once the request is received, the Office of Commercial Payment will provide the applicant the PES Provider Applicant Guide and the Intelligent Mail Indicia Performance Criteria (IMIPC), the IMIPC setting forth PES and indicia specification and requirements. The contact information for Commercial Payment can be found in § 501.2(f).

(2) The PES Provider Applicant Guide sets forth the process for applicants seeking to become a PES Provider. An applicant is subject to the rules in both that Guide and the IMIPC, while they are attempting to gain approval to become a PES Provider.

(3) An applicant applying for approval to become a PES Provider must undergo three (3) primary phases which are laid out in the PES Provider Applicant Guide: (1) Applicant Introduction and Letter of Intent, (2) Applicant Qualification and Registration, and (3) PES Evaluation. Each phase includes prerequisites to enter the phase, deliverables expected during that phase, and requires written approval by the Office of Commercial Payment to allow the process to continue to the next phase.

(4) To the extent that an applicant reaches the PES Evaluation phase, then the applicant is governed by Postal Requirements, the IMIPC, and the PES Provider Applicant Guide even though not yet an authorized PES Provider.

(5) The Postal Service, in its sole discretion, may approve an applicant. In reaching its approval determination, the Postal Service may review factors and make determinations including, but not limited to, satisfactory evidence of the applicant's integrity and financial responsibility, commitment to comply with the Postal Requirements, and a determination that disclosure to the applicant of Postal Service customer, financial, or other data of a commercial nature necessary to perform the function for which approval is sought would be appropriate and consistent with the good business practices within the meaning of 39 U.S.C. 410(c)(2).

(6) No applicant is considered a PES Provider until the Postal Service issues a final written decision. This is accomplished by the provision of a final written approval of the applicant's status as an authorized PES Provider in writing from Vice President of Mail Entry & Payment Technology (or successor). The applicant is approved in writing to engage in the function(s) for which authorization was sought and approved.

(d) To the extent that any person or entity is approved to be a PES Provider, such PES Provider must adhere to the Postal Requirements.

(e) As a condition of obtaining authorization under this section, the PES Provider's facilities used for the

manufacture, distribution, storage, resetting, repair, refurbishment, remanufacturing, modifying, or destruction of a Postage Evidencing System and all facilities housing infrastructure supporting Postage Evidencing Systems will be subject to unannounced inspection by representatives of the Postal Service. If such facilities are outside the continental United States, the PES Provider will be responsible for all reasonable and necessary travel-related costs incurred by the Postal Service to conduct the inspections. Travel-related costs are determined in accordance with Postal Service Handbook F–15, Travel and Relocation. At its discretion, the Postal Service may continue to fund routine inspections outside the continental United States as it has in the past, provided the costs are not associated with particular security issues related to a PES Provider's Postage Evidencing System or supporting infrastructure, or with the start-up or implementation of a new plant or of a new or substantially changed manufacturing process.

(1) When conducting an inspection outside the continental United States, the Postal Service will make every effort to combine the inspection with other inspections in the same general geographic area in order to enable affected PES Providers to share the costs. The Postal Service team conducting such inspections will be limited to the minimum number necessary to conduct the inspection. All air travel will be contracted for at the rates for official government business, when available, under such rules respecting class of travel as apply to those Postal Service representatives inspecting the facility at the time the travel occurs.

(2) If political or other impediments prevent the Postal Service from conducting security evaluations of Postage Evidencing System facilities in foreign countries, Postal Service approval of the activities conducted in such facilities may be suspended until such time as satisfactory inspections may be conducted.

(f) The Postal Service office responsible for administration of this part is the Office of Commercial Payment or successor organization. All submissions to the Postal Service required or invited by this part are to be made to this office in person or via mail to 475 L'Enfant Plaza SW, Room 3500, Washington, DC 20260–0004.

■ 4. Amend § 501.3 by

■ a. Removing paragraph (c);

■ b. Redsignating paragraph (d) as paragraph (c);

■ c. Revising newly redesignated paragraph (c); and

■ d. Redesignating paragraph (e) as paragraph (d).

The revision to read as follows:

§ 501.3 Postage Evidencing System provider qualification.

* * * * *

(c) Protect customer information by not causing or permitting the data to be released other than for the operation of a third-party location. The provider bears the ultimate responsibility to ensure customer information will not be compromised at any domestic or off shore locations (including third-party locations), and bears the responsibility to ensure its agents or contractors operating domestic or off shore locations do not compromise this information. The provider shall notify its customer that data relating to its systems is being housed at a third-party location, and shall provide a copy thereof to the Postal Service of such notice to its customers. To the extent that any unauthorized release takes place, the provider shall notify the Postal Service immediately upon discovery of any unauthorized use or disclosure of data or any other breach or improper disclosure of data of this agreement by the provider (as well as its agent operating the third-party location) and will cooperate with the Postal Service in every reasonable way to help the Postal Service regain possession of the data and prevent its further unauthorized use or disclosure. In the event that the Postal Service cannot regain possession of the data or prevent its further unauthorized use or disclosure, the provider shall indemnify the Postal Service from damages resulting from its (or such third-party) actions.

* * * * *

■ 5. Amend § 501.6 by revisnig paragraphs (c)(1), (2), and (3) and paragraph (e) to read as follows:

§ 501.6 Suspension and revocation of authorization.

* * * * *

(c) * * *

(1) Upon determination by the Postal Service that a provider is in violation of provisions of this part, or that its Postal Evidencing System poses an unreasonable risk to postal revenue, Commercial Payment, acting on behalf of the Postal Service, shall issue a written notice of proposed suspension citing the specific conditions or deficiencies for which suspension of authorization to manufacture and/or distribute a specific Postage Evidencing System or class of Postage Evidencing Systems may be imposed. Except in cases of willful violation, the provider shall be given an opportunity to correct deficiencies and achieve compliance with all requirements within a time limit corresponding to the potential risk to postal revenue.

(2) In cases of willful violation, or if the Postal Service determines that the provider has failed to correct cited deficiencies within the specified time limit, Commercial Payment shall issue a written notice of suspension setting forth the facts and reasons for the decision to suspend, and the effective date if a written defense is not presented as provided in paragraph (d) of this section.

(3) The notice shall also advise the provider of its right to file a response under paragraph (d) of this section. If a written response is not presented in a timely manner the suspension may go into effect. The suspension shall remain in effect for ninety (90) calendar days unless revoked or modified by Commercial Payment.

* * * * *

(e) After receipt and consideration of the defense, Commercial Payment shall advise the provider of its decision, and the facts and reasons for it. The decision shall be effective upon receipt unless it provides otherwise. The decision shall also advise the provider that it may be appealed within thirty (30) calendar days of receipt (unless a shorter time frame is deemed necessary). If an appeal is not filed in a timely manner, the decision of Commercial Payment shall become a final decision of the Postal Service. The appeal may be filed with the Chief Information Officer of the Postal Service and must include all supporting evidence and state with specificity the reasons the provider believes that the decision is erroneous. The decision of the Chief Information Officer shall constitute a final decision of the Postal Service.

* * * * *

■ 6. Amend § 501.7 by revising paragraph (a) to read as follows:

§ 501.7 Postage Evidencing System requirements.

(a) A Postage Evidencing System submitted to the Postal Service for approval must meet the requirements of the Intelligent Mail Indicia Performance Criteria (IMIPC) published by Commercial Payment. Copies of the current IMIPC may be requested via mail to the address in § 501.2(f).

* * * * *

■ 7. Amend § 501.8 by revising paragraph (a) to read as follows:

§ 501.8 Postage Evidencing System test and approval.

(a) To receive Postal Service approval, each Postage Evidencing System must be submitted by the provider and evaluated by the Postal Service in accordance with the Intelligent Mail Indicia Performance Criteria (IMIPC) published by Commercial Payment. Copies of the current IMIPC may be requested via mail to the address in § 501.2(f). These procedures apply to all proposed Postage Evidencing Systems regardless of whether the provider is currently authorized by the Postal Service to distribute Postage Evidencing Systems. All testing required by the Postal Service will be an expense of the provider.

* * * * *

■ 8. Amend § 501.10.by revising paragraph (a) introductory text and paragraph (b) to read as follows:

§ 501.10 Postage Evidencing System modifications.

(a) An authorized provider must receive prior written approval from the director, Commercial Payment, of any and all changes made to a previously approved Postage Evidencing System. The notification must include a summary of all changes made and the provider's assessment as to the impact of those changes on the security of the Postage Evidencing System and postage funds. Upon receipt of the notification, Commercial Payment will review the summary of changes and make a decision regarding the need for the following:

* * * * *

(b) Upon receipt and review of additional documentation and/or test results, Commercial Payment will issue a written acknowledgement and/or approval of the change to the provider.

■ 9. Amend § 501.14 by revising paragraph (c) introductory text, paragraph (c)(8), and paragraph (d) introductory text to read as follows:

§ 501.14 Postage Evidencing System inventory control processes.

* * * * *

(c) To ensure adequate control over Postage Evidencing Systems, plans for the following subjects must be submitted for prior approval, in writing, to the Office of Commercial Payment.

* * * * *

(8) *Postage meter destruction*—when required, the postage meter must be rendered completely inoperable by the destruction process and associated postage; printing dies and components must be destroyed. Manufacturers or distributors of meters must submit the proposed destruction method; a schedule listing the postage meters to be destroyed, by serial number and model; and the proposed time and place of destruction to Commercial Payment for approval prior to any meter destruction. Providers must record and retain the serial numbers of the meters to be destroyed and provide a list of such serial numbers in electronic form in accordance with Postal Service requirements for meter accounting and tracking systems. Providers must give sufficient advance notice of the destruction to allow Commercial Payment to schedule observation by its designated representative who shall verify that the destruction is performed in accordance with a Postal Service-approved method or process. To the extent that the Postal Service elects not to observe a particular destruction, the provider must submit a certification of destruction, including the serial number(s), to the Postal Service within 5 calendar days of destruction. These requirements for meter destruction apply to all postage meters, Postage Evidencing Systems, and postal security devices included as a component of a Postage Evidencing System.

(d) If the provider uses a third party to perform functions that may have an impact upon a Postage Evidencing System (especially its security), including, but not limited to, business relationships, repair, maintenance, and disposal of Postage Evidencing Systems, Commercial Payment must be advised in advance of all aspects of the relationship, as they relate to the custody and control of Postage Evidencing Systems and must specifically authorize in writing the proposed arrangement between the parties.

* * * * *

Brittany M. Johnson,

Attorney, Federal Compliance.

[FR Doc. 2020–01120 Filed 2–5–20; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, 90, and 95

[ET Docket No. 19–138; FCC 19–129; FRS 16447]

Use of the 5.850–5.925 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission's proposal to amend its rules for the 5.850–5.925 GHz (5.9 GHz) band. The proposal would permit unlicensed devices to operate in the lower 45-megahertz portion of the band at 5.850–5.895 GHz under part 15 of the Commission's rules. It would also permit Intelligent Transportation System (ITS) operations in the upper 30-megahertz portion of the band at 5.895–5.925 GHz under parts 90 and 95 of the Commission's rules. ITS operations would consist of Cellular Vehicle to Everything (C–V2X) devices at 5.905–5.925 GHz, and C–V2X and/or Dedicated Short Range Communications (DSRC) devices at 5.895–5.905 GHz. The document also asks whether alternate spectrum band approaches would better achieve the goal of maximizing the effective and efficient use of the 5.9 GHz band, including whether differently sized sub-bands or greater flexibility to introduce additional vehicular safety communications technologies into the band would be warranted.

DATES: Comments are due on or before March 9, 2020 and reply comments are due on or before April 6, 2020.

ADDRESSES: You may submit comments, identified by ET Docket No. 19–138, by any of the following methods:

- *Federal Communications Commission's website: https://www.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* Contact the Commission to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

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

FOR FURTHER INFORMATION CONTACT: Howard Griboff, Office of Engineering and Technology, at (202) 418–0657, *Howard.Griboff@fcc.gov.* For information regarding the Paperwork Reduction Act (PRA) information requirements contained in this document, contact Cathy Williams, Office of Managing Director, at (202) 418–2918 or *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of

Proposed Rulemaking (*NPRM*), ET Docket No. 19–138, FCC 19–129, adopted on December 12, 2019 and released on December 17, 2019. The full text of this document is available for public inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW, Washington, DC 20554, or by downloading the text from the Commission's website at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0714/FCC-17-94A1.pdf.* Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format) by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Comment Filing Procedures

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington DC 20554.

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).

***Ex Parte* Rules—Permit-But-Disclose**

Pursuant to § 1.1200(a) of the Commission's rules, the proceeding this *NPRM* 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 § 1.1206(b). In proceedings governed by § 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.

Paperwork Reduction Act of 1995

The *NPRM* contains proposed new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13 (PRA). OMB, the general public, and other federal agencies are invited to comment on the proposed information collection requirements contained in the proceeding. 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 comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Synopsis

I. Introduction and Background

1. The Commission has initiated this *NPRM* to assess the 5.9 GHz band rules and propose appropriate changes to ensure that this 75 Megahertz of mid-band spectrum supports its most effective and efficient use. This ''fresh look'' approach proposes to repurpose the lower 45-megahertz part of the band for unlicensed operations, and to continue to dedicate the upper 30 megahertz of the band for transportation and vehicle safety-related purposes.

2. For the past two decades, the non-Federal Mobile Service allocation in the 5.9 GHz band has been reserved for use by DSRC in the ITS service, with specific rules and protocols designed to enable transportation and vehicle safety-related communications. The Commission specified a single technological standard for DSRC based on its expectation that doing so was most likely to promote interoperability between vehicles and infrastructure in the United States, enable robust automotive safety communications, and accelerate the nationwide deployment of DSRC-based applications while reducing costs. Today, DSRC is being used in certain specialized traffic-related projects but has not been widely deployed within the consumer automobile market. Meanwhile, numerous technologies have been or are being developed and deployed in spectrum outside of the 5.9 GHz band to improve transportation safety and efficiency and provide certain services envisioned for DSRC.

3. C–V2X is a new technology that is designed to provide transportation and vehicle safety-related communications. Its proponents want to use C–V2X to provide ITS services in the 5.9 GHz band. In November 2018, the 5G Automotive Association (5GAA), as part of its request for a waiver of the DSRC rules to allow deployment of C–V2X at

5.905–5.925 GHz, asserted that C–V2X represents a significant advancement in technology to increase road safety and maximize the benefits of connected vehicles.

4. In the time since the 5.9 GHz band was set aside for DSRC, unlicensed device use in adjacent and nearby spectrum has developed exponentially. Most of the spectrum between 5.150 GHz to the lower edge of the 5.9 GHz band at 5.850 GHz is available for unlicensed operations under the rules for Unlicensed National Information Infrastructure (U–NII) devices. In 2013, recognizing the increasing demand for wireless broadband services, the Commission began a proceeding to examine the potential for allowing U–NII devices to share the 5.9 GHz band with DSRC. Coexistence evaluation under a three-phase test plan was ongoing at the time the *NPRM* was released. The Commission has noted that different parties have held different opinions regarding how the 5.9 GHz band should be used. These have included continuing to allow for exclusive use of the band for DSRC, promoting the use of C–V2X in the band, and making the band available for unlicensed operations.

II. Discussion

A. Dedicating Spectrum for Unlicensed Operations and Vehicular Applications

5. Rather than further attempting to resolve questions about co-existence and sharing of spectrum by unlicensed operations and DSRC, the Commission proposes to repurpose the lower 45 megahertz of the 5.9 GHz band (5.850–5.895 GHz) to allow unlicensed operations, and retain use of the upper 30 megahertz of the band (5.895–5.925 GHz) for ITS purposes, either solely for C–V2X or divided between C–V2X and DSRC technologies. This 45/30 megahertz split for unlicensed operations and ITS applications is intended to optimize the use of spectrum resources in the 5.9 GHz band by providing spectrum to support wideband unlicensed operations and continuing to dedicate sufficient spectrum to meet current and future needs for ITS applications. The Commission seeks comment on these proposals and the potential benefits of providing separate sub-bands in which unlicensed operations and vehicular-related systems would operate.

B. 5.850–5.895 GHz—45 Megahertz for Unlicensed Operations

6. The U–NII bands span much of the 5 GHz band and play a crucial role in accommodating the needs of businesses and consumers for fixed and mobile broadband communications, and specifically, Wi-Fi. These bands provide high data rate local area network connections for business and home users to interconnect with and access the internet, and are often used for data offloading by commercial wireless networks to relieve congestion when consumer demand is high. The Commission believes that unlicensed use of the 5.850–5.895 GHz portion of the 5.9 GHz band is well suited for such use and could help satisfy the burgeoning demand for high-speed wireless access.

7. The Commission proposes to designate the 5.850–5.895 GHz sub-band for unlicensed operations. The Commission believes that the 5.850–5.895 GHz sub-band (denoted as the U–NII–4 band) could be combined with the adjacent 5.725–5.850 GHz sub-band (denoted as the U–NII–3 band) to provide a large contiguous block of unlicensed spectrum that could be used to deliver more capacity and advanced features to Wi-Fi users. The Commission requests comment on its proposal to designate the 45 megahertz of spectrum at 5.850–5.895 MHz for unlicensed operations.

8. The Commission suggests that because the 5.850–5.895 GHz sub-band is adjacent to the U–NII–3 band, equipment manufacturers should be able to readily and cost-effectively manufacture devices to expand operations into this sub-band. The Commission seeks comment on how easily existing U–NII equipment could be modified to take advantage of the additional 45 megahertz of spectrum proposed for unlicensed operations.

C. 5.895–5.925 GHz—30 Megahertz for ITS

9. With this *NPRM,* the Commission revisits how best to make use of the 5.9 GHz band as part of a larger ecosystem that includes a variety of spectrum resources—including spectrum outside of the 5.9 GHz band—that can improve and enhance delivery of transportation and vehicular safety-related communications. The Commission seeks comment on the state of DSRC-based deployment and the extent to which existing licensees currently operate on some or all of the existing channels in the 5.9 GHz band. The Commission also seeks comment on the transportation and vehicular safety-related applications that are particularly well-suited for the 5.9 GHz band as compared to spectrum outside of the 5.9 GHz band, and how spectrum outside the 5.9 GHz band can be used efficiently and effectively to provide transportation and vehicular safety-related applications.

10. To ensure the most efficient and effective use of the 5.9 GHz band, the Commission proposes to continue dedicating 30 megahertz of spectrum in the upper portion of the 5.9 GHz band at 5.895–5.925 GHz to support ITS operations in the band. The Commission proposes that designating 30 megahertz of spectrum will be sufficient to support ITS-related functions in the 5.9 GHz band—public safety applications involving safety of life and property—which will be part of a larger wireless ecosystem that advances national transportation and vehicular safety-related goals. The Commission seeks comment on these proposals. Additionally, it seeks comment on whether there are actions it should take, or requirements that it should adopt, to promote rapid and effective deployment of ITS (*e.g.,* establishing appropriate benchmarks for infrastructure deployment or in-vehicle installation).

11. *C–V2X in the 5.905–5.925 GHz band.* The Commission proposes to authorize C–V2X operations in the upper 20 megahertz of the 5.9 GHz band (5.905–5.925 GHz) as a means of authorizing the ITS technology that is most capable of ensuring the rapid development and deployment of continually improving transportation and vehicular safety-related applications now and into the future, that is robust, secure, and spectrally efficient, and that is able to integrate spectrum resources from other bands as part of its transportation and vehicular safety-related system. The Commission seeks specific and detailed comment on this proposal and views.

12. The Commission seeks comment on whether authorizing C–V2X in this spectrum would be the best means for promoting effective use of this spectrum for ITS, both in terms of maximizing the potential benefits of using 5.9 GHz spectrum for vehicular-related systems (including safety features) and promoting rapid deployment of ITS in the band. The Commission also seeks comment on available technical studies on C–V2X that could inform its consideration of C–V2X, including any recent studies that provide information about how C–V2X would operate in the 5.9 GHz band. The Commission requests that commenters provide detailed information on precisely how C–V2X communications would employ use of 5.9 GHz band frequencies, and how it would integrate and make use of the commercial mobile network infrastructure as part of C–V2X.

13. The Commission also seeks comment on how C–V2X would

promote synergies with evolving technologies that use other spectrum resources and that will advance vehicular safety and other intelligent transportation capabilities of today and those anticipated in the coming years. The Commission requests comments from motor vehicle manufacturers, the associated automotive industry, and communications companies regarding authorization of C–V2X operations in this spectrum, including the extent to which their views on ITS development deployment issues have evolved. If C–V2X is best suited to achieve U.S. goals for ITS, how can the Commission best promote C–V2X use consistent with the goals and objectives of ITS, including safety and other vehicular ITS applications, connectivity, rapid development, and deployment?

14. *C–V2X or DSRC in the 5.895–5.905 GHz band.* The Commission seeks comment on whether the remaining 10 megahertz (5.895–5.905 GHz) of the 5.9 GHz band should also be designated for C–V2X. The Commission seeks comment on how to best optimize the spectrum so that this portion of the 5.9 GHz band can effectively enable the rapid and ongoing development and deployment of transportation and vehicular safety-related functionalities and applications today and in the future.

15. The Commission seeks comment on whether making additional spectrum available for C–V2X beyond 20 megahertz is necessary and appropriate for enabling the development and deployment of advanced C–V2X applications in the band. What additional C–V2X features potentially would be enabled? Commenters that support this approach should explain how C–V2X would make use of the entire 30 megahertz for ITS services and applications, and the potential benefits of this approach.

16. Alternatively, the Commission seeks comment on whether it should continue to set aside the 10 megahertz of spectrum at 5.895- 5.905 GHz for DSRC. The Commission requests comment on the kinds of DSRC-based services that would be possible using 10 megahertz of spectrum. What effect would the Commission's proposals have on any applications delivered using Channel 172 and Channel 184, the two DSRC channels that the Commission previously designated for safety of life applications? Can any such services be provided in the 10-megahertz at 5.895–5.905 GHz? What would be necessary to ensure that DSRC operations adjacent to C–V2X would be compatible? Are there any ITS services that DSRC would provide that cannot effectively be provided using C–V2X? Is dividing the 30 megahertz of ITS spectrum between C–V2X (20 megahertz) and DSRC (10 megahertz) useful and spectrally efficient when it comes to making use of the upper 30-megahertz portion of the band at 5.895–5.925 GHz for ITS services? The Commission asks that commenters supporting DSRC in the 10 megahertz of spectrum at 5.895–5.905 GHz discuss the benefits and costs of their preferred approach. The Commission also seeks comment on whether there is a more appropriate division of the upper 30-megahertz portion of the band at 5.895–5.925 GHz between C–V2X and DSRC.

17. 5GAA indicates that in addition to the 20-megahertz channel requested in its waiver request, it also desires a 40-megahertz channel (*i.e.,* 60-megahertz total) so that the technology it has planned for the band can evolve to include 5G systems and subsequent wireless generations that will amplify and expand upon the safety and other driving applications. Given that the Commission is already on the path to make substantial mid-band spectrum available for 5G in the 2.5 GHz and 3.5 GHz bands, and is proposing to do so in the 3.7 GHz band, allocating a larger spectrum designation in the 5.9 GHz as a path to 5G appears unnecessary. The Commission nonetheless seeks comment on 5GAA's assertions that 60 megahertz is needed for C–V2X so that the technology planned for the band can evolve to include 5G systems. Is it necessary to plan for such systems in the 5.9 GHz band? If so, can 20 or 30 megahertz of spectrum support 5G automotive applications? What advanced safety applications would be offered on a future 5G system? The Commission seeks comment on whether other 5G spectrum the Commission has made and is making available could be used to support additional C–V2X applications rather than the 5.9 GHz band. Commenters should address how 5G systems might fit into the overall connected vehicle ecosystem.

D. Transition of Existing DSRC Operations

18. Incumbent DSRC operations in the 5.9 GHz band fall into two categories: DSRC roadside units, which are licensed on a non-exclusive, shared basis pursuant to the Commission's part 90 rules, and on-board units, which are licensed-by-rule under part 95. Since the proposals in the *NPRM* may require DSRC incumbents to transition their operations from currently-designated frequencies, the Commission seeks comment on possible transition paths. To assess the potential effects of such a transition, the Commission seeks up-to-date information on actual DSRC operations under existing licenses, as well as the various uses of ITS that have been implemented through DSRC technology in this band. Do the locations of roadside units registered in the Commission's licensing database provide a complete and accurate representation of the deployments under these licenses? To what extent are DSRC operations concentrated in certain parts of the 5.9 GHz band, and how does use of the band vary between on-board and roadside units? Commenters are invited to submit information about the scope of deployment of such on-board units including, if available, the number of units deployed in consumer vehicles versus the number deployed in state, local, Tribal, or other governmental vehicles.

19. To what extent are existing DSRC deployments anticipated to be used on a long-term (versus demonstration) basis, and what is the lifespan of existing DSRC pilot projects? To the extent the Commission adopts the proposals detailed in this *NPRM,* would operators of existing DSRC deployments be likely to pursue C–V2X-based solutions, re-channelize to the remaining DSRC channel (if it adopts such a plan), or simply wind-down operations? To the extent the Commission grants new or renews existing DSRC authorizations, should it only prescribe such authorizations for a relatively short period of time?

20. The Commission proposes to modify existing DSRC licenses to allow operation in only the 5.895–5.925 GHz sub-band to the extent that licensees want to operate a C–V2X system or only in 5.895–5.905 GHz to the extent this sub-band is retained for DSRC systems and the licensees want to continue their DSRC operations. The Commission seeks comment on these proposals and appropriate transition paths. How would the proposed modifications affect current licensees with operational sites? How might statutory limitations or Commission policy inform the actions that the Commission should take as part of any transition plan? The Commission notes that section 316 of the Communications Act of 1934, as amended, gives the Commission authority to modify entire classes of licenses by a rulemaking or adjudication, though this authority has been interpreted not to extend to any ''fundamental change'' to the terms of a license. What obligations does section 316 of the Communications Act (or any other provision of the Act) impose on the Commission with respect to incumbent DSRC operations if the

Commission were to reallocate the band under any of the proposals on which it seeks comment in this *NPRM*?

21. Are there any transition considerations for on-board units that are different than considerations for roadside units? Considering the potential inability of DSRC on-board units to communicate with non-DSRC on-board units and infrastructure, should the Commission take any actions to remove them from service or require other suitable modifications consistent with any ultimately-adopted revisions to the 5.9 GHz band? Would such units remaining in vehicles impact unlicensed operations assuming the proposals in this *NPRM* are adopted? If on-board units remain in vehicles and DSRC licensees remain permitted to operate only in the 5.895–5.905 GHz sub-band, what effect, if any, would unlicensed operations have on these DSRC units?

22. Should the Commission allow existing DSRC roadside infrastructure to continue to operate under the licenses they hold until the end of their license term without renewal expectation? The Commission seeks comment on whether such an approach would adversely affect the introduction of unlicensed operations and C–V2X applications. In addition, the Commission requests comment on an appropriate transition timeline for all DSRC operations under any of the approaches it discusses above. Finally, to the extent that the Commission adopts revisions requiring a transition of DSRC operations, the Commission requests comment on any other considerations or approaches that it should take to effectuate an appropriate transition.

E. Technical Rules

23. *Unlicensed Operations in the 5.850–5.895 GHz Sub-band.* Unlicensed devices operate under the conditions of not causing harmful interference and accepting any interference from an authorized radio station. The Commission proposes that U–NII–4 device rules be placed in Part 15, subpart E along with the existing U–NII rules and be subject to all of the general Part 15 operational principles, and seeks comment on this proposal. Because the proposed U–NII–4 band at 5.850–5.895 GHz is located immediately adjacent to the existing U–NII–3 band at 5.725–5.850 GHz, and the Commission expects that manufacturers will design devices that span the U–NII–3 and U–NII–4 bands to implement the widest channel available under the standards—160 megahertz—the Commission proposes that U–NII–4 devices be subject to similar technical and operational rules that apply to the U–NII–3 band.

24. As an initial matter, the Commission proposes that U–NII–4 devices be permitted to operate at the same power levels as U–NII–3 devices, as specified in section 15.407(a)(3) of the Commission's rules. The Commission seeks comment on this proposal or whether it should adopt different power levels. The Commission proposes that U–NII–4 devices, or devices that operate across a single channel that spans the U–NII–3 and U–NII–4 bands, meet an out-of-band emissions (OOBE) limit of -27 dBm/MHz at or above 5.925 GHz, which is the same limit required for U–NII–3 devices at this frequency. The Commission notes that, for U–NII–3 devices, the -27 dBm/MHz limit increases incrementally to a level of 27 dBm/MHz at the band edge, as shown in section 15.407(b)(4) of the Commission's rules. Because the U–NII–4 band is above the U–NII–3 band and closer to adjacent services (*e.g.,* ITS services in the adjacent portion of the 5.9 GHz band (5.895–5.925 GHz) and 6 GHz fixed services), should the Commission also establish a separate limit at the upper U–NII–4 band edge (*i.e.,* at 5.895 GHz)? If so, what should this limit be? U–NII–3 devices are only required to meet an OOBE limit of -4.8 dBm/MHz at 5.895 GHz. Should the slope of the OOBE from U–NII–4 devices at the upper edge of the band be adjusted to match the OOBE limits from U–NII–3 devices or should a different limit be established? If the OOBE limits from the U–NII–4 band are adjusted to match the U–NII–3 band OOBE limits, can unlicensed devices and ITS devices operate directly adjacent to each other as the emissions into the ITS band would be identical from either U–NII–3 or U–NII–4 devices? The Commission seeks comment generally on the OOBE limits it should apply at the upper end of the U–NII–4 band and whether any spectrum must be reserved to protect ITS services, and if so, whether such spectrum should be in the U–NII or ITS segment of the 5.9 GHz band.

25. The Commission further proposes that U–NII–4 devices, or devices that operate across a single channel that spans the U–NII–3 and U–NII–4 bands, meet the same OOBE limits as U–NII–3 devices at the lower edge of the combined U–NII–3 and U–NII–4 band, *i.e.,* at 5.725 GHz. Because the Commission expects devices designed for the U–NII–3 and U–NII–4 bands to be similar and therefore compatible with each other, it does not believe it is necessary to set a separate OOBE limit for U–NII–4 devices at the U–NII–3/U–NII–4 band edge. The Commission seeks comment on these proposals as well as comment on whether there are alternative OOBE limits that it should adopt.

26. The Commission's proposals support separate U–NII–3 and U–NII–4 bands to provide flexibility in designing U–NII–3 equipment under the less stringent OOBE rules at the upper edge of the band. The Commission's proposals also provide flexibility for devices to operate across the U–NII–3 and U–NII–4 bands using the widest bandwidths permitted under the Institute of Electrical and Electronics Engineers (IEEE) 802.11 standard. Alternatively, the Commission could expand the U–NII–3 band and implement a single set of OOBE limits for the combined 5.725–5.895 GHz band using the OOBE limits proposed for U–NII–4 band devices or devices that operate across a single channel that spans the U–NII–3 and U–NII–4 bands. What advantages would a single band under uniform rules provide? What would be the drawbacks, especially considering the effect on OOBE limits? The Commission seeks comment on this alternative. Under the Commission's proposal or this alternative, it also seeks comment on any other rule changes that are needed to support communications across the combined U–NII–3 and U–NII–4 bands. The Commission seeks comment on how its proposals might affect device design and cost.

27. *Vehicular-Related Communications in the 5.895–5.925 GHz Sub-band.* The Commission proposes to adopt rules for vehicular-related communications in this sub-band that are similar to the Commission's approach when the rules for DSRC operations were adopted. C–V2X, which is based on the 3GPP LTE family of standards (*i.e.,* the 4G LTE-Pro system in 3GPP Release 14, with additional standard work currently underway to develop a 5G C–V2X peer-to-peer mode), is incompatible with DSRC-based operations, which is based on the IEEE 802.11 family of standards. As such, the Commission proposes that the technical rules for C–V2X be based on the 3GPP LTE standard and seeks comment on this proposal and any alternatives that should be considered. In addition, the Commission seeks comment on whether the C–V2X technical rules would be required for all devices operating in the 5.905–5.925 GHz band, or alternatively in the 5.895–5.925 GHz band, should the Commission permit C–V2X operations in the entire 30 megahertz.

28. The Commission's current DSRC rules incorporate by reference the

American Society for Testing and Materials (ASTM) EE2213–03ASTM E223313–03 standard. However, that standard has been superseded by a different standard, the IEEE 802.11p. If DSRC operations remain in the band, the Commission seeks comment on whether it should incorporate by reference IEEE 802.11 standards for DSRC operations. Similarly, the Commission seeks comment on whether 3GPP standard(s) for C–V2X operations should be incorporated by reference in the Commission's rules. What are the trade-offs in terms of deployment speed, safety and cost between mandating a particular standard for devices and leaving the choice of equipment to each manufacturer or automotive company? Commenters that advocate for mandating a particular standard should address how the Commission or industry could ensure that devices could be upgraded as the standard is upgraded to incorporate new capabilities and applications.

29. The Commission proposes that its technical rules for C–V2X be based on the 3GPP standard and discusses the specific technical rules that have been identified by 5GAA. These technical specifications are shown in the proposed rules. The Commission further proposes that, if it permits C–V2X operations across the entire 5.895–5.925 GHz band, it would extend these proposed rules to encompass that entire 30 megahertz. The Commission seeks comment on the specific language of these proposed rules, including the efficacy and technical feasibility of the proposed technical rules.

30. The Commission proposes both conducted and radiated OOBE limits for C–V2X equipment and seeks comment on these proposals. In that regard, the Commission seeks comment on the relative in-band versus out-of-band efficiency of antennas in this frequency range and whether both conducted and radiated emissions limits are necessary. The Commission also seeks comment on whether devices should be required to comply with both the conducted and radiated emissions limits or only one of the limits. Further, the Commission seeks comment on the proper reference for the OOBE limits, whether it should be the channel edge or the band edge.

31. The Commission proposes that the transmit power limit for C–V2X operation be defined over its channel bandwidth. The Commission seeks comment on this proposal and asks whether a different channel bandwidth for compliance purposes would be more appropriate. The Commission also seeks comment on any alternative technical rules to the existing DSRC regulatory framework. Commenters should address how any technical rules they support ensures the ability of C–V2X operations to deliver services while also ensuring compatibility among different nearby spectrum users (*i.e.,* how the potential for causing interference to other services is minimized). Commenters should specifically address any differences between these proposals, especially with respect to the OOBE limits, and the existing DSRC rules.

32. Although the Commission proposes specific rules consistent with those suggested by 5GAA, the Commission also seeks comment on alternatives that are based on the existing DSRC rules or some other regulatory framework. Should the Commission provide additional power to C–V2X stations commensurate with the Equivalent Isotropically Radiated Power (EIRP) levels permitted under the DSRC rules? Should additional power be permitted only for certain applications, such as vehicle-to-network or roadside unit to network communications? Should more power be permitted for all licensees or limited to only government entities as is the case under the current DSRC rules? Or would uniform power levels for all users better serve the public and avoid the potential for harmful interference? Should antenna height be a factor in how much power is permitted? Commenters advocating for technical limits similar to the existing DSRC rules should address how their alternative rules prevent harmful interference to nearby services.

33. To the extent the Commission retains provisions for DSRC operations in the 5.895–5.905 GHz band, it proposes to retain the existing part 90 and part 95 technical and coordination rules that currently apply to DSRC roadside unit and on-board unit operations on that channel (currently designated as DSRC Channel 180). This includes a power limit of 23 dBm EIRP and adherence to the current OOBE limits. The Commission seeks comment on this proposal. Should different power and OOBE limits be permitted? For example, should the Commission permit 33 dBm EIRP levels, similar to the power level proposed for C–V2X? If so, what additional measures might need to be imposed on DSRC operations to ensure there is no increased interference to DoD radars? Also, to the extent the Commission retains provisions for DSRC, it would be adjacent to the C–V2X band. Are there any additional technical rules the Commission should adopt for DSRC and/or C–V2X to facilitate their respective operations under this adjacent-channel arrangement?

34. *Incumbent protection.* In addition to the non-Federal Mobile Service allocation currently designated for DSRC, the 5.9 GHz band contains allocations for the Federal Radiolocation Service and the non-Federal Fixed Satellite Service (FSS) (Earth-to-space) on a primary basis, and the Amateur Service on a secondary basis for non-Federal use. The 5.850–5.875 GHz segment of the 5.9 GHz band is designated internationally for Industrial, Scientific, and Medical (ISM) applications.

35. The Department of Defense (DoD) uses the Federal Radiolocation Service to operate fixed and mobile radars for surveillance (including airborne surveillance), test range instrumentation, airborne transponders, and testing in support of the tracking and control of airborne vehicles. The existing DSRC rules for protection of the primary 5.9 GHz band Federal Radiolocation Service require that roadside installations within 75 kilometers around 59 Federal radar locations be coordinated with the National Telecommunications and Information Administration (NTIA). The Commission believes that requiring C–V2X equipment to likewise coordinate installations within 75-kilometer coordination zones represents the most straightforward approach for enabling compatibility with federal operations. The Commission seeks comment on this proposal, and specifically on whether C–V2X operations at the proposed power levels would in any way alter the previous assumptions for sharing with DoD radars. In addition, the Commission seeks comment on what measures the Commission might establish for C–V2X equipment to ensure the radars are not subject to harmful interference. Commenters should address the potential impact from both roadside and onboard units and provide information as to how such interference could be mitigated by requiring technical or operational constraints on the C–V2X operations in the event harmful interference were to occur.

36. The Commission also seeks comment on whether there are alternate methods to ensure that harmful interference is not caused to federal radars from C–V2X devices if it were to adopt the proposals included in the *NPRM.* Have there been any tests or studies undertaken by C–V2X proponents demonstrating that the C–V2X protocol provides comparable or greater protection to federal radars as compared to DSRC devices?

Alternatively, could dynamic or location awareness methods be used by C–V2X systems to automatically reduce power when nearing any of the sites designated for coordination, and could such provisions be made applicable to all C–V2X equipment? The Commission's consideration of on-board units in this regard could become relevant if it adopts final rules that specify different maximum power limits for C–V2X on-board units than those for DSRC on-board units. Under such a regime, how would systems be updated if new DoD radar sites are added? Proponents of any of these options should provide details specifying how the Commission could modify the interference protection rules.

37. As to unlicensed devices in the 5.9 GHz band, the Commission notes that unlicensed devices currently share spectrum with D0D radar operations in the adjacent U–NII–3 band (5.725–5.850 GHz) without implementing any frequency use avoidance techniques, and in general, sharing has been successful. The Commission proposes to adopt the same technical rules (*e.g.,* radiated power, power spectral density, etc.) for U–NII–4 unlicensed devices as apply to U–NII–3 unlicensed devices. The Commission will continue working with NTIA and DoD to examine and mitigate the potential for harmful interference to DoD radars under these proposed rules and may impose additional technical or operational constraints on U–NII–4 devices. The Commission further seeks comment on whether there are any mitigation measures, such as technical or operational conditions or constraints that it should consider for U–NII–4 operations to protect DoD radars in the 5.9 GHz band.

38. The primary non-federal FSS (Earth-to-space) operations at 5.9 GHz band are part of the ''extended C-band'' and provide uplinks (Earth-to-space) that are limited to international inter-continental systems and subject to case-by-case electromagnetic compatibility analysis. The majority of these stations are near the coastlines, though there are some inland stations. To enable the required international inter-continental transmissions, these stations transmit to satellites located at longitudes that are not located over the U.S. The Commission previously determined that no coordination requirement is needed to protect FSS uplink operations from harmful interference due to DSRC transmissions. Because C–V2X operations are anticipated to be similar to DSRC operations in their potential for interference, the Commission proposes that coordination with FSS stations is unnecessary to ensure protection from harmful interference due to C–V2X transmissions and seeks comment on this assessment. The Commission further proposes that to the extent DSRC operations remain in the 5.9 GHz band, such stations continue to operate under the current rules; *i.e.,* no coordination is necessary with FSS stations. The Commission seeks comment on this proposal and asks commenters to provide information on the types of FSS uses this band supports and how much this band actually is used (*i.e.,* is it used continuously or only as a back-up if other links go down?). Should the Commission codify coordination procedures, or should they remain under the purview of the interested parties where they can be more easily changed and updated as technology or band usage changes? Although the Commission observes that C–V2X and FSS uplink operations can co-exist without harmful interference, out of an abundance of caution, it also seeks comment on whether any testing or studies have been conducted by proponents of C–V2X that have considered FSS uplink incumbents, and how those results might inform the final rules it adopts.

39. The Commission also proposes not to adopt any restrictions on U–NII–4 devices to account for the existing non-federal users of the band. The Commission believes that the expected unlicensed device use cases, which primarily involve delivery of Wi-Fi signals along with the distance to FSS satellites in geostationary orbit, should protect FSS uplink operations from harmful interference. The Commission nevertheless seeks comment on whether any targeted rules are needed to ensure the protection of incumbent FSS uplink operations. If so, what types of sharing technology or techniques would be appropriate and what are the cost implications for manufacturers, vendors, and consumers? The Commission also believes that its proposal to apply the existing U–NII–3 power rules to the 5.850–5.895 GHz band will protect co-channel secondary Amateur Service operations from harmful interference. The Commission seeks comment on this proposed approach.

40. With regard to the secondary Amateur Service operations in the 5.9 GHz band, the Commission reasons that no additional rules are necessary to accommodate co-channel C–V2X use with the Amateur Service. The Commission also concludes that its proposal to apply the existing U–NII–3 power rules to the 5.850–5.895 GHz band will protect co-channel Amateur Service operations from harmful interference. Similarly, the Commission proposes that no additional rules are necessary to protect C–V2X devices from ISM operations permitted under Part 18 of the rules in the 5.850–5.875 GHz portion of the band. The Commission seeks comment on these approaches.

41. *Changes to the U.S. Table of Frequency Allocations.* In conjunction with the Commission's proposed use of the 5.895–5.925 GHz sub-band for vehicular-related systems, the Commission proposes conforming modifications to the U.S. Table. Currently under Footnote NG160 in the U.S. Table, use of the non-Federal Mobile Service in the 5.850–5.925 GHz band is limited to DSRC operating in the ITS radio service. The Commission proposes to modify Footnote NG160 to remove the reference to DSRC, refer to ITS generically, and limit ITS use of the Mobile Service to only the 5.895–5.925 GHz band. The Commission seeks comment on this proposal.

F. Vehicular Applications Outside of the 5.9 GHz Band

42. Vehicle-resident technologies are widely deployed in millions of vehicles today without using 5.9 GHz spectrum, and other, more advanced vehicle safety features are under development. The Commission seeks comment on the extent to which the needs for transportation and vehicular safety-related communications and other ITS applications originally identified for the 5.9 GHz band are already being met through spectrum use outside of the 5.9 GHz band. Is the requirement in the Intelligent Transportation Systems Act of 1998 to consider designating spectrum for ITS still relevant today? Because the Commission's general policy has been to move away from specific spectrum designations in favor of more flexible use, is there still a need to designate spectrum for ITS? Commenters that advocate for a specific designation should provide details regarding the benefits of such a designation including those to the public as well as on equipment designers and manufacturers.

43. Commenters also should consider whether there are other spectrum bands that might be better suited for supporting ITS applications. If so, which ones? What would be the benefit of doing so, *e.g.,* would this lead to more rapid take-up of valuable automotive safety applications? Commenters should address the extent to which some of the 5.9 GHz band might remain critical to the realization of ITS applications. Commenters that support maintaining

some 5.9 GHz band spectrum for ITS applications should specify the specific transportation and vehicular safety-related functions to be accommodated in the band and how much bandwidth in this particular band is necessary to achieve those respective functional capabilities. Are all of these applications equally critical to ensure automotive safety and improve the vehicular transportation environment? The Commission seeks comment on how the Commission can ensure that ITS is used for safety of life applications. What are the trade-offs associated with other options, such as the use of different spectrum to provide ITS services? Do the potential safety benefits vary by band or service and, if so, in what way?

44. Could the Commission modify its rules to make it easier to provide for automotive safety applications in other bands or through other radio services? What are the implications of retaining spectrum for ITS in the 5.9 GHz band relative to autonomous vehicles, especially given that autonomous vehicles are already being tested and deployed using applications and technologies other than DSRC for vehicle-to-vehicle communications or other transportation or vehicular-safety related operations?

G. Benefits and Costs

45. The Commission's goal in this proceeding is to revise the current 5.9 GHz band plan to optimize the efficient and effective use of the band by making the band available both for unlicensed use and ITS services. The Commission seeks to evaluate the benefits and costs of its proposed approach as well as alternatives, and requests comment on how to best calculate these benefits and costs. To date, the band has been underused for ITS services. Designating the 5.850–5.895 GHz band for unlicensed operations is likely to generate quantifiable benefits for consumers, stakeholders, and the American economy. Similarly, the Commission believes removing uncertainty pertaining to the future of ITS services in the band, including the type(s) of technologies that are authorized, would promote more rapid and effective deployment of these services in the band. At the same time, the Commission recognizes that reducing the spectrum available for ITS, depending on the approach taken, potentially could lead to social costs if deployments of ITS would ever occur at wide-scale. The Commission seeks comment on how to best calculate these benefits and costs.

46. The Commission believes that its proposals have the potential to create economic value by resolving uncertainty concerning the future designation of the 5.9 GHz band for both unlicensed uses and ITS services. Specifically, does the economic value of removing this uncertainty and providing a clear direction for use of the band under the proposed new band plan exceed the benefits that might be achieved by continuing on the path set out by the Commission in 2013, when it sought to explore sharing of the band between unlicensed and DSRC devices (and the extensive further testing that this would entail)? Insofar as the Commission's proposal provides certainty that part of the 5.9 GHz band would continue to be reserved for ITS services, and would have the effect of promoting development and deployment of ITS services that make use of this band, how should the Commission evaluate the benefits of such a determination today and into the future?

47. The Commission seeks comment on the benefits and costs of designating a significant portion of this band for unlicensed operations. The Commission notes that other studies have sought to quantify the benefits of unlicensed spectrum, but most have focused on existing allocations rather than on the 5.9 GHz band specifically. The Commission requests comment on the extent to which available studies may provide an appropriate approach for quantifying the benefits associated with proposing to designate 45 megahertz at 5.850–5.895 GHz for unlicensed operations. The Commission also seeks comment on other potential benefits, including benefits to other licensed or unlicensed users (including ITS users) that may be able to use unlicensed devices in providing services.

48. The Commission also proposes to measure the benefits and costs of reserving 30 megahertz of spectrum in the 5.9 GHz band for ITS and seeks specific comment on how best to evaluate these benefits and costs. In proposing to reserve 30 megahertz of spectrum in the 5.9 GHz band for ITS, the Commission recognizes that many of the technologies that will make use of 5.9 GHz band spectrum are evolving and will continue to evolve in the future. The Commission seeks comment on how to evaluate the benefits and costs of its proposal given the evolving nature of transportation and vehicular safety-related technologies, both within and outside of the 5.9 GHz band. The Commission seeks comment on the extent to which its proposals would make ITS based technologies either more or less effective. To what extent are or will the types of ITS services that would be available through use of the 5.9 GHz band going to be offered using spectrum outside of the 5.9 GHz band? How should the Commission evaluate the benefits and costs of ITS services in the 5.9 GHz band (whether for vehicular safety or other transportation-related applications) using 30 megahertz of spectrum in the band as compared with other amounts of spectrum in the band? The Commission also asks that commenters quantify how the vehicular safety and transportation-related benefits and costs may be affected based on the authorization of C–V2X technologies in the entire 5.895–5.925 GHz sub-band, or alternatively authorizing C–V2X in the upper 20 megahertz and DSRC in the other 10 megahertz. Are there technologies presently being or likely to be developed outside of the 5.9 GHz band that would substantially substitute for benefits of ITS in the 5.9 GHz band?

49. The Commission is cognizant that retaining 30 megahertz of spectrum for ITS in the 5.9 GHz band may have other economic benefits or costs that could be affected by its proposal. For instance, in addition to improving traffic safety, the ITS service was envisioned as having the potential to decrease traffic congestion, facilitate the reduction of air pollution, and help conserve vital fossil fuels. To what extent would these potential benefits be affected by the Commission's proposal? The Commission asks commenters to enumerate and quantify any such alternative effects. Additionally, to the extent that there are benefits and costs associated with the Commission's proposal for unlicensed operations and ITS services in the 5.9 GHz band, when and over what time horizon would they be realized?

H. Alternate Approaches

50. Are there spectrum band approaches other than those discussed above that may better maximize the effective and efficient use of the 5.9 GHz band? Would creating differently sized sub-bands be a better approach than the Commission's proposed band plan? Are there any additional emerging vehicle safety technologies the Commission should consider for the 5.9 GHz band? Should the Commission provide automakers and the transportation industry with broad flexibility to introduce additional vehicular safety communications technologies into the band, and permit any and all technologies so long as they can co-exist? This could include DSRC, C–V2X, or future spectrum use protocols that might be developed. If so, how should

the Commission define successful co-existence and interoperability, and are there ways to ensure that a technology-neutral approach to any future such developments would provide ready access to the band and enable critical safety services without causing harmful interference to incumbent technologies?

51. Commenters should provide detailed justification to support specific band plan options, including the types of services that could or could not be delivered by unlicensed use or by vehicular-related services under each option. Likewise, in each case, commenters should seek to quantify the costs and benefits as well as the risks and opportunities, of the discussed alternatives relative to the Commission's proposed band plan.

III. Initial Regulatory Flexibility Analysis

52. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *NPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines in the *NPRM* for comments. The Commission will send a copy of the *NPRM,* including the IRFA, to the Chief Counsel of Advocacy of the Small Business Administration (SBA).

A. Need for, and Objectives of, the Proposed Rules

53. In this NPRM, the Commission assesses the present 5.9 GHz band (5.850–5.925 GHz band) rules and proposes appropriate changes to ensure the spectrum supports its highest and best use. Recognizing the current state of vehicular technology and deployment, and the evolution of the telecommunications market, the Commission proposes to continue to dedicate spectrum—the upper 30 megahertz portion of the band—for transportation and vehicle safety purposes and repurpose the lower 45 megahertz part of the band for unlicensed operations to support high-throughput broadband applications.

54. For the past two decades, the 5.9 GHz band has been spectrum designated for the operation of the Intelligent Transportation System (ITS). The Commission adopted licensing and services rules for Dedicated Short Range Communications (DSRC), and specified a single technological standard based on its expectation that, despite its general preference for leaving the selection of technologies to licensees, a single standard in this band was most likely to promote interoperability between vehicles and infrastructure in the United States, enable robust automotive safety communications, and accelerate the nationwide deployment of DSRC-based applications while reducing costs.

55. Since that time, the DSRC service has evolved slowly and has not been widely deployed within the consumer automobile market (it has found use in certain specialized, traffic-related projects). Meanwhile, numerous technologies have been or are being developed and deployed to improve transportation safety and efficiency and provide the types of services envisioned for DSRC in spectrum outside the 5.9 GHz band. A new technology, Cellular Vehicle to Everything (C V2X), has been gaining momentum as a means of providing transportation and vehicle safety-related communications, and its proponents now seek to operate its technology as an ITS service in the 5.9 GHz band. At the same time, unlicensed device use has developed exponentially elsewhere in the 5 GHz band to become a vital component of the communications landscape. As a result, most of the spectrum between 5.150 GHz to the lower edge of the 5.9 GHz band at 5.850 GHz is available for unlicensed operations. As such, the 5.850–5.895 GHz sub-band in the 5.9 GHz band is especially well positioned to deliver immediate and potentially significant benefits when used by unlicensed devices to meet the intense demand.

56. This *NPRM* proposes to create sub-bands within the 5.9 GHz band to allow unlicensed operations to operate in the lower 45 megahertz of the band (5.850–5.895 GHz) and reserve the upper 30 megahertz of the band (5.895–5.925 GHz) for ITS, either solely C–V2X or divided between C–V2X and DSRC technologies. This 45/30 megahertz split for unlicensed devices and ITS applications is intended to optimize the use of spectrum resources in the 5.9 GHz band by enabling valuable additions and enhancements to the unlicensed ecosystem and by continuing to dedicate sufficient spectrum to meet current and future ITS needs within the vehicular-related ecosystem. This proposal seeks to provide the spectrum necessary for unlicensed operations to implement the widest, highest throughput channel permitted by the standards, while clarifying the technical rules and eliminating uncertainty for the development and deployment of ITS applications.

B. Legal Basis

57. The proposed action is taken authority found in sections 1, 4(i), 301, 302, 303, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 301, 302, 303, 316, and 332, and § 1.411 of the Commission's rules, 47 CFR 1.411.

C. Description and Estimate of Number of Small Entities to Which the Proposed Rules Will Apply

58. 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 which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

59. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, 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 28.8 million businesses.

60. 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).

61. 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 indicate 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 the Commission estimates that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

62. *Radio Frequency Equipment Manufacturers (RF Manufacturers).* Neither the Commission nor the SBA has developed a small business size standard applicable to Radio Frequency Equipment Manufacturers (RF Manufacturers). There are several analogous SBA small entity categories applicable to RF Manufacturers—Fixed Microwave Services, Other Communications Equipment Manufacturing, and Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. A description of these small entity categories and the small business size standards under the SBA rules are detailed below.

63. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Upper Microwave Flexible Use Service, Millimeter Wave Service, Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. There are approximately 66,680 common carrier fixed licensees, 69,360 private and public safety operational-fixed licensees, 20,150 broadcast auxiliary radio licensees, 411 LMDS licenses, 33 24 GHz DEMS licenses, 777 39 GHz licenses, and five 24 GHz licenses, and 467 Millimeter Wave licenses in the microwave services. The Commission has not yet defined a small business with respect to microwave services. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) and the appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this SBA category and the associated size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

64. *Other Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment). Examples of such manufacturing include fire detection and alarm systems manufacturing, Intercom systems and equipment manufacturing, and signals (*e.g.,* highway, pedestrian, railway, traffic) manufacturing. The SBA has established a size standard for this industry as all such firms having 750 or fewer employees. U.S. Census Bureau data for 2012 shows that 383 establishments operated in that year. Of that number, 379 operated with fewer than 500 employees and 4 had 500 to 999 employees. Based on this data, the Commission concludes that the majority of Other Communications Equipment Manufacturers are small.

65. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a small business size standard for this industry of 1,250 or fewer employees. U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on this data, the Commission concludes that a majority of manufacturers in this industry are small.

66. *Automobile Manufacturing.* This U.S. industry comprises establishments primarily engaged in (1) manufacturing complete automobiles (*i.e.,* body and chassis or unibody) or (2) manufacturing automobile chassis only. The SBA has established a size standard for this industry, which is 1,500 or fewer employees. 2012 U.S. Census Bureau data indicate that 185 establishments operated in this industry that year. Of this number, 162 establishments had employment of fewer than 1,000 employees, and 11 establishments had employment of 1,000 to 2,499 employees. Therefore, the Commission estimates that the majority of manufacturers in this industry are small entities.

67. *Internet Service Providers (Non-Broadband).* Internet access service providers such as Dial-up internet service providers, VoIP service providers using client-supplied telecommunications connections and internet service providers using client-supplied telecommunications connections (*e.g.,* dial-up ISPs) fall in the category of All Other Telecommunications. The SBA has developed a small business size standard for All Other Telecommunications which consists of all such firms with gross annual receipts of $35 million or less. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million. Consequently, under this size standard a majority of firms in this industry firms can be considered small.

68. *Internet Service Providers (Broadband).* Broadband internet service providers include wired (*e.g.,* cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, under this size standard, the majority of firms in this industry can be considered small.

69. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' As of 2018, there were approximately 50,504,624 cable video subscribers in the United States. Accordingly, an operator serving fewer than 505,046 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, the Commission finds that all but six incumbent cable operators are small entities under this size standard. The Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Therefore, the Commission is unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

70. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1,000 employees or more. Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

71. The *NPRM* proposes rules that will affect reporting and other compliance requirements. The *NPRM* proposes to adopt rules reducing the amount of spectrum available for vehicular-related communications, *i.e.,* ITS, from 75 megahertz (5.850–5.925 GHz) to 30 megahertz (5.895–5.925 GHz) and establish rules for the C–V2X technology that largely follow the Commission's approach when the rules for DSRC operations were adopted, including those designed to protect incumbent operations. The Commission expects that manufacturers would be required to redesign DSRC equipment to reflect the revised band plan (if DSRC remains a technical option in the band) and design C–2X equipment to per the Commission's new rules. The Commission also proposes that a licensee of either technology must register each of its roadside units in the Universal Licensing System before operating such roadside unit and delete from the registration database any roadside units that have been discontinued.

72. The NPRM also proposes to allow unlicensed operations in 45 megahertz from 5.850–5.895 GHz (the U–NII–4 band) under the conditions of not causing harmful interference and accepting any interference from an authorized radio station. The Commission proposes that U–NII–4 devices be subject to similar technical and operational rules that apply to the U–NII–3 band, with regard to, *e.g.,* power levels and out-of-band emissions limits. Because the proposed U–NII–4 band at 5.850–5.895 GHz is located immediately adjacent to the existing U–NII–3 band at 5.725–5.850 GHz, the Commission expects that manufacturers will design devices that span the U–NII–3 and U–NII–4 bands to implement the widest channel available under the standards, which will affect device design and cost.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

73. The RFA requires an agency to describe any significant 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 or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

74. The proposals that would require equipment modification or new equipment manufacturing would have an impact on equipment manufacturers, some of which may be small entities. Though the Commission believes that its proposed technical rules for the ITS equipment would provide appropriate rules for this band, it seeks comment on alternatives that are based on the existing rules or some other regulatory scheme, with regard to, *e.g.,* power limits and antenna height. The Commission also seeks comment on whether it should adopt different power levels or alternative out-of-band emissions limits for U–NII–4 equipment as compared to other U–NII equipment.

75. In addition, the Commission also seeks general comment on alternative approaches to the spectrum band plan than those discussed, such as creating differently sized sub-bands for unlicensed and ITS, and technology neutral approaches to use of the ITS band.

76. The regulatory burdens the Commission has proposed are necessary in order to ensure that the public receives the benefits of innovative services and technologies in a prompt and efficient manner and apply equally to large and small entities, thus without differential impact. Comments with proposed alternatives will assist in reaching the best outcomes. The Commission will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant impact on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

77. None.

IV. Ordering Clauses

78. *It is ordered* that pursuant to the authority found in sections 1, 4(i), 301, 302, 303, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 301, 302, 303, 316, and 332, and § 1.411 of the Commission's rules, 47 CFR 1.411, that this Notice of Proposed Rulemaking is hereby *adopted.*

79. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 2

Radio, Telecommunications.

47 CFR Part 15, 90, and 95

Communications equipment, Radio.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 2, 15, 90, and 95 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106 is amended by revising footnote ''NG160'' to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

NG160 In the band 5895–5925 MHz, the use of the non-Federal mobile service is limited to operations in the Intelligent Transportation System radio service.

* * * * *

PART 15—RADIO FREQUENCY DEVICES

■ 3. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

■ 4. Section 15.401 is revised to read as follows:

§ 15.401 Scope.

This subpart sets out the regulations for unlicensed National Information Infrastructure (U–NII) devices operating in the 5.15–5.35 GHz and 5.47–5.895 GHz bands.

■ 5. Section 15.403 is amended by revising paragraph (s) to read as follows:

§ 15.403 Definitions.

* * * * *

(s) *U–NII devices.* Intentional radiators operating in the frequency bands 5.15–5.35 GHz and 5.470–5.895 GHz that use wideband digital modulation techniques and provide a wide array of high data rate mobile and fixed communications for individuals, businesses, and institutions.

■ 6. Amend § 15.407 by:

■ a. Redesignating paragraphs (a)(4) and (5) as paragraphs (a)(5) and (6);

■ b. Adding new paragraph (a)(4);

■ c. Revising newly redesignated paragraph (a)(6);

■ d. Revising the introductory text of paragraph (b)(4);

■ e. Redesignating paragraphs (b)(5) through (7) as paragraphs (b)(6) through (8);

■ f. Adding new paragraph (b)(5); and

■ g. Revising paragraph (e).

The additions and revisions to read as follows:

§ 15.407 General technical requirements.

* * * * *

(a) * * *

(4) For the band 5.85–5.895 GHz, the maximum conducted output power over the frequency band of operation shall not exceed 1 W. In addition, the maximum power spectral density shall not exceed 30 dBm in any 500-kHz band. If transmitting antennas of directional gain greater than 6 dBi are used, both the maximum conducted output power and the maximum power spectral density shall be reduced by the amount in dB that the directional gain of the antenna exceeds 6 dBi. However, fixed point-to-point U–NII devices operating in this band may employ transmitting antennas with directional gain greater than 6 dBi without any corresponding reduction in transmitter conducted power. Fixed, point-to-point operations exclude the use of point-to-multipoint systems, omnidirectional applications, and multiple collocated transmitters transmitting the same information. The operator of the U–NII device, or if the equipment is professionally installed, the installer, is responsible for ensuring that systems employing high gain directional antennas are used exclusively for fixed, point-to-point operations.

* * * * *

(6) The maximum power spectral density is measured as a conducted emission by direct connection of a calibrated test instrument to the equipment under test. If the device cannot be connected directly, alternative techniques acceptable to the Commission may be used. Measurements in the 5.725–5.895 GHz band are made over a reference bandwidth of 500 kHz or the 26 dB emission bandwidth of the device, whichever is less. Measurements in the 5.15–5.25 GHz, 5.25–5.35 GHz, and the 5.47–5.725 GHz bands are made over a bandwidth of 1 MHz or the 26 dB emission bandwidth of the device, whichever is less. A narrower resolution bandwidth can be used, provided that the measured power is integrated over the full reference bandwidth.

* * * * *

(b) * * *

(4) For transmitters operating solely in the 5.725–5.850 GHz band:

* * * * *

(5) For transmitters operating solely in the 5.850–5.895 GHz band or operating on a channel that spans across 5.850 GHz:

(i) All emissions at or above 5.925 GHz shall not exceed an e.i.r.p. of −27 dBm/MHz.

(ii) All emissions below 5.725 GHz shall be limited to a level of −27 dBm/MHz at 5.65 GHz increasing linearly to 10 dBm/MHz at 5.7 GHz, and from 5.7 GHz increasing linearly to a level of 15.6 dBm/MHz at 5.72 GHz, and from 5.72 GHz increasing linearly to a level of 27 dBm/MHz at 5.725 GHz.

* * * * *

(e) Within the 5.725-.5.850 GHz and 5.850–5.895 GHz bands, the minimum 6 dB bandwidth of U–NII devices shall be at least 500 kHz.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 7. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

■ 8. Section 90.7 is amended by adding the definition of ''Cellular Vehicle to Everything (C–V2X) Communications Services'' in alphabetical order and revising the definitions of ''On-Board unit (OBU),'' ''Roadside unit (RSU)'' and ''Roadway bed surface'' to read as follows:

§ 90.7 Definitions.

* * * * *

Cellular Vehicle to Everything (C–V2X) Service. The use of cellular radio techniques defined by the 3rd Generation Partnership Program (3GPP) to transfer data between roadside and mobile units, between mobile units, and between portable and mobile units to perform operations related to the improvement of traffic flow, traffic safety, and other intelligent transportation service applications in a variety of environments. C–V2X Service systems may also transmit status and instructional messages related to the units involved.

* * * * *

On-Board Unit (OBU). An On-Board Unit is a DSRCS or C–V2X Service transceiver that is normally mounted in or on a vehicle, or which in some instances may be a portable unit. An

OBU can be operational while a vehicle or person is either mobile or stationary. The OBUs receive and transmit on one or more radio frequency (RF) channels. Except where specifically excluded, OBU operation is permitted wherever vehicle operation or human passage is permitted. The OBUs mounted in vehicles are licensed by rule under part 95 of this chapter and communicate with Roadside Units (RSUs) and other OBUs. Portable OBUs are also licensed by rule under part 95 of this chapter.

Roadside Unit (RSU). A Roadside Unit is a DSRCS or C–V2X Service transceiver that is mounted along a road or pedestrian passageway. An RSU may also be mounted on a vehicle or is hand carried, but it may only operate when the vehicle or hand-carried unit is stationary. Furthermore, an RSU operating under this part is restricted to the location where it is licensed to operate. However, portable or hand-held RSUs are permitted to operate where they do not interfere with a site-licensed operation. An RSU broadcasts data to or exchanges data with OBUs.

Roadway bed surface. For DSRCS or the C–V2X Service, the road surface at ground level.

* * * * *

■ 9. Section 90.149 is amended by revising paragraph (b) to read as follows:

§ 90.149 License term.

* * * * *

(b) Non-exclusive geographic area licenses for Roadside Units (RSUs) under subpart M of this part in the 5895–5925 MHz band will be issued for a term not to exceed ten years from the date of original issuance or renewal. The registration dates of individual RSUs (see § 90.375) will not change the overall renewal period of the single license.

■ 10. Section 90.155 is amended by revising paragraph (i) to read as follows:

§ 90.155 Time in which station must be placed in operation.

* * * * *

(i) Roadside Units (RSUs) under subpart M of this part in the 5895–5925 MHz band must be placed in operation within 12 months from the effective date of registration (see § 90.375) or the authority to operate the RSUs cancels automatically (see § 1.955 of this chapter). Such registration date(s) do not change the overall renewal period of the single license. Licensees must notify the Commission in accordance with § 1.946 of this chapter when registered units are placed in operation within their construction period.

■ 11. Section 90.175 is amended by revising paragraph (j)(16) to read as follows:

§ 90.175 Frequency coordinator requirements.

* * * * *

(j) * * *

(16) Applications for DSRCS and C–V2X Service licenses (as well as registrations for Roadside Units) under subpart M of this part in the 5895–5925 GHz band.

* * * * *

■ 12. Section 90.179 is amended by revising paragraph (f) to read as follows:

§ 90.179 Shared use of radio stations.

* * * * *

(f) Above 800 MHz, shared use on a for-profit private carrier basis is permitted only by SMR, Private Carrier Paging, LMS, DSCRS, and C–V2X Service licensees. See subparts M, P, and S of this part.

■ 13. Section 90.205 is amended by revising paragraph (q) to read as follows:

§ 90.205 Power and antenna height limits.

* * * * *

(q) 5895–5925 MHz. Power and height limitations are specified in subpart M of this part.

* * * * *

■ 14. Section 90.210 is amended by revising the entry of ''5850–5925'' in the table and footnote 4 to read as follows:

§ 90.210 Emission masks.

* * * * *

Applicable emission masks frequency band (MHz)	Mask for equipment with audio low pass filter	Mask for equipment without audio low pass filter
* * * * * * *		
5895–5925 [4]		
* * * * * * *		

[4] DSRCS and C–V2X Service Roadside Units in the 5.895–5.925 GHz band is governed under Subpart M of this part.

* * * * *

■ 15. In § 90.213 amend paragraph (a) by revising footnote 10 to the table to read as follows:

§ 90.213 Frequency stability.

(a) * * *

[10] Frequency stability for DSRCS and C–V2X Service equipment in the 5895–5925 MHz band is specified in subpart M of this part. For all other equipment, frequency stability is to be specified in the station authorization.

■ 16. Section 90.350 is revised to read as follows:

§ 90.350 Scope.

The Intelligent Transportation Systems (ITS) radio service is for the purpose of integrating radio-based technologies into the nation's transportation infrastructure and to develop and implement the nation's intelligent transportation systems. It includes the Location and Monitoring Service (LMS), the Dedicated Short-Range Communications Service (DSRCS), and the Cellular Vehicle to Everything (C–V2X) Service. Rules as to eligibility for licensing, frequencies available, and any special requirements for services in the Intelligent Transportation Systems radio service are set forth in this subpart.

Subpart M—[Amended]

■ 17. Amend Subpart M, consisting of §§ 90.350 through 90.383, by revising the undesignated heading after § 90.365 to read as follows:

* * * * *

Regulations Governing the Licensing and Use of Frequencies in the 5895–5925 MHz Band for Dedicated Short-Range Communications Service (DSRCS) and Cellular Vehicle to Everything (C–V2X) Service

* * * * *

■ 18. Section 90.370 is added to subpart M to read as follows:

§ 90.370 Permitted frequencies.

(a) DSRCS Roadside Units (RSUs) are permitted to operate in the 5895–5905 MHz band.

(b) C–V2X Service RSUs are permitted to operate in the 5905–5925 MHz band.

(c) Channels are available on a shared basis only for use in accordance with the Commission's rules. All licensees shall cooperate in the selection and use of channels in order to reduce

interference. This includes monitoring for communications in progress and any other measures as may be necessary to minimize interference. Licensees of RSUs suffering or causing harmful interference within a communications zone as defined in § 90.375 of this part are expected to cooperate and resolve this problem by mutually satisfactory arrangements. If the licensees are unable to do so, the Commission may impose restrictions including specifying the transmitter power, antenna height and direction, additional filtering, or area or hours of operation of the stations concerned. Further the use of any channel at a given geographical location may be denied when, in the judgment of the Commission, its use at that location is not in the public interest; use of any such channel may be restricted as to specified geographical areas, maximum power, or such other operating conditions, contained in this part or in the station authorization.

(d) Frequencies in the 5895–5925 MHz band will not be assigned for the exclusive use of any licensee.

■ 19. Section 90.371 is amended by revising the section heading, removing paragraph (a), redesignating paragraphs (b) and (c) as paragraphs (a) and (b) and revising the introductory text of newly redesignated paragraph (a) to read as follows:

§ 90.371 DSRCS and C–V2X Service.

(a) DSRCS and C–V2X Service Roadside Units (RSUs) operating in the band 5895–5925 MHz shall not receive protection from Government Radiolocation services in operation prior to the establishment of the RSU. Operation of RSU stations within 75 kilometers of the locations listed in the table below must be coordinated through the National Telecommunications and Information Administration.

* * * * *

■ 20. Section 90.373 is amended by revising the introductory text to read as follows:

§ 90.373 Eligibility in the DSRCS and C–V2X Service.

The following entities are eligible to hold an authorization to operate Roadside units in the DSRCS or C–V2X Service:

* * * * *

■ 21. Section 90.375 is revised to read as follows:

§ 90.375 License areas, communication zones, and registrations.

(a) Roadside Units (RSUs) in the 5895–5925 MHz band are licensed on the basis of non-exclusive geographic areas. Governmental applicants will be issued a geographic area license based on the geo-political area encompassing the legal jurisdiction of the entity. All other applicants will be issued a geographic area license for their proposed area of operation based on county(s), state(s) or nationwide.

(b) Applicants who are approved in accordance with FCC Form 601 will be granted non-exclusive licenses for the channel(s) corresponding to their intended operations (see § 90.370). Such licenses serve as a prerequisite of registering individual RSUs located within the licensed geographic area described in paragraph (a) of this section. Licensees must register each RSU in the Universal Licensing System (ULS) before operating such RSU. RSU registrations are subject, inter alia, to the requirements of § 1.923 of this chapter as applicable (antenna structure registration, environmental concerns, international coordination, and quiet zones). Additionally, RSUs at locations subject to NTIA coordination (see § 90.371(a)) may not begin operation until NTIA approval is received. Registrations are not effective until the Commission posts them on the ULS. It is the licensee's responsibility to delete from the registration database any RSUs that have been discontinued.

(c) Licensees must operate each RSU in accordance with the Commission's rules and the registration data posted on the ULS for such RSU. Licensees must register each RSU for the smallest communication zone needed for the intelligent transportation systems application using one of the following four communication zones:

RSU class	Maximum output power (dBm) [1]	Communications zone (meters)
A	0	15
B	10	100
C	20	400
D	28.8	1000

[1] As described in the IEEE 802.11p-2010 and Standard and ATIS transposed standards of the 3GPP (incorporated by reference, *see* § 90.379).

■ 22. Section 90.377 is revised to read as follows:

§ 90.377 Maximum EIRP and antenna height.

(a) DSRCS and C–V2X Service licensees shall transmit only the power (EIRP) needed to communicate with an On-Board Unit (OBU) within the communications zone and must take steps to limit the Roadside Unit (RSU) signal within the zone to the maximum extent practicable.

(b) DSRCS and C–V2X Service licensees must limit RSU output power to 20 dBm and equivalent isotopically radiated power (EIRP) to 33 dBm. The EIRP is measured as the maximum EIRP toward the horizon or horizontal, whichever is greater, of the gain associated with the main or center of the transmission beam.

(c) The radiation center of an RSU antenna shall not exceed 8 meters above the roadway bed surface, except that an RSU may employ an antenna with a height exceeding 8 meters but not exceeding 15 meters provided the EIRP specified in paragraphs (a) and (b) of this section is reduced by a factor of 20 log(Ht/8) in dB where Ht is the height of the radiation center of the antenna in meters above the roadway bed surface. The RSU antenna height shall not exceed 15 meters above the roadway bed surface.

■ 23. Section 90.379 is revised to read as follows:

§ 90.379 Technical standards for Roadside Units.

(a) DSRCS Roadside Units (RSUs) operating in the 5895–5905 MHz band must comply with the technical standard Institute of Electrical and Electronics Engineers (IEEE) 802.11p-2010.

(b) C–V2X Service RSUs operating in the 5905–5925 MHz band shall comply with the V2X sidelink service for this band as described in the ATIS transposed standards of the 3GPP specifications except where these rules and regulations take precedence.

(c) The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Federal Communications Commission, 445 12th Street SW, Washington, DC 20554 and is available from the sources indicated below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *www.archives.gov/federal-register/cfr/ibrlocations.html.*

(1) 802.11p-2010, IEEE Standard for Information technology—Local and metropolitan area networks—Specific requirements—Part 11: Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) Specifications Amendment 6: Wireless Access in Vehicular Environments (2010). This standard is available from the Institute of Electrical and Electronics Engineers (IEEE), 3025 Boardwalk Drive, Suite 220, Ann Arbor, MI 48108, 1–855–999–9870, *http://www.techstreet.com/ieee.*

(2) 3GPP Release 14, 3rd Generation Partnership Project Technical Specification Group Services and System Aspects (2018). This standard is available from ATIS, 1200 G Street NW Suite 500, Washington, DC 20005, *https://www.atis.org/docstore/default.aspx.*

■ 24. Section 90.381 is added to read as follows:

§ 90.381 C–V2X Service emissions limits.

C–V2X Service Roadside Units (RSUs) must comply with the following out-of-band emissions limits:

(a) Conducted limits measured at the antenna input shall not exceed:

(1) − 29 dBm/100 kHz at the band edge (The band is defined in § 90.370 of this part);

(2) − 35 dBm/100 kHz ± 1 megahertz from the band edge;

(3) − 43 dBm/100 kHz ± 10 megahertz from the band edge; and

(4) − 53 dBm/100 kHz ± 20 megahertz from the band edge.

(b) Radiated limits: All C–V2X Service RSUs must limit radiated emissions to − 25 dBm/100 kHz EIRP or less outside the band edges where the band is defined in § 90.370 of this part.

■ 25. Section 90.383 is amended by revising the introductory text and paragraph (b) to read as follows:

§ 90.383 RSU sites near the U.S./Canada or U.S./Mexico border.

Until such time as agreements between the United States and Canada or the United States and Mexico, as applicable, become effective governing border area use of the 5850–5925 MHz band, authorizations to operate Roadside Units (RSUs) are granted subject to the following conditions:

* * * * *

(b) Authority to operate RSUs is subject to modifications and future agreements between the United States and Canada or the United States and Mexico, as applicable.

§ 90.415 [AMENDED]

■ 26. Section 90.415 is amended by revising paragraph (b) to read as follows:

* * * * *

(b) Render a communications common carrier service, except for stations in the Public Safety Pool providing communications standby facilities under § 90.20(a)(2)(xi) and stations licensed under this part in the SMR, private carrier paging, Industrial/Business Pool, 220–222 MHz or the DSRCS and C–V2X Service.

■ 27. Section 90.421 is revised by adding paragraph (d) to read as follows:

§ 90.421 Operation of mobile station units not under the control of the licensee.

* * * * *

(d) DSRCS and C–V2X Service On-Board Units licensed by rule under part 95 of this chapter may communicate with any roadside unit authorized under this part or any licensed commercial mobile radio service station as defined in part 20 of this chapter.

■ 28. Section 90.425 is amended by revising paragraph (d)(10) to read as follows:

§ 90.425 Station identification.

* * * * *

(d) * * *

(10) It is a Roadside Unit (RSU) in an ITS system.

* * * * *

PART 95—PERSONAL RADIO SERVICES

■ 29. The authority citation for part 95 continues to read as follows:

Authority: 47 U.S.C. 154, 303, and 307.

Subpart L—[Amended].

■ 30. Subpart L, consisting of §§ 95.3101 through 95.3189, is amended by revising the subpart heading to read as follows:

Subpart L—DSRCS and C–V2X Service On-Board Units

■ 31. Section 95.3101 is revised to read as follows:

§ 95.3101 Scope.

This subpart contains rules that apply only to On-Board Units (OBUs) transmitting in the 5895–5925 MHz frequency band in the Dedicated Short-Range Communications Services (DSRCS) and the Cellular Vehicle to Everything (C–V2X) Service (see § 90.371 of this chapter).

■ 32. Section 95.3103 is amended by adding the definition of ''Cellular Vehicle to Everything (C–V2X) Service'' in alphabetical order and by revising the definition of ''On-Board Unit (OBU)'' to read as follows:

§ 95.3103 Definitions, OBUs.

Cellular Vehicle to Everything (C–V2X) Service. A service providing for data transfer between various mobile and roadside transmitting units for the purposes of improving traffic flow, highway safety and performing other intelligent transportation functions. See § 90.7 of this chapter for a more detailed definition.

* * * * *

On-Board Units (OBUs). OBUs are low-power devices on vehicles that transfer data to roadside units or other OBUs in the Dedicated Short-Range Communications Service or the Cellular Vehicle to Everything (C–V2X) Service (see §§ 90.370–90.383 of this chapter), to improve traffic flow and safety, and for other intelligent transportation system purposes. See § 90.7 of this chapter.

* * * * *

■ 33. Section 95.3131 is revised to read as follows:

§ 95.3131 Permissible uses, OBUs.

On-Board Units (OBUs) may transmit signals to other OBUs and to Roadside Units (RSUs), which are authorized under part 90 of this chapter or to licensees as defined in part 20 of this chapter.

§ 95.3159 [Removed].

■ 34. Section 95.3159 is removed.

■ 35. Section 95.3161 is amended by revising paragraph (a) to read as follows:

§ 95.3161 OBU transmitter certification.

(a) Each On-Board Unit (OBU) C–V2XC–V2Xthat operates or is intended to operate in the DSRCS or C–V2X Service must be certified in accordance with this subpart and subpart J of part 2 of this chapter.

* * * * *

■ 36. Section 95.3163 is revised to read as follows:

§ 95.3163 OBU frequencies.

(a) DSRCS On-Board Units (OBUs) are permitted to operate in the 5895–5905 MHz band.

(b) C–V2X Service OBUs are permitted to operate in the 5905–5925 MHz band.

■ 37. Section 95.3167 is revised to read as follows:

§ 95.3167 OBU transmit power limit.

(a) The maximum output power for portable DSRCS On-Board Unit (OBU) transmitter types is 1.0 mW.

(b) The maximum output power for vehicular and portable C–V2X Service OBU transmitter types is 20 dBm and the maximum equivalent isotopically radiated power (EIRP) is limited to 23 dBm.

(c) The power limits in paragraphs (a) and (b) of this section may be referenced to the antenna input, so that cable losses are taken into account.

(d) For purposes of this section, a portable unit is a transmitting device designed to be used so that the radiating structure(s) of the device is/are within 20 centimeters of the body of the user.

■ 38. Section 95.3179 is added to read as follows:

§ 95.3179 Unwanted emissions limits.

(a) C–V2X Service Roadside Units must comply with the following out-of-band emissions limits:

(1) Conducted limits measured at the antenna input shall not exceed:

(i) − 29 dBm/100 kHz at the band edge (The band is defined in section 95.3163 of this part.);

(ii) − 35 dBm/100 kHz ± 1 megahertz from the band edge;

(iii) − 43 dBm/100 kHz ± 10 megahertz from the band edge; and

(iv) − 53 dBm/100 kHz ± 20 megahertz from the band edge.

(2) Radiated limits: All C–V2X Service On-Board Units must limit radiated emissions to -25 dBm/100 kHz EIRP or less outside the band edges where the band is defined in section 95.3163 of this part.

(b) DSRCS out-of-band emissions limits are specified in the IEEE 802.11p-2010 standard (See section 95.3189 of this part)

■ 39. Section 95.3189 is revised to read as follows:

§ 95.3189 OBU technical standard.

(a) DSRCS On-Board Unit (OBU) transmitter types operating in the 5895–5905 MHz band must be designed to comply with the technical standard Institute of Electrical and Electronics Engineers (IEEE) 802.11p–2010.

(b) C–V2X Service OBU transmitter types operating in the 5895–5925 MHz band shall comply with the V2X sidelink service for this band as described in the ATIS transposed standards of the 3GPP specifications except where these rules and regulations take precedence.

(c) The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Federal Communications Commission, 445 12th Street SW, Washington, DC 20554 and is available from the sources indicated below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *www.archives.gov/federal-register/cfr/ibrlocations.html.*

(1) 802.11p-2010, IEEE Standard for Information technology—Local and metropolitan area networks—Specific requirements—Part 11: Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) Specifications Amendment 6: Wireless Access in Vehicular Environments (2010). This standard is available from the Institute of Electrical and Electronics Engineers (IEEE), 3025 Boardwalk Drive, Suite 220, Ann Arbor, MI 48108, 1–855–999–9870, *http://www.techstreet.com/ieee.*

(2) 3GPP Release 14, 3rd Generation Partnership Project Technical Specification Group Services and System Aspects (2018). This standard is available from ATIS, 1200 G Street NW, Suite 500, Washington, DC 20005, *https://www.atis.org/docstore/default.aspx.*

Appendix A to part 95 is amended by removing the entry in the table for ''95.1509—ASTM E2213–03 DSRC Standard.''.

[FR Doc. 2020–02086 Filed 2–5–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2018–0094; 4500090023]

RIN 1018–BD08

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Yellow Lance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the yellow lance (*Elliptio lanceolata*) under the Endangered Species Act of 1973 (Act), as amended. In total, approximately 319 river miles (mi) (514 kilometers (km)) in North Carolina, Virginia, and Maryland fall within the boundaries of the proposed critical habitat designation. If we finalize this rule as proposed, it would extend the Act's protections to this species' critical habitat. We also announce the availability of a draft economic analysis of the proposed designation.

DATES: We will accept comments on the proposed rule and draft economic analysis that are received or postmarked on or before April 6, 2020. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by March 23, 2020.

ADDRESSES: *Written comments:* You may submit comments on the proposed rule or draft economic analysis by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2018–0094, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2018–0094; U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Document availability: The draft economic analysis is available at *http://www.fws.gov/southeast,* at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0094, and at the Raleigh Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this proposed critical habitat designation and are available at *https://*

www.fws.gov/southeast/, at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0094, and at the Raleigh Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for the critical habitat designation will also be available at the Service website and Field Office set out above, and may also be included in the preamble of this proposed rule and/or at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Pete Benjamin, Field Supervisor, U.S. Fish and Wildlife Service, Raleigh Ecological Services Field Office, 551F Pylon Drive, Raleigh, NC 27606; telephone 919–856–4520. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. To the maximum extent prudent and determinable, we must designate critical habitat for any species that we determine to be an endangered or threatened species under the Act. Designations of critical habitat can only be completed by issuing a rule.

This rulemaking proposes to designate critical habitat for the yellow lance (*Elliptio lanceolata*). The yellow lance was listed as threatened under the Act on April 3, 2018 (83 FR 14189).

The basis for our action. Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the extent prudent and determinable. Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. The Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed if such areas are essential for the conservation of the species.

We prepared an economic analysis of the proposed designation of critical habitat. In accordance with section 4(b)(2) of the Act, we prepared an analysis of the economic impacts of the proposed critical habitat designation. In this document, we announce the availability of the draft economic analysis for public review and comment.

Peer Review. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270) and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of appropriate specialists regarding the species status assessment report, which informed this proposed rule. The purpose of peer review is to ensure that our designation is based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in mussel biology, habitat, and stressors (factors negatively affecting the species) to the species. We invite any additional comment from the peer reviewers during the public comment period for this proposed rule (see **DATES**, above).

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, Native American tribes, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including information to inform the following factors such that a designation of critical habitat may be determined to be not prudent:

(a) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(b) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(c) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(d) No areas meet the definition of critical habitat.

(2) Specific information on:

(a) The amount and distribution of yellow lance habitat;

(b) What areas, that were occupied at the time of listing and that contain the physical or biological features essential to the conservation of the species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species. We particularly seek comments regarding:

(i) Whether occupied areas are inadequate for the conservation of the species; and,

(ii) Specific information that supports the determination that unoccupied areas will, with reasonable certainty, contribute to the conservation of the species and, contain at least one physical or biological feature essential to the conservation of the species.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on the yellow lance and proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the benefits of including or excluding areas that may be impacted.

(6) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts.

(7) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(8) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the associated documents of the draft economic analysis, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(9) Whether we could improve or modify our approach to designating critical habitat in any way to provide for

greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. We also invite additional comments from peer reviewers during the public comment period. All comments submitted electronically via *http://www.regulations.gov* will be presented on the website in their entirety as submitted. For comments submitted via hard copy, we will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Raleigh Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On April 20, 2010, we were petitioned to list 404 aquatic species, including yellow lance, in the southeastern United States. In response to the petition, we completed a partial 90-day finding on September 27, 2011 (76 FR 59836), in which we announced our finding that the petition contained substantial information that listing may be warranted for the yellow lance. On April 5, 2017, we published a proposed rule to list the yellow lance as a threatened species (82 FR 16559). On April 3, 2018, we published the final rule to list the species as a threatened species (83 FR 14189).

Please refer to the April 5, 2017, proposed listing rule for a discussion of earlier Federal actions regarding the yellow lance.

Species Status Assessment

A species status assessment (SSA) team prepared an SSA report for the yellow lance. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. The SSA report underwent independent peer review by scientists with expertise in mussel biology, habitat management, and stressors (factors negatively affecting the species) to the species. Along with other information submitted during the process of listing the species, the SSA report is the primary source of information for this proposed designation. The SSA report and other materials relating to this proposal can be found on the Service's Southeast Region website at *https://www.fws.gov/southeast/* and at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0094, and at the Raleigh Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features.

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in specific occupied areas, we focus on the specific features that are essential to support the life-history needs of the species, including but not limited to, water characteristics, soil type,

geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. When designating critical habitat, the Secretary will first evaluate areas occupied by the species. The Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report, version 1.3 (Service 2018, entire), and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and its implementing regulations (50 CFR 424.12), require that the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species to the maximum extent prudent and determinable. The regulations at 50 CFR 424.12(a)(1) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

We did not identify any of the factors above to apply to the yellow lance. Therefore, we find designation of critical habitat is prudent for the species.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the yellow lance is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking; or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of ''critical habitat.'' When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located. We find that this information is sufficient for us to conduct both the biological and economic analyses required for the critical habitat determination. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is now determinable for the yellow lance.

Physical or Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas within the geographical area occupied

by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection.

The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species. These include, but are not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic needed to support the life history of the species. In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species.

The yellow lance is a sand-loving species (Alderman 2003, p. 6) often found buried deep in clean, coarse to medium sand and sometimes migrating with shifting sands (NatureServe 2015, p. 6), although it has also been found in gravel substrates. The species is dependent on clean (*i.e.,* not polluted), moderately flowing water with high dissolved oxygen content in riverine or larger creek environments. Most freshwater mussels, including the yellow lance, are found in aggregations (mussel beds) that vary in size and are often separated by stream reaches in which mussels are absent or rare (Vaughn 2012, p. 983). Genetic exchange occurs between and among mussel beds via sperm drift, host fish movement, and movement of mussels during high flow events.

The yellow lance are omnivores that primarily filter feed on a wide variety of microscopic particulate matter suspended in the water column, including phytoplankton, zooplankton, bacteria, detritus, and dissolved organic matter (Haag 2012, p. 26). Like most freshwater mussels, they have a unique life cycle that relies on fish hosts for successful reproduction. Yellow lance larvae (glochidia) are obligate parasites of the gills, heads, or fins of fish; primary host species are members of the Cyprinidae family, including the white shiner (*Luxilus albeolus*) and pinewoods shiner (*Lythrurus matutinus*).

A thorough review of the life history and ecology of the yellow lance is presented in the SSA report (Service 2018, entire). A summary of the resource needs of the yellow lance is in Table 1.

TABLE 1—LIFE HISTORY AND RESOURCE NEEDS OF THE YELLOW LANCE

Life stage	Resources and/or circumstances needed for individuals to complete each life stage	Resource function (BFSD *)
Fertilized Eggs—early spring	• Clear, flowing water • Sexually mature males upstream from sexually mature females • Appropriate spawning temperatures • Presence of gravid females	B
Glochidia—late spring to early summer	• Clear, flowing water • Just enough flow to attract drift feeding minnows • Presence of host fish for attachment	B, D
Juveniles—excystment from host fish to ~35 mm shell length.	• Clear, flowing water • Host fish dispersal • Appropriate interstitial chemistry —Low salinity (~0.9 ppt). —Low ammonia (~0.7 mg/L). —Low levels of copper and other contaminants. —Dissolved oxygen >1.3 mg/L. • Appropriate substrate for settlement. • Adequate food availability.	F, S
Adult—>35 mm shell length	• Clear, flowing water • Appropriate substrate (silt-free gravel and stable, coarse sand) • Adequate food availability (phytoplankton and detritus). • High dissolved oxygen (>3 mg/L). • Water temperature <35 °C.	F, S

* B = breeding; F = feeding; S=sheltering; D = dispersal.

Summary of Essential Physical or Biological Features

We have determined that the following physical or biological features are essential to the conservation of yellow lance:

(1) Suitable substrates and connected instream habitats, characterized by geomorphically stable stream channels and banks (*i.e.,* channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation) with habitats that support a diversity of freshwater mussels and native fish (such as stable riffle-run-pool habitats that provide flow refuges consisting of silt-free gravel and coarse sand substrates).

(2) Adequate flows, or a hydrologic flow regime (which includes the severity, frequency, duration, and seasonality of discharge over time), necessary to maintain benthic habitats where the species is found and to maintain connectivity of streams with the floodplain, allowing the exchange of nutrients and sediment for maintenance of the mussel's and fish host's habitat, food availability, spawning habitat for native fishes, and the ability for newly transformed juveniles to settle and become established in their habitats.

(3) Water and sediment quality (including, but not limited to, conductivity, hardness, turbidity, temperature, pH, ammonia, heavy metals, and chemical constituents) necessary to sustain natural physiological processes for normal behavior, growth, and viability of all life stages.

(4) The presence and abundance of fish hosts necessary for recruitment of the yellow lance.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of the yellow lance may require special management considerations or protections to reduce the following threats: (1) Urbanization of the landscape, including (but not limited to) land conversion for urban and commercial use, infrastructure (roads, bridges, utilities), and urban water uses (water supply reservoirs, wastewater treatment, etc.); (2) nutrient pollution from agricultural activities that impact water quantity and quality; (3) significant alteration of water quality; (4) improper forest management or silviculture activities that remove large areas of forested wetlands and riparian systems; (5) culvert and pipe installation that create barriers to movement; (6) impacts from invasive species; (7) changes and shifts in seasonal precipitation patterns as a result of climate change; and (8) other watershed and floodplain disturbances that release sediments or nutrients into the water.

Management activities that could ameliorate these threats include, but are not limited to: Use of best management practices (BMPs) designed to reduce sedimentation, erosion, and bank side destruction; protection of riparian corridors and retention of sufficient canopy cover along banks; moderation of surface and ground water withdrawals to maintain natural flow regimes; increased use of stormwater management and reduction of stormwater flows into the systems; and reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat.

The current distribution of the yellow lance is reduced from its historical distribution. We anticipate that recovery will require continued protection of existing populations and habitat, as well as ensuring there are adequate numbers of mussels in stable populations and that these populations occur over a wide geographic area. This strategy will help to ensure that catastrophic events, such as floods, which can cause excessive sedimentation, nutrients, and debris to disrupt stream ecology, cannot simultaneously affect all known populations. Rangewide recovery considerations, such as maintaining existing genetic diversity and striving for representation of all major portions of the species' current range, were considered in formulating this proposed critical habitat designation.

Sources of data for this proposed critical habitat include multiple databases maintained by universities and State agencies for North Carolina, Virginia, and Maryland, and numerous survey reports on streams throughout the species' range. Other sources of available information on habitat requirements for this species include studies conducted at occupied sites and published in peer-reviewed articles, agency reports, and data collected during monitoring efforts (Service 2018, entire).

Areas Occupied at the Time of Listing

We identified stream channels that currently support populations of the yellow lance. In the SSA report, we define ''current'' as stream channels with observations of the species from 2005 to the present. Due to the breadth and intensity of survey effort done for freshwater mussels throughout the known range of the species, it is reasonable to assume that streams with no positive surveys since 2005 should not be considered occupied for the purpose of our analysis.

Specific habitat areas were delineated based on Natural Heritage Element Occurrences (EOs) following NatureServe's occurrence delineation protocol for freshwater mussels (NatureServe 2018, unpaginated). These EOs provide habitat for yellow lance subpopulations and are large enough to be self-sustaining over time, despite fluctuations in local conditions. The EOs contain stream reaches with interconnected waters so that host fish containing yellow lance glochidia can move between areas, at least during certain flows or seasons. Based on this information, we consider the following streams in Maryland, Virginia, and North Carolina to be occupied by the species at the time of listing: Patuxent River, Rappahannock Subbasin (including the Rappahannock River, South Run, Carter Run, Thumb Run, Hungry Run, and Great Run), Rapidan Subbasin (including the Rapidan River, Blue Run, and Marsh Run), South Anna River, Johns Creek, Nottoway Subbasin (including the Nottoway River, Crooked Creek, and Sturgeon Creek), Tar River, Sandy/Swift Creek, Fishing Creek Subbasin (including Fishing Creek, Shocco Creek, and Richneck Creek), Swift Creek, and Little River (see unit descriptions under Proposed Critical Habitat Designation, below). The proposed critical habitat designation does not include all streams known to have been occupied by the species historically; instead, it includes only the currently occupied streams within the historical range that have also retained some or all of the physical or biological features that will allow for the maintenance and expansion of existing populations.

Areas Outside the Geographic Area Occupied at the Time of Listing

We are not proposing to designate any areas outside the geographical area currently occupied by the species because we did not find any unoccupied areas that were essential for the conservation of the species. The protection of stream segments within the seven currently existing populations (Patuxent, Rappahannock, York, James, Chowan, Tar, and Neuse), which are located across the physiographic representation of the range, would sufficiently reduce the risk of extinction. Improving the resiliency of populations in the currently occupied streams will increase viability to the point that the protections of the Act are no longer necessary.

General Information on the Maps of the Proposed Critical Habitat Designation

The proposed critical habitat designation is defined by the map or maps, as modified by any accompanying

regulatory text, presented at the end of this document under Proposed Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the discussion of individual units below. We will make the coordinates or plot points or both on which each map is based available to the public at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0094, at *http://www.fws.gov/southeast,* and at the Raleigh Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**, above).

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for yellow lance. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation under the Act with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

Proposed Critical Habitat Designation

We are proposing to designate approximately 319 river mi (514 km) in 11 units as critical habitat in North Carolina, Virginia, and Maryland for the yellow lance. All of the units were occupied by the species at the time of listing and contain all of the physical and biological features that are essential to support life-history processes of the species. These proposed critical habitat areas, described below, constitute our current best assessment of areas that meet the definition of critical habitat for the yellow lance. Table 2 shows the name, land ownership of the riparian areas surrounding the units, and approximate river miles of the proposed designated units for the yellow lance. Because all streambeds are navigable waters, the actual critical habitat units are all owned by the State in which they are located. The riparian land adjacent to the proposed critical habitat is 83% private lands, 11% conservation lands and easements, and 6% state lands.

TABLE 2—PROPOSED CRITICAL HABITAT UNITS FOR THE YELLOW LANCE

Critical habitat unit	Riparian ownership surrounding units	River miles (kilometers)
1. PR1—Patuxent River	State; Private	10 (16)
2. RR1—Rappahannock Subbasin	Private; Easements	44 (71)
3. RR2—Rapidan Subbasin	Private; Easements	9 (14)
4. YR1—South Anna River	Private; Easements	8 (13)
5. JR1—Johns Creek	Private; George Washington and Jefferson National Forest	14 (23)
6. CR1—Nottoway Subbasin	Private; Fort Pickett Military Reservation; Easements	41 (66)
7. TR1—Tar River	Private; Easements	91 (146)
8. TR2—Sandy/Swift Creek	Private; State; Easements	31 (50)
9. TR3—Fishing Creek Subbasin	Private; State; Easements	37 (60)
10. NR1—Swift Creek	Private; Easements	24 (39)
11. NR2—Little River	Private; Easements	10 (16)
Total		319 (514)

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all proposed units, and reasons why they meet the definition of critical habitat for yellow lance, below.

Patuxent Population

Unit 1: PR1—Patuxent River

Unit 1 consists of approximately 10 river mi (16.1 km), including 3 mi (4.8 km) of the Patuxent River and 7 mi (11.3 km) of the Hawlings River, in Montgomery and Howard Counties, Maryland. The riparian land adjacent to Patuxent River is primarily located in Patuxent River State Park (90 percent), with some parcels privately owned (10 percent); the riparian land surrounding the Hawlings River is predominantly conservation parcels (97 percent) including State, county, and Maryland National Capital Parks Planning (MD NCPP) park land, and some privately owned parcels (3 percent).

Special management considerations or protection may be required to address excess nutrients, sediment, and pollutants that enter the rivers and serve as indicators of other forms of pollution such as bacteria and toxins, all of which reduce water quality for the species. Primary sources of these types of pollution result from urbanization and include wastewater, stormwater runoff, and fertilizers. Portions of the upper Patuxent River watershed were listed in 2011 as impaired for aquatic life and wildlife due to total suspended solids, and in 2014 due to chlorides and sulfates (MDE 2016, unpaginated). There are 146 non-major National Pollutant Discharge Elimination System (NPDES) discharges and three major (including Maryland City Water Reclamation Facility (WRF) and Bowie Wastewater Treatment Plant (WWTP)) NPDES discharges in the management unit. The Patuxent River is also fragmented by two water supply reservoirs, one with dual use as a hydroelectric facility. Given the urban stormwater and nonpoint source pollution identified as contributing to water quality issues in this unit, special management considerations related to developed areas including riparian buffer restoration, reduced surface and groundwater withdrawals, stormwater retrofits, eliminating direct stormwater discharges, increasing open space in the watershed, and implementing highest levels of treatment of wastewater practicable will benefit the habitat in this unit.

Rappahannock Population

Unit 2: RR1—Rappahannock Subbasin

Unit 2 consists of approximately 44 river mi (70.8 km) of Rappahannock Subbasin, including 1.7 mi (2.7 km) in Hungry Run, 7.9 mi (12.7 km) in Thumb Run, 5.9 mi (9.5 km) in South Run/Carter Run, 2.7 mi (4.3 km) in Great Run, and 25.8 mi (41.6 km) in Rappahannock River in Rappahannock,

Fauquier, and Culpeper Counties, Virginia. The riparian land adjacent to this unit is primarily privately owned (72 percent), with some conservation parcels (28 percent).

Special management considerations or protection may be required to address excess nutrients, sediment, and pollutants that enter the river and serve as indicators of other forms of pollution such as bacteria and toxins, all of which impact water quality for the species. Sources of these types of pollution include wastewater, agricultural runoff, stormwater runoff, and septic systems. Approximately 77 miles (123.9 km) of the Rappahannock River watershed are impaired for aquatic life. Impairment is indicated by low benthic-macroinvertebrate bioassessment scores, pH and temperature issues, and *Escherichia coli* (*E. coli*); several of these can be attributed to septic systems or nonpoint source runoff into streams. There are 93 non-major NPDES discharges and 11 major NPDES discharges, including several city and package WWTPs, within this unit. Special management considerations for riparian buffer restoration, agricultural BMPs, stormwater retrofits, maintenance of forested buffers, and implementing highest levels of treatment of wastewater practicable will benefit the habitat for the species in this unit.

Unit 3: RR2—Rapidan Subbasin

Unit 3 consists of approximately 9 river mi (14.5 km) of Rapidan Subbasin, including 1.2 mi (1.9 km) in Marsh Run, 3.1 mi (5.0 km) in Blue Run, and 4.7 mi (7.6 km) in the Rapidan River in Madison and Orange Counties, Virginia. The riparian land adjacent to this unit is privately owned (57 percent) and conservation parcels (43 percent).

Special management considerations or protection may be required to address excess nutrients, sediment, and pollutants that enter the river and serve as indicators of other forms of pollution such as bacteria and toxins, all of which reduce water quality for the species (see discussion for Unit 2, above). Special management considerations for riparian buffer restoration, agricultural BMPs, stormwater retrofits, maintenance of forested buffers, and implementing highest levels of treatment of wastewater practicable will benefit the habitat for the species in this unit.

York Population

Unit 4: YR1—South Anna River

Unit 4 consists of approximately 8 river mi (12.9 km) of the South Anna River in Louisa County, Virginia. The riparian land adjacent to this unit is primarily privately owned (92 percent), with some conservation parcels (8 percent).

Special management considerations or protection may be required to address excess nutrients, sediment, and pollutants that enter the river and serve as indicators of other forms of pollution such as bacteria and toxins, all of which impact water quality for the species. Sources of these types of pollution include wastewater, agricultural runoff, stormwater runoff, and septic systems. Based on 2012 data, 13 stream reaches, totaling approximately 44 miles (70.8 km), are impaired for aquatic life in the Po River and South Anna River watersheds. Impairment is indicated by low benthic-macroinvertebrate bioassessment scores, low dissolved oxygen, pH, and *E. coli.* There are 50 non-major NPDES discharges in the basin, and one major discharge, the Ashland WWTP. Special management considerations for riparian buffer restoration, agricultural BMPs, stormwater retrofits, maintenance of forested buffers, and implementing highest levels of treatment of wastewater practicable will benefit the habitat for the species in this unit.

James Population

Unit 5: JR1—Johns Creek

Unit 5 consists of approximately 14 river mi (22.5 km) of the Johns Creek in Craig County, Virginia. The riparian land adjacent to this unit is primarily private, with some federally owned land as part of George Washington and Jefferson National Forest.

Special management considerations or protection may be required to address excess nutrients, sediment, and pollutants, which enter the creek and serve as indicators of other forms of pollution such as bacteria and toxins, all of which impact water quality for the species. Sources of these types of pollution are wastewater, agricultural runoff, and urban stormwater runoff. National Forest lands surround most of the Johns Creek watershed; protections and management of these lands will likely enable habitat conditions (water quality, water quantity/flow, instream substrate, and connectivity) to remain high into the future (Service 2017, entire). Targeted species restoration in conjunction with current associated-species restoration efforts in Johns, Dicks, and Little Oregon Creeks within the Craig Creek Subbasin will likely improve the yellow lance's resiliency in these areas. Maintenance of forested buffer conditions is essential to retaining high-quality instream habitat in this unit.

Chowan Population

Unit 6: CR1—Nottoway Subbasin

Unit 6 consists of approximately 41 river mi (66 km) of Nottoway Subbasin, including 1.4 mi (2.3 km) in Crooked Creek, 3.3 mi (5.3 km) in Sturgeon Creek, and 36.3 mi (58.4 km) in the Nottoway River in Nottoway, Lunenburg, Brunswick, and Dinwiddie Counties, Virginia. The proposed designation begins upstream of VA49 and ends at its confluence with Sturgeon Creek. The riparian land adjacent to this unit is primarily privately owned (64 percent), although Fort Pickett Military Reservation, which is exempted from this critical habitat designation, also has frontage on the Nottoway River (33 percent; see Exemptions, below), and there are some conservation parcels (3 percent).

Special management considerations or protection may be required within this unit to address a variety of threats. In the past decade, the Nottoway River suffered from several seasonal drought events, which not only caused low dissolved oxygen conditions but also decreased food delivery because of minimal flows. In addition, these conditions led to increased predation rates on potential host fishes that were concentrated into low-flow refugia (*e.g.,* pools). Urban stormwater and nonpoint source pollution have been identified as contributing to water quality issues in this unit. Additional threats to this system include oil and gas pipeline projects that propose to cross streams at locations where the species occurs. Special management considerations for riparian buffer restoration, reduced surface and groundwater withdrawals, and stormwater retrofits will benefit the habitat in this unit. Additional special management considerations or protection may be required within this unit to address low water levels as a result of water withdrawals and drought, as well as recommendation of alternate routes for oil and gas pipelines, or directional boring for those projects.

Tar Population

Unit 7: TR1—Tar River

Unit 7 consists of approximately 91 river mi (146.5 km) of the Tar River, including 4.4 mi (7.1 km) in Ruin Creek, 11.9 mi (19.2 km) in Tabbs Creek, 6.8 mi (10.9 km) in Crooked Creek, and 67.9 mi (109.3 km) in the Tar River in Granville, Vance, Franklin, and Nash Counties, North Carolina. The riparian land adjacent to this unit is almost all

privately owned (98 percent), with a few conservation parcels (2 percent).

Special management considerations or protection may be required within this unit to address a variety of threats. Excessive amounts of nitrogen and phosphorus run off the land, or are discharged, into the waters, causing excessive growth of vegetation and leading to extremely low levels of dissolved oxygen. Based on 2014 data, seven stream reaches totaling approximately 38 miles (61.1 km) are impaired in this basin. Indicators of impairment are low dissolved oxygen and low benthic-macroinvertebrate assessment scores, and the entire basin is classified as Nutrient Sensitive Waters (NCDEQ 2016, pp. 115–117). There are 102 non-major NPDES discharges, including several package WWTPs and biosolids facilities, and 3 major NPDES discharges (Oxford WWTP, Louisburg WWTP, and Franklin County WWTP) in this unit; with expansion of these facilities, or addition of new wastewater discharges, an additional threat to habitat exists in this unit. Special management focused on agricultural BMPs, implementing highest levels of treatment of wastewater practicable, maintenance of forested buffers, and connection of protected riparian corridors will benefit habitat for the species in this unit.

Unit 8: TR2—Sandy/Swift Creek

Unit 7 consists of approximately 31 river mi (50 km) of Sandy/Swift Creek in Vance, Warren, Halifax, Franklin, and Nash Counties, North Carolina. The riparian land adjacent to this unit is primarily privately owned (92 percent), with the rest in either conservation easements (2.5 percent) or State Game Land parcels (4.6 percent).

Special management considerations or protection may be required within this unit to address a variety of threats. Excessive amounts of nitrogen and phosphorus run off the land, or are discharged, into the waters, causing excessive growth of vegetation and leading to extremely low levels of dissolved oxygen; one stream reach totaling approximately 5 miles (8 km) is impaired in this unit. Special management focused on agricultural BMPs, maintenance of forested buffers, and connection of protected riparian corridors will benefit habitat for the species in this unit.

Unit 9: TR3—Fishing Creek Subbasin

Unit 9 consists of approximately 37 river mi (59.5 km) of Fishing Creek Subbasin, including 1.6 mi (2.6 km) in Richneck Creek, 8.0 mi (12.9 km) in Shocco Creek, and 27.4 mi (44 km) in Fishing Creek in Vance, Warren, Halifax, Franklin, and Nash Counties, North Carolina. The riparian land adjacent to this unit is primarily in private ownership (85 percent), with some State Game Land parcels (12 percent) and conservation easements (3 percent).

Special management considerations or protection may be required within this unit to address a variety of threats. Excessive amounts of nitrogen and phosphorus run off the land, or are discharged, into the waters, causing excessive growth of vegetation and leading to extremely low levels of dissolved oxygen. Special management focused on agricultural BMPs, maintenance of forested buffers, and connection of protected riparian corridors will benefit habitat for the species in this unit.

Neuse Population

Unit 10: NR1—Swift Creek

Unit 10 consists of approximately 24 river mi (38.6 km) of the Swift Creek in Wake and Johnston Counties, North Carolina. The riparian land adjacent to this unit is almost entirely privately owned (99.5 percent), with one conservation parcel (0.5 percent).

Special management considerations or protection may be required within this unit to address a variety of threats. Large quantities of nutrients (especially nitrogen) contributed by fertilizers and animal waste washed from lawns, urban developed areas, and farm fields are impacting aquatic ecosystems in this unit. There are several permitted point source discharges of wastewater. Development is also impacting several areas along Swift Creek.

All of Swift Creek is rated ''impaired'' by the North Carolina Division of Water Resources. Many factors contribute to this designation, including low benthic-macroinvertebrate assessment scores, low pH, poor fish community scores, low dissolved oxygen, polychlorinated biphenyls, copper, and zinc. Many non-major and one major (Dempsey Benton Water Treatment Plant) permitted discharges occur in this unit. Special management related to developed areas, including using the best available wastewater treatment technologies, retrofitting stormwater systems, eliminating direct stormwater discharges, increasing open space in the watershed, and maintaining connected riparian corridors, will be important to maintain habitat in this unit.

Unit 11: NR2—Little River

Unit 11 consists of approximately 10 river mi (16.1 km) of the Little River in Johnston County, North Carolina. The riparian land adjacent to this unit is almost entirely privately owned (99.5 percent), with one conservation parcel (0.5 percent).

Special management considerations or protection may be required within this unit to address a variety of threats. Four stream reaches totaling approximately 17 miles are impaired in the Little River. The designation of impairment is based primarily on low benthic-macroinvertebrate assessment scores, low pH, and low dissolved oxygen. There are 32 non-major and no major NPDES discharges in this unit. Special management considerations in this unit include retrofitting stormwater systems, eliminating direct stormwater discharges, increasing and protecting existing open space, and maintaining connected riparian corridors.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final regulation with a revised definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33

U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal agency actions within the species' habitat that may require conference or consultation or both include management and any other landscape-altering activities on Federal lands administered by the Service, Army National Guard, U.S. Forest Service, and National Park Service; issuance of section 404 Clean Water Act permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration. Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency, do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2), is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation, we have listed a new species or designated critical habitat that may be affected by the Federal action, or the action has been modified in a manner that affects the species or critical habitat in a way not considered in the previous consultation. In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the ''Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate 7(a)(2) of the Act by destroying or adversely modifying such designation, or that may be affected by such designation.

Activities that the Services may, during a consultation under section 7(a)(2) of the Act, find are likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Actions that would alter the minimum flow or the existing flow regime. Such activities could include, but are not limited to, impoundment, channelization, water diversion, water withdrawal, and hydropower generation. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of the yellow lance and/or its fish host by decreasing or altering flows to levels that would adversely affect their ability to complete their life cycles.

(2) Actions that would significantly alter water chemistry or temperature. Such activities could include, but are not limited to, release of chemicals (including pharmaceuticals, metals, and salts), biological pollutants, or heated effluents into the surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities could alter water conditions to levels that are beyond the tolerances of the yellow lance and/or its fish host and result in direct or cumulative adverse effects to these individuals and their life cycles.

(3) Actions that would significantly increase sediment deposition within the stream channel. Such activities could include, but are not limited to, excessive sedimentation from livestock grazing, road construction, channel alteration, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of the mussel and/or its fish host by increasing the sediment deposition to levels that would adversely affect their ability to complete their life cycles.

(4) Actions that would significantly increase the filamentous algal community within the stream channel. Such activities could include, but are not limited to, release of nutrients into the surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities can result in excessive filamentous algae filling streams and reducing habitat for the yellow lance and/or its fish host, degrading water quality during algal decay, and decreasing oxygen levels at night from algal respiration to levels below the tolerances of the mussel and/or its fish host. Algae can also directly compete with mussel offspring by covering the sediment that prevents the glochidia from settling into the sediment.

(5) Actions that would significantly alter channel morphology or geometry. Such activities could include, but are not limited to, channelization, impoundment, road and bridge construction, mining, dredging, and destruction of riparian vegetation. These activities may lead to changes in water flows and levels that would degrade or eliminate the mussel, its fish host, and/or their habitats. These actions can also

lead to increased sedimentation and degradation in water quality to levels that are beyond the tolerances of the mussel and/or its fish host.

(6) Actions that result in the introduction, spread, or augmentation of nonnative aquatic species in occupied stream segments, or in stream segments that are hydrologically connected to occupied stream segments, even if those segments are occasionally intermittent, or introduction of other species that compete with or prey on the yellow lance. Possible actions could include, but are not limited to, stocking of nonnative fishes, stocking of sport fish, or other related actions. These activities can introduce parasites or disease to fish hosts; result in direct predation; or affect the growth, reproduction, and survival of yellow lance.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the proposed critical habitat designation for yellow lance to determine if they meet the criteria for exemption from critical habitat under section 4(a)(3) of the Act.

We have identified one area within the proposed critical habitat designation that consists of Department of Defense lands with a completed, Service-approved INRMP. The Army National Guard—Maneuver Training Center Fort Pickett (Fort Pickett) is located on 41,000 acres in three counties in southeastern Virginia: Nottoway, Brunswick, and Dinwiddie. Fort Pickett is on federally owned land and is managed by the Virginia Army National Guard and is subject to all federal laws and regulations. The Fort Pickett INRMP covers fiscal years 2017–2021, and serves as the principal management plan governing all natural resource activities on the installation. Among the goals and objectives listed in the INRMP is habitat management for rare, threatened, and endangered species, and the yellow lance is included in this plan. Management actions and elements that will benefit the yellow lance and its habitat include managing soil erosion and sedimentation; maintaining and improving riparian, forest, and stream habitats; enforcing stream and wetland protection zones; improving water quality; and conducting public outreach and education.

Fourteen miles (22.5 km) of Unit 6 (CR1—Nottoway Subbasin) are located within the area covered by this INRMP. Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified streams are subject to the INRMP and that conservation efforts identified in the INRMP will provide a benefit to the yellow lance. Therefore, streams within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 14 river miles (22.5 river km) of habitat in this proposed critical habitat designation because of this exemption.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factors to use and how much weight to give to any factor.

As discussed below, we are not proposing to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate whether a specific critical habitat designation may restrict or modify specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,*

under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

For this proposed designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the yellow lance (IEc 2018, entire). The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. Ultimately, the screening analysis allows us to focus our analysis the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The screening analysis also assesses whether units are unoccupied by the species and may require additional management or conservation efforts as a result of the critical habitat designation for the species which may incur incremental economic impacts. This screening analysis, combined with the information contained in our IEM, constitutes our draft economic analysis of the proposed critical habitat designation for the yellow lance (DEA), which is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the yellow lance, first we identified, in the IEM dated August 2, 2018, probable incremental economic impacts associated with the following categories of activities: (1) Federal lands management (U.S. Forest Service, Department of Defense); (2) agriculture; (3) forest management/silviculture/timber; (4) development; (5) recreation; (6) restoration activities; and (7) transportation. Additionally, we considered whether the activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the yellow lance is present, Federal agencies already are required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for the yellow lance. We used the following to help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the yellow lance would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation.

The proposed critical habitat designation for the yellow lance totals approximately 319 river mi (514 km) in 11 units as critical habitat in North Carolina, Virginia, and Maryland, all of which is occupied by the species. In these areas, any actions that may affect the species would also affect proposed critical habitat, and it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the yellow lance. Therefore, even though some analysis of the impacts of the action of critical habitat may be necessary, and this additional analysis will require costs in time and resources by both the Federal action agency and the Service, it is believed that, in most circumstances, these costs would predominantly be administrative in nature and would not be significant. We do not expect any additional consultations resulting from the designation of critical habitat. The total annual incremental costs of critical habitat designation are anticipated to be the additional resources expended in a maximum of 102 section 7 consultations annually at a cost of less than $240,000 per year. Accordingly, we believe that, in most circumstances, these costs would not reach the threshold of ''significant'' under E.O. 12866.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our required determinations. See **ADDRESSES**, above, for information on where to send comments.

Exclusions

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical

habitat. As discussed above, we prepared an analysis of the probable economic impacts of the proposed critical habitat designation and related factors. Based on this analysis, the Secretary does not propose to exercise his discretion to exclude any areas from the final designation based on economic impacts. However, during the development of a final designation, we will consider any additional economic impact information we receive during the public comment period, which may result in areas being excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts or Homeland Security Impacts

Under section 4(b)(2) of the Act, we also consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this proposal, we have determined that, other than the land exempted under section 4(a)(3)(B)(i) of the Act based upon the existence of an approved INRMP (see Exemptions, above), the lands within the proposed designation of critical habitat for the yellow lance are not owned or managed by the Department of Defense or Department of Homeland Security, and, therefore, we anticipate no impact on national security. Consequently, the Secretary does not propose to exercise his discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether there are permitted conservation plans covering the species in the area such as habitat conservation plans (HCPs), safe harbor agreements, or candidate conservation agreements with assurances, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of tribal conservation plans and partnerships, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we have determined that there are currently no HCPs or other management plans for yellow lance, and the proposed designation does not include any tribal lands or trust resources. We anticipate no impact on tribal lands, partnerships, or HCPs from this proposed critical habitat designation.

During the development of a final designation, we will consider any information currently available or received during the public comment period regarding the economic, national security, or other relevant impacts of the proposed designation and will determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Executive Order 13771

This proposed rule is not an E.O. 13771 (''Reducing Regulation and Controlling Regulatory Costs'') (82 FR 9339, February 3, 2017) regulatory action because this proposed rule is not significant under E.O. 12866.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and therefore, not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only

Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if made final as proposed, this proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final as proposed, this proposed critical habitat designation will not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that the designation of this proposed critical habitat would significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because the lands being proposed for critical habitat designation are owned by the States of North Carolina, Virginia, and Maryland. These government entities do not fit the definition of ''small governmental jurisdiction.'' Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for yellow lance in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that, if adopted, this designation of critical habitat for yellow lance does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies in Maryland, Virginia, and North Carolina. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the

conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the elements of physical or biological features essential to the conservation of the species. The proposed areas of designated critical habitat are presented on maps, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA, 42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. As discussed above (see Exclusions), we have determined that no tribal lands would be affected by this designation.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Authors

The primary authors of this proposed rule are the staff members of the U.S. Fish and Wildlife Service Species Assessment Team and Raleigh Ecological Services Field Office.

References Cited

A complete list of references cited in this proposed rule is available on the internet at *http://www.regulations.gov* and upon request from the Raleigh Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

■ 2. Amend § 17.11(h) by revising the entry for ''Lance, yellow'' under CLAMS in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	* * *
CLAMS				

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
Lance, yellow	*Elliptio lanceolata*	Wherever found	T	83 FR 14189, 4/3/2018; 50 CFR 17.95(f).[CH]
*	*	*	*	*

■ 3. Amend § 17.95(f) by adding, immediately following the entry for ''Rabbitsfoot (*Quadrula cylindrica cylindrica*),'' an entry for ''Yellow Lance (*Elliptio lanceolata*)'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and Snails.*

* * * * *

Yellow Lance (*Elliptio lanceolata*)

(1) Critical habitat units are depicted for Franklin, Granville, Halifax, Johnston, Nash, Vance, Wake, and Warren Counties, North Carolina; Brunswick, Craig, Culpeper, Dinwiddie, Fauquier, Louisa, Lunenburg, Madison, Nottoway, Orange, and Rappahannock Counties, Virginia; and Howard and Montgomery Counties, Maryland, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of yellow lance consist of the following components:

(i) Suitable substrates and connected instream habitats, characterized by geomorphically stable stream channels and banks (*i.e.,* channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation) with habitats that support a diversity of freshwater mussel and native fish (such as stable riffle-run-pool habitats that provide flow refuges consisting of silt-free gravel and coarse sand substrates).

(ii) Adequate flows, or a hydrologic flow regime (which includes the severity, frequency, duration, and seasonality of discharge over time), necessary to maintain benthic habitats where the species is found and to maintain connectivity of streams with the floodplain, allowing the exchange of nutrients and sediment for maintenance of the mussel's and fish host's habitat, food availability, spawning habitat for native fishes, and the ability for newly transformed juveniles to settle and become established in their habitats.

(iii) Water and sediment quality (including, but not limited to, conductivity, hardness, turbidity, temperature, pH, ammonia, heavy metals, and chemical constituents) necessary to sustain natural physiological processes for normal behavior, growth, and viability of all life stages.

(iv) The presence and abundance of fish hosts necessary for recruitment of the yellow lance.

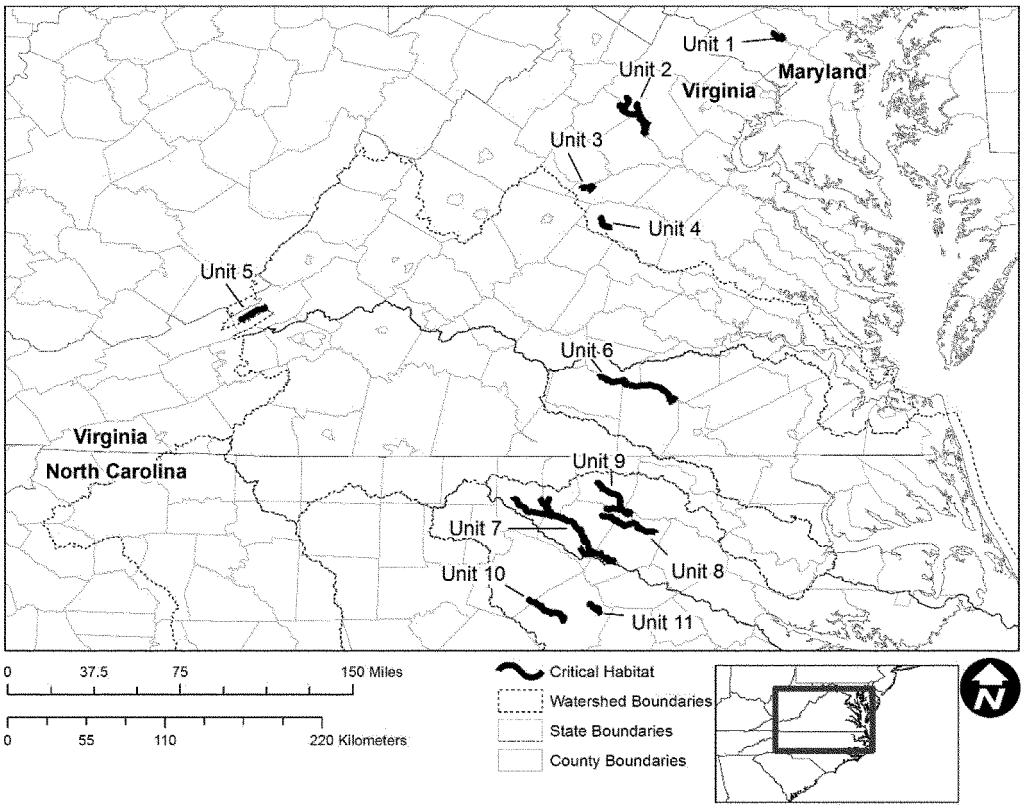
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created by overlaying Natural Heritage Element Occurrence data and U.S. Geological Survey (USGS) hydrologic data for stream reaches. The hydrologic data used in the critical habitat maps were extracted from the USGS 1:1M scale nationwide hydrologic layer (*https://nationalmap.gov/small_scale/mld/1nethyd.html*) with a projection of EPSG:4269–NAD83 Geographic. The North Carolina, Virginia, and Maryland Natural Heritage program species presence data were used to select specific stream segments for inclusion in the critical habitat layer. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0094 and at the Raleigh Ecological Services Field Office. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) *Note:* Index map follows:

BILLING CODE 4333–15–P

Index Map of Critical Habitat Units for Yellow Lance

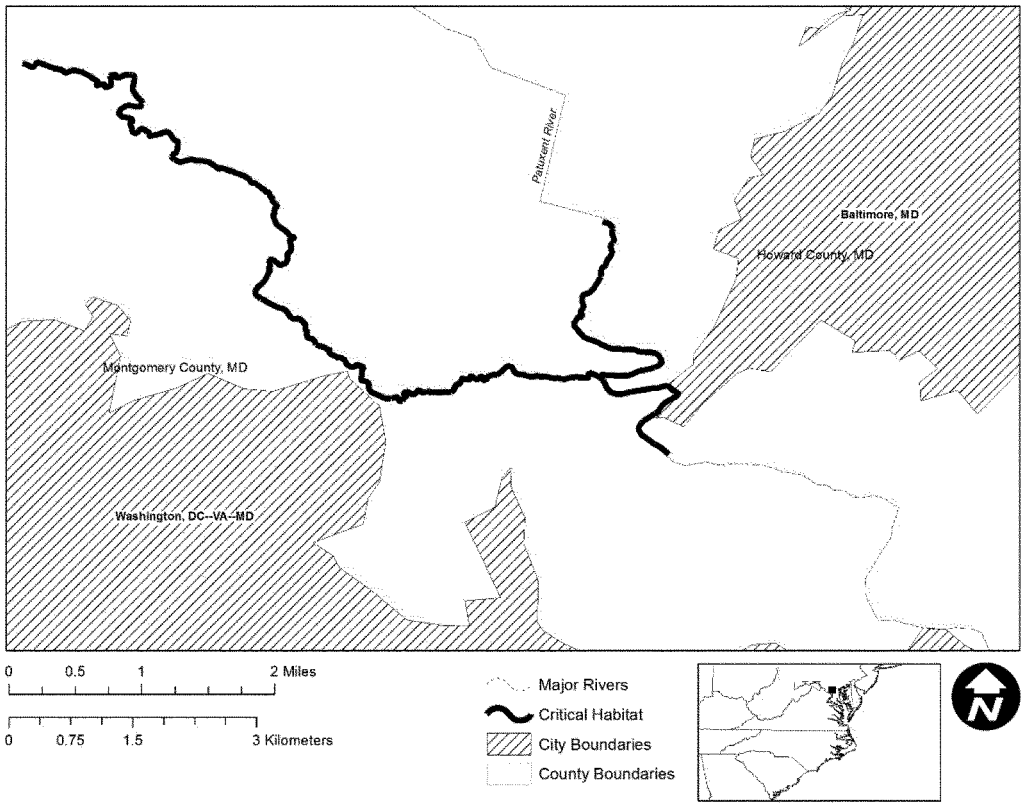


(6) Unit 1: PRI—Patuxent River, Montgomery and Howard Counties, Maryland.

(i) This unit consists of approximately 10 river miles (16.1 kilometers (km)) of occupied habitat, including 3 mi (4.8 km) of the Patuxent River and 7 mi (11.3 km) of the Hawlings River. Unit 1 includes stream habitat up to bank full height.

(ii) Map of Unit 1 follows:

Map of Unit 1 - Patuxent River Critical Habitat Unit for Yellow Lance

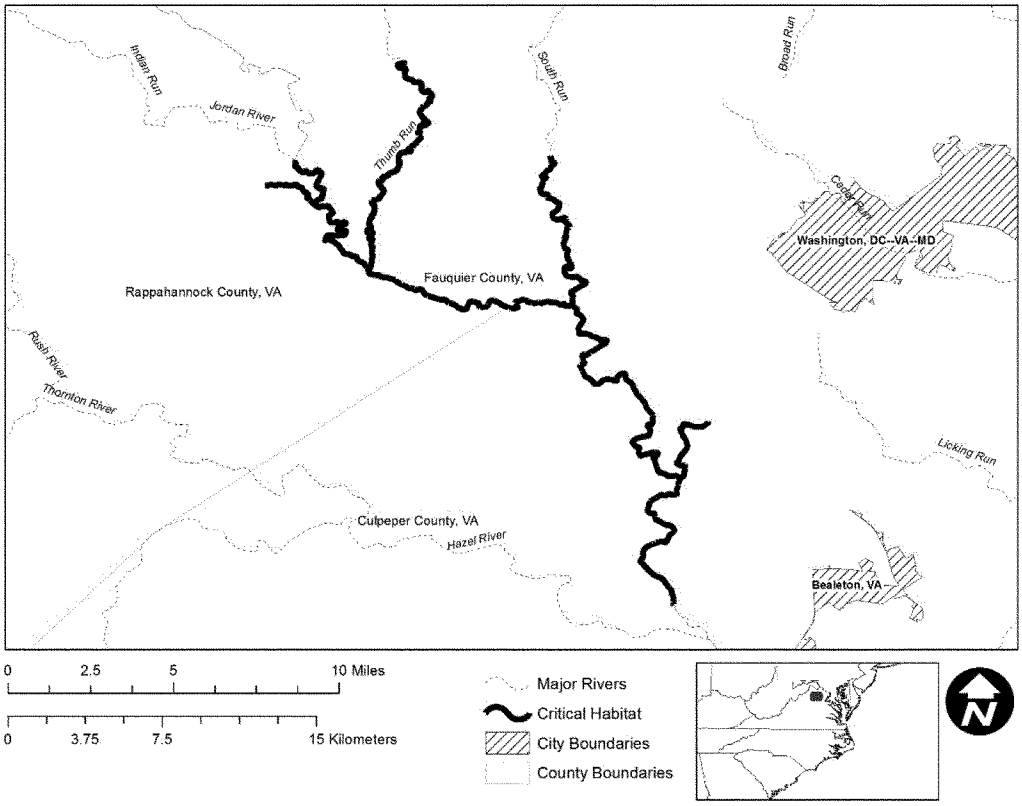


(7) Unit 2: RR1—Rappahannock Subbasin, Rappahannock, Fauquier, and Culpeper Counties, Virginia.

(i) This unit consists of approximately 44 river miles (70.8 km) of occupied habitat in the Rappahannock Subbasin, including 1.7 miles (2.7 km) in Hungry Run, 7.9 miles (12.7 km) in Thumb Run, 5.9 miles (9.5 km) in South Run/Carter Run, 2.7 miles (4.3 km) in Great Run, and 25.8 miles (41.6 km) in Rappahannock River. Unit 2 includes stream habitat up to bank full height.

(ii) Map of Unit 2 follows:

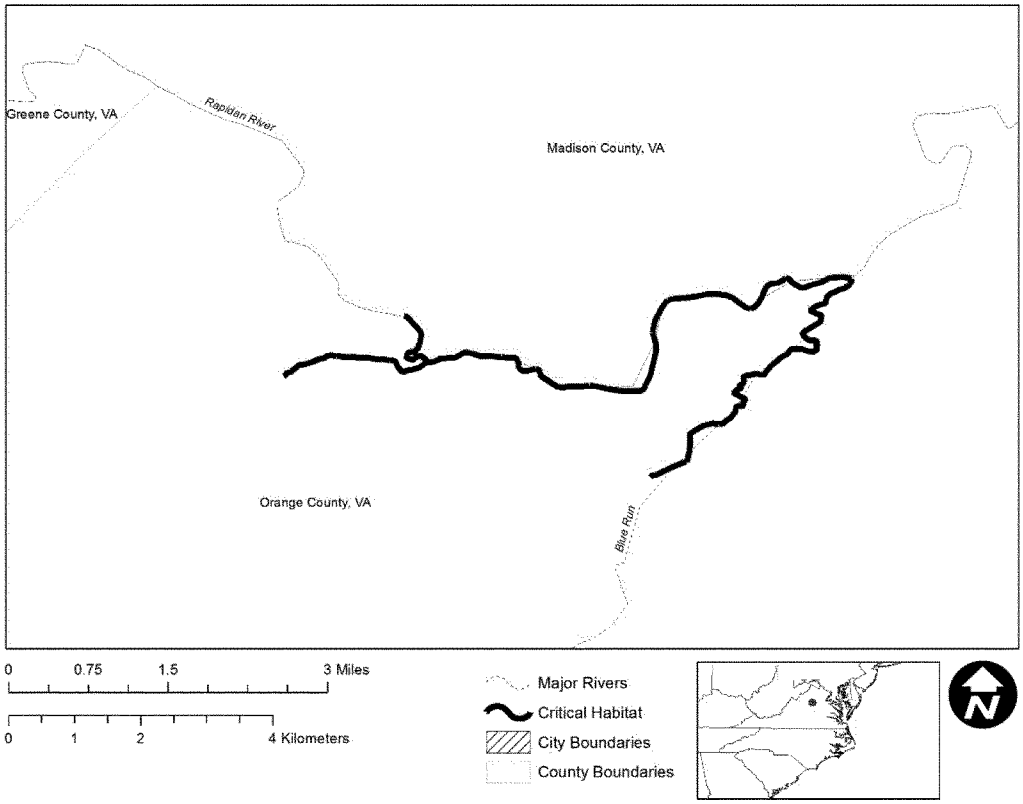
Map of Unit 2 - Rappahannock Subbasin Critical Habitat Unit for Yellow Lance



(8) Unit 3: RR2—Rappahannock Subbasin, Madison and Orange Counties, Virginia.(i) This unit consists of 9 river miles (14.5 km) of occupied habitat in the Rapidan Subbasin, including 1.2 miles (1.9 km) in Marsh Run, 3.1 miles (5.0 km) in Blue Run, and 4.7 miles (7.6 km) in the Raspidan River. Unit 3 includes stream habitat up to bank full height.

(ii) Map of Unit 3 follows:

Map of Unit 3 - Rapidan Subbasin Critical Habitat Unit for Yellow Lance

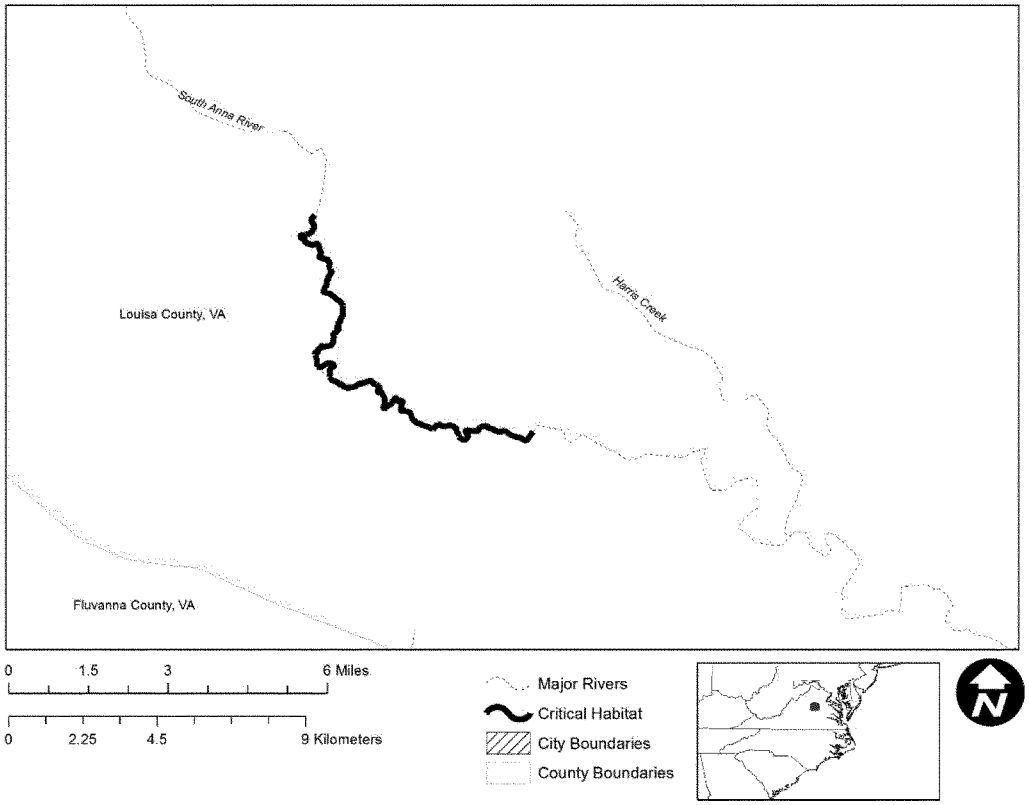


(9) Unit 4: YR1—South Anna River, Louisa County, Virginia.

(i) This unit consists of approximately 8 river miles (12.9 km) of occupied habitat in the South Anna River. Unit 4 includes stream habitat up to bank full height.

(ii) Map of Unit 4 follows:

Map of Unit 4 - South Anna River Critical Habitat Unit for Yellow Lance

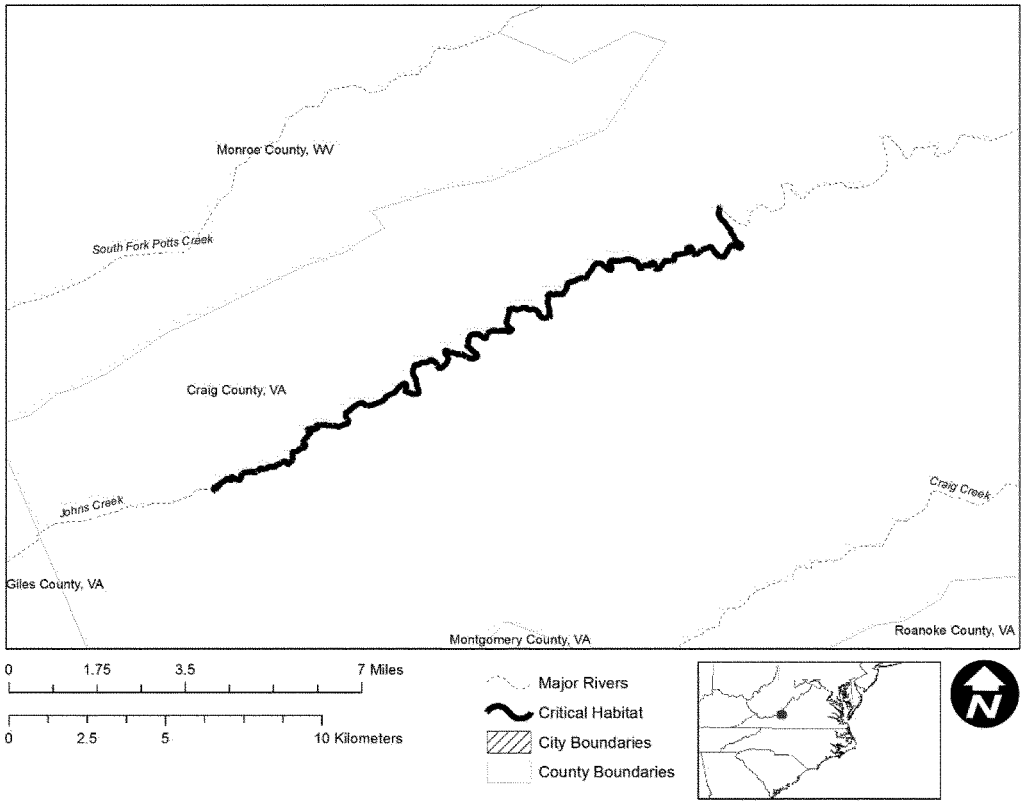


(10) Unit 5: JR1—Johns Creek, Craig County, Virginia.

(i) This unit consists of approximately 14 river miles (22.5 km) of occupied habitat in the Johns Creek. Unit 5 includes stream habitat up to bank full height.

(ii) Map of Unit 5 follows:

Map of Unit 5 - Johns Creek Critical Habitat Unit for Yellow Lance

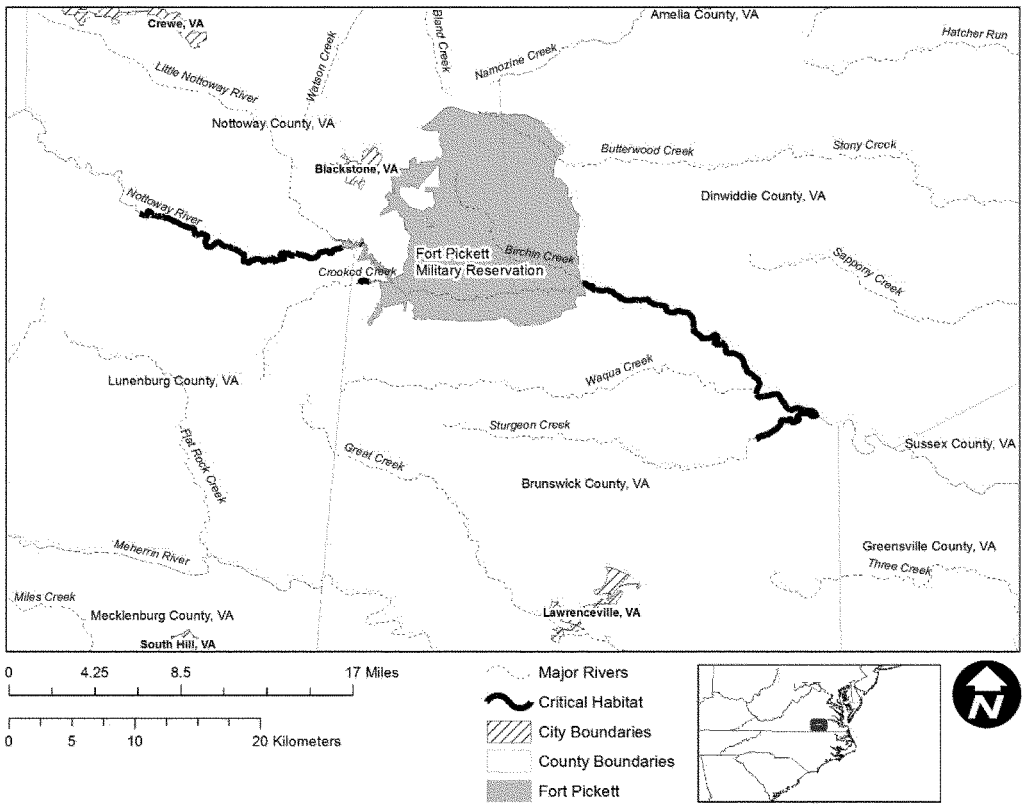


(11) Unit 6: CR1—Nottoway Subbasin, Nottoway, Lunenburg, Brunswick, and Dinwiddie Counties, Virginia

(i) This unit consists of approximately 41 river miles (66 km) of occupied habitat in the Nottoway Subbasin, including 1.4 miles (2.3 km) in Crooked Creek, 3.3 miles (5.3 km) in Sturgeon Creek, and 36.3 miles (58.4 km) in the Nottoway River. Unit 6 includes stream habitat up to bank full height.

(ii) Map of Unit 6 follows:

Map of Unit 6 - Nottoway Subbasin Critical Habitat Unit for Yellow Lance

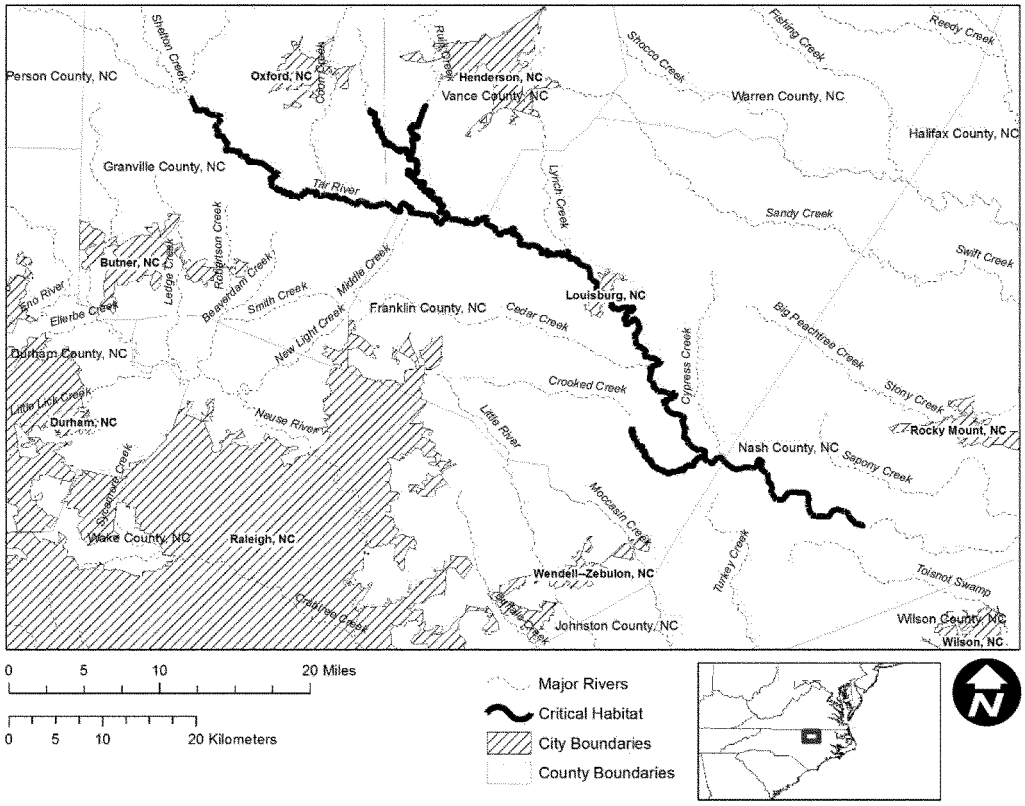


(12) Unit 7: TR1—Tar River, Granville, Vance, Franklin, and Nash Counties, North Carolina.

(i) This unit consists of approximately 91 river miles (146.5 km) of occupied habitat in the Tar River, including 4.4 miles (7.1 km) in Ruin Creek, 11.9 miles (19.2 km) in Tabbs Creek, 6.8 miles (10.9 km) in Crooked Creek, and 67.9 miles (109.3 km) in the Tar River. Unit 7 includes stream habitat up to bank full height.

(ii) Map of Unit 7 follows:

Map of Unit 7 -Tar River Critical Habitat Unit for Yellow Lance

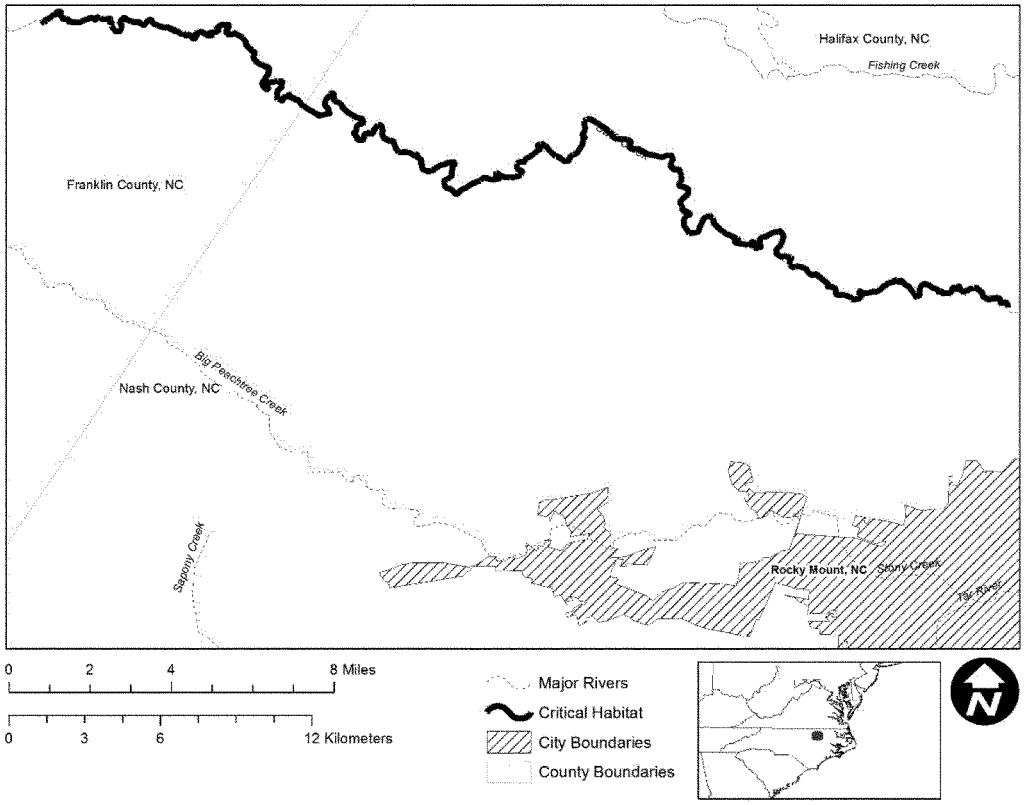


(13) Unit 8: TR2—Sandy/Swift Creek, Vance, Warren, Halifax, Franklin, and Nash Counties, North Carolina.

(i) This unit consists of 31 river miles (50 km) of occupied habitat in the Sandy and Swift Creeks. Unit 8 includes stream habitat up to bank full height.

(ii) Map of Unit 8 follows:

Map of Unit 8 - Sandy/Swift Creek Critical Habitat Unit for Yellow Lance

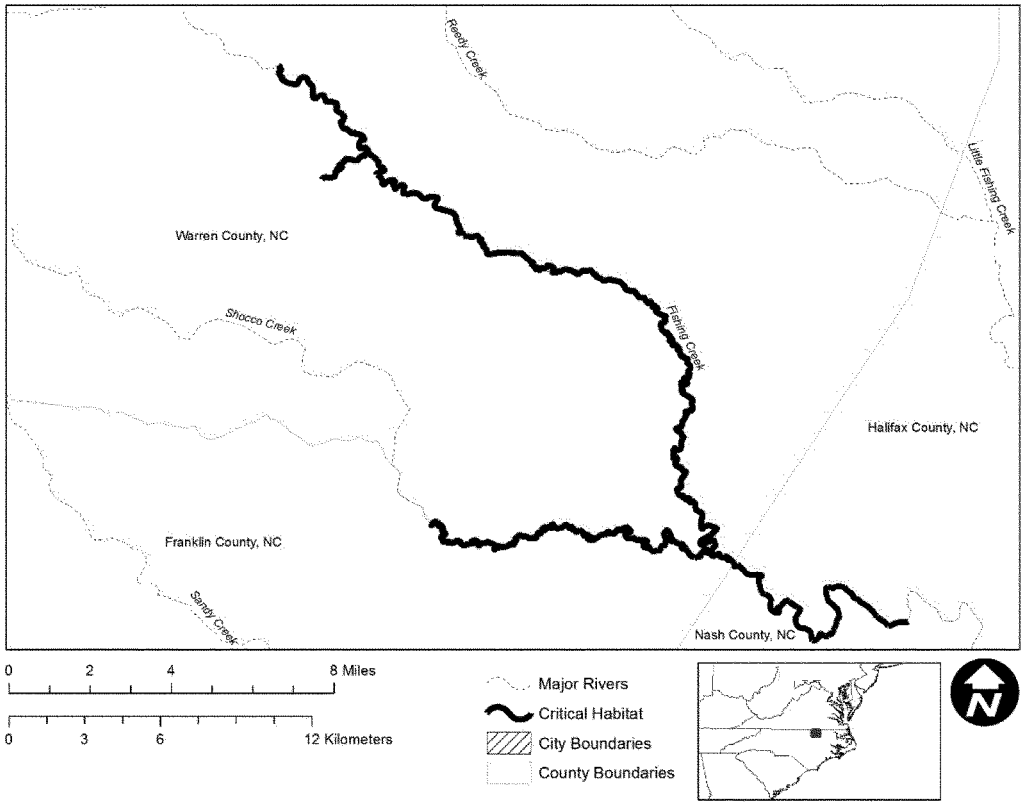


(14) Unit 9: TR3—Fishing Creek Subbasin, Vance, Warren, Halifax, Franklin, and Nash Counties, North Carolina.

(i) This unit consists of approximately 37 river miles (59.5 km) of occupied habitat in the Fishing Creek Subbasin, including 1.6 miles (2.6 km) in Richneck Creek, 8.0 miles (12.9 km) in Shocco Creek, and 27.4 miles (44 km) in Fishing Creek. Unit 9 includes stream habitat up to bank full height.

(ii) Map of Unit 9 follows:

Map of Unit 9 - Fishing Creek Subbasin Critical Habitat Unit for Yellow Lance

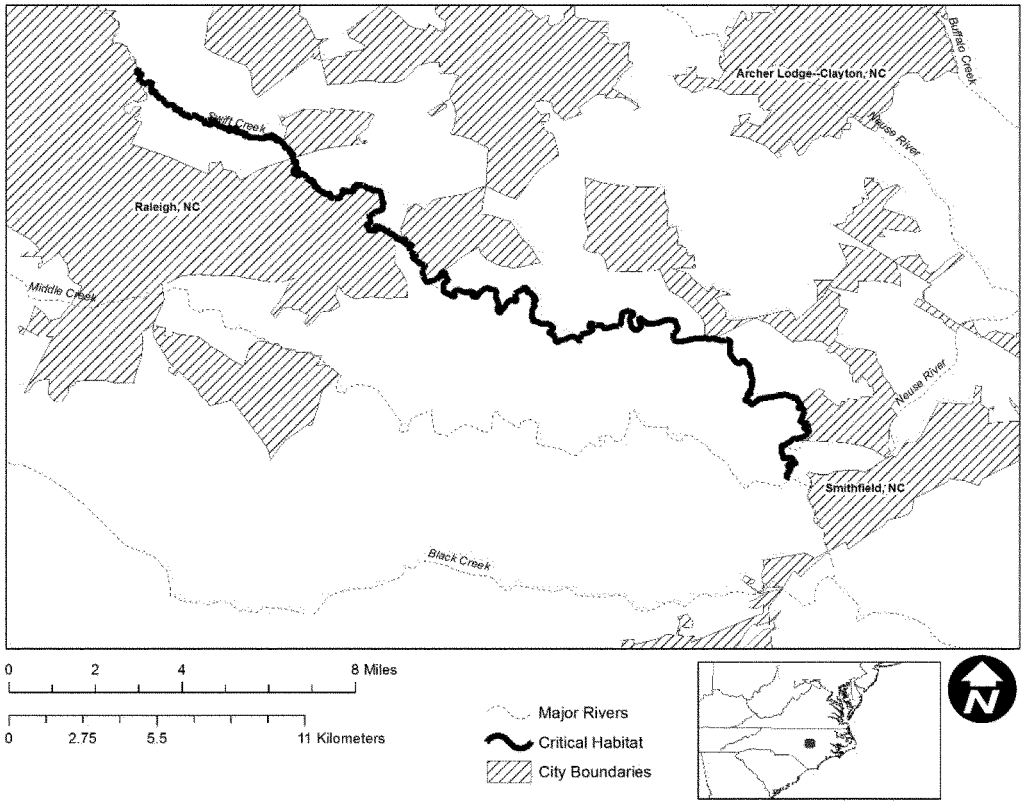


(15) Unit 10: NR1—Swift Creek, Wake and Johnston Counties, North Carolina.

(i) This unit consists of approximately 24 river miles (38.6 km) of occupied habitat in the Swift Creek. Unit 10 includes stream habitat up to bank full height.

(ii) Map of Unit 10 follows:

Map of Unit 10 - Swift Creek Critical Habitat Unit for Yellow Lance

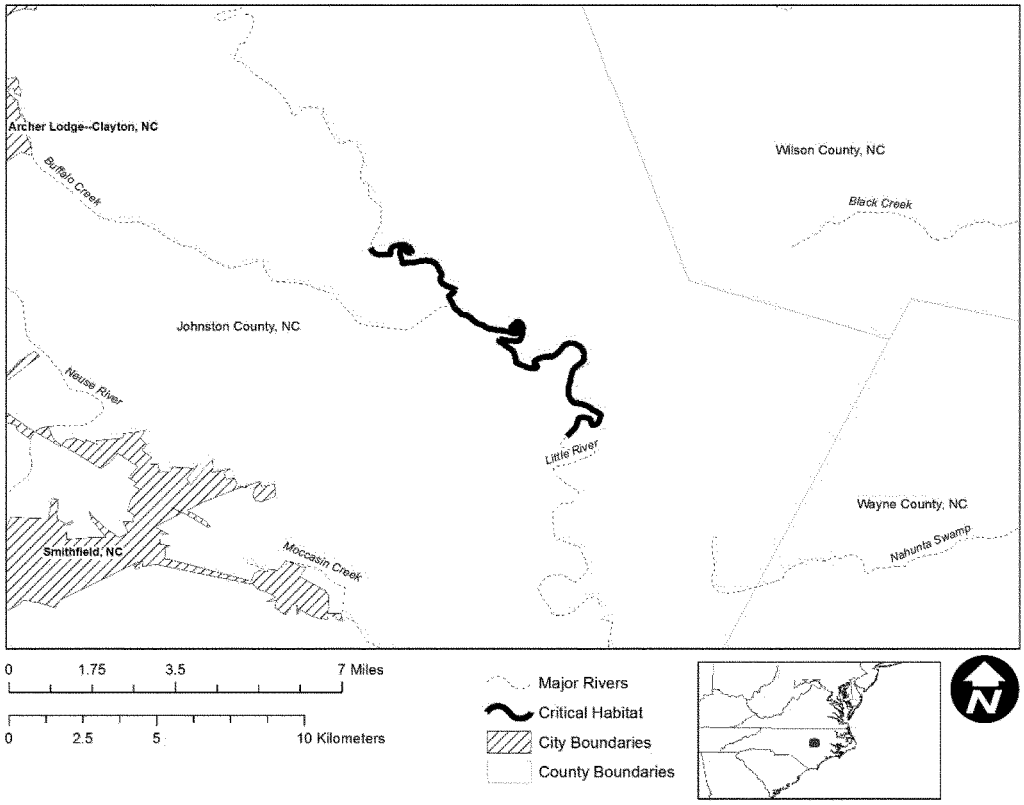


(16) Unit 11: NR2—Little River, Johnston County, North Carolina.

(i) This unit consists of approximately 10 river miles (16.1 km) of occupied habitat in the Little River. Unit 11 includes stream habitat up to bank full height.

(ii) Map of Unit 11 follows:

Map of Unit 11 - Little River Critical Habitat Unit for Yellow Lance



* * * * *

Dated: November 26, 2019.

Margaret E. Everson,

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

[FR Doc. 2020–02294 Filed 2–5–20; 8:45 am]

BILLING CODE 4333–15–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 200130–0039]

RIN 0648–BJ39

Pacific Halibut Fisheries; Catch Sharing Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to approve changes to the Pacific Halibut Catch Sharing Plan for the International Pacific Halibut Commission's regulatory Area 2A off Washington, Oregon, and California. In addition, NMFS proposes to implement the portions of the Plan and management measures that are not implemented through the International Pacific Halibut Commission. These measures include the recreational fishery seasons and allocations and management measures for Area 2A. These actions are intended to conserve Pacific halibut and provide angler opportunity where available.

DATES: Comments on the proposed rule must be received on or before March 9, 2020.

ADDRESSES: Submit your comments, identified by NOAA–NMFS–2019–0120, by either of the following methods:

- *Federal e-Rulemaking Portal:* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0120,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Barry Thom, c/o Kathryn Blair, West Coast Region, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record and NMFS will post them for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Docket: This rule is accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov.* Background information and documents are available at the NMFS West Coast Region website at *https://www.fisheries.noaa.gov/west-coast/sustainable-fisheries/fisheries-management-west-coast* and at the Council's website at *http://*

www.pcouncil.org. Other comments received may be accessed through *Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kathryn Blair, phone: 503–231–6858, fax: 503–231–6893, or email: *kathryn.blair@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Northern Pacific Halibut Act (Halibut Act) of 1982 gives the Secretary of Commerce (Secretary) responsibility for implementing the provisions of the Halibut Convention between the United States and Canada. 16 U.S.C. 773–773k. The Halibut Act requires that the Secretary adopt regulations to carry out the purposes and objectives of the Halibut Convention and Halibut Act 16 U.S.C. 773(c). The Halibut Act also authorizes the regional fishery management councils to develop regulations in addition to, but not in conflict with, regulations of the International Pacific Halibut Commission (IPHC) to govern the Pacific halibut catch in their corresponding U.S. Convention waters (16 U.S.C. 773c(c)).

Since 1988, NMFS has implemented annual Catch Sharing Plans that allocate the IPHC regulatory Area 2A Pacific halibut catch limit between treaty Indian and non-Indian harvesters, and among non-Indian commercial and recreational (sport) fisheries. The Pacific Fishery Management Council (Council) develops Catch Sharing Plans in accordance with the Halibut Act. In 1995, the Council recommended, and NMFS approved and implemented a long-term Area 2A Catch Sharing Plan (60 FR 14651; March 20, 1995). NMFS has been implementing adjustments to the Area 2A Catch Sharing Plan based on Council recommendations each year to address the changing needs of these fisheries. While the full Catch Sharing Plan is not published in the **Federal Register**, it is made available on the Council and NMFS websites.

At its annual meeting February 3–7, 2020, the IPHC will recommend an Area 2A catch limit. This catch limit is derived from the total constant exploitation yield (TCEY), which includes commercial discards and bycatch estimates calculated using a formula developed by the IPHC. As provided in the Halibut Act at 16 U.S.C. 773b, the Secretary of State, with the concurrence of the Secretary of Commerce, may accept or reject, on behalf of the United States, regulations recommended by the IPHC in accordance with the Convention. Following acceptance by the Secretary of State, the annual management measures promulgated by the IPHC are published in the **Federal Register** to provide notice of their immediate regulatory effectiveness and to inform persons subject to the regulations of their restrictions and requirements (50 CFR 300.62).

This rule proposes to implement the Council's recommended changes to the Catch Sharing Plan for IPHC regulatory Area 2A, which affect only the recreational fishery. In addition, this rule would revise the recreational Pacific halibut fishery management measures, such as season dates and some catch limits that are set in NMFS regulations. These management measures are detailed in the Council's recommended Catch Sharing Plan and were developed through the Council's public process.

Proposed Changes to the 2020 Area 2A Catch Sharing Plan

Each year, at the Council's September meeting, members of the public have an opportunity to propose changes to the Catch Sharing Plan for consideration by the Council. At the September 2019 Council meeting, only Washington Department of Fish and Wildlife (WDFW) and Oregon Department of Fish and Wildlife (ODFW) proposed changes to the Catch Sharing Plan. The Council voted to solicit public input on all of the changes recommended by WDFW and ODFW. WDFW and ODFW subsequently held public workshops on the recommended changes.

At its November 2019 meeting, the Council considered the results of the state-sponsored workshops on the recommended changes to the Catch Sharing Plan, along with public input provided at the 2019 September and November Council meetings, and made its final recommendations for modifications to the Catch Sharing Plan. NMFS proposes to approve all of the Council's recommended changes to the Catch Sharing Plan as discussed below.

1. In section (f)(1)(i), the Council recommended modifying the season start date for Washington's Puget Sound subarea to allow it to open in April instead of early May. In 2019, the Puget Sound subarea had 39,468 pounds (17.9 mt) of its allocation remaining at the recreational end of the season. This change would provide up to an additional month for anglers in the Puget Sound subarea to attain quota that has gone unharvested in recent years.

2. In section (f)(1)(i)–(iii), the Council recommended modifying the number of open days for Washington's Puget Sound, North and South Coast subareas so they may be open up to three days a week instead of two. This change would provide flexibility in setting season days in years with high quota, to allow for additional angler opportunity.

3. In section (f)(1)(ii)–(iv), the Council recommended modifying the season start date in Washington's North and South Coast, and Columbia River subareas to open on April 30 if it falls on a Thursday, because opening days are set by days in the week in the Catch Sharing Plan. This change adds flexibility to open the season earlier, provides a consistent season structure, and reduces effort shifts between Washington subareas.

4. In section (f)(1)(v), the Council recommended adding an allocation-based threshold for setting open days in the Oregon Central Coast nearshore subarea. Specifically, the Council recommended that if the fishery allocation is 25,000 pounds (11.34 mt) or greater, the season will open May 1; if the allocation is less than 25,000 pounds (11.34 mt), the season will open June 1. This change provides an additional month of opportunity for anglers to achieve the full catch limit in years with a high allocation.

5. In section (f)(1)(v), the Council recommended adding an allocation-based threshold for setting open days in the Oregon Central Coast subarea's summer all-depth fishery. Specifically, if the allocation projected to remain in the Central Coast spring all-depth fishery after its conclusion plus the summer all-depth allocation totals 60,000 pounds (27.22 mt) or more after the spring all-depth season concludes, Thursday may be added to the Central Coast summer all-depth season open days. This change provides anglers an additional day per week to achieve full attainment of the catch limit in years with high quota.

6. In section (f)(1)(vi), the Council recommended revising the Southern Oregon subarea allocation of 3.91 percent of the Oregon recreational quota, to 3.91 percent up to a ceiling of 8,000 pounds (3.63 mt), with any amount over 8,000 pounds (3.63 mt) from the 3.91 percent allocation to be automatically allocated to the Columbia River subarea. The goal of this change is to provide angler opportunity in the Columbia River subarea in years with a high allocation without revising the allocation percentage, when unused quota may not be utilized in the Southern Oregon subarea. The Columbia River subarea has high effort and attainment, and has had reduced seasons in recent years, while an allocation of 8,000 pounds (3.63 mt) for the Southern Oregon subarea is higher than recent catches and is unlikely to

affect angler opportunity in that subarea.

Additional discussion of these changes is included in the materials submitted to the Council at its September and November meetings, available at *https://www.pcouncil.org/council-operations/council-meetings/past-meetings/.* A version of the proposed Catch Sharing Plan including these changes can be found at *https://www.pcouncil.org/pacific-halibut/background-information/.*

Minor Changes to Regulatory Text To Remove Cross References

At the November 2019 IPHC interim meeting, the IPHC Secretariat submitted a proposal to reorder IPHC regulation sections for clarity and emphasis. Current regulations at 50 CFR 300.63(d) cross reference IPHC regulation section numbers. NMFS proposes removing these cross-references to prevent inconsistency with IPHC regulations.

Tribes' Usual and Accustomed Fishing Areas

Regulations at 50 CFR 300.61 and 300.64 describe the usual and accustomed fishing areas of Indian tribes with treaty fishing rights to Pacific halibut. In 50 CFR 300.61, the definition of Subarea 2A–1 describes the usual and accustomed fishing area for all 13 treaty tribes with fishing rights to halibut. The regulations at 50 CFR 300.64 describe each treaty tribe's usual and accustomed fishing area, and explain that ''boundaries of a tribe's fishing area may be revised as ordered by a Federal Court'' (50 CFR 300.63(i)).

On March 5, 2018, the United States District Court for the Western District of Washington revised the western boundaries of the U&A fishing areas for the Quileute Indian Tribe and the Quinault Indian Nation *United States* v. *Washington,* 2:09–sp–00001–RSM, (W.D. Wash. March 5, 2018) (Order Regarding Boundaries of Quinault and Quileute U&As). These revised boundaries mirror the coast of the Washington shoreline at a distance of 40 nautical miles for the Quileute Indian Tribe and 30 nautical miles for the Quinault Indian Nation. Other boundaries and their supporting rationale described in previous rulemakings on the U&A fishing areas would not be affected by this rulemaking. NMFS proposes revising the definition of Subarea 2A–1 at 50 CFR 300.61 to a more general description of the usual and accustomed fishing areas of Indian tribes with treaty fishing rights to Pacific halibut, and updating the table at 50 CFR 300.64(i) to reflect the court decision.

Proposed 2020 Recreational Fishery Management Measures

On the Council's recommendation, NMFS also proposes recreational fishery management measures, including season dates that are necessary to implement the Council's recommended Catch Sharing Plan in 2020. The Catch Sharing Plan includes a framework for setting fishing open days by subarea, and each state submits final recommended season dates annually. This proposed rule contains dates for the recreational (sport) fisheries based on the 2020 Catch Sharing Plan as recommended by the Council. The season dates preferred for Washington, following input from the public, are proposed here. The proposed season dates for Oregon are based on the Catch Sharing Plan framework and season dates from 2019. The proposed season dates for California are identical to those from 2019. The final rule will select dates based on public comment, including comments from Oregon and California after it has concluded its public meetings gathering input on season dates.

The annual domestic management measures are published each year through a final rule under NMFS' authority to implement the Halibut Convention (50 CFR 300.62). For the 2019 fishing season, the final rule for the commercial fisheries, IPHC regulations, and catch limits was published on March 14, 2019 (84 FR 9243), and the final rule for Area 2A recreational fisheries was published on April 29, 2019 (84 FR 17960). The section numbers below correspond to IPHC regulation sections in the March 14, 2019, final rule.

NMFS proposes the following regulations to implement the Catch Sharing Plan recommended by the Council under the Halibut Act. After the opportunity for public comment, NMFS will publish a final rule implementing the Catch Sharing Plan and annual management measures, as required by implementing regulations at 50 CFR 300.63(b)(1). The numbering of this section corresponds to the annual regulations promulgated by the IPHC; IPHC regulations for 2020 will be finalized via separate rulemaking by March 15, 2020, or as soon as possible thereafter. This proposed rule would add the following text to the annual domestic management measures and paragraph (8) of the 2020 IPHC regulations under the heading, ''Sport Fishing for Pacific Halibut—IPHC Regulatory Area 2A'':

(8) The sport fishing subareas, subquotas, fishing dates, and daily bag limits are as follows, except as modified under the inseason actions consistent with 50 CFR 300.63(c). All sport fishing in Area 2A is managed on a ''port of landing'' basis, whereby any halibut landed into a port counts toward the quota for the area in which that port is located, and the regulations governing the area of landing apply, regardless of the specific area of catch.

(a) The quota for the area in Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line extending from 48°17.30′ N lat., 124°23.70′ W long. north to 48°24.10′ N lat., 124°23.70′ W long., is [SUBAREA ALLOCATIONS WILL BE INSERTED WHEN FINAL RULE PUBLISHES AND WILL BE BASED ON THE ALLOCATION FORMULAS IN THE COUNCIL'S CATCH SHARING PLAN].

(i) The fishing seasons are:

(A) For the area in Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line at approximately 123°49.60′ W long., fishing is open April 16–18, 23–25; April 30–May 2; May 7–9, 14–16, 22–24, 28–30; June 4–6, 11–13, 18–20, and 25–27, or until there is not sufficient quota for another full day of fishing and the area is closed by the Commission. Any closure will be announced on the NMFS hotline at 800–662–9825.

(B) For the area in U.S. waters in the Strait of Juan de Fuca, approximately between 124°23.70′ W long. and 123°49.60′ W long., fishing is open April 30; May 2, 7, 9, 14, 16, 22, 23, 24, 28–30; June 4–6, 11–13, 18–20, and 25–27, or until there is not sufficient quota for another full day of fishing and the area is closed by the Commission. Any closure will be announced on the NMFS hotline at 800–662–9825.

(ii) The daily bag limit is one halibut of any size per day per person.

(b) The quota for landings into ports in the area off the north Washington coast, west of the line described in paragraph (2)(a) of section 26 and north of the Queets River (47°31.70′ N lat.) (North Coast subarea), is [SUBAREA ALLOCATIONS WILL BE INSERTED WHEN FINAL RULE PUBLISHES AND WILL BE BASED ON THE ALLOCATION FORMULAS IN THE COUNCIL'S CATCH SHARING PLAN].

(i) The fishing seasons are:

(A) Fishing is open April 30; May 2, 7, 9, 14, 16, 22, 24, 28, 30; June 4, 6, 11, 13, 18, 20, 25, and 27, or until there is not sufficient quota for another full day of fishing and the area is closed by the Commission. Any closure will be announced on the NMFS hotline at 800–662–9825.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Recreational fishing for groundfish and halibut is prohibited within the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the North Coast Recreational YRCA. A vessel fishing with recreational gear in the North Coast Recreational YRCA may not be in possession of any halibut. Recreational vessels may transit through the North Coast Recreational YRCA with or without halibut on board. The North Coast Recreational YRCA is a C-shaped area off the northern Washington coast intended to protect yelloweye rockfish. The North Coast Recreational YRCA is defined in groundfish regulations at 50 CFR 660.70(a).

(c) The quota for landings into ports in the area between the Queets River, WA (47°31.70′ N lat.), and Leadbetter Point, WA (46°38.17′ N lat.) (South Coast subarea), is [SUBAREA ALLOCATIONS WILL BE INSERTED WHEN FINAL RULE PUBLISHES AND WILL BE BASED ON THE ALLOCATION FORMULAS IN THE COUNCIL'S CATCH SHARING PLAN].

(i) This subarea is divided between the all-depth fishery (the Washington South coast primary fishery), and the incidental nearshore fishery in the area from 47°31.70′ N lat. south to 46°58.00′ N lat. and east of a boundary line approximating the 30-fm (55-m) depth contour. This area is defined by straight lines connecting all of the following points in the order stated as described by the following coordinates (the Washington South coast, northern nearshore area):

(1) 47°31.70′ N lat, 124°37.03′ W long;
(2) 47°25.67′ N lat, 124°34.79′ W long;
(3) 47°12.82′ N lat, 124°29.12′ W long;
(4) 46°58.00′ N lat, 124°24.24′ W long.

The primary fishery season dates are April 30; May 3, 7, 10, 14, 17, 21; June 18, 21, 25, and 28, or until there is not sufficient quota for another full day of fishing and the area is closed by the Commission. Any closure will be announced on the NMFS hotline at 800–662–9825. If sufficient quota remains, the fishing season in the nearshore area commences the Saturday subsequent to the closure of the primary fishery and continues 7 days per week until [SUBAREA ALLOCATIONS WILL BE INSERTED WHEN FINAL RULE PUBLISHES AND WILL BE BASED ON THE ALLOCATION FORMULAS IN THE COUNCIL'S CATCH SHARING PLAN] is projected to be taken by the two fisheries combined and the fishery is closed by the Commission or September 30, whichever is earlier. If the fishery is closed prior to September 30, and there is insufficient quota remaining to reopen the northern nearshore area for another fishing day, then any remaining quota may be transferred in-season to another Washington coastal subarea by NMFS.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Seaward of the boundary line approximating the 30-fm (55-m) depth contour and during days open to the primary fishery, lingcod may be taken, retained and possessed when allowed by groundfish regulations at 50 CFR 660.360, subpart G.

(iv) Recreational fishing for groundfish and halibut is prohibited within the South Coast Recreational YRCA and Westport Offshore YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the South Coast Recreational YRCA and Westport Offshore YRCA. A vessel fishing in the South Coast Recreational YRCA and/or Westport Offshore YRCA may not be in possession of any halibut. Recreational vessels may transit through the South Coast Recreational YRCA and Westport Offshore YRCA with or without halibut on board. The South Coast Recreational YRCA and Westport Offshore YRCA are areas off the southern Washington coast established to protect yelloweye rockfish. The South Coast Recreational YRCA is defined at 50 CFR 660.70(d). The Westport Offshore YRCA is defined at 50 CFR 660.70(e).

(d) The quota for landings into ports in the area between Leadbetter Point, WA (46°38.17′ N lat.), and Cape Falcon, OR (45°46.00′ N lat.)(Columbia River subarea), is [SUBAREA ALLOCATIONS WILL BE INSERTED WHEN FINAL RULE PUBLISHES AND WILL BE BASED ON THE ALLOCATION FORMULAS IN THE COUNCIL'S CATCH SHARING PLAN].

(i) This subarea is divided into an all-depth fishery and a nearshore fishery. The nearshore fishery is allocated 500 lb (0.23 mt) of the subarea allocation. The nearshore fishery extends from Leadbetter Point (46°38.17′ N lat., 124°15.88′ W long.) to the Columbia River (46°16.00′ N lat., 124°15.88′ W long.) by connecting the following coordinates in Washington: 46°38.17′ N lat., 124°15.88′ W long. 46°16.00′ N lat., 124°15.88′ W long. and connecting to the boundary line approximating the 40-fm (73-m) depth contour in Oregon. The nearshore fishery opens May 4, and continues on Monday, Tuesday, and Wednesday each week until the nearshore allocation is taken, or September 30, whichever is earlier. The all-depth fishing season is open April 30; May 3, 7, 10, 14, 17, 21, 28, 31; June 4, 7, 11, 14, 18, 21, 25, and 28, or until there is not sufficient quota for another full day of fishing and the area is closed by the Commission, or September 30, whichever is earlier. Any closure will be announced on the NMFS hotline at 800–662–9825. Subsequent to this closure, if there is insufficient quota remaining in the Columbia River subarea for another fishing day, then any remaining quota may be transferred inseason to another Washington and/or Oregon subarea by NMFS. Any remaining quota would be transferred to each state in proportion to its contribution.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Pacific Coast groundfish may not be taken and retained, possessed or landed when halibut are on board the vessel, except sablefish, Pacific cod, flatfish species, and lingcod caught north of the Washington-Oregon border during the recreational halibut fishery, when allowed by Pacific Coast groundfish regulations, during days open to the all-depth fishery only.

(iv) Taking, retaining, possessing, or landing halibut on groundfish trips is only allowed in the nearshore area on days not open to all-depth Pacific halibut fisheries.

(e) The quota for landings into ports in the area off Oregon between Cape Falcon (45°46.00′ N lat.) and Humbug Mountain (42°40.50′ N lat.) (Oregon Central Coast subarea), is [SUBAREA ALLOCATIONS WILL BE INSERTED WHEN FINAL RULE PUBLISHES AND WILL BE BASED ON THE ALLOCATION FORMULAS IN THE COUNCIL'S CATCH SHARING PLAN].

(i) The fishing seasons are:

(A) The first season (the ''inside 40-fm'' fishery) commences May 1, and continues 7 days a week, in the area shoreward of a boundary line approximating the 40-fm (73-m) depth contour, or until the sub-quota for the central Oregon ''inside 40-fm'' fishery of [SUBAREA ALLOCATIONS WILL BE INSERTED WHEN FINAL RULE PUBLISHES AND WILL BE BASED ON THE ALLOCATION FORMULAS IN THE COUNCIL'S CATCH SHARING PLAN], or any inseason revised subquota,is estimated to have been taken and the season is closed by the Commission, or October 31, whichever is earlier. The boundary line approximating the 40-fm (73-m) depth contour between 45°46.00′ N lat. and 42°40.50′ N lat. is defined at § 660.71(k).

(B) The second season (spring season), which is for the ''all-depth'' fishery, is open May 8, 9; 14, 15, 16; 21, 22, 23; 28, 29, 30; and June 4, 5, 6. The

allocation to the all-depth fishery is [SUBAREA ALLOCATIONS WILL BE INSERTED WHEN FINAL RULE PUBLISHES AND WILL BE BASED ON THE ALLOCATION FORMULAS IN THE COUNCIL'S CATCH SHARING PLAN]. If sufficient unharvested quota remains for additional fishing days, the season will re-open June 18, 19, 20; July 2, 3, 4; and July 16, 17, 18. Notice of the re-opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825.

(C) The third season (summer season), which is for the ''all-depth'' fishery, will be August 6, 7, 8; 20, 21, 22; September 3, 4, 5; 17, 18, 19; October 1, 2, 3; 15, 16, 17; 29, 30, 31; and will continue until the combined spring season and summer season quotas in the area between Cape Falcon and Humbug Mountain, Oregon, are estimated to have been taken and the area is closed by the Commission. NMFS will announce on the NMFS hotline in July whether the fishery will re-open for the summer season in August. Additional fishing days may be opened if sufficient quota remains after the last day of the first scheduled open period. If, after this date, an amount greater than or equal to 60,000 lb (27.2 mt) remains in the combined all-depth and inside 40-fm (73-m) quota, the fishery may re-open every Thursday, Friday and Saturday, beginning August 6, 7, and 8, and ending when there is insufficient quota remaining, whichever is earlier. If after September 8, an amount greater than or equal to 30,000 lb (13.6 mt) remains in the combined all-depth and inside 40-fm (73-m) quota, and the fishery is not already open every Thursday, Friday and Saturday, the fishery may re-open every Thursday, Friday and Saturday, beginning September 10, 11, and 12, and ending October 31. After September 8, the bag limit may be increased to two fish of any size per person, per day. NMFS will announce on the NMFS hotline whether the summer all-depth fishery will be open on such additional fishing days, what days the fishery will be open and what the bag limit is.

(ii) The daily bag limit is one halibut of any size per day per person, unless otherwise specified. NMFS will announce on the NMFS hotline any bag limit changes.

(iii) During days open to all-depth halibut fishing when the groundfish fishery is restricted by depth, no groundfish may be taken and retained, possessed or landed, when halibut are on board the vessel, except sablefish, Pacific cod, and flatfish species, when allowed by groundfish regulations, if halibut are onboard the vessel. During days open to all-depth halibut fishing when the groundfish fishery is open to all depths, any groundfish species permitted under the groundfish regulations may be retained, possessed or landed if halibut are on board the vessel. During days open to nearshore halibut fishing, flatfish species may be taken and retained seaward of the seasonal groundfish depths restrictions, if halibut are on board the vessel.

(iv) When the all-depth halibut fishery is closed and halibut fishing is permitted only shoreward of a boundary line approximating the 40-fm (73-m) depth contour, halibut possession and retention by vessels operating seaward of a boundary line approximating the 40-fm (73-m) depth contour is prohibited.

(v) Recreational fishing for groundfish and halibut is prohibited within the Stonewall Bank YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the Stonewall Bank YRCA. A vessel fishing in the Stonewall Bank YRCA may not possess any halibut. Recreational vessels may transit through the Stonewall Bank YRCA with or without halibut on board. The Stonewall Bank YRCA is an area off central Oregon, near Stonewall Bank, intended to protect yelloweye rockfish. The Stonewall Bank YRCA is defined at § 660.70(f).

(f) The quota for landings into ports in the area south of Humbug Mountain, OR (42° 40.50′ N lat.) to the Oregon/California Border (42° 00.00′ N lat.) (Southern Oregon subarea) is [SUBAREA ALLOCATIONS WILL BE INSERTED WHEN FINAL RULE PUBLISHES AND WILL BE BASED ON THE ALLOCATION FORMULAS IN THE COUNCIL'S CATCH SHARING PLAN].

(i) The fishing season commences on May 1, and continues 7 days per week until the subquota is taken, or October 31, whichever is earlier.

(ii) The daily bag limit is one halibut per person with no size limit.

(iii) No Pacific Coast groundfish may be taken and retained, possessed or landed, except sablefish, Pacific cod, and flatfish species, in areas closed to groundfish, if halibut are on board the vessel.

(g) The quota for landings into ports south of the Oregon/California Border (42°00.00′ N lat.) and along the California coast is [SUBAREA ALLOCATIONS WILL BE INSERTED WHEN FINAL RULE PUBLISHES AND WILL BE BASED ON THE ALLOCATION FORMULAS IN THE COUNCIL'S CATCH SHARING PLAN].

(i) The fishing season will be open May 1 through October 31, or until the subarea quota is estimated to have been taken and the season is closed by the Commission, whichever is earlier. NMFS will announce any closure by the Commission on the NMFS hotline (206) 526–6667 or (800) 662–9825.

(ii) The daily bag limit is one halibut of any size per day per person.

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the International Pacific Halibut Commission (IPHC), the Pacific Fishery Management Council, the North Pacific Fishery Management Council (Council), and the Secretary of Commerce. Section 5 Halibut Act (16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. The proposed action is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Washington, Oregon, and California.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows.

Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The Halibut Act gives the Secretary of Commerce responsibility for implementing the provisions of the Halibut Convention between the United States and Canada. The Halibut Act requires that the Secretary adopt regulations to carry out the purposes and objectives of the Halibut Convention and Halibut Act. The Halibut Act also authorizes the regional fishery management councils to develop regulations in addition to, but not in conflict with, regulations of the IPHC to govern the Pacific halibut catch in their corresponding U.S. Convention waters. The Council's main management

objective for the Pacific halibut fishery in Area 2A is to manage fisheries to remain within the catch limit for Area 2A.

A second objective is to allow the recreational (sport) fishery to target halibut in the manner that is appropriate to meet the conservation requirements for species that co-occur with Pacific halibut. A third objective is to meet the needs of fishery participants in particular fisheries and fishing areas.

A Description and, Where Feasible, Estimate of the Number of Small Entities To Which the Final Rule Applies

This rule would revise the recreational Pacific halibut fishery management measures, such as season dates and some catch limits that are set in NMFS regulations. This proposed rule would open the recreational fishery with 2020 season dates and subarea allocations, impacting charter boats, anglers, and businesses relying on sport fishing across all of Area 2A. This rule also proposes changes to the sport fishing sector of the Catch Sharing Plan for the halibut fishery, impacting participants in the recreational Washington and Oregon subareas. Therefore, this rule may affect some charterboat operations in Area 2A. Previous analyses determined that charterboats are small businesses (see 77 FR 5477 (February 3, 2012) and 76 FR 2876 (January 18, 2011)). Charter fishing operations are classified under NAICS code, 487210, with a corresponding Small Business Association size standard of $7.5 million in annual receipts. No commercial fishing entities are directly affected by this rule.

In 2019, the IPHC issued 84 licenses to the charterboat fleet. NMFS estimates there are 47 licensed charterboats in Washington, and 26 in Oregon. Recent information on charterboat activity is not available, but prior analysis indicated that 60 percent of the IPHC charterboat license holders (around 50 vessels) may be affected by these regulations. Private vessels used for recreational fishing are not businesses, and are therefore not subject to the RFA.

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of This Proposed Rule

The proposed changes to the Catch Sharing Plan and domestic management measures do not include any new reporting or recordkeeping requirements.

Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rule

There are no relevant Federal rules that may duplicate, overlap, or conflict with this action.

Description and Estimate of Economic Effects on Entities, by Entity Size and Industry

The major effect of halibut management on small entities will be from the catch limit decisions made by the IPHC, a decision independent from this proposed action. This proposed action would implement management measures including season dates and bag limits for the recreational fishery, and makes minor changes to the Catch Sharing Plan to provide increased recreational opportunities under the allocations that result from the Area 2A catch limit. There are no large entities involved in the halibut fisheries; therefore, none of these changes will have a disproportionately negative effect on small entities versus large entities. The proposed changes to the Catch Sharing Plan are considered minor, with minimal economic effects.

A Description of, and an Explanation of the Basis for, Assumptions Used

In the description of the entities affected, estimates of the amount of charterboat activity from the number of licensed vessels were based on a 2004 report by the Pacific States Marine Fisheries Commission. This report has not been updated and the number of entities is assumed to be similar.

Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

The status quo alternative of not implementing management measures, such as season dates and bag limits, or revising the Catch Sharing Plan would not achieve the objectives and requirements of the Convention and Halibut Act, specifically conserving Pacific halibut and allocating quota equitably. Without establishing 2020 season dates and subarea allocations, there would be a significant economic impact on the entire recreational sector, including charter boats. When considered with the proposed management measures, the proposed changes to the Catch Sharing Plan would have minimal effect on the fishery and there are no other additional significant alternatives that would further minimize the impact of the proposed rule on small entities while achieving the goals and objectives of the Convention and Halibut Act. In addition, these management measures and Catch Sharing Plan changes were proposed by stakeholders to address the needs of the fisheries, and, as explained above, the proposed changes are not expected to have a significant economic impact on a substantial number of small entities.

A copy of this analysis is available from the Council or NMFS (see **ADDRESSES**).

This proposed rule was developed after meaningful consultation and collaboration with the tribal representative on the Council, pursuant to Executive Order 13175.

The U.S. Government formally recognizes that the 13 Washington Tribes have treaty rights to fish for Pacific halibut. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of Pacific halibut available in the tribes' usual and accustomed fishing areas (described at 50 CFR 300.64). Each of the treaty tribes has the discretion to administer their fisheries and to establish their own policies to achieve program objectives. Accordingly, tribal allocations and regulations, including the proposed changes to the Catch Sharing Plan, have been developed in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

Dated: January 31, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300, subpart E, is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

■ 1. The authority citation for part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

■ 2, In § 300.61, revise the definition of ''Subarea 2A–1'' to read as follows:

§ 300.61 Definitions.

* * * * *

Subarea 2A–1 includes the usual and accustomed fishing areas for Pacific Coast treaty tribes off the coast of Washington and all inland marine waters of Washington north of Point Chehalis (46°53.30′ N lat.), including Puget Sound. Boundaries of a tribe's fishing area may be revised as ordered by a Federal court.

* * * * *

■ 3. In § 300.63, revise paragraph (d) to read as follows:

§ 300.63 Catch sharing plan and domestic management measures in area 2A.

* * * * *

(d) *Fishery Election in Area 2A.* (1) A vessel that fishes in Area 2A may participate in only one of the following three fisheries in Area 2A:

(i) The sport fishery established in the annual domestic management measures and IPHC regulations and defined at 50 CFR 300.61;

(ii) The commercial directed fishery for halibut during the fishing period(s) established in the annual domestic management measures and IPHC regulations and/or the incidental retention of halibut during the sablefish primary fishery described at 50 CFR 660.231; or

(iii) The incidental catch fishery during the salmon troll fishery as authorized in the annual domestic management measures and IPHC regulations.

(2) No person shall fish for halibut in the sport fishery in Area 2A under the annual domestic management measures and IPHC regulations, from a vessel that has been used during the same calendar year for commercial halibut fishing in Area 2A, or that has been issued a permit for the same calendar year for the commercial halibut fishery in Area 2A.

(3) No person shall fish for halibut in the directed commercial halibut fishery during the fishing periods established in the annual domestic management measures and IPHC regulations, and/or retain halibut incidentally taken in the sablefish primary fishery in Area 2A from a vessel that has been used during the same calendar year for the incidental catch fishery during the salmon troll fishery, as authorized in the annual domestic management measures and IPHC regulations.

(4) No person shall fish for halibut in the directed commercial halibut fishery and/or retain halibut incidentally taken in the sablefish primary fishery in Area 2A from a vessel that, during the same calendar year, has been used in the sport halibut fishery in Area 2A or that is licensed for the sport charter halibut fishery in Area 2A.

(5) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under the annual domestic management measures and IPHC regulations, taken on a vessel that, during the same calendar year, has been used in the sport halibut fishery in Area 2A, or that is licensed for the sport charter halibut fishery in Area 2A.

(6) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under the annual domestic management measures and IPHC regulations, taken on a vessel that, during the same calendar year, has been used in the directed commercial halibut fishery during the fishing periods established in the annual domestic management measures and IPHC regulations, and/or retained halibut incidentally taken in the sablefish primary fishery for Area 2A or that is licensed to participate in these commercial fisheries during the fishing periods established in the annual domestic management measures and IPHC regulations in Area 2A.

* * * * *

■ 4. In § 300.64, revise paragraph (i) to read as follows:

§ 300.64 Fishing by U.S. treaty Indian tribes.

* * * * *

(i) Table 1 to this paragraph (i) sets forth the fishing areas of each of the 13 treaty Indian tribes fishing pursuant to this section. Within subarea 2A–1, boundaries of a tribe's fishing area may be revised as ordered by a Federal court.

TABLE TO PARAGRAPH (i)

Tribe	Boundaries
HOH	The area between 47°54.30′ N lat. (Quillayute River) and 47°21.00′ N lat. (Quinault River) and east of 125°44.00′ W long.
JAMESTOWN S'KLALLAM	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington,* 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1486, to be places at which the Jamestown S'Klallam Tribe may fish under rights secured by treaties with the United States.
LOWER ELWHA S'KLALLAM.	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington,* 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049 and 1066 and 626 F. Supp. 1443, to be places at which the Lower Elwha S'Klallam Tribe may fish under rights secured by treaties with the United States.
LUMMI	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington,* 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 384 F. Supp. 360, as modified in Subproceeding No. 89–08 (W.D. Wash., February 13, 1990) (decision and order re: Cross-motions for summary judgement), to be places at which the Lummi Tribe may fish under rights secured by treaties with the United States.
MAKAH	The area north of 48°02.25′ N lat. (Norwegian Memorial) and east of 125°44.00′ W long.
NOOKSACK	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington,* 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Nooksack Tribe may fish under rights secured by treaties with the United States.
PORT GAMBLE S'KLALLAM	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington,* 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1442, to be places at which the Port Gamble S'Klallam Tribe may fish under rights secured by treaties with the United States.
QUILEUTE	The area commencing at Cape Alava, located at 48°10′00″ N lat, 124°43′56.9″ W long.; then proceeding west approximately 40 nautical miles at that latitude to a northwestern point located at 48°10′00″ N lat, 125°44′00″ W long.; then proceeding in a southeasterly direction mirroring the coastline at a distance no farther than 40 nautical miles from the mainland Pacific coast shoreline at any line of latitude, to a southwestern point at 47°31′42″ N lat., 125°20′26″ W long.; then proceeding east along that line of latitude to the Pacific coast shoreline at 47°31′42″ N lat., 124°21′9.0″ W long.

TABLE TO PARAGRAPH (i)—Continued

Tribe	Boundaries
QUINAULT	The area commencing at the Pacific coast shoreline near Destruction Island, located at 47°40′06″ N lat., 124°23′51.362″ W long.; then proceeding west approximately 30 nautical miles at that latitude to a northwestern point located at 47°40′06″ N lat., 125°08′30″ W long.; then proceeding in a southeasterly direction mirroring the coastline no farther than 30 nautical miles from the mainland Pacific coast shoreline at any line of latitude, to a southwestern point at 46°53′18″ N lat., 124°53′53″ W long.; then proceeding east along that line of latitude to the Pacific coast shoreline at 46°53′18″ N lat., 124°7′36.6″ W long.
SKOKOMISH	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington,* 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 384 F. Supp. 377, to be places at which the Skokomish Tribe may fish under rights secured by treaties with the United States.
SUQUAMISH	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington,* 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049, to be places at which the Suquamish Tribe may fish under rights secured by treaties with the United States.
SWINOMISH	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington,* 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049, to be places at which the Swinomish Tribe may fish under rights secured by treaties with the United States.
TULALIP	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington,* 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1531–1532, to be places at which the Tulalip Tribe may fish under rights secured by treaties with the United States.

[FR Doc. 2020–02229 Filed 2–5–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–BJ35

Fisheries of the Exclusive Economic Zone Off Alaska; Modifying Seasonal Allocations of Pollock and Pacific Cod for Trawl Catcher Vessels in the Central and Western Gulf of Alaska

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

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: The North Pacific Fishery Management Council submitted Amendment 109 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) to the Secretary of Commerce for review. If approved, Amendment 109 would reduce operational and management inefficiencies in the Central Gulf of Alaska and Western Gulf of Alaska trawl catcher vessel Pacific cod fisheries by changing seasonal Gulf of Alaska Pacific cod apportionments to allow greater harvest opportunities earlier in the year. Amendment 109 is necessary to provide participants in the fisheries an opportunity to more fully harvest the total allowable catch of Pacific cod, increase management flexibility, and potentially decrease prohibited species catch while not redistributing fishing opportunities between management areas or harvesting sectors. Amendment 109 is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the GOA FMP, and other applicable laws.

DATES: Submit comments on or before April 6, 2020.

ADDRESSES: Submit your comments, identified by docket number NOAA–NMFS–2019–0125, by either of the following methods:

- *Federal e-Rulemaking Portal.* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0125,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record, and NMFS will post the comments for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 109 to the GOA FMP, the draft Environmental Assessment and the Regulatory Impact Review (collectively referred to as the ''Analysis'') prepared for this proposed rule may be obtained from *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph Krieger, 907–586–7228 or *joseph.krieger@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) at section 304(a) requires that each regional fishery management council submit an amendment to a fishery management plan (FMP) for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-Stevens Act at section 304(a) also requires that the Secretary, upon receiving an amendment to a FMP, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. FMP amendments and regulations developed by the Council may be implemented by NMFS only after approval by the Secretary.

The North Pacific Fishery Management Council (Council) has submitted Amendment 109 to the GOA FMP (Amendment 109) to the Secretary for review. This notice announces that proposed Amendment 109 is available for public review and comment.

NMFS manages U.S. groundfish fisheries in the exclusive economic zone under the GOA FMP. The Council prepared, and the Secretary approved, the GOA FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the GOA FMP appear at 50 CFR parts 600 and 679. In June 2019, the Council adopted Amendment 109. If approved, Amendment 109 would change the Central Gulf of Alaska (CGOA) and Western Gulf of Alaska (WGOA) Pacific cod seasonal apportionments to increase the trawl catcher vessel (CV) sector's A season total allowable catch (TAC) while proportionally decreasing the sector's B season TAC. In recommending Amendment 109, the Council intends to increase fishery yield, increase management flexibility, and potentially decrease prohibited species catch (PSC) in the CGOA and WGOA trawl CV Pacific cod fisheries.

Amendment 109 would amend the trawl CV seasonal apportionments of Pacific cod in the table in Section 3.2.3.4.3.3.2 of the GOA FMP. The WGOA trawl CV A season would change from 72.3 percent to 82.1 percent, and the B season would change from 27.7 percent to 17.9 percent. The CGOA trawl CV A season would change from 50.8 percent to 60.8 percent, and the B season would change from 49.2 percent to 39.2 percent.

At the same time the Council took action to adopt Amendment 109, the Council also adopted a regulatory amendment that would change the seasons for, and seasonal apportionments of, pollock in the CGOA and WGOA. The proposed rule to implement Amendment 109 will propose regulations to implement the regulatory amendment for GOA pollock seasons and seasonal apportionments.

Background

The trawl groundfish fisheries in the GOA include fisheries for pollock, sablefish, several rockfish species, numerous flatfish species, Pacific cod, and other groundfish. Trawl gear captures groundfish by towing a net above or along the ocean floor. Amendment 109 would affect the trawl CV fisheries for Pacific cod in two specific areas of the GOA: (1) The CGOA regulatory area, and (2) the WGOA regulatory area. These specific regulatory areas are defined at § 679.2.

NMFS annually establishes Pacific cod TACs for these two regulatory areas. NMFS apportions the annual WGOA and CGOA Pacific cod TACs across two seasons. NMFS apportions 60 percent of the annual WGOA and CGOA Pacific cod TACs to the A season, and apportions 40 percent of the annual WGOA and CGOA Pacific cod TACs to the B season. For vessels deploying trawl gear, the A season occurs from January 20 through June 10, and the B season occurs from September 1 through November 1.

Since the implementation of Amendment 83 to the GOA FMP in 2012 (76 FR 74670, December 1, 2011), NMFS, after subtracting a set-aside for the jig gear sector, also allocates the annual WGOA and CGOA Pacific cod TACs between five sectors in the WGOA and six sectors in the CGOA. Each sector's allocation is apportioned between the A and B seasons in each area, and the ratio for each sector's seasonal apportionment is not required to be a 60 percent: 40 percent ratio. However, for all gear (trawl and non-trawl) and operational-type (CV and catcher/processors (C/Ps)) sectors, the total of A season sector apportionments in each area equals 60 percent of the annual Pacific cod TAC, and the total of B season sector apportionments in each area equals 40 percent of the annual Pacific cod TAC.

Regulations at § 679.20(a)(12)(i) and Tables 2–2 and 2–3 in the Analysis show the seasonal percentage allocations for each sector. These tables illustrate that no sector, in isolation, experiences a 60 percent: 40 percent seasonal TAC split. For example, the CGOA trawl CV sector is currently allocated 21.1 percent of the annual CGOA Pacific cod TAC in the A season and 20.5 percent of the annual CGOA Pacific cod TAC in the B season. Those two figures are at a 51 percent: 49 percent ratio to each other. The WGOA trawl CV sector is allocated 27.7 percent of the annual WGOA Pacific cod TAC in the A season TAC and 10.7 percent of the annual WGOA Pacific cod TAC in the B season, which results in a 72 percent: 28 percent seasonal ratio. The WGOA trawl CVs receive a relatively greater proportion of their annual Pacific cod TAC allocation in the A season, as they do not target Pacific cod in the fall (B season). The sectors that receive a small percentage of the annual TAC tend to be those that encounter Pacific cod as incidental catch that must be retained (as an Improved Retention/Improved Utilization Program (IR/IU) species), but do not conduct directed fishing for Pacific cod.

Regulations at 50 CFR 679.20(a)(12)(ii) describe the reallocation of sector allocations ''if [. . . NMFS] determines that a sector will be unable to harvest the entire amount of Pacific cod allocated to [a] sector.'' NMFS publishes these reallocations as inseason actions in the **Federal Register** and posts them on the NMFS Alaska Region website as Information Bulletins. Regulations at 50 CFR 679.20(a)(12)(ii) also state that NMFS should take into account ''the capability of a sector [. . .] to harvest the remaining Pacific cod TAC.'' There are no set dates upon which reallocations should occur; NMFS relies on its management expertise as well as communication with the fleets about their expected levels of activity or encounter rates of Pacific cod. In practice, NMFS reallocates Pacific cod that it projects will go unharvested by a sector. The regulations provide a hierarchy that guides preference in reallocations if there are competing needs for additional TAC. The regulations at § 679.20(a)(12)(ii)(B) state that NMFS should consider reallocation to CV sectors first, then reallocation to the combined CV and C/P pot sector, and then to any of the other C/P sectors (trawl and hook-and-line). NMFS provides a record of inseason Pacific cod TAC reallocations on its website. Since 2012, almost all inseason reallocations have occurred during the B season, and most reallocations flowed from the trawl CV sector; no reallocations have been made to the trawl CV sector.

In recent years, trawl CVs in the GOA Pacific cod fishery only conduct directed fishing for B season Pacific cod in the CGOA. The WGOA trawl CV sector receives 10.7 percent of the annual WGOA Pacific cod TAC in the B season (see Table 2–2 in the Analysis) but it goes largely unharvested by trawl vessels except as incidental catch during the C and D seasons in the pollock trawl fishery. In the CGOA, where the trawl CV fishery is prosecuted, harvest of Pacific cod in the B season lags A season harvest by a significant margin in percentage terms. Table 3–4 in the Analysis shows that harvest of CGOA B season Pacific cod TAC was typically below 50 percent and began to fall precipitously in the years leading up to the 2018 reduction in ABC. While industry participants have reported that fish size and flesh quality can be better in the fall B season than in the late-winter A season due to the length of time removed from spawning activity, GOA Pacific cod do not tend to aggregate in the fall in a manner that lends itself to efficient harvest with trawl gear. As a result, a significant portion of the GOA Pacific cod B season TAC is left unharvested by trawl CVs, while the A season TAC is more fully prosecuted by trawl CVs.

The Council acknowledged that trawl CVs in the GOA have only directed

fished for Pacific cod in the CGOA during the B season in recent years and that WGOA Pacific cod TAC goes largely unharvested. The Council also acknowledged that in the CGOA, where the trawl CV fishery is prosecuted, harvest of Pacific cod in the B season lags A season harvest by a significant margin in percentage terms, which also results in unharvested Pacific cod TAC. To address these concerns, the Council adopted Amendment 109. Amendment 109 would increase trawl CV allocations of Pacific cod TAC in the CGOA and WGOA during the A season while proportionally decreasing trawl CV allocations of Pacific cod TAC in the CGOA and WGOA during the B season. Specifically, 25.29364 percent of the annual CGOA Pacific cod TAC would be allocated to the trawl CV sector during the A season and 16.29047 percent would be allocated to the B season. Additionally, 31.54 percent of the annual WGOA Pacific cod TAC would be allocated to the trawl CV sector during the A season and 6.86 percent would be allocated to the B season. Sections 2.3, 2.6 and 4.6.4 of the Analysis describe the range of alternative Pacific cod TAC allocations considered by the Council and summarizes the Council's rationale for the proposed allocations.

Before adopting its preferred alternatives for Amendment 109, the Council considered a range of alternatives and options (see Sections 2 and 4.6 of the Analysis for more detail on alternatives and options). The Council determined, and NMFS agrees, that Amendment 109 will reduce operational and management inefficiencies in the CGOA and WGOA trawl CV Pacific cod fisheries by changing seasonal Gulf of Alaska Pacific cod apportionments to allow greater harvest opportunities earlier in the year.

NMFS is soliciting public comments on proposed Amendment 109 through the end of the comment period (see **DATES**). NMFS intends to publish in the **Federal Register** and seeks public comment on the proposed rule that would implement Amendment 109 following NMFS's evaluation of the proposed rule under the Magnuson-Stevens Act.

Respondents do not need to submit the same comments on Amendment 109 and the proposed rule. All relevant written comments received by the end of the comment period for Amendment 109, whether specifically directed to the FMP amendment or the proposed rule, will be considered by NMFS in the approval/disapproval decision for Amendment 109 and addressed in the response to comments in the final decision. Comments received after the end of the comment period for Amendment 109 will not be considered in the approval/disapproval decision on Amendment 109. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the last day of the comment period (see **DATES**).

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

Dated: February 3, 2020.

Jennifer M. Wallace,

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

[FR Doc. 2020–02372 Filed 2–5–20; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 85, No. 25
Thursday, February 6, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Technology Letter of Explanation

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before April 6, 2020.

ADDRESSES: Direct all written comments to Mark Crace, IC Liaison, Bureau of Industry and Security, 1401 Constitution Avenue, Suite 2099B, Washington, DC 20233 (or via the internet at *PRAcomments@doc.gov*). Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

SUPPLEMENTARY INFORMATION:

I. Abstract

The collection is necessary under section 748.8(o) and Supplement 2 section (o) to Part 748 of the Export Administration Regulations (EAR). Licensing officers must make decisions on licensing the export of United States commodities and technical data to foreign countries. When an export involves certain technical data or knowhow described in the Export Administration Regulation, additional information is required to fully understand the transaction and make a licensing decision. The Technology Letter of Explanation provides a written description of the technology proposed for export sufficient to allow BIS technical staff to evaluate the impact of licensing the export on United States national security and foreign policy. The letter of assurance puts the consignee on notice that the technology is subject to U.S. export controls and causes the consignee to certify that it will not release the data or the direct product of the data to certain specified country group nationals; thus providing assurance that U.S. national security data will be safeguarded and used only for the stated end use. The additional information is necessary to evaluate technology exports as covered under this collection.

II. Method of Collection

Submitted on paper or electronically.

III. Data

OMB Control Number: 0694–0047.
Form Number(s): N/A.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 6,283.
Estimated Time per Response: 30 minutes to 2 hours.
Estimated Total Annual Burden Hours: 9,416.
Estimated Total Annual Cost to Public: $0.
Respondent's Obligation: Voluntary.
Legal Authority: Export Control Reform Act 4812(b) and 4814(b)(1)(B).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection; they will also become a matter of public record.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–02330 Filed 2–5–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–822–804; A–822–806]

Steel Concrete Reinforcing Bars From Belarus and Carbon and Alloy Steel Wire Rod From Belarus: Initiation of Antidumping Duty Changed Circumstances Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is initiating changed circumstances reviews (CCRs) to examine whether Belarus is still a non-market economy (NME) country for purposes of the antidumping duty (AD) law.

DATES: Applicable February 6, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher Loopesko, Office of Policy, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0969.

SUPPLEMENTARY INFORMATION:

Background

Citing changes that have occurred in Belarus in recent years, on December 16, 2019, Commerce received letters from the Government of the Republic of Belarus (GOB) requesting that Commerce conduct a review of Belarus' status as an NME country within the context of CCRs of the AD orders on steel concrete reinforcing bars and alloy steel wire rod. In the letters, the GOB submitted information supporting its request for market economy (ME) status.

We find that the GOB has provided sufficient evidence for Commerce to initiate these CCRs. Therefore, in response to this request, Commerce is initiating these CCRs in order to examine whether Belarus is still an NME country for purposes of the AD law, pursuant to sections 751(b) and 771(18)(C)(ii) of the Tariff Act of 1930, as amended (the Act). Commerce has treated Belarus as an NME country in all past AD investigations and administrative reviews.[1] A designation as an NME remains in effect until it is revoked by Commerce.[2]

Opportunity for Public Comment and Information

As part of this inquiry to review Belarus' NME status, Commerce is interested in receiving public comment and information with respect to Belarus on the following factors enumerated by section 771(18)(B) of the Act, which Commerce must take into account in making an ME/NME determination:

(i) The extent to which the currency of the foreign country is convertible into the currency of other countries;

(ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management;

(iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country;

(iv) the extent of government ownership or control of the means of production;

(v) the extent of government control over allocation of resources and over price and output decisions of enterprises; and

(vi) such other factors as the administering authority considers appropriate.

The deadline for the submission of comments is not later than 30 days after the date of publication of this notice. Rebuttal comments, limited to issues raised in parties' affirmative comments, may be filed not later than 14 days after the date for filing affirmative comments. All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[3] An electronically filed document must be received successfully in its entirety in ACCESS by 5:00 p.m. Eastern Time on the due date set forth in this notice. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

All such comments must also be filed on the records of both of the concurrent CCRs. ACCESS is available to registered users at *http://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Commerce building.

After reviewing all comments, Commerce will determine whether a public hearing in these CCRs is warranted, if one is requested in the comments filed by an interested party, as defined by section 771(9) of the Act, or if Commerce otherwise determines that one is warranted. If Commerce determines that a hearing is warranted, it will announce a time for that hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, in a room to be determined.

Unless extended, consistent with 19 CFR 351.216(e), we intend to issue the final results of these CCRs no later than 270 days after the date on which these reviews were initiated or within 45 days of that date if all parties agree to the outcome of the reviews.

Notification to Interested Parties

This determination is issued and published in accordance with sections 751(b) and 771(18)(C)(ii) of the Act.

Dated: January 30, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–02361 Filed 2–5–20; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See, e.g., Certain Carbon and Alloy Steel Wire Rod from Belarus, the Russian Federation, and the United Arab Emirates: Affirmative Final Determinations of Sales at Less Than Fair Value and Partial Affirmative Finding of Critical Circumstances,* 82 FR 56214 (November 28, 2017); and *Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Belarus,* 66 FR 33528 (June 22, 2001).

[2] *See* section 771(18)(C)(i) of the Act.

[3] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/ACCESS_User_Guide.pdf.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–845]

Suspension Agreement on Sugar From Mexico; 2018 Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Sugar From Mexico (as Amended)

AGENCY: Enforcement & Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that the selected respondents Ingenio Adolfo Lopez Mateos S.A. de C.V. and its affiliates (Grupo PIASA) and Ingenio Pánuco S.A.P.I. de C.V. (Pánuco), are in compliance with the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (AD Agreement), as amended on June 30, 2017 (collectively, amended AD Agreement), for the period January 1, 2018 through December 31, 2018, when such amended AD Agreement was in effect. Further, Commerce preliminarily determines that the amended AD Agreement in effect during the POR was meeting its statutory requirements under sections 734(c) and (d) of the Tariff Act of 1930, as amended (the Act). The preliminary results are set forth in the section titled ''Methodology and Preliminary Results,'' *infra.* We intend to issue the final results of review within 120 days after publication of these preliminary results in the **Federal Register**.

DATES: Applicable January 31, 2020.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or David Cordell, Bilateral Agreements Unit, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–0162 or (202) 482–0408, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 2014, Commerce signed an agreement under section 734(c) of the Act, with a representative of Mexican producers/exporters accounting for substantially all imports of sugar from Mexico, suspending the antidumping duty (AD) investigation on sugar from Mexico.[1] On June 30, 2017, Commerce and a representative of Mexican producers/exporters

[1] *See Agreement Suspending the Antidumping Duty Investigation of Sugar from Mexico,* 79 FR 78039 (December 29, 2014) (AD Agreement).

accounting for substantially all imports of sugar from Mexico signed an amendment to the AD Agreement.[2] Consistent with a ruling from the U.S. Court of International Trade, Commerce published in the **Federal Register** a notice of the termination of the 2017 AD Amendment, with an applicable date of December 7, 2019.[3]

On December 26, 2018, the American Sugar Coalition and its Members [4] (petitioners) filed a timely request for an administrative review of the amended AD Agreement.[5] On January 28, 2019, Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.[6] On February 12, 2019, the petitioners resubmitted their request for an administrative review of the amended AD Agreement as a precaution because the initial request was made during the partial federal government closure.[7]

Commerce initiated the review of the amended AD Agreement on March 14, 2019, for the December 1, 2017 through November 30, 2018, period of review (POR).[8] On May 6, 2019, Commerce selected mandatory respondents and issued its questionnaires to the respondent companies: Grupo PIASA and Pánuco.[9] These two companies represented the largest producers/exporters of subject merchandise imported into the United States during the POR.

Scope of Review

Merchandise covered by this amended AD Agreement was typically imported under the following headings of the HTSUS during the POR: 1701.12.1000, 1701.12.5000, 1701.13.1000, 1701.13.5000, 1701.14.1000, 1701.14.5000, 1701.91.1000, 1701.91.3000, 1701.99.1010, 1701.99.1025, 1701.99.1050, 1701.99.5010, 1701.99.5025, 1701.99.5050, and 1702.90.4000. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this amended AD Agreement is dispositive.[10]

Methodology and Preliminary Results

Commerce has conducted this review in accordance with section 751(a)(1)(C) of the Act, which specifies that Commerce shall ''review the current status of, and compliance with, any agreement by reason of which an investigation was suspended.'' In this case, Commerce and a representative of the Mexican sugar producers/exporters accounting for substantially all imports of sugar from Mexico signed the AD Agreement, which suspended the underlying antidumping duty investigation, on December 19, 2014. Further, on June 30, 2017, Commerce and a representative of the Mexican sugar producers/exporters accounting for substantially all imports of sugar from Mexico signed an amendment to the AD Agreement. Pursuant to the amended AD Agreement, the Mexican signatories agreed that the subject merchandise would be subject to minimum reference prices and that at least 85 percent of the dumping from the original investigation would be eliminated, as outlined in the amended AD Agreement.[11] The Mexican signatories also agreed to other conditions, including the reporting of the polarity testing of Other Sugar [12] and enhanced monitoring.[13]

After reviewing the information received to date from the respondent companies in their questionnaire and supplemental questionnaire responses, we preliminarily determine that the respondents adhered to the terms of the amended AD Agreement in effect during the POR and that the amended AD Agreement was functioning as intended. Further, we preliminarily determine that the amended AD Agreement was meeting the statutory requirements under sections 734(c) and (d) of the Act during the POR. For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. Issues involving business proprietary information are addressed in separate memoranda.[14]

Public Comment

Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs in accordance with 19 CFR 351.309(d)(1). Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to provide: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[15]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Standard Time within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those

[2] *See Sugar From Mexico: Amendment to the Agreement Suspending the Antidumping Duty Investigation,* 82 FR 31945 (July 11, 2017) (AD Amendment).

[3] *See Sugar From Mexico: Notice of Termination of Amendment to the Agreement Suspending the Antidumping Duty Investigation,* 84 FR 67711 (December 11, 2019).

[4] The members of the American Sugar Coalition are as follows: American Sugar Cane League, American Sugarbeet Growers Association, American Sugar Refining, Inc., Florida Sugar Cane League, Rio Grande Valley Sugar Growers, Inc., Sugar Cane Growers Cooperative of Florida, and the United States Beet Sugar Association.

[5] *See* Letter to Wilbur L. Ross, Jr., Secretary of Commerce, from the American Sugar Coalition and its members, ''Sugar from Mexico: Request for Administrative Review'' (December 26, 2018).

[6] *See* Memorandum to the Record, ''Deadlines Affected by the Partial Shutdown of the Federal Government'' (January 28, 2019). All deadlines in this segment of the proceeding have been extended by 40 days.

[7] *See* Letter to Wilbur L. Ross, Jr., Secretary of Commerce, form the American Sugar Coalition and its members, ''Sugar from Mexico: Resubmission of Request for Administrative Review'' (February 12, 2019).

[8] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 9297 (March 14, 2019).

[9] *See* Memorandum to the File, ''Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico, as Amended: Placement of CBP Data on the Record for Respondent Selection'' (March 18, 2019).

[10] For a complete description of the Scope of the Order, *see* Memorandum to Jeffrey I. Kessler, Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for Preliminary Results of Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico,'' dated concurrently with this notice (Preliminary Decision Memorandum).

[11] *See AD Agreement,* 79 FR at 78039, 78042, and 78044, at Price Undertaking. *See also AD Amendment,* 82 FR at 31946–47.

[12] *See AD Agreement,* 79 FR at 78039, 78041 at Definitions. *See also AD Amendment,* 82 FR 31945, 31946–47.

[13] *See AD Agreement,* 79 FR at 78040, 78042–43, at Monitoring of the Agreement. *See also AD Amendment,* 82 FR at 31947.

[14] *See* Memorandum to the File, ''Analysis of Proprietary Information and Argument Regarding Ingenio Aldolfo Lopez Mateos S.A. de C.V. and Its Affiliates'' (January 31, 2020); Memorandum to the File, ''Analysis of Proprietary Information and Argument Regarding Ingenio Pánuco, S.A.P.I. de C.V.'' (January 31, 2020).

[15] *See* 19 CFR 351.309(c)(2) and (d)(2).

raised in the respective case briefs. Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 31, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–02364 Filed 2–5–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) has received requests to conduct administrative reviews of various antidumping duty (AD) and countervailing duty (CVD) orders and findings with December anniversary dates. In accordance with Commerce's regulations, we are initiating those administrative reviews.

DATES: Applicable February 6, 2020.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Commerce has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various AD and CVD orders and findings with December anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *https://access.trade.gov* in accordance with 19 CFR 351.303.[1] Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on Commerce's service list.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 30 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments within five days after the deadline for the initial comments.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act, the following guidelines regarding collapsing of companies for purposes of respondent selection will apply. In general, Commerce has found that determinations concerning whether particular companies should be ''collapsed'' (*e.g.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this AD proceeding (*e.g.,* investigation, administrative review, new shipper review, or changed circumstances review). For any company subject to this review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (Q&V) Questionnaire for purposes of respondent selection, in general, each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where Commerce considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of a particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[2] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial responses to section D of the questionnaire.

Separate Rates

In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, Commerce analyzes each entity exporting the subject merchandise. In accordance with the separate rates criteria, Commerce assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, Commerce requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on Commerce's website at *https://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[4] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on Commerce's website at *https://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Application, refer to the instructions contained in the application. Separate Rate Applications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a Separate Rate Application or Certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews:

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following AD and CVD orders and findings. We intend to issue the final results of these reviews not later than December 31, 2020.

[3] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[4] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
AD Proceedings	
India: Carbazole Violet Pigment 23, A–533–838	12/1/18–11/30/19
Pidilite Industries Limited	
Oman: Circular Welded Carbon-Quality Steel Pipe, A–523–812	12/1/18–11/30/19
Al Jazeera Steel Products Co. SAOG	
Al Samna Metal Manufacturing & Trading Company LLC	
Bollore Logistics (Oman) LLC	
Transworld Shipping Trading & Logistics Services LLC	
Republic of Korea: Certain Circular Welded Non-Alloy Steel Pipe,[5] A–580–809	11/1/18–10/31/19
Aju Besteel	
Bookook Steel	
Chang Won Bending	
Dae Ryung	
Daewoo Shipbuilding & Marine Engineering (Dsme)	
Daiduck Piping	
Dong Yang Steel Pipe	
Dongbu Steel	
Eew Korea Company	
Histeel	
Husteel Co., Ltd.	
Hyundai Rb	
Hyundai Steel (Pipe Division)	
Hyundai Steel Company	
Kiduck Industries	
Kum Kang Kind	
Kumsoo Connecting	
Miju Steel Mfg	
NEXTEEL Co., Ltd.	
Samkang M & T	
Seah Fs	
Seah Steel	
Steel Flower	
Vesta Co., Ltd.	
Ycp Co.	
Republic of Korea: Welded Line Pipe, A–580–876	12/1/18–11/30/19
AJU BESTEEL Co., Ltd.	
Daewoo International Corporation	
Dong Yang Steel Pipe	
Dongbu Incheon Steel Co.	
Dongbu Steel Co., Ltd.	
Dongkuk Steel Mill	
EEW Korea Co., Ltd.	
HISTEEL Co., Ltd.	
Husteel Co., Ltd.	
Hyundai RB Co. Ltd.	
Hyundai Steel Company/Hyundai HYSCO	
Keonwoo Metals Co., Ltd.	
Kolon Global Corp.	
Korea Cast Iron Pipe Ind. Co., Ltd.	
Kurvers Piping Italy S.R.L.	
Miju Steel MFG Co., Ltd.	
MSTEEL Co., Ltd.	
NEXTEEL Co., Ltd.	
Poongsan Valinox (Valtimet Division)	
POSCO	
POSCO Daewoo	
R&R Trading Co. Ltd.	
Sam Kang M&T Co., Ltd.	
SeAH Steel Corp.	
Sin Sung Metal Co., Ltd.	
SK Networks	
Soon-Hong Trading Company	
Steel Flower Co., Ltd.	
TGS Pipe	
Tokyo Engineering Korea Ltd.	
Socialist Republic of Vietnam: Uncovered Innerspring Units, A–552–803	12/1/18–11/30/19
Angkor Spring Co., Ltd.	
The People's Republic of China: Cased Pencils, A–570–827	12/1/18–11/310/19
Ningbo Homey Union Co., Ltd.	
Orient International Holding Shanghai Foreign Trade Co., Ltd.	
Shandong Wah Yuen Stationery Co. Ltd.	
Tianjin Tonghe Stationery Co. Ltd.	
Wah Yuen Stationery Co. Ltd.	

	Period to be reviewed
The People's Republic of China: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, A–570–979	12/1/18–11/30/19
Anji DaSol Solar Energy Science & Technology Co., Ltd.	
BYD (Shangluo) Industrial Co., Ltd.	
Canadian Solar International Limited, Canadian Solar Manufacturing (Changshu), Inc., Canadian Solar Manufacturing (Luoyang)Inc., CSI Cells Co., Ltd., CSI–GCL Solar Manufacturing (YanCheng) Co., Ltd., CSI Solar Power (China) Inc.	
Changzhou Trina Solar Energy Co., Ltd., Trina Solar (Changzhou) Science and Technology Co., Ltd., Yancheng Trina Solar Energy Technology Co., Ltd., Changzhou Trina Solar Yabang Energy Co., Ltd., Turpan Trina Solar Energy Co., Ltd., Hubei Trina Solar Energy Co., Ltd., Trina Solar (Hefei) Science and Technology Co., Ltd.	
Chint Solar (Zhejiang) Co., Ltd., Chint Energy (Haining) Co., Ltd., Chint Solar (Jiuquan) Co., Ltd., Chint Solar (Hong Kong) Company Limited	
De-Tech Trading Limited HK	
Dongguan Sunworth Solar Energy Co., Ltd.	
Eoplly New Energy Technology Co., Ltd.	
ERA Solar Co., Ltd.	
ET Solar Energy Limited	
Hangzhou Sunny Energy Science and Technology Co., Ltd.	
Hengdian Group DMEGC Magnetics Co. Ltd.	
JA Solar Technology Yangzhou Co., Ltd.	
Jiangsu High Hope Int'l Group	
Jiawei Solarchina (Shenzhen) Co., Ltd.	
Jiawei Solarchina Co., Ltd.	
JingAo Solar Co., Ltd.	
Jinko Solar Co., Ltd.	
Jinko Solar Import and Export Co., Ltd.	
JinkoSolar International Limited	
LERRI Solar Technology Co., Ltd. (aka LONGi Solar Technology Co. Ltd.)	
Lightway Green New Energy Co., Ltd.	
LONGi Solar Technology Co. Ltd.	
Ningbo ETDZ Holdings, Ltd.	
Ningbo Qixin Solar Electrical Appliance Co., Ltd.	
Risen Energy Co. Ltd., Risen (Wuhai) New Energy Co., Ltd., Zhejiang Twinsel Electronic Technology Co., Ltd., Risen (Luoyang) New Energy Co., Ltd., Jiujiang Shengchao Xinye Technology Co., Ltd., Jiujiang Shengzhao Xinye Trade Co., Ltd. Ruichang Branch, RISEN ENERGY (HONGKONG) CO., LTD.	
Shanghai BYD Co., Ltd	
Shanghai JA Solar Technology Co., Ltd.	
Shenzhen Sungold Solar Co., Ltd.	
Shenzhen Topray Solar Co., Ltd.	
Sumec Hardware & Tools Co., Ltd.	
Sunpreme Solar Technology (Jiaxing) Co., Ltd.	
Systemes Versilis, Inc.	
Taizhou BD Trade Co., Ltd.	
tenKsolar (Shanghai) Co., Ltd.	
Tianneng Yingli New Energy Resources Co., Ltd.	
Toenergy Technology Hangzhou Co., Ltd.	
Wuxi Suntech Power Co., Ltd/Luoyang Suntech Power Co., Ltd.	
Wuxi Tianran Photovoltaic Co., Ltd.	
Yingli Energy (China) Company Limited, Baoding Tianwei Yingli New Energy Resources Co., Ltd., Tianjin Yingli New Energy Resources Co., Ltd., Hengshui Yingli New Energy Resources Co., Ltd., Lixian Yingli New Energy Resources Co., Ltd., Baoding Jiasheng Photovoltaic Technology Co., Ltd., Beijing Tianneng Yingli New Energy Resources Co., Ltd., Hainan Yingli New Energy Resources Co., Ltd., Shenzhen Yingli New Energy Resources Co., Ltd.	
Yingli Green Energy International Trading Company Limited	
Zhejiang Aiko Solar Energy Technology Co., Ltd.	
Zhejiang ERA Solar Technology Co., Ltd.	
Zhejiang Jinko Solar Co., Ltd.	
Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company	
The People's Republic of China: Forged Steel Fittings,[6] A–570–067	5/17/18–10/31/19
The People's Republic of China: Honey, A–570–863	12/1/18–11/30/19
Ban Me Thuot Honey Bee JSC	
Hanoi Bee JSC	
Honey Bee Co., Ltd.	
Indocan Honey Pvt. Ltd.	
Inner Mongolia Komway Import & Export Co., Ltd.	
Jiangsu Runchen Agricultural/Sideline Foodstuff Co., Ltd.	
Nhieu Loc Co., Ltd.	
Phong Son Co., Ltd.	
Sunflower Bee Honey Co.	
Xuzhou Troy Imp. & Exp. Co., Ltd.	
The People's Republic of China: Multilayered Wood Flooring, A–570–970	12/1/18–11/30/19
A&W (Shanghai) Woods Co., Ltd.	
Anhui Boya Bamboo & Wood Products Co., Ltd.	
Anhui Longhua Bamboo Product Co., Ltd.	
Anhui Yaolong Bamboo & Wood Products Co. Ltd.	

	Period to be reviewed
Armstrong Wood Products (Kunshan) Co., Ltd.[7]	
Armstrong World Industries Inc.	
Baroque Timber Industries (Zhongshan) Co., Ltd.[8]	
Benxi Flooring Factory (General Partnership)	
Benxi Wood Company	
Changzhou Hawd Flooring Co., Ltd.	
Chinafloors Timber (China) Co., Ltd.	
Dalian Dajen Wood Co., Ltd.	
Dalian Deerfu Wooden Product Co., Ltd.	
Dalian Guhua Wooden Product Co., Ltd.	
Dalian Huade Wood Product Co., Ltd.	
Dalian Huilong Wooden Products Co., Ltd.	
Dalian Jaenmaken Wood Industry Co., Ltd.	
Dalian Jiahong Wood Industry Co., Ltd.	
Dalian Kemian Wood Industry Co., Ltd.	
Dalian Penghong Floor Products Co., Ltd.	
Dalian Qianqiu Wooden Product Co., Ltd., Fusong Jinlong Wooden Group Co., Ltd., Fusong Jinqiu Wooden Product Co., Ltd., and Fusong Qianqiu Wooden Product Co., Ltd. (collectively, Fusong Jinlong Group)	
Dalian Shengyu Science And Technology Development Co., Ltd.	
Dalian Shumaike Floor Manufacturing Co., Ltd.	
Dalian T-Boom Wood Products Co., Ltd.	
Dongtai Fuan Universal Dynamics, LLC	
Dun Hua Sen Tai Wood Co., Ltd.	
Dunhua City Dexin Wood Industry Co., Ltd.	
Dunhua City Hongyuan Wood Industry Co., Ltd.	
Dunhua City Jisen Wood Industry Co., Ltd.[9]	
Dunhua City Wanrong Wood Industry Co., Ltd.	
Dunhua Shengda Wood Industry Co., Ltd	
Fine Furniture (Fine Furniture (Shanghai) Limited and Double F Limited) [10]	
Guangzhou Homebon Timber Manufacturing Co., Ltd.	
Guangzhou Panyu Kangda Board Co., Ltd.	
Guangzhou Panyu Southern Star Co., Ltd.	
Hailin Linjing Wooden Products Co., Ltd.	
Hangzhou Hanje Tec Company Limited	
Hangzhou Zhengtian Industrial Co., Ltd.	
Hunchun Forest Wolf Wooden Industry Co., Ltd.	
Hunchun Xingjia Wooden Flooring Inc.	
Huzhou Chenghang Wood Co., Ltd	
Huzhou Fulinmen Imp. & Exp. Co., Ltd.	
Huzhou Jesonwood Co., Ltd.	
Huzhou Sunergy World Trade Co., Ltd.	
Innomaster Home (Zhongshan) Co., Ltd.	
Jiafeng Wood (Suzhou) Co., Ltd.	
Jiangsu Guyu International Trading Co., Ltd	
Jiangsu Keri Wood Co., Ltd.	
Jiangsu Mingle Flooring Co., Ltd	
Jiangsu Senmao Bamboo and Wood Industry Co., Ltd.	
Jiangsu Simba Flooring Co., Ltd.	
Jiangsu Yuhui International Trade Co., Ltd.	
Jiashan HuiJiaLe Decoration Material Co., Ltd.	
Jiashan On-Line Lumber Co., Ltd.	
Jiaxing Hengtong Wood Co., Ltd.	
Jilin Forest Industry Jinqiao Flooring Group Co., Ltd.	
Jilin Xinyuan Wooden Industry Co., Ltd.	
Karly Wood Product Limited.	
Kember Flooring, Inc. (a.k.a. Kember Hardwood Flooring, Inc.)	
Kemian Wood Industry (Kunshan) Co., Ltd.	
Kingman Floors Co., Ltd.	
Lauzon Distinctive Hardwood Flooring, Inc.	
Linyi Anying Wood Co., Ltd.	
Linyi Bonn Flooring Manufacturing Co., Ltd.	
Linyi Youyou Wood Co., Ltd.	
Metropolitan Hardwood Floors, Inc.	
Mudanjiang Bosen Wood Industry Co., Ltd.	
Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd.	
Omni Arbor Solutions Co., Ltd.	
Pinge Timber Manufacturing (Zhejiang) Co., Ltd.	
Power Dekor Group Co., Ltd.	
Power Dekor North America Inc.	
Scholar Home (Shanghai) New Material Co., Ltd.	
Shandong Longteng Wood Co., Ltd.	
Shanghai Lairunde Wood Co., Ltd.	
Shanghaifloor Timber (Shanghai) Co., Ltd.	

	Period to be reviewed
Shenyang Haobainian Wooden Co., Ltd.	
Shenzhenshi Huanwei Woods Co., Ltd.	
Sino-Maple (Jiangsu) Co., Ltd.	
Suzhou Dongda Wood Co., Ltd.	
Tongxiang Jisheng Import and Export Co., Ltd.	
Xiamen Yung De Ornament Co., Ltd.	
Xuzhou Antop International Trade Co., Ltd.	
Xuzhou Shenghe Wood Co., Ltd.	
Yekalon Industry Inc.	
Yihua Lifestyle Technology Co., Ltd. (successor-in-interest to Guangdong Yihua Timber Industry Co., Ltd.)	
Yingyi-Nature (Kunshan) Wood Industry Co., Ltd.	
Zhejiang Biyork Wood Co., Ltd.	
Zhejiang Dadongwu Greenhome Wood Co., Ltd.[11]	
Zhejiang Fudeli Timber Industry Co., Ltd	
Zhejiang Fuerjia Wooden Co., Ltd	
Zhejiang Jiechen Wood Industry Co., Ltd.	
Zhejiang Longsen Lumbering Co., Ltd.	
Zhejiang Shiyou Timber Co., Ltd.	
Zhejiang Shuimojiangnan New Material Technology Co., Ltd.	
Zhejiang Simite Wooden Co., Ltd.	
Turkey: Welded Line Pipe, A–489–822	12/1/18–11/30/19
Borusan Istikbal Ticaret	
Borusan Mannesmann Boru Sanayi ve Ticaret A.	
Cayirova Boru Sanayii ve Ticaret A.S.	
Cimtas Boru Imalatlari ve Ticaret, Ltd. Sti.	
Emek Boru Makina Sanayi ve Ticaret A.S.	
Erbosan Erciyas Tube Industry and Trade Co. Inc.	
Erciyas Celik Boru Sanayii A.S.	
Guven Celik Boru Sanayii ve Ticaret Ltd. Sti.	
Has Altinyagmur celik Boru Sanayii ve Ticaret Ltd. Sti.	
HDM Steel Pipe Industry & Trade Co. Ltd.	
Metalteks Celik Urunleri Sanayii	
MMZ Onur Boru Profil Uretim Sanayii ve Ticaret A.S.	
Noksel Steel Pipe Co. Inc.	
Ozbal Celik Boru	
Toscelik Profile and Sheet Industry, Co.	
Tosyali Dis Ticaret A.S.	
Umran Celik Boru Sanayii	
YMS Pipe & Metal Sanayii A.S.	
Yucelboru Ihracat Ithalat Pazzarlam	
United Arab Emirates: Circular Welded Carbon-Quality Steel Plate, A–520–907	12/1/18–11/30/19
Ajmal Steel Tubes and Pipes Industries, LLC	
Conares Metal Supply Limited	
K.D. Industries Inc.	
Tiger Steel Industries LLC	
Universal Tube and Plastic Industries, Ltd	
CVD Proceedings	
India: Carbazole Violet Pigment 23, C–533–839	1/1/18–12/31/18
Pidilite Industries Limited	
The People's Republic of China: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, C–570–980	1/1/18–12/31/18
Anji DaSol Solar Energy Science & Technology Co., Ltd.	
Baoding Jiasheng Photovoltaic Technology Co., Ltd.	
Baoding Tianwei Yingli New Energy Resources Co., Ltd.	
BYD (Shangluo) Industrial Co., Ltd.	
Canadian Solar International Limited	
Canadian Solar Manufacturing (Changshu) Inc.	
Canadian Solar Manufacturing (Luoyang) Inc.	
Changzhou Trina Solar Energy Co., Ltd.	
Changzhou Trina Solar Yabang Energy Co., Ltd.	
Chint Solar (Zhejiang) Co., Ltd.	
De-Tech Trading Limited HK	
Dongguan Sunworth Solar Energy Co., Ltd.	
Eoplly New Energy Technology Co., Ltd.	
ERA Solar Co., Ltd.	
ET Solar Energy Limited	
Hainan Yingli New Energy Resources Co., Ltd.	
Hangzhou Sunny Energy Science and Technology Co., Ltd.	
Hengdian Group DMEGC Magnetics Co., Ltd.	
Hengshui Yingli New Energy Resources Co., Ltd.	
Hubei Trina Solar Energy Co., Ltd.	
JA Solar Technology Yangzhou Co., Ltd.	
Jiangsu High Hope Int'l Group	

	Period to be reviewed
Jiawei Solarchina (Shenzhen) Co., Ltd.	
Jiawei Solarchina Co., Ltd.	
JingAo Solar Co., Ltd.	
Jinko Solar Co., Ltd.	
Jinko Solar Import and Export Co., Ltd.	
Jinko Solar International Limited	
LERRI Solar Technology Co., Ltd.	
Light Way Green New Energy Co., Ltd.	
Lixian Yingli New Energy Resources Co., Ltd.	
Luoyang Suntech Power Co., Ltd.	
Ningbo ETDZ Holdings, Ltd.	
Ningbo Qixin Solar Electrical Appliance Co., Ltd.	
Risen Energy Co., Ltd.	
Shanghai BYD Co., Ltd.	
Shanghai JA Solar Technology Co., Ltd.	
Shenzhen Sungold Solar Co., Ltd.	
Shenzhen Topray Solar Co., Ltd.	
Shenzhen Yingli New Energy Resources Co., Ltd.	
Sumec Hardware & Tools Co., Ltd.	
Sunpreme Solar Technology (Jiaxing) Co., Ltd.	
Systemes Versilis, Inc.	
Taizhou BD Trade Co., Ltd.	
tenKsolar (Shanghai) Co., Ltd.	
Tianjin Yingli New Energy Resources Co., Ltd.	
Tianneng Yingli New Energy Resources Co., Ltd.	
Toenergy Technology Hangzhou Co., Ltd.	
Trina Solar (Changzhou) Science and Technology Co., Ltd.	
Turpan Trina Solar Energy Co., Ltd.	
Wuxi Suntech Power Co., Ltd. Luoyang Suntech Power Co., Ltd.	
Wuxi Tianran Photovoltaic Co., Ltd.	
Yancheng Trina Solar Energy Technology Co., Ltd.	
Yingli Energy (China) Co., Ltd.	
Yingli Green Energy International Trading Company Limited	
Zhejiang ERA Solar Technology Co., Ltd.	
Zhejiang Jinko Solar Co., Ltd.	
Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company	
The People's Republic of China: Lightweight Thermal Paper,[12] C–570–921	1/1/18–12/31/18
Avery Dennison (China) Co., Ltd.	
Dong Nam Pack	
Gold Huasheng Paper (Suzhou IP) Co.	
Gold Shengpu Paper Products (Suzhou)	
Henan Jianghe Paper Co. Ltd.	
Jinan Fuzhi Paper Co., Ltd.	
Pax Technology Limited	
Prosper (HK) Co., Ltd.	
Sailing International Limited	
Shenzhen Formers Printing Co., Ltd.,	
Shenzhen HDB Network Technology	
Shenzhen Speedy Import & Export Co., Ltd.	
Suzhou Xiandai Paper Production Co.	
SYCDA Company Limited	
Wuxi Honglinxin International Trade	
Xiamen ATP Technology Co. Ltd.	
The People's Republic of China: Multilayered Wood Flooring, C–570–971	1/1/18–12/31/18
A&W (Shanghai) Woods Co., Ltd.	
American Pacific Plywood, Inc.	
Anhui Boya Bamboo & Wood Products Co., Ltd.	
Anhui Longhua Bamboo Product Co., Ltd.	
Anhui Suzhou Dongda Wood Co., Ltd.	
Anhui Yaolong Bamboo & Wood Products Co., Ltd.	
Armstrong Wood Products (Kunshan) Co., Ltd.	
Baishan Huafeng Wooden Product Co., Ltd.	
Baroque Timber Industries (Zhongshan) Co., Ltd.	
Baiying Furniture Manufacturer Co., Ltd.	
Benxi Flooring Factory (General Partnership)	
Benxi Wood Company	
Changbai Mountain Development And Protection Zone Hongtu Wood Industrial Co., Ltd.	
Changzhou Hawd Flooring Co., Ltd.	
Chinafloors Timber (China) Co., Ltd.	
Cheng Hang Wood Co., Ltd.	
Dalian Dajen Wood Co., Ltd.	
Dalian Deerfu Wooden Product Co., Ltd.	
Dalian Guhua Wooden Product Co., Ltd.	

	Period to be reviewed
Dalian Huade Wood Product Co., Ltd.	
Dalian Huilong Wooden Products Co., Ltd.	
Dalian Jaenmaken Wood Industry Co., Ltd.	
Dalian Jiahong Wood Industry Co., Ltd.	
Dalian Jinda Wood Products Corporation	
Dalian Jiuyuan Wood Industry Co., Ltd.	
Dalian Kemian Wood Industry Co., Ltd.	
Dalian Meisen Woodworking	
Dalian Penghong Floor Products Co., Ltd.	
Dalian Shengyu Science and Technology Development Co.	
Dalian Shumaike Floor Manufacturing Co., Ltd.	
Dalian Qianqiu Wooden Product Co., Ltd.	
Dalian T -Boom Wood Products Co., Ltd.	
Dalian Xinjinghua Wood Co., Ltd.	
Dongtai Fuan Universal Dynamics, LLC	
Dongtai Zhangshi Wood Industry Co. Ltd.	
Dun Hua Sen Tai Wood Co., Ltd.	
Dunhua City Dexin Wood Industry Co., Ltd.	
Dunhua City Hongyuan Wood Industry Co., Ltd.	
Dunhua City Jisen Wood Industry Co., Ltd.	
Dunhua City Wanrong Wood Industry Co., Ltd.	
Dunhua Shengda Wood Industry Co., Ltd.	
Fine Furniture (Shanghai) Limited	
Fu Lik Timber (HK) Co., Ltd.	
Fujian Wuyishan Werner Green Industry Co., Ltd.	
Furnco International Shanghai Company	
Fusong Jinqiu Wooden Product Co., Ltd.	
Fusong Jinlong Wooden Group Co., Ltd.	
Fusong Qianqiu Wooden Product Co., Ltd.	
Gaotang Weilong Industry and Trade	
Gold Seagull Shanghai Flooring	
GTP International Ltd.	
Guangdong Fu Lin Timber Technology Limited	
Guangdong Yihua Timber Industry Co., Ltd.	
Guangzhou Homebon Timber Manufacturing Co., Ltd.	
Guangzhou Panyu Kangda Board Co., Ltd.	
Guangzhou Panyu Southern Star Co., Ltd.	
HaiLin LinJing Wooden Products, Ltd.	
HaiLin XinCheng Wooden Products, Ltd.	
Hangzhou Dazhuang Floor Co., Ltd. (DBA Dasso Industrial Group Co., Ltd.)	
Hangzhou Hanje Tec Company Limited	
Hangzhou Huahi Wood Industry Co., Ltd.	
Hangzhou Zhengtian Industrial Co., Ltd.	
Henan Xingwangjia Technology Co., Ltd.	
Hong Kong Easoon Wood Technology Co., Ltd.	
Huaxin Jiasheng Wood Co., Ltd.	
Huber Engineering Wood Corp.	
Hunchun Forest Wolf Wooden Industry Co., Ltd.	
Hunchun Xingjia Wooden Flooring Inc.	
Huzhou Chenghang Wood Co., Ltd.	
Huzhou City Nanxun Guangda Wood Co., Ltd.	
Huzhou Daruo Import And Export	
Huzhou Fulinmen Imp. & Exp. Co., Ltd.	
Huzhou Fuma Wood Co., Ltd.	
Huzhou Jesonwood Co., Ltd.	
Huzhou Laike Import and Export Co.	
Huzhou Muyun Wood Co., Ltd.	
Huzhou Sunergy World Trade Co., Ltd.	
Innomaster Home (Zhongshan) Co., Ltd.	
Jesonwood Forest Products ZJ	
Jiafeng Wood (Suzhou) Co., Ltd.	
Jiangsu Guyu International Trading Co., Ltd.	
Jiangsu Kentier Wood Co., Ltd.	
Jiangsu Keri Wood Co., Ltd.	
Jiangsu Mingle Flooring Co., Ltd.	
Jiangsu Senmao Bamboo and Wood Industry Co., Ltd.	
Jiangsu Simba Flooring Co., Ltd.	
Jiangsu Yuhui International Trade Co., Ltd.	
Jiashan Fengyun Timber Co., Ltd.	
Jiashan HuiJiaLe Decoration Material Co., Ltd.	
Jiashan On-Line Lumber Co., Ltd.	
Jiaxing Brilliant Import & Export Co., Ltd.	
Jiaxing Hengtong Wood Co., Ltd.	

	Period to be reviewed
Jilin Forest Industry Jinqiao Flooring Group Co., Ltd.	
Jilin Xinyuan Wooden Industry Co., Ltd.	
Karly Wood Product Limited	
Kemian Wood Industry (Kunshan) Co., Ltd	
Kingman Floors Co., Ltd.	
Kunming Alston (AST) Wood Products Co., Ltd.	
Liaoning Daheng Timber Group	
Linyi Bonn Flooring Manufacturing Co., Ltd.	
Linyi Anying Wood Co., Ltd.	
Linyi Youyou Wood Co., Ltd. (successor-in-interest to Shanghai Lizhong Wood Products Co., Ltd.) (a/k/a The Lizhong Wood Industry Limited Company of Shanghai)	
Max Choice Wood Industry	
Mudanjiang Bosen Wood Industry Co., Ltd.	
Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd.	
Nanjing Minglin Wooden Industry Co., Ltd.	
Ningbo Tianyi Bamboo and Wood Products Co., Ltd.	
Pinge Timber Manufacturing (Zhejiang) Co., Ltd.	
Power Dekor Group Co. Ltd.	
Power Dekor North America Inc.	
PT. Tanjung Kreasi Parquet Industry	
Qingdao Barry Flooring Co., Ltd.	
Qingdao Wisdom International	
Riverside Plywood Corporation	
Samling Riverside Co., Ltd.	
Scholar Home (Shanghai) New Material Co. Ltd.	
Shandong Kaiyuan Wood Industry Co., Ltd.	
Shandong Longteng Wood Co., Ltd.	
Shandong Puli Trading Co., Ltd.	
Shanghai Anxin (Weiguang) Timber Co., Ltd.	
Shanghai Demeija Timber Co., Ltd.	
Shanghai Eswell Timber Co., Ltd.	
Shanghai Lairunde Wood Co., Ltd.	
Shanghai Lizhong Wood Products Co., Ltd. (a/k/a The Lizhong Wood Industry Limited Company of Shanghai)	
Shanghai New Sihe Wood Co., Ltd.	
Shanghai Shenlin Corporation	
Shanghaifloor Timber (Shanghai) Co., Ltd.	
Shenyang Haobainian Wooden Co., Ltd.	
Shenyang Sende Wood Co., Ltd.	
Shenzhenshi Huanwei Woods Co., Ltd.	
Sino-Maple (Jiangsu) Co., Ltd.	
Suifenhe Chengfeng Trading Co., Ltd.	
Sunyoung Wooden Products	
Suzhou Anxin Weiguang Timber Co., Ltd.	
Suzhou Dongda Wood Co., Ltd.	
Suzhou Times Flooring Co., Ltd.	
Tak Wah Building Material (Suzhou) Co.	
The Greenville Flooring Co., Ltd.	
Tongxiang Jisheng Import and Export Co., Ltd.	
Topocean Consolidation Service	
Vicwood Industry (Suzhou) Co. Ltd.	
Xiamen Yung De Ornament Co., Ltd.	
Xuzhou Antop International Trade Co., Ltd.	
Xuzhou Shenghe Wood Co., Ltd.	
Yekalon Industry, Inc.	
Yihua Lifestyle Technology Co., Ltd.	
Yingyi-Nature (Kunshan) Wood Industry Co., Ltd.	
Yixing Lion-King Timber Industry	
Zhejiang Anji Xinfeng Bamboo And Wood Industry Co., Ltd.	
Zhejiang Biyork Wood Co., Ltd.	
Zhejiang Dadongwu Auto Elect Moto	
Zhejiang Dadongwu Greenhome Wood Co., Ltd.	
Zhejiang Desheng Wood Industry Co., Ltd.	
Zhejiang Fudeli Timber Industry Co., Ltd.	
Zhejiang Fuerjia Wooden Co., Ltd.	
Zhejiang Fuma Warm Technology Co., Ltd.	
Zhejiang Haoyun Wooden Co., Ltd.	
Zhejiang Jesonwood Co., Ltd.	
Zhejiang Jiaye Flooring	
Zhejiang Jiechen Wood Industry Co., Ltd.	
Zhejiang Longsen Lumbering Co., Ltd.	
Zhejiang Shiyou Timber Co., Ltd.	
Zhejiang Shuimojiangnan New Material Technology Co., Ltd.	
Zhejiang Simite Wooden Co., Ltd.	

	Period to be reviewed
Zhejiang Tianzhen Bamboo & Wood Development Co., Ltd. Zhejiang Yongyu Bamboo Joint-Stock Co., Ltd.	
Suspension Agreements	
None.	

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an AD order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), Commerce, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether AD duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant ''gap'' period of the order (*i.e.,* the period following the expiry of provisional measures and before definitive measures were put into place), if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Factual Information Requirements

Commerce's regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such factual submissions based on the type of factual information being submitted. Please review the *Final Rule,*[13] available at *https://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in this segment.

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information using the formats provided at the end of the *Final Rule.*[14] Commerce intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable certification requirements.

Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by Commerce.[15] In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) Q&V questionnaires. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions

[5] In the initiation notice that published on January 17, 2020 (85 FR 3014), covering cases with the November anniversary dates, Commerce inadvertently omitted the case and companies listed above. Accordingly, Commerce is initiating this administrative review with respect to these companies.

[6] In the initiation notice that published on January 17, 2020 (85 FR 3014) the POR for the above referenced case was incorrect. The period listed above is the correct POR for this case.

[7] Commerce is only reviewing entries where Armstrong Wood Products (Kunshan) Co., Ltd. was the exporter but not the producer of subject merchandise.

[8] Commerce is only reviewing entries where Baroque Timber Industries (Zhongshan) Co., Ltd. was the exporter but not the producer of subject merchandise.

[9] Commerce is only reviewing entries where Dunhua City Jisen Wood Industry Co., Ltd. was the exporter but not the producer of subject merchandise.

[10] Commerce is only reviewing entries where Fine Furniture (Shanghai) Limited and/or Double F Limited was the exporter but Fine Furniture (Shanghai) Limited was not the producer of subject merchandise.

[11] Other variations of this company's name are Zhejiang Dadongwu GreenHome Wood Co., Ltd. and Zhejiang Dadongwu Green Home Wood Co., Ltd.

[12] In the initiation notice that published on January 17, 2020 (85 FR 3014), covering cases with the November anniversary dates, Commerce inadvertently omitted the case and companies listed above. Accordingly, Commerce is initiating this administrative review with respect to these companies.

[13] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[14] *See* section 782(b) of the Act; *see also Final Rule;* and the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[15] *See* 19 CFR 351.302.

which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This policy also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which Commerce will grant untimely-filed requests for the extension of time limits. Please review the *Final Rule,* available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: February 3, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–02362 Filed 2–5–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–201–846]

Suspension Agreement on Sugar From Mexico; 2018 Administrative Review of the Agreement Suspending the Countervailing Duty Investigation on Sugar From Mexico (as Amended)

AGENCY: Enforcement & Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that the Government of Mexico (GOM) and selected respondents, Ingenio Adolfo Lopez Mateos S.A. de C.V. and its affiliates (Grupo PIASA) and Ingenio Pánuco S.A.P.I. de C.V. (Pánuco), are in compliance with the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (CVD Agreement), as amended on June 30, 2017 (collectively, amended CVD Agreement), for the period January 1, 2018 through December 31, 2018, when such amended CVD Agreement was in effect. Further, Commerce preliminarily determines that the amended CVD Agreement in effect during the period of review (POR) was meeting its statutory requirements under sections 704(c) and (d) of the Tariff Act of 1930, as amended (the Act). The preliminary results are set forth in the section titled ''Methodology and Preliminary Results,'' *infra.* We intend to issue the final results of review within 120 days after publication of these preliminary results in the **Federal Register**.

DATES: Applicable January 31, 2020.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or David Cordell, Bilateral Agreements Unit, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–0162 or (202) 482–0408, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 2014, Commerce signed an agreement under section 704(c) of the Act, with the GOM, suspending the countervailing duty (CVD) investigation on sugar from Mexico.[1] On June 30, 2017, Commerce and the GOM signed an amendment to the CVD Agreement.[2] Consistent with a ruling from the U.S. Court of International Trade, Commerce published in the **Federal Register** a notice of the termination of the 2017 CVD Amendment, with an applicable date of December 7, 2019.[3]

On December 26, 2018, the American Sugar Coalition and its Members [4] (petitioners) filed a timely request for an administrative review of the amended CVD Agreement.[5] On January 28, 2019, Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.[6] On February 12, 2019, the petitioners resubmitted their request for an administrative review of the amended CVD Agreement as a precaution because the initial request was made during the partial federal government closure.[7]

Commerce initiated the review of the amended CVD Agreement on March 14, 2019, for the January 1, 2018 through December 31, 2018 POR.[8] On May 6, 2019, Commerce selected mandatory respondents and issued its questionnaire to the GOM and two selected respondent companies: Grupo PIASA and Pánuco.[9] These two companies represented the largest producers/exporters of subject merchandise imported into the United States during the POR.

Scope of Review

Merchandise covered by this amended CVD Agreement was typically imported under the following headings of the HTSUS during the POR: 1701.12.1000, 1701.12.5000, 1701.13.1000, 1701.13.5000, 1701.14.1000, 1701.14.5000, 1701.91.1000, 1701.91.3000, 1701.99.1010, 1701.99.1025, 1701.99.1050, 1701.99.5010, 1701.99.5025, 1701.99.5050, and 1702.90.4000. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this amended CVD Agreement is dispositive.[10]

Methodology and Preliminary Results

Commerce has conducted this review in accordance with section 751(a)(1)(C) of the Act, which specifies that Commerce shall ''review the current status of, and compliance with, any agreement by reason of which an investigation was suspended.'' In this case, Commerce, and the GOM signed the CVD Agreement on December 19, 2014. Pursuant to the CVD Agreement, the GOM agreed that the subject

[1] *See Agreement Suspending the Countervailing Duty Investigation of Sugar from Mexico,* 79 FR 78044 (December 29, 2014) (*CVD Agreement*).

[2] *See Sugar From Mexico: Amendment to the Agreement Suspending the Countervailing Duty Investigation,* 82 FR 31942 (July 11, 2017) (*CVD Amendment*).

[3] *See Sugar from Mexico: Notice of Termination of Amendment to the Agreement Suspending the Countervailing Duty Investigation,* 84 FR 67718 (December 11, 2019).

[4] The members of the American Sugar Coalition are as follows: American Sugar Cane League, American Sugarbeet Growers Association, American Sugar Refining, Inc., Florida Sugar Cane League, Rio Grande Valley Sugar Growers, Inc., Sugar Cane Growers Cooperative of Florida, and the United States Beet Sugar Association.

[5] *See* Letter to Wilbur L. Ross, Jr., Secretary of Commerce, from the American Sugar Coalition and its members, ''Sugar from Mexico: Request for Administrative Review'' (December 26, 2018).

[6] *See* Memorandum to the Record, ''Deadlines Affected by the Partial Shutdown of the Federal Government'' (January 28, 2019). All deadlines in this segment of the proceeding have been extended by 40 days.

[7] *See* Letter to Wilbur L. Ross, Jr., Secretary of Commerce, form the American Sugar Coalition and its members, ''Sugar from Mexico: Resubmission of Request for Administrative Review'' (February 12, 2019).

[8] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 9297 (March 14, 2019). The original initiation notice had incorrectly stated that the POR ended on December 30, 2017, and this was corrected in the initiation notice published on March 16, 2018.

[9] *See* Memorandum to the File, ''Administrative Review of the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico, as Amended: Placement of CBP Data on the Record for Respondent Selection'' (March 18, 2019).

[10] For a complete description of the Scope of the Order, *see* Memorandum to Jeffrey I. Kessler, Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for Preliminary Results of Administrative Review of the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico,'' dated concurrently with this notice (Preliminary Decision Memorandum).

merchandise would be subject to export limits, as outlined in the CVD Agreement.[11] The GOM also agreed to other conditions including limits on Refined Sugar [12] and the issuance of shipment-specific (later amended to contract-specific) export licenses.[13] The amendment to the CVD Agreement also made certain changes with respect to GOM's licensing system and the polarity of the sugar to be exported.[14]

After reviewing the information received to date from the respondent companies and the GOM in their questionnaire and supplemental questionnaire responses, we preliminarily find that the GOM adhered to the terms of the amended CVD Agreement in effect during the POR and that the amended CVD Agreement was functioning as intended. Further, we preliminarily determine that the amended CVD Agreement in effect during the POR was meeting its statutory requirements under sections 704(c) and (d) of the Act. For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. Issues involving business proprietary information are addressed in a separate memorandum.[15]

Public Comment

Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs in accordance with 19 CFR 351.309(d)(1). Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to provide: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. *See* 19 CFR 351.309(c)(2) and (d)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Standard Time within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 31, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–02363 Filed 2–5–20; 8:45 am]

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[11] *See CVD Agreement,* 79 FR at 78047, at Export Limits. *See also CVD Amendment,* 82 FR at 31942, 31944.

[12] *See CVD Agreement,* 79 FR at 78046–47, at Definitions and Export Limits. *See also CVD Amendment,* 82 FR at 31942, 31944.

[13] *See CVD Agreement,* 79 FR at 78047–48, at Export Limits and Implementation. *See also CVD Amendment,* 82 FR at 31944.

[14] *See CVD Amendment,* 82 FR at 31943–44.

[15] *See* Memorandum to the File, ''Memorandum Regarding Certain Allocations of the Export Limit'' (January 31, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–928]

Uncovered Innerspring Units From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) has completed the administrative review of the antidumping duty order on uncovered innerspring units (innersprings) from the People's Republic of China (China) covering the period of review (POR) February 1, 2018 through January 31, 2019. We continue to find that none of the exporters of subject merchandise demonstrated eligibility for a separate rate; therefore, each is part of the China-wide entity.

DATES: Applicable February 6, 2020.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, 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) 482–2243.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 2019, Commerce published the *Preliminary Results* of this review and gave interested parties an opportunity to comment.[1] We received no comments. These final results cover two companies for which an administrative review was requested and not rescinded: Jietai Machinery Ltd. (HK) and Green Asia Parts, LTD.[2] This review was conducted in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the order is uncovered innerspring units composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (*e.g.,* twin, twin long, full, full long, queen, California king and king) and units used in smaller constructions, such as crib and youth mattresses. All uncovered innerspring units are included in the scope regardless of width and length. Included within this definition are innersprings typically ranging from 30.5 inches to 76 inches in width and 68 inches to 84 inches in length. Innersprings for crib mattresses typically range from 25 inches to 27 inches in width and 50 inches to 52 inches in length.

Uncovered innerspring units are suitable for use as the innerspring component in the manufacture of innerspring mattresses, including mattresses that incorporate a foam encasement around the innerspring.

Pocketed and non-pocketed innerspring units are included in this definition. Non-pocketed innersprings are typically joined together with helical wire and border rods. Non-pocketed innersprings are included in this definition regardless of whether they have border rods attached to the perimeter of the innerspring. Pocketed innersprings are individual coils covered by a ''pocket'' or ''sock'' of a nonwoven synthetic material or woven material and then glued together in a linear fashion.

Uncovered innersprings are classified under subheading 9404.29.9010 and have also been classified under subheadings 7320.20.5010, 7320.90.5010, 7326.20.0070, 7326.20.0071, 7326.20.0090, 9404.10.0000, 9404.29.9005, 9404.29.9011, 9404.29.9013, and 9404.29.9050 of the Harmonized Tariff Schedule of the United States

[1] *See Uncovered Innerspring Units from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2018–2019,* 84 FR 52459 (October 2, 2019) (*Preliminary Results*).

[2] *Id.*

(HTSUS).[3] The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of the order is dispositive.

Final Results of Review

Commerce preliminarily determined that neither of the companies subject to this review demonstrated eligibility for separate rate status and, thus, Commerce found them to be part of the China-wide entity.[4] As noted above, Commerce received no comments concerning the *Preliminary Results* of this review. We find that there is no reason to modify our analysis. Accordingly, no decision memorandum accompanies this **Federal Register** notice. For further details regarding the issues addressed in this proceeding, *see* the *Preliminary Results.*[5]

In these final results of review, we continue to treat both exporters subject to this review as part of the China-wide entity.[6] The China-wide entity rate is 234.51 percent.

China-Wide Entity

Commerce's policy regarding the conditional review of the China-wide entity applies to this administrative review.[7] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity, and Commerce did not self-initiate a review, the entity is not under review and the entity's rate is not subject to change (*i.e.,* 234.51 percent).

[3] Based on a recommendation by U.S. Customs and Border Protection (CBP), on September 6, 2017, we added HTSUS 7326.20.0090 to the scope. *See* Memorandum, ''Request from Customs and Border Protection to Update the ACE AD/CVD Case Reference File, Uncovered Innersprings from the People's Republic of China (A–570–928) and South Africa (A–791–821),'' dated September 6, 2017. On October 21, 2019, we also added HTSUS numbers 9404.29.9050 and 9404.29.9013 to the scope based on another recommendation by CBP. *See* Memorandum, ''Request from Customs and Border Protection to Update the ACE AD/CVD Case Reference File, Uncovered Innersprings from the People's Republic of China (A–570–928),'' dated October 21, 2019.

[4] *See Preliminary Results.*

[5] *Id.*

[6] In the *Preliminary Results,* we found both exporters subject to this review to be part of the China-wide entity as each exporter failed to submit a separate rate application and/or a separate rate certification to establish its eligibility for separate rate status.

[7] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

Assessment Rates

Commerce has determined, and CBP shall assess, antidumping duties on all appropriate entries in this review, in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1). We intend to issue assessment instructions directly to CBP 15 days after publication in the **Federal Register** of these final results of this administrative review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed Chinese and non-Chinese exporters not under review in this segment of the proceeding, but who have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the China-wide entity rate (*i.e.,* 234.51 percent); and (3) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation, which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h).

Dated: January 27, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–02377 Filed 2–5–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–971]

Multilayered Wood Flooring From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, and Intent To Rescind Review, in Part; 2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of multilayered wood flooring (wood flooring) from the People's Republic of China (China). Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable February 6, 2020.

FOR FURTHER INFORMATION CONTACT: Bob Palmer or Suzanne Lam, 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 or 202–482–0783, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 2011, Commerce issued a countervailing duty (CVD) order on multilayered wood flooring from China.[1] Several interested parties requested that Commerce conduct an administrative review of the *Order,* and on March 14, 2019, Commerce published in the **Federal Register** a notice of initiation of an administrative

[1] *See Multilayered Wood Flooring from the People's Republic of China: Countervailing Duty Order,* 76 FR 76693 (December 8, 2011) (*Order*).

review of the *Order* on 170 producers/exporters for the period of review (POR).[2] Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[3] On September 11, 2019, Commerce partially extended the preliminary results deadline until December 13, 2019.[4] On November 18, 2019, Commerce fully extended the preliminary results deadline until January 31, 2020.[5]

Scope of the Order

The product covered by the *Order* is wood flooring from China. For a complete description of the scope of this administrative review, *see* the Preliminary Decision Memorandum.[6]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that confers a benefit to the recipient, and that the subsidy is specific.[7] For a full description of the methodology underlying our preliminary conclusions, including our reliance, in part, on adverse facts available pursuant to sections 776(a) and (b) of the Act, *see* the Preliminary Decision Memorandum.

The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of topics discussed in the Preliminary Decision Memorandum is included as an Appendix to this notice.

Intent To Rescind Administrative Review, in Part

Based on our analysis of U.S. Customs and Border Protection (CBP) information, and the no shipment certifications submitted by Anhui Boya Bamboo & Wood Products Co., Ltd., Anhui Yaolong Bamboo and Wood Products Co., Ltd., Armstrong Wood Products (Kunshan) Co., Ltd., Changzhou Hawd Flooring Co., Ltd., Dalian Shengyu Science and Technology Development Co., Ltd., Hunchun Forest Wolf Wooden Industry Co., Ltd., Jiashan On-Line Lumber Co., Ltd., Kingman Floors Co., Ltd., Yingyi-Nature (Kunshan) Wood Industry Co., Ltd., and Zhejiang Shiyou Timber Co., Ltd., Commerce preliminarily determines that these companies had no shipments of subject merchandise during the POR. For additional information regarding this determination, *see* the Preliminary Decision Memorandum. Absent any evidence of shipments being placed on the record, pursuant to 19 CFR 351.213(d)(3), we intend to rescind the administrative review of these companies in the final results of review.

Rate for Non-Selected Companies Under Review

There are 157 companies for which a review was requested and not rescinded, and which were not selected as mandatory respondents or found to be cross-owned with a mandatory respondent. For these companies, because the rates calculated for the mandatory respondents, Baroque Timber Industries (Zhongshan) Co., Ltd. (Baroque Timber) and Jiangsu Guyu International Trading Co., Ltd. (Jiangsu Guyu) were above *de minimis* and not based entirely on facts available, we applied a subsidy rate based on a weighted-average of the subsidy rates calculated for Baroque Timber and Jiangsu Guyu using publicly-ranged sales data submitted by the respondents. This methodology to establish the all-others subsidy rate is consistent our practice and with section 705(c)(5)(A) of the Act. For further information on the calculation of the non-selected respondent rate, refer to the section in the Preliminary Decision Memorandum entitled ''Non-Selected Companies Under Review.'' For a list of the non-selected companies, please see Appendix III to this notice.

Preliminary Results of the Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated a countervailable subsidy rate for each of the mandatory respondents, Baroque Timber and Jiangsu Guyu, and their cross-owned affiliates where applicable.

We preliminarily find the countervailable subsidy rates for the mandatory and non-selected respondents under review to be as follows:

Producer/exporter	Subsidy rate (percent)
Baroque Timber Industries (Zhongshan) Co., Ltd. and its Cross-Owned Affiliates[8]	18.18
Jiangsu Guyu International Trading Co., Ltd. and its Cross-Owned Affiliates[9]	123.26
Non-Selected Companies Under Review[10]	24.61

Disclosure and Public Comment

We will disclose to parties in this proceeding the calculations performed in reaching the preliminary results within five days of publication of these preliminary results.[11] Interested parties may submit written comments (case briefs) on the preliminary results no later than 30 days from the date of

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 9297, 9304 (March 14, 2019) (*Initiation Notice*).

[3] *See* Memorandum, ''December Order Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated August 8, 2019. All deadlines in this segment of the proceeding have been extended by 31 days.

[4] *See* Memorandum, ''Multilayered Wood Flooring from the People's Republic of China: Extension of Deadline for Preliminary Results of 2017 Countervailing Duty Administrative Review,'' dated September 11, 2019.

[5] *See* Memorandum, ''Multilayered Wood Flooring from the People's Republic of China: Second Extension of Deadline for Preliminary Results of 2017 Countervailing Duty Administrative Review,'' dated November 18, 2019.

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results in the Countervailing Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China: 2017'' (Preliminary Decision Memorandum), dated concurrently with, and hereby adopted by, this notice.

[7] *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.

[8] Cross-owned affiliates are Riverside Plywood Corp. and Suzhou Times Flooring Co., Ltd.

[9] Cross-owned affiliates are Jiangsu Shengyu Flooring Co., Ltd., Siyang County Shunyang Wood Co., Ltd., and Shanghai Woyuan Industrial Co., Ltd.

[10] *See* Appendix III.

[11] *See* 19 CFR 351.224(b).

publication of this **Federal Register** notice, and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[12] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

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 within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues 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.[13] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Parties are reminded that briefs and hearing requests are to be filed electronically using ACCESS and that electronically filed documents must be received successfully in their entirety by 5 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, we intend to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after publication of these preliminary results.

Assessment Rates

In accordance with 19 CFR 351.221(b)(4)(i), we preliminarily assigned subsidy rates in the amounts shown above for the producer/exporters shown above. Upon completion of the administrative review, consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions directly to CBP 15 days after publication of the final results of this review. For the companies for which this review is rescinded, Commerce will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2017, through December 31, 2017, in accordance with 19 CFR 351.212(c)(l)(i). Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, Commerce intends, upon publication of the final results, to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above 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 administrative review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most recent company-specific or all-others rate applicable to the company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

These preliminary results are issued and published pursuant to sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: January 31, 2020.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Non-Selected Companies Under Review
IV. Scope of the Order
V. Diversification of China's Economy
VI. Subsidies Valuation
VII. Interest Rate Benchmarks, Discount Rates, Inputs, Land-Use and Electricity
VIII. Use of Facts Otherwise Available and Application of Adverse Inferences
IX. Analysis of Programs
X. Recommendation

Appendix II

Non-Selected Companies Under Review

1. A&W (Shanghai) Woods Co., Ltd.
2. Anhui Longhua Bamboo Product Co., Ltd.
3. Anhui Suzhou Dongda Wood Co., Ltd.
4. Baishan Huafeng Wooden Product Co., Ltd.
5. Baiying Furniture Manufacturer Co., Ltd.
6. Benxi Flooring Factory (General Partnership)
7. Benxi Wood Company
8. Changbai Mountain Development And Protection Zone Hongtu Wood Industrial
9. Cheng Hang Wood Co., Ltd.
10. Chinafloors Timber (China) Co., Ltd.
11. Dalian Dajen Wood Co., Ltd.
12. Dalian Deerfu Wooden Product Co., Ltd.
13. Dalian Huade Wood Product Co., Ltd.
14. Dalian Huilong Wooden Products Co., Ltd.
15. Dalian Jaenmaken Wood Industry Co., Ltd.
16. Dalian Jiahong Wood Industry Co., Ltd.
17. Dalian Jinda Wood Products Corporation
18. Dalian Jiuyuan Wood Industry Co., Ltd.
19. Dalian Kemian Wood Industry Co., Ltd.
20. Dalian Meisen Woodworking
21. Dalian Penghong Floor Products Co., Ltd.
22. Dalian Qianqiu Wooden Product Co., Ltd
23. Dalian Shumaike Floor Manufacturing Co., Ltd.
24. Dalian T-Boom Wood Products Co., Ltd.
25. Dalian Xinjinghua Wood Co., Ltd.
26. Dongtai Fuan Universal Dynamics, LLC
27. Dongtai Zhangshi Wood Industry Co. Ltd.
28. Dun Hua Sen Tai Wood Co., Ltd.
29. Dunhua City Dexin Wood Industry Co., Ltd.
30. Dunhua City Hongyuan Wood Industry Co., Ltd.
31. Dunhua City Jisen Wood Industry Co., Ltd.
32. Dunhua City Wanrong Wood Industry Co., Ltd.
33. Dunhua Shengda Wood Industry Co., Ltd.
34. Fine Furniture (Shanghai) Limited
35. Fu Lik Timber (HK) Co., Ltd.
36. Fujian Wuyishan Werner Green Industry Co., Ltd.
37. Furnco International Shanghai Company
38. Fusong Jinlong Wooden Group Co., Ltd.
39. Fusong Jinqiu Wooden Product Co., Ltd.
40. Fusong Qianqiu Wooden Product Co., Ltd.
41. Gaotang Weilong Industry and Trade
42. Gold Seagull Shanghai Flooring
43. GTP International Ltd.
44. Guangdong Fu Lin Timber Technology Limited
45. Guangdong Yihua Timber Industry Co., Ltd.
46. Guangzhou Homebon Timber Manufacturing Co., Ltd.
47. Guangzhou Panyu Kangda Board Co., Ltd.
48. Guangzhou Panyu Southern Star Co., Ltd.
49. HaiLin LinJing Wooden Products, Ltd.
50. HaiLin XinCheng Wooden Products, Ltd.
51. Hangzhou Dazhuang Floor Co., Ltd. (DBA Dasso Industrial Group Co., Ltd.)
52. Hangzhou Hanje Tee Company Limited
53. Hangzhou Huahi Wood Industry Co., Ltd.
54. Hangzhou Zhengtian Industrial Co., Ltd.
55. Henan Xingwangjia Technology Co., Ltd.
56. Hong Kong Chuanshi Inernational
57. Hong Kong Easoon Wood Technology Co., Ltd.
58. Huaxin Jiasheng Wood Co., Ltd.
59. Huber Engineering Wood Corp.
60. Houzhou Chenchang Wood Co., Ltd.
61. Hunchun Xingja Wooden Flooring Inc.
62. Huzhou City Nanxun Guangda Wood Co., Ltd.
63. Huzhou Daruo Import and Export
64. Huzhou Fulinmen Imp. & Exp. Co., Ltd.
65. Huzhou Fuma Wood Co., Ltd.
66. Huzhou Jesonwood Co., Ltd.
67. Huzhou Laike Import and Export Co

[12] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

[13] *See* 19 CFR 351.310.

68. Huzhou Muyun Wood Co., Ltd.
69. Huzhou Sunergy World Trade Co., Ltd.
70. Innomaster Home (Zhongshan) Co., Ltd.
71. Jesonwood Forest Products ZJ
72. Jiafeng Wood (Suzhou) Co., Ltd.
73. Jiangsu Kentier Wood Co., Ltd.
74. Jiangsu Keri Wood Co., Ltd.
75. Jiangsu Mingle Flooring Co., Ltd.
76. Jiangsu Senmao Bamboo and Wood Industry Co., Ltd.
77. Jiangsu Simba Flooring Co., Ltd.
78. Jiangsu Yuhui International Trade Co., Ltd.
79. Jiashan Fengyun Timber Co., Ltd.
80. Jiashan HuiJiaLe Decoration Material Co., Ltd.
81. Jiaxing Hengtong Wood Co., Ltd.
82. Jilin Forest Industry Jinqiao Flooring Group Co., Ltd.
83. Jilin Xinyuan Wooden Industry Co., Ltd.
84. Karly Wood Product Limited
85. Kember Flooring, Inc.
86. Kemian Wood Industry (Kunshan) Co., Ltd.
87. Kornbest Enterprises Limited
88. Kunming Alston (AST) Wood Products Co., Ltd.
89. Les Planchers Mercier, Inc.
90. Liaoning Daheng Timber Group
91. Linyi Anying Wood Co., Ltd.
92. Linyi Bonn Flooring Manufacturing Co., Ltd.
93. Linyi Youyou Wood Co., Ltd.
94. Logwin Air and Ocean Hong Kong
95. Max Choice Wood Industry
96. Metropolitan Hardwood Floors, Inc.
97. Mudanjiang Bosen Wood Industry Co., Ltd.
98. Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd.
99. Nanjing Minglin Wooden Industry Co., Ltd.
100. Ningbo Tianyi Bamboo and Wood Products Co., Ltd.
101. Pinge Timber Manufacturing (Zhejiang) Co., Ltd.
102. Power Dekor Group Co. Ltd.
103. Power Dekor North America Inc.
104. PT. Tanjung Kreasi Parquet Industry
105. Qingdao Barry Flooring Co., Ltd.
106. Qingdao Wisdom International
107. Samling Elegant Living Trading (Labuan) Ltd.
108. Samling Riverside Co., Ltd.
109. Scholar Home (Shanghai) New Material Co. Ltd.
110. Shandong Kaiyuan Wood Industry Co., Ltd.
111. Shandong Longteng Wood Co., Ltd.
112. Shandong Puli Trading Co., Ltd.
113. Shanghai Anxin (Weiguang) Timber Co., Ltd.
114. Shanghai Demeija Timber Co., Ltd.
115. Shanghai Eswell Timber Co., Ltd.
116. Shanghai Lairunde Wood Co., Ltd.
117. Shanghai Lizhong Wood Products Co., Ltd. (aka The Lizhong Wood Industry Limited Company of Shanghai)
118. Shanghai New Sihe Wood Co., Ltd.
119. Shanghai Shenlin Corporation
120. Shanghaifloor Timber (Shanghai) Co., Ltd.
121. Shenyang Haobainian Wooden Co., Ltd.
122. Shenyang Sende Wood Co., Ltd.
123. Shenzhenshi Huanwei Woods Co., Ltd.
124. Sino-Maple (Jiangsu) Co., Ltd.
125. Suifenhe Chengfeng Trading Co., Ltd.
126. Sunyoung Wooden Products
127. Suzhou Anxin Weiguang Timber Co., Ltd.
128. Suzhou Dongda Wood Co., Ltd.
129. Tak Wah Building Material (Suzhou) Co.
130. Tech Wood International Ltd.
131. The Greenville Flooring Co., Ltd.
132. Tongxiang Jisheng Import and Export Co., Ltd.
133. Topocean Consolidation Service
134. Vicwood Industry (Suzhou) Co. Ltd.
135. Xiamen Yung De Ornament Co., Ltd.
136. Xuzhou Antop International Trade Co., Ltd.
137. Xuzhou Shenghe Wood Co., Ltd.
138. Yekalon Industry, Inc.
139. Yihua Lifestyle Technology Co., Ltd.
140. Yixing Lion-King Timber Industry
141. Zhejiang Anji Xinfeng Bamboo and Wood Industry Co., Ltd.
142. Zhejiang Biyork Wood Co., Ltd.
143. Zhejiang Dadongwu Auto Elect Motor
144. Zhejiang Dadongwu Green Home Wood Co., Ltd.
145. Zhejiang Desheng Wood Industry Co., Ltd.
146. Zhejiang Fudeli Timber Industry Co., Ltd.
147. Zhejiang Fuerjia Wooden Co., Ltd.
148. Zhejiang Fuma Warm Technology Co., Ltd.
149. Zhejiang Haoyun Wooden Co., Ltd.
150. Zhejiang Jesonwood Co., Ltd.
151. Zhejiang Jiaye Flooring
152. Zhejiang Jiechen Wood Industry Co., Ltd.
153. Zhejiang Longsen Lumbering Co., Ltd.
154. Zhejiang Shuimojiangnan New Material Technology Co., Ltd.
155. Zhejiang Simite Wooden Co., Ltd.
156. Zhejiang Tianzhen Bamboo & Wood Development Co., Ltd.
157. Zhejiang Yongyu Bamboo Joint-Stock Co., Ltd.

[FR Doc. 2020–02365 Filed 2–5–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and New Shipper Review, Preliminary Determination of No Shipments, and Rescission of Review, in Part; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain companies covered by the administrative review and new shipper reviews did not make sales of subject merchandise at prices below normal value (NV). We invite interested parties to comment on these preliminary results.

DATES: Applicable February 6, 2020.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin or Alexis Cherry, 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) 482–6478 or (202) 482–0607, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting an administrative review and an aligned new shipper review (NSR) of the antidumping duty order on multilayered wood flooring (MLWF) from the People's Republic of China (China). The period of review (POR) for both reviews is December 1, 2017 through November 30, 2018. The administrative review covers 99 companies, including two mandatory respondents: The Fusong Jinlong Group [1] (Jinlong) and Jiangsu Guyu International Trade Co., Ltd. (Guyu). The new shipper review covers Muchsee Wood (Chuzhou) Co., Ltd. (Muchsee Wood). We preliminarily determine that sales of subject merchandise by Jinlong and Guyu have not been made at prices below NV.[2] We also preliminarily determine that a single sale of subject merchandise by Muchsee Wood has not been made at prices below NV.[3] In addition, we are preliminarily granting separate rates to Jinlong, Guyu, Muchsee Wood and 54 producers/exporters, and determine that 21 producer/exporters made no shipments of subject merchandise during the POR. Finally, we are rescinding the review with respect to

[1] Commerce has previously indicated that Dalian Qianqiu Wooden Product Co., Ltd. (Dalian Qianqiu), Fusong Jinlong Wooden Group Co., Ltd. (Fusong Jinlong), Fusong Jinqiu Wooden Product Co., Ltd. (Fusong Jinqiu), and Fusong Qianqiu Wooden Product Co., Ltd. (Fusong Qianqiu) are collectively known as the ''Fusong Jinlong Group.'' *See e.g., Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012,* 79 FR 26712 (May 9, 2014) at n.14. We are addressing the status of these companies in a preliminary affiliation and collapsing analysis memorandum based on information on the record of this administrative review. *See* Memorandum, ''Decision Memorandum for the Preliminary Results in the Antidumping Duty Administrative Review and New Shipper Review: Multilayered Wood Flooring from the People's Republic of China; 2017–2018'' (Preliminary Decision Memorandum), dated concurrently with, and hereby adopted by, this notice, at the ''Affiliation and Single Entity'' section.

[2] *See* Preliminary Decision Memorandum.

[3] *Id.*

Jilin Forest Industry Jinqiao Flooring Group Co., Ltd. (Jinqiao Flooring).

Scope of the Order [4]

The product covered by the *Order* is MLWF from China. For a complete description of the scope of this administrative review, *see* the Preliminary Decision Memorandum.

Partial Rescission of Review

Commerce initiated a review of 99 companies in this administrative review [5] and one company in this new shipper review.[6] Shenzhenshi Huanwei Woods Co., Ltd. (Huanwei Woods) and Jinqiao Flooring submitted timely requests to withdraw from the administrative review.[7] No other parties requested a review of Jinqiao Flooring; however, the American Manufacturers of Multilayered Wood Flooring (the petitioners) requested a review of Huanwei Woods.[8] Accordingly, Commerce is rescinding the administrative review only with respect to Jinqiao Flooring.[9]

Preliminary Determination of No Shipments

Based on an analysis of information from U.S. Customs and Border Protection (CBP), no shipment certifications, and other record information, we preliminarily determine that 21 companies had no shipments of subject merchandise during the POR.[10] For additional information regarding this determination, *see* the Preliminary Decision Memorandum. Consistent with our practice in non-market economy (NME) cases, we are not rescinding this administrative review with respect to these companies but, rather, intend to complete the review and issue appropriate instructions to CBP based on the final results of the review.[11]

Separate Rates

We preliminarily determine that, in addition to Jinlong and Guyu, 54 companies not individually examined are eligible for separate rates in this administrative review.[12] We also preliminarily determine that Muchsee Wood is eligible for a separate rate in this new shipper review.

The statute and Commerce's regulations do not address the establishment of a separate rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act). Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for separate-rate respondents which Commerce did not examine individually in an administrative review. For the preliminary results of this administrative review, Commerce has determined the estimated dumping margins for Jinlong and Guyu to be zero.[13] Because this is the only calculated POR margin available and in light of *Albemarle Corp.* v. *United States,* we are assigning this rate to all eligible non-selected respondents who qualify for a separate rate in this administrative review.[14]

The China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[15] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity, the entity is not under review, and the entity's rate is not subject to change.

Aside from the companies we preliminarily find made no shipments and the company for which the review is being rescinded, Commerce considers all other companies for which a review was requested and which did not demonstrate separate rate eligibility to be part of the China-wide entity.[16] For the preliminary results of this review, we consider 18 companies to be part of the China-wide entity. For additional information, *see* the Preliminary Decision Memorandum.

Methodology

We are conducting these reviews in accordance with sections 751(a)(1)(B) and 751(a)(2)(B) of the Act and 19 CFR 351.213 and 351.214. We calculated export prices for Jinlong, Guyu, and Muchsee Wood in accordance with section 772(a) of the Act. Because China is an NME within the meaning of section 771(18) of the Act, we calculated NV in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/*

[4] *See Multilayered Wood Flooring from the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less than Fair Value and Antidumping Duty Order,* 76 FR 76690 (December 8, 2011), as amended in *Multilayered Wood Flooring from the People's Republic of China: Amended Antidumping and Countervailing Duty Orders,* 77 FR 5484 (February 3, 2012) (collectively, *Order*).

[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 9297 (March 14, 2019) (*First Initiation Notice*); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 12200 (April 1, 2019); *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 18777 (May 2, 2019); and *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 3014 (January 17, 2020), correcting the *First Initiation Notice* (collectively, *Initiation Notices*).

[6] *See Multilayered Wood Flooring from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review; 2017–2018,* 84 FR 9494 (March 15, 2019).

[7] *See* Huanwei Woods' Letter, ''Multilayered Wood Flooring from People's Republic of China: Notice of Withdrawal of Counsel and Withdrawal of Request for 2017–2018 Administrative Review,'' dated May 9, 2019; *see also* Jinqiao Flooring's Letter, ''Multilayered Wood Flooring from the People's Republic of China: 7th Administrative Review; Withdrawal of Administrative Review Request,'' dated June 12, 2019.

[8] *See* Petitioners' Letter, ''Multilayered Wood Flooring from the People's Republic of China: Request for Administrative Review,'' dated December 31, 2018.

[9] *See* 19 CFR 351.213(d)(1).

[10] *See* Appendix II for a list of these companies.

[11] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011) (*NME AD Assessment*) and the ''Assessment Rates'' section, below.

[12] *See* Preliminary Decision Memorandum at 11–15, for more details.

[13] *See* Memoranda, ''Preliminary Results Margin Calculation for the Fusong Jinlong Group'' and ''Preliminary Results Margin Calculation for Jiangsu Guyu International Trading Co., Ltd.,'' both dated concurrently with this notice; *see also* Preliminary Decision Memorandum.

[14] *See Albemarle Corp.* v. *United States,* 821 F.3d 1345 (Fed. Cir. 2016); *see also* Preliminary Decision Memorandum at the ''Weighted-Average Dumping Margin for Non-Examined Separate-Rate Companies in the Administrative Review'' section, for more details.

[15] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[16] *See Initiation Notices* (''All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below.'') Companies that are subject to this administrative review that are considered to be part of the China-wide entity are listed in Appendix II.

index.html. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice.

Preliminary Results of the Administrative Review

We preliminarily determine that the following weighted-average dumping margins exist for the administrative review covering the period December 1, 2017 through November 30, 2018:

Exporters	Weighted-average dumping margin (percent)
The Fusong Jinlong Group	0.00
Jiangsu Guyu International Trading Co., Ltd	0.00
A&W (Shanghai) Woods Co., Ltd	0.00
Anhui Longhua Bamboo Product Co., Ltd	0.00
Benxi Wood Company	0.00
Dalian Dajen Wood Co., Ltd	0.00
Dalian Deerfu Wooden Product Co., Ltd	0.00
Dalian Jiahong Wood Industry Co., Ltd	0.00
Dalian Kemian Wood Industry Co., Ltd	0.00
Dalian Penghong Floor Products Co., Ltd	0.00
Dalian Shengyu Science And Technology Development Co., Ltd	0.00
Dalian Shumaike Floor Manufacturing Co., Ltd	0.00
Dalian T-Boom Wood Products Co., Ltd	0.00
Dongtai Fuan Universal Dynamics, LLC	0.00
Dunhua City Dexin Wood Industry Co., Ltd	0.00
Dunhua City Hongyuan Wood Industry Co., Ltd	0.00
Dunhua City Wanrong Wood Industry Co., Ltd	0.00
Dun Hua Sen Tai Wood Co., Ltd	0.00
Dunhua Shengda Wood Industry Co., Ltd	0.00
Guangzhou Panyu Southern Star Co., Ltd	0.00
HaiLin LinJing Wooden Products, Ltd	0.00
Hangzhou Hanje Tec Company Limited	0.00
Hunchun Xingjia Wooden Flooring Inc	0.00
Huzhou Chenghang Wood Co., Ltd	0.00
Huzhou Fulinmen Imp. & Exp. Co., Ltd	0.00
Huzhou Sunergy World Trade Co., Ltd	0.00
Jiangsu Keri Wood Co., Ltd	0.00
Jiangsu Mingle Flooring Co., Ltd	0.00
Jiangsu Senmao Bamboo and Wood Industry Co., Ltd	0.00
Jiangsu Simba Flooring Co., Ltd	0.00
Jiashan HuiJiaLe Decoration Material Co., Ltd	0.00
Jiaxing Hengtong Wood Co., Ltd	0.00
Jilin Xinyuan Wooden Industry Co., Ltd	0.00
Karly Wood Product Limited	0.00
Kember Flooring, Inc	0.00
Kemian Wood Industry (Kunshan) Co., Ltd	0.00
Lauzon Distinctive Hardwood Flooring, Inc	0.00
Linyi Youyou Wood Co., Ltd	0.00
Metropolitan Hardwood Floors, Inc	0.00
Mudanjiang Bosen Wood Industry Co., Ltd	0.00
Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd	0.00
Omni Arbor Solutions Co., Ltd	0.00
Pinge Timber Manufacturing (Zhejiang) Co., Ltd	0.00
Power Dekor Group Co., Ltd	0.00
Scholar Home (Shanghai) New Material Co., Ltd	0.00
Shenyang Haobainian Wooden Co., Ltd	0.00
Sino-Maple (Jiangsu) Co., Ltd	0.00
Suzhou Dongda Wood Co., Ltd	0.00
Tongxiang Jisheng Import and Export Co., Ltd	0.00
Xuzhou Shenghe Wood Co., Ltd	0.00
Yekalon Industry Inc	0.00
Yihua Lifestyle Technology Co., Ltd, (successor-in-interest to Guangdong Yihua Timber Industry Co., Ltd)	0.00
Zhejiang Dadongwu Green Home Wood Co., Ltd	0.00
Zhejiang Fuerjia Wooden Co., Ltd	0.00
Zhejiang Longsen Lumbering Co., Ltd	0.00
Zhejiang Shiyou Timber Co., Ltd	0.00

Preliminary Results of the New Shipper Review

We preliminarily determine that the following weighted-average dumping margin exists for the new shipper review covering the period December 1, 2017 through November 30, 2018:

Exporter	Producer	Weighted-average dumping margin (percent)
Muchsee Wood (Chuzhou) Co., Ltd.	Muchsee Wood (Chuzhou) Co., Ltd.	0.00

Disclosure and Public Comment

We intend to disclose to interested parties the calculations performed for these preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[17] Rebuttals to case briefs may be filed no later than five days after the written comments are filed, and all rebuttal comments must be limited to comments raised in the case briefs.[18]

Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this review 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.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, we intend to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless otherwise extended, we intend to issue the final results of these reviews, which will include the results of our analysis of the issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Assessment Rates

Upon issuance of the final results, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by these reviews, in accordance with 19 CFR 351.212(b). For the companies for which the administrative review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). We intend to issue appropriate assessment instructions

[17] *See* 19 CFR 351.309(c).

[18] *See* 19 CFR 351.309(d).

with respect to the companies for which this administrative review is rescinded to CBP 15 days after the publication of this notice.

For any individually examined respondent whose (estimated) *ad valorem* weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, Commerce will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total quantity of those sales, in accordance with 19 CFR 351.212(b)(1).[19] Commerce will also calculate (estimated) *ad valorem* importer-specific assessment rates with which to assess whether the per-unit assessment rate is *de minimis.* We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate calculated in the final results of this review is not zero or *de minimis.* If the individually examined respondents' *ad valorem* weighted-average dumping margins continue to be zero or *de minimis* in the final results, or an importer-specific *ad valorem* assessment rate is zero or *de minimis,*[20] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the respondents that were not selected for individual examination in this administrative review that qualified for a separate rate, the assessment rate will be the separate rate established in the final results of this administrative review. If, in the final results, this rate continues to be zero or *de minimis* (*i.e.,* less than 0.5 percent), Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For entries that were not reported in the U.S. sales databases submitted by the individually examined respondent, and for the 18 companies that did not qualify for a separate rate in the administrative review, Commerce will instruct CBP to liquidate such entries at the China-wide rate (*i.e.,* 85.13 percent).[21] In addition, if we continue to find in the final results no shipments of subject merchandise for the companies for which we preliminarily find no such shipments during the POR,[22] Commerce will instruct CBP to liquidate any suspended entries of subject merchandise from those companies at the China-wide rate, with the exception of certain entries from Yingyi-Nature and Changzhou Hawd that Commerce will identify in appropriate instructions to CBP.[23]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of these reviews for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the companies listed above that have a separate rate, the cash deposit rate will be the established in the final results; (2) for previously investigated or reviewed Chinese and non-Chinese exporters for which a review was not requested and that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (*i.e.,* 85.13 percent); and (4) for all non-China exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to Chinese exporter that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing the preliminary results of these reviews in accordance with sections 751(a)(l), 751(a)(2)(B)(iv), 751(a)(3), and 777(i)(l) of the Act and 19 CFR 351.214 and 351.221(b)(4).

Dated: January 31, 2020.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Review
IV. Scope of the Order
V. Selection of Respondents
VI. Partial Rescission of Review
VII. Preliminary Determination of No Shipments
VIII. *Bona Fide* Sale Analysis
IX. Discussion of the Methodology
X. Recommendation

Appendix II

No shipments

Anhui Yaolong Bamboo & Wood Products Co. Ltd.
Armstrong Wood Products (Kunshan) Co., Ltd.
Baroque Timber Industries (Zhongshan) Co., Ltd.
Benxi Flooring Factory (General Partnership)
Changzhou Hawd Flooring Co., Ltd.
Dunhua City Jisen Wood Industry Co., Ltd.
Fine Furniture (Fine Furniture (Shanghai) Limited and Double F Limited)[24]
Guangzhou Panyu Kangda Board Co., Ltd.
Hangzhou Zhengtian Industrial Co., Ltd.
Hunchun Forest Wolf Wooden Industry Co., Ltd.
Huzhou Jesonwood Co., Ltd.
Innomaster Home (Zhongshan) Co., Ltd.
Jiangsu Yuhui International Trade Co., Ltd.
Jiashan On-Line Lumber Co., Ltd.
Kingman Floors Co., Ltd.
Linyi Anying Wood Co., Ltd.
Shandong Longteng Wood Co., Ltd.
Shanghaifloor Timber (Shanghai) Co., Ltd.
Xuzhou Antop International Trade Co., Ltd.
Yingyi-Nature (Kunshan) Wood Industry Co., Ltd.
Zhejiang Shuimojiangnan New Material Technology Co., Ltd.

China-Wide Entities

Anhui Boya Bamboo & Wood Products Co., Ltd.
Chinafloors Timber (China) Co., Ltd.
Dalian Guhua Wooden Product Co., Ltd.
Dalian Huade Wood Product Co., Ltd.
Dalian Huilong Wooden Products Co., Ltd.
Dalian Jaenmaken Wood Industry Co., Ltd.
Guangzhou Homebon Timber Manufacturing Co., Ltd.

[19] In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[20] *See* 19 CFR 351.106(c)(2).

[21] *See Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016–2017,* 84 FR 38002, 38003 (August 5, 2019).

[22] *See* Appendix II for a list of these companies.

[23] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65695 (October 24, 2011); *see also* Preliminary Determination Memorandum at the ''Preliminary Determination of No Shipments'' section.

[24] Commerce is only reviewing entries where Fine Furniture (Shanghai) Limited and/or Double F Limited was the exporter but Fine Furniture (Shanghai) Limited was not the producer of subject merchandise.

Houzhou Chenchang Wood Co., Ltd.
Jiafeng Wood (Suzhou) Co., Ltd.
Linyi Bonn Flooring Manufacturing Co., Ltd.
Power Dekor North America Inc.
Shanghai Lairunde Wood Co., Ltd.
Shenzhenshi Huanwei Woods Co., Ltd.
Xiamen Yung De Ornament Co., Ltd.
Zhejiang Biyork Wood Co., Ltd.
Zhejiang Fudeli Timber Industry Co., Ltd
Zhejiang Jiechen Wood Industry Co., Ltd.
Zhejiang Simite Wooden Co., Ltd.

Rescissions

Jilin Forest Industry Jinqiao Flooring Group Co., Ltd.

[FR Doc. 2020–02360 Filed 2–5–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Region Crab Permits

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written or on-line comments must be submitted on or before April 6, 2020.

ADDRESSES: Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or via the internet at *PRAcomments@doc.gov*). All comments received are part of the public record. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Doug Duncan, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK, 99802–1668; 907–586–7228.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) is requesting extension of a currently approved information collection for the Crab Rationalization Program (CR Program). The information being collected is necessary for NMFS to manage the CR Program.

NMFS manages the king and Tanner crab fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands under the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crabs (FMP). The North Pacific Fishery Management Council prepared the FMP under the Magnuson-Stevens Fishery Conservation and Management Act as amended in 2006. Regulations implementing the FMP and the CR Program appear at 50 CFR part 680. Information on the CR Program is posted on the NMFS Alaska Region website at: *https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/bering-sea-and-aleutian-islands-bsai-crab-rationalization-program.*

NMFS established the CR Program as a catch share program for nine crab fisheries in the BSAI and assigned quota share (QS) to persons and processor quota share (PQS) to processors based on their historic participation in one or more of these nine crab fisheries during a qualifying period. Under the CR Program, share allocations to harvesters and processors and incentives to participate in fishery cooperatives increase efficiencies, provide economic stability, and facilitate compensated reduction of excess capacities in the harvesting and processing sectors. Community interests are protected by Western Alaska Community Development Quota (CDQ) allocations, regional landing and processing requirements, and other measures.

CR Program components include QS allocation, PQS allocation, individual fishing quota (IFQ) issuance, individual processing quota (IPQ) issuance, quota transfers, use caps, crab harvesting cooperatives, protections for Gulf of Alaska groundfish fisheries, QS/PQS matching, an arbitration system, monitoring, economic data collection, and cost recovery fee collection.

This information collection contains the forms used by participants in the CR Program to apply for or renew permits; transfer or lease IFQ, IPQ, QS, or PQS; and apply for exemption from regional delivery requirements. This information collection also contains the following reports for which no collection forms are used:

- The North or South Region Delivery Exemption Report is submitted by IFQ holders who signed a preseason application. This report provides NMFS with the means to assess how the industry is exercising the exemption opportunity and whether implementing regulations are sufficient to meet the Council's Statement of Intent for Amendment 41 to the FMP.
- The Community Impact Report or IPQ Holder Report is submitted by a community entity or IPQ holder, respectively, and provides documentation needed by NMFS to evaluate the efficacy of privately administered contracts.
- The CDQ Group Notification of Community Representative is submitted by the CDQ groups representing Saint Paul and Saint George to designate to NMFS a single entity as the regional representative for these two communities.
- The Eligible Crab Community Organization (ECCO) Annual Report is submitted by the ECCO. It details the use of the crab QS and IFQ and is intended to ensure that the ECCO maintains the QS and IFQ to benefit residents of eligible communities.

II. Method of Collection

Information is collected primarily via mail, fax, or email. The following may be submitted online through eFISH on the NMFS Alaska Region website: The Application for Transfer (Lease) of Crab IPQ, the Application for Transfer of IFQ between Crab Harvesting Cooperatives, and renewals of registered crab receiver permits and Federal crab vessel permits.

III. Data

OMB Control Number: 0648–0514.
Form Number(s): None.
Type of Review: Extension of a current information collection.
Affected Public: Business or other for-profit organizations; Individuals or households.
Estimated Number of Respondents: 575.
Estimated Time per Response: 20 hours each for Application for Exemption from CR Crab North or South Region Delivery Requirements, and North or South Region Delivery Exemption Report; 15 hours for Application for Annual Crab Harvesting Cooperative Individual Fishing Quota Permit; 5 hours for CDQ Group Notification of Community Representative; 4 hours each for ECCO Annual Report and to file an appeal; 2.5 hrs each for Application for Annual Crab IFQ Permit, and Application to Become an ECCO; 2 hours each for Application for Annual Crab IPQ

Permit, Application for Transfer of Crab QS, Application for Transfer of Crab PQS, Application for Transfer (Lease) of Crab IFQ, Application for CR Program Eligibility to Receive QS/PQS or IFQ/IPQ by Transfer, Application for Annual Exemption from Western Aleutian Islands Golden King Crab West Region Delivery Requirements, Community Impact Report or IPQ Holder Report, and Application for Transfer of Crab QS/IFQ to or from an ECCO; 1 hour for Application for BSAI Crab Hired Master (Skipper) Permit; 30 minutes each for Application for Registered Crab Receiver Permit, Application for Converted CPO QS and CPO IFQ, and BSAI Crab Rationalization Program QS Beneficiary Designation Form; 21 minutes for Application for Federal Crab Vessel Permit; 1 hour for electronic response and 2 hours for non-electronic response for Application for Transfer (Lease) of Crab IPQ; and 5 minutes for electronic response and 10 minutes for non-electronic response for Application for Transfer of IFQ between Crab Harvesting Cooperatives.

Estimated Total Annual Burden Hours: 3,007.

Estimated Total Annual Cost to Public: $3,330 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–02379 Filed 2–5–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XX038]

Fisheries of the Northeastern United States; Bluefish Fishery; Scoping Process

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

ACTION: Notice; public scoping meetings; requests for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council announces its intent to prepare, in cooperation with the National Marine Fisheries Service and the Atlantic States Marine Fisheries Commission, an amendment to the Atlantic Bluefish Fishery Management Plan. An Environmental Impact Statement may be necessary for the amendment under the National Environmental Policy Act to analyze the impacts of any proposed management measures. The Council has initiated this amendment in order to perform a review of the sector-based allocations, commercial allocations to the states, goals and objectives of the management plan, transfer processes, and develop a rebuilding plan. This notice announces the Council's supplemental public process for determining the scope of issues to be addressed, and for identifying the significant issues related to the bluefish fishery in the Greater Atlantic region. This notice is to alert the interested public of the Council's scoping process, the potential development of a draft Environmental Impact Statement, and to provide for public participation in that process.

DATES: Written comments must be received on or before 11:59 p.m., EST, on Tuesday, March 17, 2020. Eleven supplemental public scoping meetings will be held during this comment period. See Supplementary Information for dates, times, and locations.

ADDRESSES: Written comments may be sent by any of the following methods:

- Email to the following address: *nmfs.garbluefishamend@noaa.gov.* Include ''Bluefish Scoping Comments'' in the subject line;
- Mail or hand deliver to Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, Delaware 19901. Mark the outside of the envelope ''Bluefish Scoping Comments''; or
- Fax to (302) 674–5399.

The scoping document may be obtained from the Council office at the previously provided address, or by request to the Council by telephone (302) 674–2331, or via the internet at *http://www.mafmc.org.*

Comments may also be provided verbally at any of the eleven supplemental public scoping meetings. See Supplementary Information for dates, times, and locations.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher M. Moore, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901, (telephone 302–674–2331).

SUPPLEMENTARY INFORMATION:

Background

More details on the topics addressed in this supplementary information section may be found in the Bluefish Amendment Scoping Document (see **ADDRESSES**) and on the bluefish allocation amendment page of the Council's website at *http://www.mafmc.org/actions/bluefish-allocation-amendment.*

The Council, in cooperation with the Atlantic States Marine Fisheries Commission, has initiated this action in order to (1) update the Bluefish Fishery Management Plan (FMP) goals and objectives for bluefish management; (2) perform a comprehensive review of the bluefish sector allocations, commercial allocations to the states, and transfer processes within the Bluefish FMP; and 3) initiate a bluefish rebuilding plan. Some questions for consideration in this amendment: (1) Are the existing goals and objectives appropriate for managing the bluefish fishery; (2) is the existing allocation between the commercial and recreational sectors based on the annual catch limit appropriate for managing the bluefish fishery; (3) are the existing commercial state allocations appropriate for managing the bluefish fishery; (4) are the existing transfer processes appropriate for managing the bluefish fishery; and (5) what is the appropriate approach to take for rebuilding?

The scoping period is an important opportunity for members of the public to raise concerns related to the issues that will be considered in the amendment. The Council needs your input to identify management issues, develop effective alternatives, and identify possible impacts to be considered. Public comments early in the amendment development process will help the Council address issues of public concern in a thorough and appropriate manner. Comments can be made in writing or during the scoping hearings as described above (see **ADDRESSES**).

Following the scoping process, the Council will develop a range of management alternatives to be considered and potentially prepare an Environmental Impact Statement (EIS) to analyze the impacts of the management alternatives being considered as required by the National Environmental Policy Act. A draft EIS will be distributed for public review. During a 30-day public comment period which will include public hearings, the public may comment on any aspect of the draft EIS. Following a review of the comments, the Council will then choose preferred management measures for submission with the Final EIS to the Secretary of Commerce to publish a proposed and then final rule. An additional comment period will be available during the rulemaking process.

Scoping Hearings

The Council will take and discuss scoping comments on this amendment at the following eleven supplemental scoping meetings dates and locations:

1. Thursday, February 13, 2020 from 7:30–9 p.m.: Massachusetts Maritime Academy, Admiral's Hall, 101 Academy Drive, Buzzards Bay, MA 02532.
2. Tuesday, February 18, 2020 from 6–8 p.m.: Ocean County Administration Bldg., Rm. 119, 101 Hooper Avenue, Toms River, NJ 08753.
3. Wednesday, February 19, 2020 from 7–8 p.m.: Delaware Dept. of Natural Resources & Environmental Control Auditorium, Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.
4. Tuesday, February 25, 2020 from 4:45–6 p.m.: Berlin Library, 13 Harrison Avenue, Berlin, MD 21811.
5. Wednesday, February 26, 2020 from 7:30–9 p.m.: University of Rhode Island Bay Campus, Corless Auditorium, South Ferry Road, Narragansett, RI 02882.
6. Wednesday, February 26, 2020 from 8–9 p.m.: Connecticut Department of Energy and Environmental Protection Marine Headquarters Boating Education Center (Rear Building), 333 Ferry Road, Old Lyme, CT 06371.
7. Thursday, February 27, 2020 from 6–7 p.m.: North Carolina Division of Marine Fisheries Central District Office, 5285 Highway 70 West, Morehead City, NC 28557.
8. Thursday, February 27, 2020 from 7–9 p.m.: Stony Brook University, School of Marine and Atmospheric Sciences, Room 120 Endeavour Hall; Stony Brook, NY 11794.
9. Monday, March 2, 2020 from 6–8 p.m.: Merritt Island Service Center Complex, 2575 N Courtenay Parkway, Room 205, Merritt Island, FL 32953.
10. Monday, March 2, 2020 from 6–7 p.m.: Virginia Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651.
11. Wednesday, March 4, 2020 from 6–7:30 p.m.: Internet webinar accessible at *http://mafmc.adobeconnect.com/bf_allocation_rebuilding_scoping/*. Audio is available by dialing 1–800–832–0736 and entering room number 5068609.

Special Accommodations

The scoping hearings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders (302–674–2331, ext 251) at least 5 days prior to the meeting date.

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

Dated: February 3, 2020.

Jennifer M. Wallace,

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

[FR Doc. 2020–02355 Filed 2–5–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR026]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Jordan Cove Energy Project, Coos Bay, Oregon

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: NMFS has hereby issued an incidental harassment authorization to Jordan Cove Energy Project, LP (JCEP) for authorization to take marine mammals incidental to pile driving associated with construction of the Jordan Cove Liquified Natural Gas (LNG) terminal and ancillary projects. This project is being tracked on the Permitting Dashboard, which can be accessed at *https://www.permits.performance.gov/permitting-projects/jordan-cove-lng-terminal-and-pacific-connector-gas-pipeline.*

DATES: The IHA is effective October 1, 2020 through September 30, 2021.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the take of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review. Under the MMPA, take is defined as meaning to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the monitoring and reporting of such takings must be set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On April 23, 2019, NMFS received a request from JCEP for an IHA to take marine mammals incidental to pile driving associated with the Jordan Cove LNG Project, Coos Bay, Oregon. The application was deemed adequate and complete on August 16, 2019. JCEP requested the take of a small number of seven species of marine mammals by Level B harassment. Neither JCEP nor

NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. The IHA is effective from October 1, 2020, through September 30, 2021.

Description of Proposed Activity

Overview

JCEP is proposing to construct an LNG terminal in Coos Bay, install a pipeline, conduct dredging to allow for a broader operational weather window, widen the TransPacific Parkway (TPP) to facilitate construction traffic, and carry out two habitat-related compensatory mitigation projects. A subset of this work would occur under the issued IHA. Pile driving is the primary means by which marine mammals within Coos Bay may be taken by Level B harassment. Work associated with the project may occur year-round beginning in October 2020; however, impact pile driving is restricted to the in-water work window established to protect salmonids (October 1 to February 15, annually). In-water vibratory pile driving may occur year-round. Pile driving at various locations may occur simultaneously; however, JCEP would only use one hammer at any given site.

Dates and Duration

LNG Terminal construction will begin in 2020, with a target in-service date in the first half of 2024. NMFS has authorized take that may occur from the pile driving activities in the first year of construction (October 1, 2020 through September 30, 2021). Conformance to the ODFW regulatory in-water work window for dredging and in-water impact driving will be implemented to reduce impacts on listed fish species per other permitting authorities. The in-water work window is the period of October 1 to February 15, and the period outside the in-water work window is February 16 to September 30.

JCEP estimates pile driving may occur over 230 days from October 1, 2020 through September 30, 2021. The majority of this pile driving would be at the water's edge but would result in elevated in-water noise levels. Pile driving may occur from approximately 10 minutes to 5 hours per day depending on the pile driving location and pile driving method. At any given location, only one hammer will be used.

Specific Geographic Region

JCEP would construct the LNG terminal and ancillary projects within Coos Bay, Oregon. Coos Bay is an approximately 55.28 km^2 estuary in Coos County, Oregon, A detailed description of the area is provided in the **Federal Register** notice of proposed IHAs (84 FR 63618; November 18, 2019) and is not repeated here. Please see that **Federal Register** notice for more information.

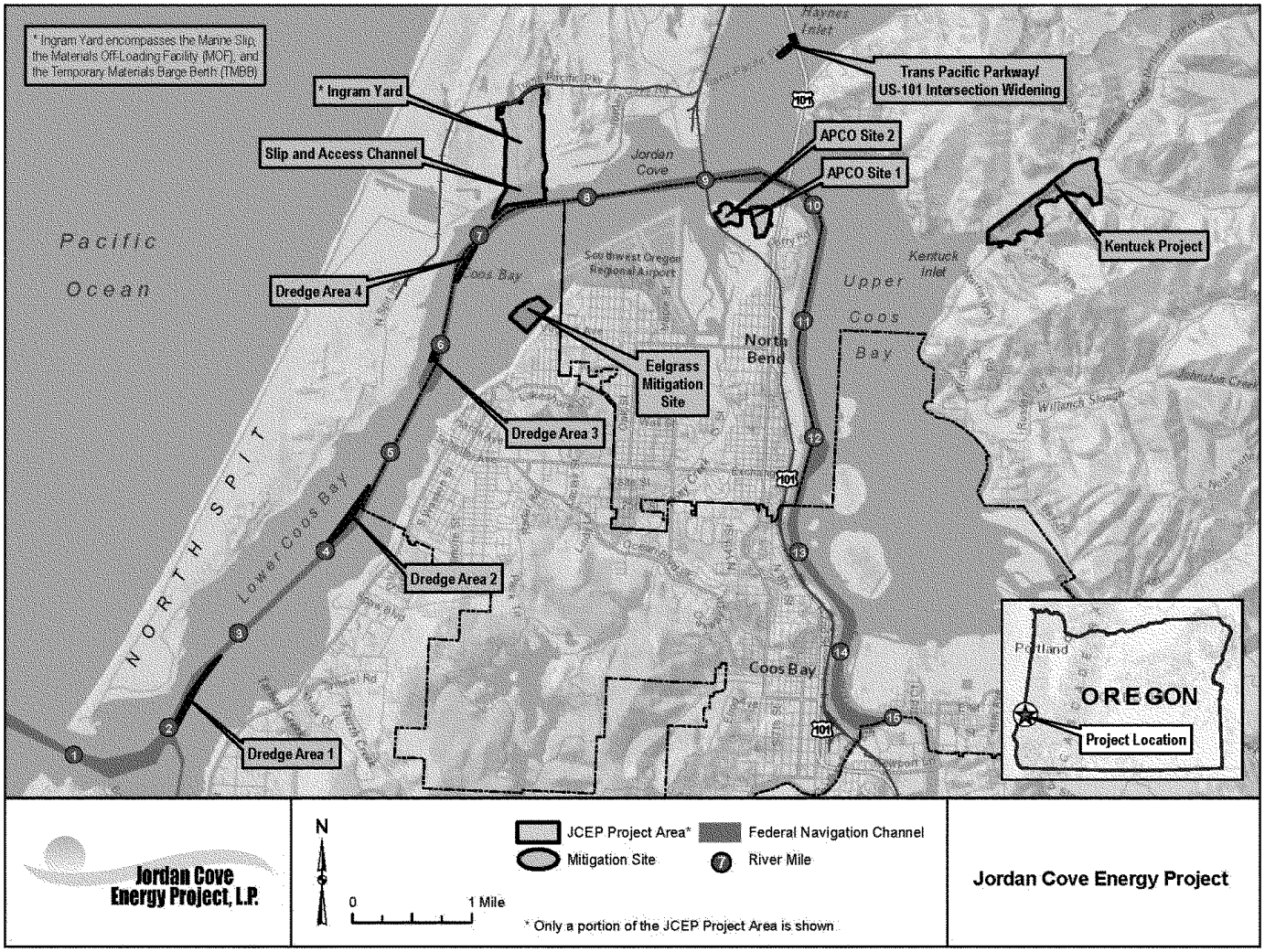

Figure 1-- Jordan Cove LNG Terminal Project Area and Location of Ancillary Activities.

Detailed Description of Specific Activity

JCEP is proposing to construct an LNG facility on the bay side of the North Spit of Coos Bay at about Channel Mile (CM) 7.3, along the existing federal navigation channel. The LNG Terminal would be capable of receiving and loading ocean-going LNG carriers, to export LNG to Asian markets, and sized to export 7.8 million metric tons of LNG per annum. The LNG Terminal is located in what is referenced as Ingram Yard in Figure 1 and would include a gas conditioning plant, a utility corridor, liquefaction facilities (including five liquefaction trains), two full-containment LNG storage tanks, and LNG loading facilities. The LNG Terminal also would include a marine slip, access channel, material offloading facility (MOF), and temporary materials barge berth (TMBB), collectively referred to as the Marine Facilities. These Marine Facilities are the focus of JCEP's application as these are within or connected to the waters of Coos Bay where marine mammals may be present.

Table 1 below summarizes the piles installed at the terminal and ancillary projects. A detailed description of the specified activity is in the **Federal Register** notice of proposed IHA (84 FR 63618; December 18, 2019) and is not repeated here. Please see that **Federal Register** notice for more information. No changes have been made to the specified activities described therein.

TABLE 1—TOTAL PILES ASSOCIATED WITH THE JORDAN COVE LNG TERMINAL AND ANCILLARY ACTIVITIES

Method	Pile type	In-the-dry vs in-water vs behind cofferdam?	Total piles	Location	Driving days [a]	Duration driving per day (min)
LNG Terminal						
Vibratory	Sheet Pile	In-the-dry	1,246	MOF (outside in water work window).	97	309
Vibratory	Sheet Pile	In-the-dry	623	MOF (inside in water work window).	48	309
Vibratory	Sheet Pile	In-the-dry	113	W. berth wall, 2.5% nearest berm (outside in water work window).	8.5	329
Vibratory	Pipe Pile	In-the-dry	6	TMBB mooring pile (inside in water work window).	10	9
Ancillary Activities (all would occur inside in-water work window)						
Impact	Timber	Behind cofferdam	1,150	TPP/US–101 intersection.	60	50
Vibratory					60	100
Vibratory	Sheet Pile	In-water	311	TPP/US–101 intersection.	16	100
Impact	Pipe Pile	In-water with BCA (for impact driving).	36	TPP/US–101 intersection.	9	20
Vibratory					9	30
Vibratory	Pipe Pile	In-water	33	APCO sites	9	30

[a] May occur concurrently with other pile-driving activities but only one pile hammer would be operating in any given area.
TPP/US–101—TransPacific Parkway/U.S. Highway 101.
MOF—Material Offloading Facility.
TMBB—Temporary Material Barge Berth.
LNG Terminal—Liquid Natural Gas Terminal.
BCA—Bubble Curtain Attenuation or equivalent.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to Jordan Cove was published in the **Federal Register** on November 18, 2019 (84 FR 63618). That notice described, in detail, Jordan Cove's proposed activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, proposed amount and manner of take, and proposed mitigation, monitoring and reporting measures. During the 30-day public comment period, NMFS received comment letters from the Marine Mammal Commission (Commission) and the Oregon Shores Conservation Coalition (OSCC) on behalf of Rogue Climate, Sierra Club, Cascadia Wildlands, Rogue Riverkeeper, Oregon Wild, Pipeline Awareness Southern Oregon, Western Environmental Law Center, Center for Biological Diversity (hereafter collectively referred to as OSCC). Comments contained in those letters, including the Commission's recommendations, and our responses are provided here, and the comments have been posted online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* We note that OSCC made a general comment urging NMFS to implement all of the Commission's recommendations; therefore, any response directed at the Commission also satisfies OSCC comment.

Comment 1: The Commission contends that modeling conducted by JASCO to estimate distances to the Level B harassment threshold for vibratory driving sheet piles at the terminal (*i.e.,* in-the-dry) applied data that resulted in a higher broadband source level (SL) than that used for in-water vibratory pile driving (*i.e.,* 163 dB rms vs 160 dB rms, respectively); therefore, the higher SL should also be used in the in-water pile driving acoustic analysis. The Commission recommends that NMFS (1) use 163 rather than 160 dB re 1 μPa at 1 m as the SL for vibratory installation of sheet piles at TPP/U.S. 101 intersection, (2) revise the Level A and B harassment zones accordingly, and (3) re-estimate the numbers of takes of harbor seals.

Response: The purpose of JASCO's modeling was to estimate distances to NMFS Level B harassment distances from in-the-dry vibratory pile driving using a sophisticated propagation model (Appendix D in JCEP's application). JASCO's report clearly identified their propagation model incorporates, among other things, a one-third octave band SL spectrum rather than a single broadband SL to estimate distances to the Level B harassment threshold. JASCO chose the spectrum from the Port of Oakland Berth 23 project and reported the one-third octave band SLs in their report. In contrast, JCEP modeled in-water pile driving propagation using a simple practical spreading loss model (*i.e.,* 15logR) that incorporates a single broadband SL (in this case the average, broadband SL based on various projects and provided in Caltrans (Table I.2.2)). These modeling approaches are not comparable. Spectra data for vibratory sheet pile driving is currently limited (most data sources, like Caltrans, do not provide accompanying spectral data

with their source levels) and therefore there are few one-third octave band spectra available for JASCO to apply to its sound propagation model.

Essentially, the Commission is recommending that because JASCO used the Berth 23 spectrum in its propagation model, JCEP and NMFS must limit themselves to using the single, broadband SL calculated from the Berth 23 project (which was not used in JASCO's model) and apply it to the in-water pile driving practical spreading loss model. This approach ignores all other broadband source level data available. That is, the 160 dB rms broadband SL applied to JCEP's in-water acoustic analysis represents the typical SL averaged from all data available in Caltrans and is a reasonable and justified SL. Further, 160dB rms has consistently been applied by NMFS in previous sheet pile driving projects where site specific data are absent without question from the Commission, including the recently issued IHA for the U.S. Army Corps of Engineers pile driving project in Coos Bay (85 FR 1140, January 9, 2020).

For the reasons described above, NMFS disagrees with the Commission that it is necessary to apply the single broadband SL from the Port of Oakland Berth 23 project to the in-water pile driving acoustic analysis simply because the spectrum generated for that project was used in JASCO's in-the-dry model. Therefore, we did not recalculate Level B harassment zones and as a result, did not adjust harbor seal takes based on modified harassment zones.

Comment 2: The Commission noted that the potential for Level A harassment from impact pile driving at APCO sites 1 and 2 was not analyzed. Should there be a possibility that impact driving may be necessary to install the 24-in piles at APCO Sites 1 and 2, the Commissions recommends that NMFS estimate the extents of the Level A harassment zones and revise the various tables accordingly in the FR notice and final incidental harassment authorization.

Response: JCEP has clarified that proofing 24-in piles at APCO Sites 1 and 2 with an impact hammer may occur and that the pile driving scenario would be similar to that at the US101/TPP site. Therefore, the analysis at the US101/TPP site has been applied to the APCO Sites, including implementing the same shutdown zones to avoid Level A harassment of all marine mammals; therefore, no Level A harassment is anticipated or authorized.

Comment 3: The Commission noted there is potential for vibratory hammering to occur for 80 minutes per day during installation of 24-in piles at the TPP/U.S. 101 intersection; however, JCEP (and NMFS) used a 30 minute duration in the User Spreadsheet to calculate distances to Level A harassment zones. The Commission recommends that NMFS recalculate the Level A harassment zones to account for the maximum time that vibratory installation could occur on a given day and revise Tables 9 and 10 in the **Federal Register** notice accordingly.

Response: JCEP has clarified the 80 minute duration presented in their application and subsequently carried over the proposed IHA is a typographical error. All vibratory pile driving is expected to be limited to 30 minutes per day. Therefore, NMFS has determined no further analysis is necessary.

Comment 4: The Commission recommends that NMFS finish reviewing and finalize its recommended proxy source levels for both impact and vibratory installation of the various pile types and sizes and make them available to the public as they are completed.

Response: As the Commission notes, NMFS is developing proxy source level recommendations for impact and vibratory pile driving based on all available data, and we intend to make that information available to the public as it is developed. Until that time, NMFS has advised applicants and the Commission that Caltrans 2015 represents the most complete pile driving source level compilation, and applicants should defer to these data absent any project site specific data.

Comment 5: The Commission disagrees with NMFS's application of a 7 dB source level reduction in its acoustic analysis because bubble curtains placed immediately around the pile do not attenuate ground-borne source and there are data available that indicate less sound reduction has been achieved in certain cases and NMFS is in possession of that data. The Commission recommends that NMFS (1) consult with acousticians, including those at UW–APL, regarding the appropriate source level reduction factor to use to minimize near-field (<100 m) and far-field (>100 m) effects on marine mammals or (2) use the data NMFS has compiled regarding source level reductions at 10 m for near-field effects and assume no source level reduction for far-field effects for all relevant incidental take authorizations.

Response: The Commission has raised this concern before and NMFS refers readers to our response, which may be found in the notice of issuance of an IHA to Carnival (84 FR64833, November 25, 2019), incorporated here by reference.

Comment 6: The Commission recommends that NMFS strongly encourage JCEP to collect *in-situ* data during impact pile driving of half the piles with and half without use of the bubble curtain and require JCEP to position the far-field hydrophone at least 5 m in depth and at least 100 m or 20 times the source depth away from the pile, whichever is greater.

Response: The Oregon Department of Fish and Wildlife (ODFG), NMFS, and the U.S. Fish and Wildlife Service restrict JCEP from impact pile driving without a bubble curtain to protect ESA-listed species. NMFS has no authority to override this restriction through this IHA; therefore, NMFS is not requiring JCEP to test bubble curtain effectiveness. With respect to hydrophone placement, JCEP has updated its acoustic monitoring plan to reflect the far-field hydrophone will be placed in at least 5 m water depth and at least 100 m or 20 times the source depths away from the pile, whichever is greater.

Comment 7: The Commission had concerns regarding our approach for estimating harbor seals take in the proposed IHA and provided alternative methods of calculating those take estimates. The Commission recommends that NMFS (1) use a density of (a) 16.0 seals/km^2 rather than 3 seals/km^2 for fall/winter and (b) 32.0 seals/km^2 rather than 6.0 seals/km^2 for spring and summer; (2) refrain from using JCEP's movement model; and (3) recalculate the number of Level B harassment takes of harbor seals accordingly.

Response: The Commission recommends NMFS apply harbor seal densities for both winter and summer based on winter survey data. For winter, the Commission recommends we apply the highest density value of 11.1 seals/km^2 stated in AECOM (2018) and apply a correction factor (1.53 seals; Huber *et al.,* 2001) to the number of seals used in AECOM's calculation, resulting a density of 16 seals/km^2. NMFS agrees applying a correction factor to harbor seal haulout counts is a conservative approach to estimating density and has done so in our revised take estimates for both summer and winter (see *Estimated Take* section). However, NMFS finds the density values reported in AECOM 2018 are not actually density values. AECOM inappropriately applied the opportunistic boat-based survey area (15.09 km^2), which was a separate effort than the drone-based aerial survey counts, to the haulout count data to estimate a density. Therefore, NMFS finds the density values in AECOM's

report are not accurate and that the count of 167 animals solely represents the abundance of harbor seals at the two haulout sites surveyed.

The Commission then recommended applying a spring/summer density of 32 seals/km^2 (16 *2) based on the 50 percent summer/winter density ratio NMFS originally proposed (6.2 for summer and 3.0 for winter). NMFS finds this approach ill-advised for many reasons. First, as discussed above, the values provided in AECOM 2018 are not true densities. Moreover, even if the density was accurate, it would represent seals near the bay's entrance, whereas JCEP would be conducting all in-water pile driving in areas far removed from where the winter haulout counts were conducted. More importantly, the Commission's approach is to base summer density on winter density, which essentially disregards all ODFW spring/summer data at all four haulout sites within Coos Bay (which is a good bay-wide representation of where JCEP would be working). Finally, the Commission's recommendation is to double the density in summer based on the originally proposed summer/winter density ratio, despite the fact that the Commission takes issue with the originally proposed winter density. For all these reasons, NMFS has not implemented the Commission's recommended summer and winter densities.

The Commission's recommendation also does not consider the contextual factors associated with data collection locations and pile driving locations. The Commission questions why the density in AECOM 2018 was not used as it was recently used for estimating take for another project within Coos Bay. Above, we discuss why this is not a true density; however, we also find that applying the AECOM 2018 stated ''density'' is more appropriate for the U.S. Army Corps of Engineers project as it is taking place at the jetties, which are in close proximity to the harbor seal haul-out sites where those data were collected. As discussed in the notice of proposed IHA, all in-water pile driving for the Jordan Cove project will take place at the U.S.101/TPP site (which is located in the northern part of Coos Bay, behind a berm that is fully enclosed except for two small locations), and APCO sites, which are in the eastern portion of Coos Bay, far from the bay's entrance. NMFS finds these contextual factors are important when estimating take.

NMFS further considered the Commission's overall concern that the number of harbor seals takes proposed may be an underestimate. Therefore, we adjusted harbor seal take numbers based on all appropriate survey data and project location relative to those data. First, we applied the 1.53 correction factor, as recommended by the Commission, to harbor seal haulout counts to calculate a density for both summer and winter. Our proposed IHA explained why we did not do this initially (*i.e.,* the June 2014 survey is taken during peak abundance times; however, that density is applied through the summer when seal abundance may decrease) but upon re-evaluation we determined the 1.53 correction factor is appropriately more conservative. The Commission also took issue with JCEP calculating density based on the area of Coos Bay; however, ODFW's June 2014 survey data includes counts for all four haulout sites within Coos Bay (including the single haulout near the APCO sites); therefore, applying the area of Coos Bay (55.28 km^2) to generate a harbor seal bay-wide density is appropriate. In total, this results in a spring/summer density of 9.2 seals/km^2 (333 seals observed $\times$ 1.53)/55.28).

Because the haulout survey data from AECOM 2018 only included two of the four haulout sites, as described above, we estimated haulout abundance at the two un-surveyed haulouts, based on the ratio of animals observed during the ODFW surveys (this assumes equal habitat distribution throughout the year which we have determined is reasonable). This results in a fall/winter density of 3.0 seals/km^2. We provide more detail on these calculations in the *Estimated Take* section below.

The Commission recommended NMFS not apply JCEP's movement method for estimating harbor seal take from out-of-water pile driving at the Jordan Cove terminal site and states that it results in an underestimate of take. The Commission's concern is that the movement model is a new, unique method and varies from any take estimate approaches in other authorizations. NMFS disagrees with the Commission's suggestion that ''consistency'' is a paramount consideration above others in evaluating take estimates. While consistency in use of the best available science is the goal, it may be more appropriate (and a better use of the best available science) or equally appropriate to use different inputs or methods in different circumstances. More specifically, the Commission took issue with the model description (*e.g.,* seals ''drift'') and that current speeds were applied that were slower than average swim speeds. We do not agree the Commission's issue is of scientific concern because, as described in the proposed IHA notice, this speed falls within the bounds of harbor seal swim speeds used in Navy modeling. The Commission also postulated JCEP's simple movement method does not account for any estimate of the probability of occurrence. We find this statement is not accurate, as JCEP's movement model does account for density and Level B harassment area; the same parameters included in the standard method which the Commission recommended we use as an alternative to the movement method. Lastly, we note the Commission's letter failed to recognize that JCEP conservatively applied the findings from JASCO's vibratory model for piles set back 30 ft (9 m) from the water's edge to all piles that are to be installed within 100 ft (30 m) of the water's edge, as described in our notice of proposed IHA. Therefore, the Commission's assumption the movement model underestimates takes is not supported.

For all the reasons provided above, we implemented some but not all of the Commission's specific recommendations. We applied a correction factor to harbor seal haulout counts and adjusted harbor seal densities for both the in-water (fall/winter) and out-of-water (spring/summer) work windows using the same methods as in the proposed IHA. As described in the notice of proposed IHA, NMFS finds JCEP's movement method, while innovative, is a reasonable approach to estimating take and we have continued to apply it with the adjusted densities described above and in the *Estimated Take* section.

Comment 8: The Commission recommends that NMFS revise its estimated takes of California sea lions to at least 654 and estimated takes of Steller sea lions to at least 327 because the take estimates should be based on the total number of days pile driving is expected to occur at the project sites combined, and AECOM's May 2017 survey data indicate the potential for at least two and potentially three California sea lions to occur in the project area on any given day.

Response: In our proposed IHA, NMFS estimated one California sea lion and one Steller sea lion could be observed on any given calendar day of pile driving (n = 270). To be conservative, NMFS increased the number of California sea lion that could occur on any given day to two animals based on the Commission's comment in the final IHA. However, the Commission is incorrect that 327 days of pile driving (the input if pile driving at each location occurred on independent days) should be used in our take estimate. That

approach would assume that animals are taken more than once on any given day and would be overly conservative for species that are more likely to remain near the bay's entrance and likely display seasonal use of Coos Bay. California sea lions or Steller sea lions are unlikely to be exposed to pile driving noise at the U.S. 101/TPP site given its location behind a berm; however, we conservatively included all pile driving activity in our take estimate. Also, there were no sightings of either species on AECOM's 4-day fall/winter survey; therefore, their presence during this time is likely much less than that in spring/summer. The Commission's recommendation to treat the sites independent of each other does not take these contextual factors into account and results in a gross overestimate of potential take. Therefore, 230 calendar days of pile driving is the appropriate input into our estimated take calculations. We have authorized 460 California sea lion takes (2 animals × 230 days), by Level B harassment, and retained the 230 Steller sea lion takes, by Level B harassment, as originally proposed.

Comment 9: The Commission recommends that NMFS (1) update and use its various templates for **Federal Register** notices and draft authorizations and (2) conduct a more thorough review of the notices, draft authorizations, and final authorizations to ensure accuracy, completeness, and consistency.

Response: The Commission has provided this recommendation previously. NMFS makes every reasonable effort to publish the best possible products for public comment.

Comment 10: The Commission recommends that NMFS (1) specify, in the **Federal Register** for the authorization issuance and the final authorization, that JCEP would be required to (a) conduct its activities during daylight hours only, (b) keep a running tally of both observed and extrapolated takes, and (c) delay or cease pile driving if PSOs cannot observe the entirety of the shut-down zone due to low-visibility conditions, and (2) specify in section 5(a) of the final authorization that two PSOs would be required to monitor at each site when pile-driving activities occur.

Response: The **Federal Register** notice for the proposed action (84 FR 63618, November 18, 2019) did not include a description of the time of day that the activity would take place. NMFS has noted below, in the *Changes from Proposed IHA to Final IHA* section, that the applicant has indeed clarified their intention for pile driving to occur during daylight hours. NMFS agrees that the **Federal Register** notice for a proposed action should detail whether a specified activity will take place during daylight hours only, or whether an activity may, or will, take place at night. NMFS bases its determinations on how an applicant describes their activities and expects that an applicant will carry out a project as it is described in the associated application and **Federal Register** notices. Additionally, NMFS includes here a requirement that ''should environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.'' This requirement implies that a shutdown zone should either be visible due to daylight, or an applicant must illuminate the shutdown zone to allow sufficient visibility. Therefore, NMFS does not agree that it is necessary to stipulate that the activity may only occur during daylight hours.

JCEP's Marine Mammal Monitoring Plan clearly stipulates that two PSOs will be on-site at each pile driving location. However, NMFS agrees that this description should be contained in the IHA and has done so. We have also included in the authorization that JCEP must include extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone and the percentage of the Level B harassment zone that was not visible in the draft and final reports.

Comment 11: The Commission recommends that NMFS require that JCEP report: (1) The number of strikes per pile or strikes per day in section 5(d)(ii); and (2) pulse durations associated with impact pile driving and the spectra for all pile types and installation methods in section 5(d)(iii) of the final authorization.

Response: These components are included in JCEP's acoustic monitoring plan; however, NMFS has also included the Commission's recommended components specifically in the IHA.

Comment 12: The Commission recommends that NMFS (1) stipulate that a renewal is a one-time opportunity in all **Federal Register** notices requesting comments on the possibility of a renewal, on its web page detailing the renewal process, and in all draft and final authorizations that include a term and condition for a renewal, (2) ensure that action proponents have met all renewal requirements prior to proposing to issue a renewal in the **Federal Register**, and (3) follow its own renewal process of informing all commenters on the original authorization of the opportunity to submit additional comments on the proposed renewal.

Response: NMFS' website indicates that Renewals are good for ''up to another year of the activities covered in the initial IHA.'' NMFS has never issued a Renewal for more than one year and in no place have we implied that Renewals are available for more than one year. Any given FR notice considering a Renewal clearly indicates that it is only being considered for one year. Accordingly, changes to the Renewal language on the website, notices, and authorizations are not necessary.

NMFS is also already evaluating each renewal request against the criteria clearly described on our website and is following our own renewal process of informing all commenters on the original authorization. We believe the Commission provided recommendations 2 and 3 in light of recent action wherein we inadvertently neglected to alert the Commission about a specific renewal request and the preliminary monitoring report was not available at the time of the proposed Renewal IHA. However, once we noticed the error, we republished the notice of proposed Renewal IHA (along with a preliminary monitoring report) in the **Federal Register** for that project. Therefore, NMFS is already implementing the Commission's recommendation.

Comment 13: OCSS indicated JCEP's IHA application did not consider impacts to ESA-listed marine mammals from tanker transit and incorrectly identifies certain activities (*e.g.,* land-based construction activities, channel-widening dredging activities) as not expecting to result in take of marine mammals.

Response: NMFS' IHA authorizes take of marine mammals incidental to one-year of pile driving associated with the Jordan Cove LNG Terminal; therefore, vessel transit is not part of the specified activities as the terminal would not be complete. No incidental take of ESA-listed marine mammal species was requested or expected to result from this activity and we did not authorize such in the IHA. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

With respect to other activities, as described in JCEP's application, channel-widening dredging activities would not occur under the IHA, but would occur in subsequent years. We recognize the timing description in the proposed IHA notice was not clear. JCEP will be excavating a 30-acre access channel at the terminal site (located far

from any haulout), which requires the dredging of 1.4 million cubic yards of sand and silt. At times, dredging could be conducted concurrent with pile driving. In our proposed notice, we described why dredging is not expected to result in take (*i.e.,* it is located at least 500 m from any haulout site, dredging would not occur during the pupping season, harbor seals are likely habituated to past and present routine dredging, and non-harbor seal presence in Coos Bay is rare). The proposed IHA also included a mitigation measure that JCEP must implement a shutdown of dredging should a marine mammal come within 10 m of the dredge. That measure remains in the final IHA.

On-land construction activities are located at least 3 miles (4.8 km) from any major haulout site. While it is unlikely pinnipeds would randomly haul-out near construction activities, any disturbance would likely be captured as the animal enters the water and is exposed to pile driving noise. However, to minimize disturbance, we have included a measure in the final IHA that all JCEP personnel must abide by NMFS' Marine Mammal Viewing Guidelines, maintaining a 50-yard setback from any hauled-out pinniped.

Comment 14: OCSS is concerned about the long-term, cumulative impacts associated with JCEP's project, during construction and once complete, and indicates NMFS should consider ODFW's analysis and recommendations on Jordan Cove's DEIS prior to any final decision on the proposed IHA. OCSS specifically suggests NMFS should consider ODFW's comments on the Jordan Cove DEIS regarding long-term habitat impacts such as the creation of the deepwater alcove at the proposed terminal site and eelgrass habitat impacts and the effectiveness of the proposed eelgrass mitigation plan.

Response: NMFS is a cooperating agency on the Federal Energy Regulatory Commission's EIS prepared pursuant to the National Environmental Policy Act (NEPA). The EIS considers the individual and cumulative effects of the project on all aquatic resources, including habitat and marine mammal prey species. These impacts are fully described in Chapter 4 of the FEIS. Further, NMFS evaluated impacts to ESA-listed marine mammal prey such as salmonids and is requiring a number of fish mitigation measures be implemented in the Terms and Conditions of NMFS' Biological Opinion, issued January 10, 2020. These measures include salvaging fish (through relocation), using confined and/or confined bubble curtains during pile driving to reduce the potential for fish injury, monitoring and minimize suspended sediment loads, minimizing fish kills during dredging by maintain contact between the draghead and seafloor, and successfully restoring eelgrass habitat and other tidal wetland restoration project, among other things. We refer the reader to section 2.9.3 of the Incidental Take Statement contained within the Biological Opinion for a complete list of mitigation and minimization measures.

Comment 15: OSCC commented the MMPA allows the NMFS to authorize marine mammal take only if certain conditions are met and must provide for the monitoring and reporting of such takings and must prescribe methods and means of effecting the ''least practicable impact'' on the species or stock and its habitat.

Response: NMFS has provided a detailed description on how we reached our conclusion that taking under the IHA would have a negligible impact on marine mammals species and stocks and would satisfy the small numbers standard. We have also provided mitigation, monitoring and reporting requirements JCEP must adhere to in the IHA.

Comment 15: OSCC questioned whether the construction dates contained within the IHA request are accurate. The OSCC notes that in May 2019, the Oregon Department of Environmental Quality denied JCEP's request for Clean Water Act Section 401 Certification and therefore implied construction is unlikely to begin in October 2020.

Response: Any IHA issued by NMFS is only valid for otherwise lawful activities. If JCEP does not begin construction due to a permitting delay, harassment of marine mammals incidental to the specified activity would not occur. On January 16, 2020, JCEP indicated to NMFS that the construction start date in the IHA application (October 1, 2020), remains valid and therefore, the IHA reflects that anticipated start date.

Comment 16: OSCC commented that the Applicant's materials appear to underestimate the impacts of noise on Pacific harbor seals and other identified marine mammal species in Coos Bay.

Response: OSCC is concerned pile driving (impact and vibratory) will lead to fish kills (including those piles driven in-the-dry) and marine mammal impacts will be similar to those demonstrated during offshore wind farm construction in Europe. OSCC cites modeled noise levels from offshore wind farm construction (250 dB peak-peak @ 1m; Bailey *et al.,* 2010) to justify this comment. In that study, the authors recorded noise levels in Moray Forth, Scotland, during installation of two 88 m tall wind turbines. Each pile required 5000–7000 strikes. The turbines were mounted on four-legged steel jackets fixed to the seabed using four (1.8 m diameter) tubular steel piles.

There are several issues with OSCC's argument. Foremost, OSCC's comparison between noise levels, an associated impacts to marine mammals and their prey, generated from installing 1.8 m diameter piles in the North Sea to the proposed project (sheet piles and 24-in piles in an estuary) are in no-way analogous, with much more sound produced by the former. In addition, the North Sea wind farm is located in an area far from everyday human disturbance (other than shipping traffic). In contrast, animals residing within Coos Bay are subjected to daily human disturbance in all forms. Given the difference in baseline noise/disturbance exposure, we would expect the North Sea marine mammals to react more strongly to new stimuli than habituated marine mammals in Coos Bay.

Furthermore, OCSS cited noise levels that Bailey *et al.,* (2010) clearly indicates are likely not accurate. Bailey *et al.* (2010) states the modeled 250 dB peak-peak SL probably greatly over-estimates the actual source as inspection of the data highlights that this fit exceeds the majority of the measured data at close range and source level calculated for the subset of data closest to the pile-driving (up to 1 km) was 226 dB re 1 μPa at 1 m (95% CI ± 14.2), which is similar to that predicted (225 dB re 1 μPa at 1 m) in the Environmental Statement (Talisman, 2005).

NMFS conducted a full analysis of the potential for marine mammal auditory injury and harassment based on NMFS' thresholds, which represent the best available science. At the terminal, JCEP conservatively applied findings from JASCO's acoustic analysis for piles set back 30 ft (9 m) from the water's edge to all piles within 100 ft (30 m) of the water's edge—a very conservative approach. There is no potential for PTS from piles driven at the terminal and where there is a small potential for PTS from piles driven in-water, JCEP will implement shutdown zones greater than the most conservative PTS isopleths. We also were conservative in estimating the potential for harassment, as described in the *Estimated Take* section. For these reasons, NMFS does not agree we have underestimated the impacts of noise on marine mammals incidental to pile driving.

Comment 17: OCSS suggested NMFS should give further consideration to the

potential injury to marine mammals likely to result from LNG tanker transit because the pile driving associated with the proposed marine facilities is meant to facilitate LNG tanker transit to and from the proposed LNG Terminal.

Response: Under the MMPA, NMFS is required to assess the impacts to marine mammals from a specified activity. Here, the activity evaluation, and for which take was requested and is authorized, is limited to pile driving during the effective period of the IHA. No tanker transit would occur during the effective dates of the IHA as the terminal would not be complete.

Changes From Proposed IHA to Final IHA

The most substantive change since we published the Notice of proposed IHA, described above and in the *Estimated Take* section, is the increase in the Level B harassment take numbers for harbor seals from 8,754 to 13,984 and California sea lions from 230 to 460. In addition, we expanded the shutdown zones at the APCO sites to account for the potential for impact pile driving at these locations (not originally considered in the proposed IHA). We also included additional monitoring and reporting conditions in the IHA, some of which were reflected in JCEP's application and marine mammal and acoustic monitoring plans but were not contained within the proposed IHA. These additions include stipulating at least two PSOs must be stationed at each pile driving location and the entire shutdown zone must be visible during pile driving, reporting extrapolated takes in the draft and final reports, and reporting specific acoustic monitoring data, including, but not limited to, the number of impact driving strikes of the pile being measured and spectra. None of these modifications affect our negligible impact or small numbers determinations.

Description of Marine Mammals in the Area of Specified Activities

Systematic marine mammal surveys in Coos Bay are limited; therefore, JCEP conducted seasonal multi-day surveys in support of the IHA application and relied on Oregon Department of Fish and Wildlife (ODFW) aerial surveys as well as anecdotal reports (*e.g.,* media reports) to better understand marine mammal presence in Coos Bay. Based on these data, seven marine mammal species comprising seven stocks have the potential to occur within Coos Bay during the project.

Table 2 lists all species with expected potential for occurrence in Coos Bay and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR) values, where known. Additional detail regarding the affected species and stocks, including local occurrence data in Coos Bay is fully described, in detail, in our notice of proposed IHA (84 FR 63618, December 18, 2019) and that information is not repeated here.

TABLE 2—MARINE MAMMAL SPECIES POTENTIALLY PRESENT WITHIN COOS BAY DURING THE JORDAN COVE LNG PROJECT CONSTRUCTION

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	N, N	26,960 (0.05, 25,849, 2016)	801	139
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer Whale	*Orcinus orca*	West Coast Transient	N, N	521 (-, 243, 2012)	2.4	0
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Northern CA/Southern OR	N, N	35,769 (0.52, 23,749, 2011)	475	≥0.6
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Northern elephant seal	*Mirounga angustirostris*	California breeding	N, N	179,000 (n/a, 81,368, 2010)	4,882	8.8
Steller sea lion	*Eumetopias jubatus*	Eastern U.S	N,N	43,201 (-, 43,201, 2017)	2,592	113
California sea lion	*Zalophus californianus*	U.S	N, N	257,606 (n/a, 233,515, 2014)	14,011	≥321
Family Phocidae (earless seals):						
Pacific harbor seal	*Phoca vitulina*	Oregon/Washington Coastal	N, N	24,732 (unk, -, 1999)[5]	unk	unk

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] The minimum population estimate (NMIN) for the West Coast Transient stock of killer whales is derived from mark-recapture analysis for West Coast transient population whales from the inside waters of Alaska and British Columbia of 243 whales (95% probability interval = 180–339) in 2006 (DFO 2009), which includes animals found in Canadian waters.

[5] Because the most recent abundance estimate is >8 years old (1999), there is no current estimate of abundance available for this stock. However, for purposes of our analysis, we apply the previous abundance estimate (24,732) which accounts for animals in water during aerial surveys.

Potential Effects of Specified Activities on Marine Mammals and their Habitat

We provided discussion of the potential effects of the specified activity on marine mammals and their habitat in our **Federal Register** notice of proposed IHA (84 FR 63618; November 18, 2018). Therefore, we do not reprint the information here but refer the reader to that document. That document included a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat, as well as general background information on sound. The *Estimated Take* section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section and the material it references, the *Estimated Take* section, and the *Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of small numbers and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, Section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to pile driving. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*e.g.,* shutdown zone measures) discussed in detail below in the Mitigation section, Level A harassment is neither anticipated nor authorized.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (*e.g.,* hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

JCEP's proposed activity includes the use of continuous, non-impulsive (vibratory pile driving) and intermittent, impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms), respectively, are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive).

These thresholds are provided in Table 3 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	$L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	$L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	$L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	$L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	$L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	$L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	$L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	$L_{E,PW,24h}$: 201 dB.

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT—Continued

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Otariid Pinnipeds (OW) (Underwater)	$L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	$L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways *(i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

JCEP investigated potential source levels associated with their proposed pile driving activities. For piles driven in-water, JCEP used data from Caltrans (2015) and considered use of bubble curtains during impact driving to estimate source levels and in consideration of use of bubble curtains (required per ODFW regulations) and derive estimated distances to the appropriate NMFS Level B harassment isopleth (160 dB for impact driving, 120 dB for vibratory driving) using a practical (15logR) spreading model (Table 4).

TABLE 4—ESTIMATED SOURCE LEVELS FOR PILES DRIVING AND CORRESPONDING LEVEL B HARASSMENT ISOPLETHS AND AREAS

Pile type/method/location	Source levels at 10 meters (dB)			160/120 dB RMS threshold (Level B harassment)	
	Peak	RMS	SEL	Distance to Level B threshold (m) [2]	Area (sq. km) [2]
LNG Terminal					
Sheet piles/24-in pipe piles (in-the-dry)	See Appendix D in JCEP's application			1,914	2.49.
Ancillary Activities					
24-inch Pipe Piles at TPP/US–101– Impact with BCA	[1] 196	[1] 183	[1] 170	341	0.136.
14-inch Timber Piles at TPP/US–101– Impact within cofferdam	180	170	160	46	0.002.
24-inch Pipe Piles at TPP/US–101, and APCO sites—Vibratory	.....	165	165	10,000	TPP/US101—1.18 APCO—0.40.
14-inch Timber Piles at TPP/US–101—Vibratory	.....	162	162	6,310	1.18.
Sheet Piles at TPP/US–101—Vibratory	.....	160	160	4,642	1.18.

[1] Assumes a 7dB bubble curtain reduction from unattenuated sources in Caltrans (2015).
[2] Distance to threshold is calculated whereas area accounts for cutoffs from land.

For piles driven close to the water's edge (within 100 feet) but out-of-water (in water laden sediments) at the MOF, JCEP contracted JASCO to conduct more sophisticated acoustic modeling to determine if sound propagation through the sediment would contribute to elevated noise levels in-water above NMFS harassment thresholds. Appendix D in JCEP's application contains the full modeling report for vibratory pile driving, respectively, near the water's edge (within 9 m (30 feet)) at the MOF (note Appendix C contains impact pile driving model; however, no impact driving piles in-the-dry would occur under the IHA). The model methods, in summary, included use of a full-wave numerical sound propagation model to simulate the transmission of vibratory pile driving noise (based on one-third octave band levels) through water-saturated soils into the water. One-third-octave band source levels for vibrating sheet piles were based on published hydrophone measurements of in-water sheet pile driving.

To model sound propagation from vibratory pile driving, JASCO used a modified version of the RAM parabolic-equation model (Collins 1993, 1996). The environmental data and source levels were input to underwater noise modeling software to estimate the underwater noise received levels (RL) that would be present in the water near the pile driving. The maximum modeled Level B harassment threshold distance for vibratory pile driving in-the-dry at the LNG Terminal site is 1,914 m. We note Jasco conservatively applied the findings from the vibratory model for piles set back 30 ft (9 m) from the water's edge to all piles that are to be installed within 100 ft (30 m) of the water's edge. The model predicted that the Level A harassment thresholds for

all hearing groups would not be reached during vibratory pile driving at the Terminal (all in-the-dry piles) when considering five hours of vibratory pile driving per day (see Table 5–2 in Appendix B in JCEP's application).

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that an ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth from in-water sources that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as pile driving, NMFS User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that exact distance the whole duration of the activity, it could incur PTS. Inputs used in the User Spreadsheet for all the in-water pile driving work and the resulting isopleths are reported in Table 5. We note none of the peak source levels exceed any Level A harassment threshold.

TABLE 5—NMFS USER SPREADSHEET INPUTS FOR IN-WATER PILE DRIVING

	User spreadsheet input				
	24-In steel impact	14-In timber impact	24-In steel vibratory	Sheet vibratory	14-in timber vibratory
Spreadsheet Tab Used	(E.1) Impact pile driving	(E.1) Impact pile driving	(A) Non-Impulse- Stat-Cont.	(A) Non-Impulse- Stat-Cont.	(A) Non-Impulse- Stat-Cont.
Source Level (Single Strike/shot SEL/rms).	170 dB	160 dB	165 dB	160 dB	162 dB.
Weighting Factor Adjustment (kHz).	2 kHz	2 kHz	2.5 kHz	2.5 kHz	2.5 kHz.
a) Number of strikes per pile	200	100	N/A	N/A	N/A.
a) Number of piles per day or activity duration.	4	20	0.5 hours	1.67 hours	1.67 hours.
Propagation (xLogR)	15	15	15	15	15.
Distance of source level measurement (meters).	10	10	10	10	10.

The resulting Level A isopleths for in-water pile driving for each marine mammal hearing group are presented in Table 6 (the following discussion does not apply to in-the-dry piles as that was modeled by Jasco). The User Spreadsheet calculates a very small zone (less than 6 m) when considering 1.67 hours of vibratory driving piles in-water (this time does not include time it takes to reset the hammer to new piles) and JCEP would implement a minimum 10 m shutdown zone. Therefore, NMFS has determined there is no potential for Level A take during any of the vibratory pile driving scenarios. During impact hammering in water (which occurs only at the TPP/US–101 and APCO sites), the potential for Level A take remains very small; however, it is greater than during vibratory driving. JCEP anticipates it could install up to 20 14-in timber piles per day. This could take several hours over the course of the entire day to reset piles; however, the resulting isopleth for all 20 piles is less than 56 meters for all species. When considering the installation of five 14-in timber piles (a more reasonable but still lengthy amount of time when considering animal movement), the Level A isopleth distance is also very small. Similarly, impact driving 24-in steel pipe piles at the TPP/US–101 site when considering the installation of four piles per day results in a small Level A harassment distance when using the User Spreadsheet. JCEP proposes to install 36 24-in piles over 9 days at this location to construct the work access bridge. The 36 piles installed at the TPP/US–101 site are located in an area that is behind a berm with infrequent harbor seal presence. For a seal to incur PTS, it must remain 63 m from the pile for the time it takes for four piles to be installed. These piles would only be proofed with the impact hammer; therefore, vibratory driving would occur first and then the hammer would have to be reset. In total, the amount of time it may take to install four piles is several hours. JCEP is proposing shutdown zones equal to or greater than the calculated Level A harassment isopleth distance for all pile driving. Because the zones are small and consider several hours in duration, NMFS believes the potential for Level A harassment is *de minimis* and is not proposing to issue take of any marine mammal by Level A harassment.

TABLE 6—CALCULATED LEVEL A HARASSMENT ISOPLETHS BASED ON NMFS USER SPREADSHEET FOR IN-WATER PILE DRIVING

Project element requiring pile installation	Source levels at 10 meters (dB)		Distance to level A threshold [1] (m)				
	Peak [2]	RMS (vibratory)/SEL (impact)	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocids	Otariids
LNG Terminal							
Sheet Piles at MOF/South West Berth wall and 24-inch TMBB Mooring Piles—Vibratory (in water/in the dry)	—[3]	—[3]	NE	NE	NE	NE	NE

TABLE 6—CALCULATED LEVEL A HARASSMENT ISOPLETHS BASED ON NMFS USER SPREADSHEET FOR IN-WATER PILE DRIVING—Continued

Project element requiring pile installation	Source levels at 10 meters (dB)		Distance to level A threshold [1] (m)				
	Peak [2]	RMS (vibratory)/SEL (impact)	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocids	Otariids
Ancillary Activities							
24-inch Pipe Piles at TPP/US–101—Impact with BCA	201	170 SEL	117.0	4.2	139.3	62.6	4.6
14-inch Timber Piles at TPP/US–101—Impact within cofferdam	180	160 SEL	46.4	1.7	55.3	24.8	1.8
24-inch Pipe Piles at, TPP/US–101 and APCO sites—Vibratory in water	191	165 RMS	8.0	0.7	11.8	4.8	0.3
14-inch Timber Piles at TPP/US–101—Vibratory within cofferdam	172	162 RMS	11.2	1.0	16.5	6.8	0.5
Sheet Piles at TPP/US–101—Vibratory in water	175	160 RMS	8.2	0.7	12.2	5.0	0.4

[1] Level A thresholds are based on the NMFS 2018 Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing; cSEL threshold distances are shown. See footnote 3 below.
[2] All distances to the peak Level A harassment thresholds are not met.
[3] Since these piles will be driven on land, source values at 10m are not available; distances are calculated by JASCO modeling.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

Harbor Seals

Over the last several decades, intermittent and independent surveys of harbor seal haul-outs in Coos Bay have been conducted. The most recent aerial survey of haul-outs in Washington and Oregon occurred in 2014 by ODFW. Those surveys were conducted during a time when the highest number of animals would be expected to haul out (*i.e.,* the latter portion of the pupping season [May and June] and at low tide). Based on logistic population growth models, harbor seal populations of the Oregon Coast had reached carrying capacities during the late 1980s and early 1990s (Brown *et al.* 2005). Using these data, an estimation of harbor seal density within Coos Bay can be made by simply dividing the area of the Coos Bay estuary by the estimated abundance at all four haul-out sites.

The Coos Bay estuary has an area of 55.28 square kilometers, as measured using geographic information system (GIS) files available from the Coastal Atlas (2018). We used the ODFW 2014 June aerial survey data collected at all four major haulout sites throughout the Bay yielding 333 observed individuals to estimate harbor seal density in Coos Bay during the February 15–September 30 timeframe. In the proposed IHA, we did not apply the corrected abundance of 509 seals because those data are collected during times with higher abundance than the rest of the season. Therefore, we used the straight counts which, when considering a timeframe of February through September, is likely more representative of long-term abundance. The resulting density is 6.2 seals/km². While we feel this remains adequate, we recognize a level of uncertainty with how harbor seals move throughout the estuary (*e.g.,* how many times a day they may transit past the terminal) and the inability to distinguish individual seals in the field; therefore, to be conservative we applied the 1.53 correction factor (Huber *et al.,* 2001) to ODFW's June harbor seal count resulting in a density of 9.2 seals/km² (509 seals/55.28 km²).

To determine a fall/winter denisty for harbor seals, we applied seal count data based on AECOM's November/December 2018 survey. This survey included 3 days of aerial (drone) flyovers at the Clam Island and Pigeon Point haul-outs. In addition, AECOM separately conducted vessel-based transect surveys over a 3-day period and opportunistically logged marine mammal sightings. However, in their report, AECOM inappropriately applied the boat-based survey area to the harbor seal count data; therefore, we did not apply the density stated in AECOM's report. We also recognized the counts were only conducted at two of the four haulout sites and that these haulout sites are near the Bay's entrance channel. Therefore, assuming equal seal distribution between haulouts throughout the year, we estimated how many harbor seals may have been counted at South Slough and Coos Port by AECOM based on the ratio of seals observed at all four haulouts in the summer. We believe assuming the ratio of seals using each haulout is likely consistent throughout the year is reasonable because of the likely resident status of harbor seals in the Bay year round and there are no known changes in the availability of the habitat for using throughout the year.

In the notice of proposed IHA, we estimated the winter density of harbor seals to be 3.0 seals/km² based on 167 harbor seals hauled out at the Clam Island and Pigeon Point sites on any one day of the AECOM surveys. However, as described above, when accounting for seals that may have been hauled out at the other two sites, we increased that density to 6.0 seals/km² in the final IHA. Based on all ODFW data, the average ratio of total seals seen at Coos Port and South Slough were 18 percent (62/343) and 13 percent (44/343), respectively. We then applied these ratios to estimate abundance at these two haulout sites during the fall/winter season based on the 167 seals observed at Clam Island and Pigeon Port (n = 167) resulting in a total of 219 seals at all four haulout sites (167 seals at Clam Island and Coos Port + (167*0.18) + (167*0.13)). Multiplying by the 1.53 correction factor results in a total of 334 seals (219*1.53). Dividing that seal abundance by the area of Coos Bay results in fall/winter density of 6.0 seals/km² (334 seals/55.28 km²) which we applied to the October 1–February 15th work window.

Other Pinnipeds

No data are available to calculate density estimates for non-harbor seal pinnipeds; therefore, JCEP applies a presence/absence approach considering group size for estimating take for California sea lions, Steller sea lions, and Northern elephant seals. As described in the *Description of Marine Mammals* section, no haulouts for California sea lions and Steller sea lions

exist within Coos Bay where harassment from exposure to pile driving could occur; however, these species do haul out on the beaches adjacent to the entrance to Coos Bay. These animals forage individually and seasonal use of Coos Bay have been observed, primarily in the spring and summer when prey are present. For this reason, JCEP estimates two California sea lions and one Steller sea lion may be present each day of pile driving (270 days). Northern elephant seals are not common in Coos Bay and also forage/travel individually. JCEP estimates one individual may be present within a given ensonified area greater than the NMFS harassment threshold one day for every seven days of pile driving.

Cetaceans

Similar to pinnipeds other than harbor seals, it is not possible to calculate density for cetaceans in Coos Bay as they are not common. Therefore JCEP estimates take based on a presence/absence approach and considers group size. During migration, gray whales species typically travels singly or as a mother and calf pair. This species has been reported in Coos Bay only a few times in the last decade and thus take of up to two individuals is requested as a contingency. The typical group size for transient killer whales is two to four, consisting of a mother and her offspring (Orca Network, 2018). Males and young females also may form small groups of around three for hunting purposes (Orca Network, 2018). Previous sightings in Coos Bay documented a group of 5 transient killer whales in May 2007 (as reported by the Seattle Times, 2007) and a pair of killer whales were observed during the 2017 May surveys. Considering most pile driving would occur outside the time period killer whales are less likely to be present, JCEP assumes that a group of three killer whales come into Coos Bay and could enter a Level B harassment zone for one day up to five times per year which would allow for a combination of smaller (*e.g.,* 2 animals) or larger (*e.g.,* 5 animals) groups.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

Harbor Seals

ODFW and AECOM survey data suggest approximately 300 to 400 harbor seals are resident to Coos Bay. We also anticipate there is some flux between Coos Bay haulouts and nearby coastal haulouts, which likely contributes to the higher abundance estimates during the pupping season. Given the residency patterns, the standard approach for estimating take is likely insufficient to enumerate the number of harbor seals potentially taken by the specified activity. However, we do not believe that every harbor seal in the estuary (300 to 400 individuals) would be taken every day of pile driving given distances from haulouts to Level B harassment zones and pile driving durations within a day. Therefore, an approach balancing these two extremes needed to be developed.

NMFS typically relies on a standard calculation where estimated take = density x ensonified area x number of pile driving. This is considered a static approach in that it accounts for any given moment of pile driving—a snapshot in time. Typically, this approach allows for a sufficient amount of take from a typical pile driving project and we find it suitable for the Ancillary Activities because they would be limited in duration or would occur in areas where harbor seals are not expected to traverse frequently. However, the inputs described above are less applicable (and better methods are available) for estimating harbor seal take resulting from the vibratory pile driving that is planned at the LNG Terminal, because 1) vibratory driving at the Terminal may be occurring for several hours per day, 2) Coos Bay is narrow and Level B harassment noise thresholds are expected to be exceeded across the width of Coos Bay at the Terminal, and 3) many harbor seals that haul out at Clam Island, and to a lesser extent, the other haulouts in Coos Bay, likely swim by the LNG Terminal work zone throughout the day. Because of these factors, individual animals are expected to move into the Level B ZOI throughout the day as active vibratory driving is occurring at the LNG Terminal, and harbor seal take would be underestimated without accounting for the movement of animals. Therefore, JCEP developed a calculation method whereby seals in the ''model'' are considered to move continuously past the LNG Terminal site. JCEP refers to this as the movement method.

JCEP's movement method uses the same base assumption as the typical static method described above—that harbor seals are distributed evenly across the estuary. However, this method then assumes that these evenly distributed harbor seals travel through the harassment zones and they use a current drift speed as a proxy for this drift but it could also be considered a slow swim speed (likely representative for animals milling around an estuary to which they are resident) as described below. The calculations used by JCEP to estimate harbor seal exposures (likely occurring to the same 300 to 400 individuals) is: (Seals/km^2 × (ZOI) km^2) + (Seals/km^2 × (Current) km/min × (Pile Driving) min/day × (Channel Width) km) = Seals/day. This calculation represents that take for each day is calculated by taking a snapshot of the seals that are in the Level B harassment zone when driving starts (*i.e.,* the conventional static method), and then adding to that the seals that ''flow'' into the leading edge of the ZOI for the duration of pile driving. After harbor seals flow across the leading edge of the Level B harassment zone, they are considered taken.

Although seals are active swimmers and do not drift with the current, the purpose of the method was not to characterize actual movement but to estimate how many seals may pass into a given Level B harassment zone throughout the day. The method proposed by JCEP is a method designed to model the possibility seals may come within the Level B harassment zone in greater probability than a single snapshot in time in a given day (the static calculation method described above). In their Acoustic Integration AIM model, the U.S. Navy estimates harbor seal swim speeds range from 1–4 kilometers per hour (0.27 m/sec − 1.1 m/sec) (Table B–2 in Navy, 2017). The proposed method assumes a drift speed of 0.39 m/sec (1.4 km/hour), which is within this range. We note the data from which the Navy swim speeds are derived are primarily tagging data during dives and bouts of foraging where animals are likely lunging for prey and moving quickly. Therefore, because we are looking for representative swim speeds crossing zones and these animals are resident to Coos Bay, we believe the lower end of this range is representative of average swim speeds. Further, the proposed movement method assumes seals flow in one direction whereas it is more likely seals are moving in multiple directions, potentially not crossing or taking longer to cross a Level B harassment isopleth. When considering this straight-line movement assumption and that the speed proposed is within a reasonable swim speed, NMFS finds JCEP's method is acceptable to estimate the potential for exposure. More importantly, the resulting number of exposures from this method is an equally reasonable amount of take given the specified activity (Table 7). We do not anticipate the calculated exposures to represent the number of individuals taken but that these exposures likely

will occur to the same individuals repeatedly as the population appears to be resident with some flux in abundance as evident by the lower sighting rates in winter months than near pupping season.

TABLE 7—ESTIMATED HARBOR SEAL EXPOSURES

Method	Pile type	Total piles	Location	Animal density [a]	Driving days	Mins driving per day	Level B zone area from GIS [b c] (sq. km)	Level B takes per day [a]	Total Level B takes (year 1) [b]	Calculation method
LNG Terminal Piles										
Vibratory	Sheet Pile	1,246	MOF (outside ODFW work window).	9.2	97	309	2.49	95.83	9,295.54	Movement.
Vibratory	Sheet Pile	623	MOF (inside ODFW work window).	6.0	48	309	2.49	63.13	3,030.36	Movement.
Vibratory	Sheet Pile	113	W. berth wall, 2.5% nearest berm (outside ODFW work window).	9.2	8.5	329	2.49	98.54	837.63	Movement.
Vibratory	Pipe Pile	6	TMBB mooring pile (inside ODFW window).	6.0	10	9	3.19	19.22	192.16	Static.
Ancillary Activities Piles (all inside ODFW window)										
Impact	Timber	1,150	TPP/US–101 intersection	6.0	60	50	NA	NA	NA	Static.
Vibratory	Timber	1,150	TPP/US–101 intersection	6.0	60	100	1.18	7.14	428.22	Static.
Vibratory	Sheet Pile	311	TPP/US–101 intersection	6.0	16	100	1.18	7.17	114.16	Static.
Impact	Pipe Pile	36	TPP/US–101 intersection	6.0	9	20	NA[c]	NA	NA	Static.
Vibratory	Pipe Pile	36	TPP/US–101 intersection	6.0	9	30	1.18	7.14	64.23	Static.
Vibratory	Pipe Pile	33	APCO sites	6.0	9	30	0.40	2.39	21.47	Static.
Grand Total.									13,983.77	

[a] Animal density is calculated for both in-water and out-of-water impact pile driving work windows as animal density is not uniform throughout the year.
[b] No takes are allocated to impact pile driving as vibratory pile driving, which has larger harassment isopleths, would occur on the same day.
[c] The calculated area of the Level B zone is influenced by land.

A summary of the amount of take, by species, with respect to stock size is provided in Table 8. For all marine mammal species, it is unlikely Level A harassment would occur due to implementation of shutdowns, the nature of the work and movement of animals throughout the bay. Cetaceans especially would likely move quickly through the area and JCEP would implement shutdown zones equal to most conservative Level A harassment distance based on the User Spreadsheet (*i.e.,* the output that considers the maximum amount of piles driven in one day).

TABLE 8—TOTAL AMOUNT OF ESTIMATED TAKE, PER SPECIES

Common name	Stock	Take		Percent of stock (stock size)
		Level A	Level B	
gray whale	Eastern North Pacific	0	2	<1 (26,960)
killer whale	West Coast Transient	0	15	3 (521)
harbor porpoise	Northern CA/Southern OR	0	12	<1 (35,769)
Northern elephant seal	California breeding	0	33	<1 (179,000)
Steller sea lion	Eastern U.S.	0	230	<1 (41,638)
California sea lion	U.S.	0	460	<1 (257,606)
Pacific harbor seal	Oregon/Washington Coast	0	13,984	* <2 (24,732)

* The number of takes presented here (n = 13,984) represents potential exposures to 300–400 individual harbor seals, not the number of individuals taken.

Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of

accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

JCEP's project design greatly reduces marine mammal and fisheries impacts to in-water noise. JCEP is conducting the majority of pile driving (over 90 percent) at the LNG terminal site behind a berm or in-the-dry. Further, the bulk of the terminal slip would be excavated and dredged before being connected to the estuary. Excavated material would be used to restore the former Kentuck golf course to functional wetlands. JCEP will primarily use a vibratory hammer to reduce the potential for auditory injury; pre-drill the soil at the LNG terminal to loosen and facilitate a more efficient installation and optimize vibratory driving, implement NMFS' standard soft-start procedure for impact hammer pile-driving, avoid in-water impact pile driving from February 16 through September 30 which includes the harbor seal pupping season. When in-water impact driving is necessary, JCEP will use a bubble curtain that will distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column, balance bubbles around the pile, and have the lowest bubble ring on the seabed floor. JCEP would implement shutdown zones (Table 9) equal to the Level A harassment distances as calculated based on the maximum number of piles driven per day. No shutdown zones are required for pile driving in-the-dry at the LNG terminal. These zones are all relatively small; therefore, there is little concern for unnecessary project delays. These shutdown zones will also minimize noise exposure such that the severity of any Level B harassment is minimized. If a species for which take is not authorized is observed within Coos Bay and could be exposed to pile driving noise, JCEP would implement a shutdown zone that equates to the Level B harassment zone for that activity. In addition, should environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

TABLE 9—SHUTDOWN ZONES, BY PILE DRIVING ACTIVITY AND SPECIES

Species	Impact pile driving		Vibratory pile-driving	
	Timber piles at TPP/US–101	Pipe piles at TPP/US–101 and APCO	Pipe piles, timber piles and sheet piles at TPP/US–101	Pipe piles at APCO
Shutdown Zone				
Harbor Seal	30	70	10	10
Northern Elephant Seal	30	70	10	10
California Sea Lion	10	10	10	10
Stellar Sea Lion	10	10	10	10
Gray Whale	60	140	25	30
Killer Whale	10	10	10	10
Harbor Porpoise	60	140	25	30

Based on our evaluation of the applicant's proposed measures, NMFS has determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

JCEP will implement a marine mammal monitoring plan that will include shutdown zones and monitoring areas. JCEP's Marine Mammal Monitoring Plan includes five components: (1) Conduct a preconstruction survey; (2) monitor marine mammal occurrence near the

project site during construction; (3) enforce shutdown zones (Table 9) for marine mammals; (4) record observations of marine mammals in the observable portions of the Level B harassment zones, including movement and behavior of animals; and (5) report the results of the preconstruction survey and the construction monitoring, including take numbers. Each of these components is discussed in detail in the associated Marine Mammal Monitoring Plan, provided in Appendix E of JCEP's application.

At least two protected species observers (PSOs) will be on-watch during all pile driving. Monitoring locations will be specific to each activity and may be subject to change depending on physical conditions at the site. PSOs will be positioned on either land-based structures, the shoreline, or boats, depending on activity, best vantage point, and field and safety conditions. The PSOs will be stationed to observe shut-down zone and maximum visual coverage of the Level B harassment zones.

A two-person PSO team will complete a one-time, boat-based, 2-day pre-construction survey of potential Level B harassment zones prior to pile driving activities at the LNG Terminal Marine Facilities (Table 2). A one-day survey would be conducted at the TPP/US–101 and APCO sites prior to pile driving work. The surveys will include on-water observations at each of the pile driving locations to observe species numbers and general behaviors of animals in the area. Surveys will occur no earlier than seven days before the first day of construction at each activity site.

Special attention will be given to the two closest harbor seal haul-out sites in proximity to the project area—Clam Island and Pigeon Point—as described in Section 4 of the IHA application. On each of the monitoring days, monitoring will occur for up to 12 hours (weather-dependent), to include one low-tide survey and one high-tide survey in daylight hours. A small boat will be used for the survey from various locations that provide the best vantage points. The information collected from monitoring will be used for comparison with results of marine mammal behaviors during pile-driving activities and will contribute to baseline monitoring data for the area.

Marine mammal observations will begin 30 minutes prior to the onset of pile driving. Monitoring the Level B harassment zone for a minimum of 30 minutes after pile-driving stops.

Recording marine mammal presence in the entirety of the vibratory driving Level B harassment zones is not practicable and is not planned The Level B harassment zone will be monitored out to visible distances and then using the daily density calculated for each species observed, the number of Level B harassment take will be extrapolated out to the full zone or if hydroacoustics data is available, the measured Level B harassment zone. PSOs will continue monitoring 30 minutes post pile driving each day.

A final marine mammal monitoring report shall be prepared and submitted within thirty days following resolution of comments on the draft report from NMFS. This report must contain the informational elements described in the Marine Mammal Monitoring Plan, including, but not limited to: Dates and times (begin and end) of all marine mammal monitoring, a description of construction activities occurring during each daily observation period, weather and sightability conditions, sighting data (*e.g.,* number of marine mammals observed, by species) PSO locations during marine mammal monitoring, any mitigation action, and other applicable parameters as listed in the IHA available at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* The report must also distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals, and the number of total takes estimated based on sighting capabilities.

In addition to marine mammal monitoring, JCEP, in coordination with NMFS, has developed a Hydroacoustic Monitoring Plan. This plan is designed to conduct sound source verification and verify that underwater noise thresholds are not exceeded over distances greater than predicted by the acoustic models used in JCEP's application and this analysis. For the 2020–2021 construction season, hydroacoustic monitoring will be conducted for a portion of all piles to be installed by impact or vibratory methods. In general, approximately 5 percent of each pile driving activity would be monitored, with a minimum of three and a maximum of 20 piles monitored.

Two hydrophones will be placed for each monitoring event, one placed close to the pile and one placed at a greater distance so that a transmission loss value can be measured. For in-water pile driving, the hydrophone nearest the pile will be placed at least 3H from the pile, where H is the water depth at the pile and 0.7 to 0.85H depth from the surface, or 10 meters, whichever is greater (NMFS 2012b). For all pile driving, including in-the-dry pile installation, hydrophones will be placed at least 1 meter below the surface and with a clear acoustic line-of-sight between the pile and the hydrophone. The other hydrophone will be placed at mid-column depth, at a distance at least 20 times the source depth from each pile being monitored, in waters at least 5 meters deep (NMFS 2012a). If the water velocity is 1.5 meters per second or greater, 1 to 3 meters off the bottom is recommended for near-field hydrophones and greater than 5 meters from the surface is recommended for any far-field hydrophones (FHWG 2013). A weighted tape measure will be used to determine the depth of the water. The hydrophones will be attached to a nylon cord, a steel chain, or other proven anti-strum features, if the current is swift enough to cause strumming of the line. The nylon cord or chain will be attached to an anchor that will keep the line the appropriate distance from each pile. The nylon cord or chain will be attached to a float or tied to a static line at the surface. The distances will be measured by a tape measure, where possible, or a laser range-finder. The acoustic path (line of sight) between the pile and the hydrophone(s) should be unobstructed in all cases.

The on-site inspector/contractor will inform the acoustics specialist when pile driving is about to begin, to ensure that the monitoring equipment is operational. Underwater sound levels will be monitored continuously during the entire duration of each pile being driven, with a minimum one-third octave band frequency resolution. The wideband instantaneous absolute peak pressure and sound exposure level (SEL) values of each strike, and daily cumulative SEL (cSEL) should be monitored in real time during construction, to ensure that the project does not exceed its authorized take level. Peak and RMS pressures will be reported in dB (1 μPa). SEL will be reported in dB (1 μPa^2 per second). Wideband time series recording is strongly recommended during all impact pile driving.

Underwater sound levels will be continuously monitored during the entire duration of each pile being driven. The peak, root-mean-square (RMS) (impulse level), and SEL of each strike will be monitored in real time. The cSEL also will be monitored, assuming no contamination from other noise sources. Underwater sound levels will be measured in dB re:1 μPa. JCEP will submit a draft report on all monitoring conducted under the IHA within ninety calendar days of the

completion of marine mammal and/or acoustic monitoring or sixty days prior to the issuance of any subsequent IHA for this project, whichever comes first. When applying for a subsequent IHA, JCEP will include a summary of the monitoring data collected to date with its application.

A final draft report, including data collected and summarized from all monitoring locations, will be submitted to NMFS within 90 days of completion of the hydroacoustic monitoring. The results will be summarized in graphical form and will include summary statistics and time histories of impact sound values for each pile. A final report will be prepared and submitted to NMFS within 30 days following receipt of comments on the draft report from NMFS. The report will include information of the circumstances surrounding the recordings (*e.g.,* pile size, type, number of strikes, hydrophone distance to pile, spectrum, etc.) as presented in JCEP's Hydroacoustic Monitoring Plan.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as serious injury, or mortality, JCEP must immediately cease the specified activities and report the incident to the NMFS Office of Protected Resources (301–427–8401) and the West Coast Region Stranding Coordinator (206–526–4747). The report must include the time and date of the incident; description of the incident; environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility); description of all marine mammal observations and active sound source use in the 24 hours preceding the incident; species identification or description of the animal(s) involved; fate of the animal(s); and photographs or video footage of the animal(s).

Activities must not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with JCEP to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. JCEP may not resume pile driving activities until notified by NMFS.

In the event JCEP discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), JCEP must immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Region Stranding Coordinator, NMFS. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with JCEP to determine whether additional mitigation measures or modifications to the activities are appropriate.

In the event that JCEP discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the specified activities (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), JCEP must report the incident to the Office of Protected Resources, NMFS, and the West Coast Region Stranding Coordinator, NMFS, within 24 hours of the discovery.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analyses applies to all species listed in Table 4 except for harbor seals, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. For harbor seals, there are meaningful differences in anticipated individual responses to activities, impact of expected take on the resident population in Coos Bay (all part of the Oregon/Washington stock), or impacts on habitat; therefore, we provide a supplemental analysis independent of the other species for which we have authorized take.

NMFS has identified key qualitative and quantitative factors, which may be employed to assess the level of analysis necessary to determine whether expected impacts associated with a specified activity will be negligible. These include (but are not limited to) the type and magnitude of taking, the amount and importance of the available habitat for the species or stock that is affected, the duration of the anticipated effect to the species or stock, and the status of the species or stock. When an evaluation of key factors shows that the anticipated impacts of the specified activity would clearly result in no greater than a negligible impact on all affected species or stocks, additional evaluation is not necessary. In this case, all the following factors are in place for all affected species or stocks except harbor seals:

- No takes by mortality, serious injury or Level A harassment are anticipated or authorized;
- Takes by Level B harassment are less than 3 percent of the best available abundance estimates for all stocks;
- Take would not occur in places and/or times where take would be more likely to accrue to impacts on reproduction or survival, such as within ESA-designated or proposed critical habitat, biologically important areas (BIA), or other habitats critical to recruitment or survival (*e.g.,* rookery);
- Take would occur over a short timeframe, being limited to the short duration a marine mammal would be present within Coos Bay during pile driving;
- Take would occur over an extremely small portion of species/stock range;
- The affected stocks are not known to be declining and/or are within OSP range; and
- Any impacts to marine mammal habitat from pile driving are temporary and minimal.

For all species and stocks, take, by Level B harassment only, would only occur within Coos Bay—a limited, confined area of any given stock's home range, including the Oregon/Washington stock of harbor seals. JCEP is not requesting, and NMFS is not expecting or authorizing, Level A

harassment of marine mammals incidental to the specified activities.

For harbor seals, we further discuss our negligible impact finding in the context of potential impacts to the resident population, a small subset of the Oregon/Washington coastal stock, within Coos Bay. Similar to other stocks, take by mortality, serious injury, or Level A harassment is not anticipated or proposed to be authorized; takes would occur over a very small portion of the stock's range; and the affected stocks are not known to be declining. OSP for harbor seals is currently unknown; however, the stock was previously reported to be within its OSP range (Jeffries *et al.,* 2003, Brown *et al.,* 2005).

As discussed in the *Description of Marine Mammals and Their Habitat* section, a resident population of approximately 300–400 harbor seals that belong to the Oregon/Washington Coastal stock likely reside year-round within Coos Bay. The exact home range of this sub-population is unknown but harbor seals, in general, tend to have limited home range sizes. Therefore, we can presume a limited number of harbor seals (approximately 300–400) will be repeatedly taken throughout the effective period of the IHA, though not necessarily on sequential days. It is possible a limited number of harbor seals may enter the bay occasionally (similar to occasional Steller sea lion and California sea lion presence) from nearby coastal haulouts (*e.g.,* Cape Arago); however, these seals would likely not be repeatedly exposed throughout the entire year. For those animals exposed repeatedly, these exposures would occur throughout the year but not every single day (230 days of pile driving work total). In addition, pile driving work is spread throughout the Bay, thereby varying the areas where Level B harassment may occur. Regardless, in general, repeated exposure, especially over sequential days, of harbor seals to pile driving noise could result in impacts to reproduction or survival of individuals in certain circumstances. The following discussion analyzes the potential impacts from repeated pile driving exposure to Coos Bay harbor seals and describes why impacts to reproduction or survivorship that could have an adverse impact on the stock are not anticipated.

Harbor seals within Coos Bay are currently exposed to numerous anthropogenic noise sources. Coos Bay is highly developed along its coastline. Typical noise sources within Coos Bay include U.S. Army Corps of Engineers maintenance dredging, commercial shipping and fishing vessel traffic, and recreational boating. Despite these existing anthropogenic stressors, unpublished ODFW aerial survey data indicates that harbor seals in Coos Bay have been stable and likely approach carrying capacity (Wright *et al.,* 2019, pers. comm), similar to the status of the entire stock. In the absence of recent abundance estimates throughout its range, the current population trend of the Oregon/Washington Coastal stock is unknown; however, based on the analyses of Jeffries *et al.* (2003) and Brown *et al.* (2005), both the Washington and Oregon portions of this stock were reported as reaching carrying capacity. As described in Southall *et al.* (2007), except for naïve individuals, behavioral responses depend critically on the principles of habituation and sensitization, meaning that an animal's exposure history with a particular sound and other contextual factors play a role in anticipated behaviors and consequences of those behaviors on survival and reproduction. Examples of contextual factors include proximity to a source, whether the source is approaching, and general novelty or familiarity with a source (Southall *et al.,* 2007).

AECOM's acoustic surveys indicate median background noise levels in Coos Bay are at or higher than the harassment threshold used in our analysis to estimate Level B harassment (120 dB rms). The range of background noise levels in the presence of working commercial vessels have been measured up to 164 dB rms at close but unknown distance from the source; however, we can assume those measurements were taken several tens of meters away from the vessel for safety and port access reasons. Overall, harbor seals are familiar with several anthropogenic noise sources in Coos Bay, pile driving is stationary (not perceived as approaching), and the haulout sites within Coos Bay are no less than 500 m from any pile driving location.

There are no known concentrated foraging areas around the terminal site or location of the ancillary activities. Further, JCEP would not conduct any impact pile driving during the pupping season, which would otherwise be introducing noise that has a greater potential for injury during critical life stages and when abundance and density of harbor seals are greatest.

In summary and as described above, although this small resident population is likely to be taken repeatedly throughout the year, the following factors primarily support our determination that the impacts resulting from JCEP's proposed activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival on harbor seals:

- No mortality, serious injury, or Level A harassment is anticipated or authorized.
- Exposure resulting in Level B harassment would occur in a very small part of the Oregon/Washington Coastal stock's range.
- Animals exposed would primarily be limited to the 300–400 resident harbor seals in Coos Bay, a small percentage of the overall stock (approximately 2 percent).
- No in-water impact pile driving would occur during the pupping season; therefore, no impacts to pups from this activity is likely to occur. Vibratory pile driving near the water's edge may result in noise propagation near the MOF and ancillary activities; however, pupping sites are located outside the Level B harassment ensonification areas for any pile driving activity.
- Harbor seals in Coos Bay are habituated to several sources of anthropogenic noise sources with no evidence exposure is impacting rates or recruitment and survival (as evident from steady population numbers as derived from several years of ODFW aerial survey data).
- The Oregon/Washington coastal stock is subject to very low anthropogenic sources of mortality and serious injury (*e.g.,* annual minimum level of human-caused mortality and serious injury is 10.6 harbor seals) and is likely reaching carrying capacity (Carretta, 2018).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS finds that the total taking from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors

may be considered in the analysis, such as the temporal or spatial scale of the activities.

For all stocks, the amount of authorized take is small (less than 3 percent; Table 8). Although the number of exposures of harbor seals is high, as described above, takes would likely occur to the small (approximately 300 to 400 animals) resident population of harbor seals within Coos Bay.

Based on the analysis contained herein of the proposed activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population sizes of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses from JCEP's proposed activities.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the West Coast Region Protected Resources Division, whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed marine mammal species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA is categorically excluded from further NEPA review.

Authorization

As a result of these determinations, NMFS has issued an IHA to JCEP authorizing the take, by Level B harassment only, of marine mammals incidental to pile driving associated with construction of the Jordan Cove LNG Terminal and associated ancillary activities in Coos Bay, Oregon from October 1, 2020 through September 30, 2021, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A copy of the issued IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Dated: January 31, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–02338 Filed 2–5–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Women in the Services; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Women in the Services (DACOWITS) will take place.

DATES: Open to the public Tuesday, March 3, 2020 from 8:00 a.m. to 3:00 p.m.

ADDRESSES: The address of the open meeting is the DoubleTree Crystal City, located at 300 Army Navy Drive, Arlington, Virginia, 22202.

FOR FURTHER INFORMATION CONTACT: Colonel Elaine Freeman, U.S. Army, (703) 697–2122 (Voice), 703–614–6233 (Facsimile), *roelene.e.freeman.mil@mail.mil* (Email). Mailing address is 4800 Mark Center Drive, Suite 04J25–01, Alexandria, VA 22350. Website: *http://dacowits.defense.gov.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is for the DACOWITS to receive written information and briefings on topics related to the recruitment, retention, employment, integration, well-being, and treatment of women in the Armed Forces of the United States.

Agenda: Tuesday, March 3, 2020, from 8:00 a.m. to 3:00 p.m.—Welcome, Introductions, and Announcements; Swearing-In Ceremony; Request for Information Status Update; Briefings and DACOWITS discussion; and a Public Comment Period.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public, subject to the availability of space.

Written Statements: Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the FACA, interested persons may submit a written statement to the DACOWITS. Individuals submitting a written statement must submit their statement no later than 5:00 p.m., Monday, February 24, 2020 to Mr. Robert Bowling (703) 697–2122 (Voice), 703–614–6233 (Facsimile), *osd.pentagon.ousd-p-r.mbx.dacowits@mail.mil* (Email). Mailing address is 4800 Mark Center Drive, Suite 04J25–01, Alexandria, VA 22350. If members of the public are interested in making an oral statement, a written statement must be submitted. If a statement is not received by Monday, February 24, 2020, prior to the meeting, which is the

subject of this notice, then it may not be provided to or considered by the Committee during this quarterly business meeting. After reviewing the written statements, the Chair and the Designated Federal Officer (DFO) will determine if the requesting persons are permitted to make an oral presentation. The DFO will review all timely submissions with the DACOWITS Chair and ensure they are provided to the members of the Committee.

Dated: February 3, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–02376 Filed 2–5–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Table Rock Lake Oversight Committee Meetings Notice

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of revised dates for open committee meetings and request for comments.

SUMMARY: The Department of Defense (DoD) published a notice that announced the second meeting of the Table Rock Lake Oversight Committee, which was to take place on Thursday, January 23, 2020 from 8:00 a.m. to 5:00 p.m., had been cancelled and would be re-scheduled at a later date, along with meetings three and four. DoD is publishing this notice to announce the revised schedule for Meetings 2, 3, and 4 of the Federal advisory committee meetings of the Table Rock Lake Oversight Committee (TRLOC). The meetings are open to the public. Public comments are requested.

DATES: The meetings will be held on:

Meeting 2: Thursday, March 5, 2020, 8 a.m. to 5 p.m.

Meeting 3: Wednesday, May 6, 2020, 8 a.m. to 5 p.m.

Meeting 4: Thursday, July 16, 2020, 8 a.m. to 12 p.m.

ADDRESSES: The meetings are being held at Dewey Short Visitor Center, Table Rock Lake, 4500 MO–165, Branson, MO 65616.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin McDaniels, Designated Federal Officer (DFO) for the Committee, in writing at U.S. Army Corps of Engineers, Little Rock District, Operations Division, P.O. Box 867 Little Rock, Arkansas 72203–0867, by phone at 501–324–5556, or by email at *CESWL-TRLOC-DFO@usace.army.mil.*

SUPPLEMENTARY INFORMATION: These meetings are being held pursuant to the implementation of Section 1185(c) of the Water Resources Development Act of 2016 (130 Stat. 1680) and under the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, 86 Stat. 770.), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3.150).

Purpose of the Meetings: The TRLOC is an independent Federal advisory committee established as directed by Section 1185(c) of the Water Resources Development Act of 2016 (130 Stat. 1680). The committee is advisory in nature only with duties to include providing information and recommendations to the U.S. Army Corps of Engineers, Little Rock District Engineer on revisions to the Table Rock Lake Master Plan and Shoreline Management Plan. The TRLOC may also, at the discretion of the District Engineer, review any permit to be issued under the provisions of the existing master plan and shoreline management plan until any approved revisions are finalized and become part of the formal governing documents.

Proposed Agendas:

Agenda—Meeting 2

I. Call to Order, DFO and TRLOC Chairperson
II. Public Comment Session
III. Committee Discussion/Questions/Recommendations on Master Plan
IV. Committee Discussion/Questions/Recommendations on Shoreline Management Plan
V. Adjournment

Agenda—Meeting 3

I. Call to Order, DFO and TRLOC Chairperson
II. Corps Presentation on Draft Master and Shoreline Management Plans
III. Public Comment Session
IV. Committee Discussion/Questions/Recommendations on Master Plan
V. Committee Discussion/Questions/Recommendations on Shoreline Management Plan
VI. Adjournment

Agenda—Meeting 4

I. Call to Order, DFO and TRLOC Chairperson
II. Corps Presents Final Master Plan and Shoreline Management Plan
III. Committee Questions/Comments on Final Plans
IV. Adjournment

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, each meeting is open to the public. Seating is on a first-come, first-served basis. The Dewey Short Visitor Center is readily accessible to and usable by persons with disabilities. For additional information about public access procedures, contact Mr. Kevin McDaniels, the Committee's Designated Federal Officer, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Committee, in response to the stated agenda of the open meeting or in regard to the Committee's mission in general. Written comments or statements should be submitted via email to *CESWL-TableRockSMP_FAC@usace.army.mil* or by mail to the US Army Corps of Engineers, Table Rock Lake Oversight Committee, P.O. Box 867, Little Rock, Arkansas 72203–0867. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the third meeting to be considered by the Committee. The Designated Federal Officer and the Committee Chair will review all timely submitted written comments or statements and ensure the comments are provided to all members of the Committee before the meeting. Written comments or statements received after this date will not be provided to the Committee, as their final recommendations will be submitted to the District Engineer for consideration during the third meeting. Please note that because the TRLOC operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow a member of the public to speak or otherwise address the Committee during the meeting. Members of the public will be permitted to make verbal comments during the Committee meeting only at the time and in the manner described below. A three (3) hour period will be provided near the beginning of Meeting 2 and Meeting 3 for verbal comments. In the interest of time and for allowing everyone to be heard, individuals will

be given a maximum of 2 minutes to address their comments to the TRLOC. Individuals will not be allowed to transfer time to other individuals. A court reporter will be in attendance to record the TRLOC meetings.

Dated: January 28, 2020.

Paul E. Owen,

Brigadier General, U.S. Army Commanding.

[FR Doc. 2020–02368 Filed 2–5–20; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Table Rock Lake Oversight Committee; Notice of Federal Advisory Committee Meeting; Cancellation AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of federal advisory committee meeting; cancellation.

SUMMARY: On November 21, 2019, the Department of Defense (DoD) published a notice that announced the second meeting of the Table Rock Lake Oversight Committee, which was to take place on Thursday, January 23, 2020 from 8:00 a.m. to 5:00 p.m. DoD is publishing this notice to announce that this federal advisory committee meeting has been cancelled and will be re-scheduled at a later date, along with meetings three and four.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin McDaniels, Designated Federal Officer (DFO) for the Committee, in writing at U.S. Army Corps of Engineers, Little Rock District, Operations Division, P.O. Box 867 Little Rock, Arkansas 72203–0867, by phone at 501–324–5556, or by email at *CESWL-TRLOC-DFO@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Due to circumstances beyond control of the Department of Defense (DoD) and the Designated Federal Officer, the Table Rock Lake Oversight Committee was unable to provide public notification required by 41 CFR 102–3.150(a) concerning the cancellation of its previously noticed meeting of January 23, 2020. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-day notification requirement.

On November 21, 2019 (84 FR 64307), the Department of Defense (DoD) published a notice that announced a January 23, 2020 meeting of the Table Rock Lake Oversight Committee. DoD is publishing this notice to announce that this federal advisory committee meeting has been cancelled and will be re-scheduled at a later date, along with the subsequent meetings. The rescheduled meetings will be announced in the **Federal Register**.

Dated: January 23, 2020.

Pete G. Perez,

Director, Programs Directorate.

[FR Doc. 2020–02367 Filed 2–5–20; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2576–187]

FirstLight Hydro Generating Co.; 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-project use of project lands and waters.

b. *Project No:* 2576–187.

c. *Date Filed:* November 26, 2019, supplemented on January 24, 2020.

d. *Applicant:* FirstLight Hydro Generating Co.

e. *Name of Project:* Housatonic River Hydroelectric Project.

f. *Location:* Rocky River Development (Candlewood Lake) in Fairfield County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Donald Traester, Regulatory Compliance Manager, FirstLight Hydro Generating Co., 143 West Street Ext., Suite E, P.O. Box 5002, New Milford, CT 06776, (413) 659–4416.

i. *FERC Contact:* Mark Carter, (678) 245–3083, *mark.carter@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* March 2, 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–2576–187. 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:* FirstLight Hydro Generating Co. is requesting authorization from the Commission to allow the Tax District of Candlewood Isle (applicant) to expand the footprint and number of existing residential boat docks at Candlewood Isle. The applicant currently has docks at two locations: (1) The Clubhouse (3 docks that accommodate 40 watercraft and 19 mooring locations) and (2) the tennis courts (two docks that accommodate 12 watercraft). The applicant proposes to replace the 19 existing mooring locations at the Clubhouse by extending each of the 3 existing docks to accommodate an additional 20 watercraft, and add 4 additional docks at the Tennis Courts location to accommodate an additional 72 watercraft. In all, the proposed facilities could accommodate a total of 144 watercraft, which would be a net increase of 73 boat docking locations relative to the existing conditions. The licensee states that its request is consistent with the approved Shoreline Management Plan and Boat Overcrowding Plan because, among other things, the applicant holds deeded rights to construct the boat docks.

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: January 30, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–02286 Filed 2–5–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–902–000]

sPower Energy Marketing; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of sPower Energy Marketing's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 19, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 30, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–02283 Filed 2–5–20; 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 corporate filings:

Docket Numbers: EC20–12–001.
Applicants: Gauley River Power Partners, LLC.
Description: Amendment to October 21, 2019 Application for Authorization Under Section 203 of the Federal Power Act, et al. of Gauley River Power Partners, LLC.
Filed Date: 1/30/20.
Accession Number: 20200130–5104.
Comments Due: 5 p.m. ET 2/20/20.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–72–000.
Applicants: Enel Green Power Roadrunner Solar Project II, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Enel Green Power Roadrunner Solar Project II, LLC.
Filed Date: 1/30/20.
Accession Number: 20200130–5080.
Comments Due: 5 p.m. ET 2/20/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1933–010.
Applicants: Interstate Power and Light Company.
Description: Amendment to April 19, 2019 Notification of Change in Status of Interstate Power and Light Company.
Filed Date: 1/29/20.
Accession Number: 20200129–5172.
Comments Due: 5 p.m. ET 2/19/20.

Docket Numbers: ER19–1965–001.
Applicants: Alcoa Power Generating Inc.
Description: Order Nos. 845 and 845–A Compliance Filing, et al. of Alcoa Power Generating Inc.
Filed Date: 1/30/20.
Accession Number: 20200130–5103.
Comments Due: 5 p.m. ET 2/20/20.

Docket Numbers: ER20–159–001.

Applicants: Midcontinent Independent System Operator, Inc., Pioneer Transmission, LLC.
Description: Compliance filing: 2020–01–30_Pioneer Regulatory Asset Compliance Filing to be effective N/A.
Filed Date: 1/30/20.
Accession Number: 20200130–5077.
Comments Due: 5 p.m. ET 2/20/20.

Docket Numbers: ER20–498–001.
Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.
Description: Tariff Amendment: 2020–01–30_SA 3382 OTP–NSPM Substitute FSA (J460) Hankinson-Wahpeton to be effective 2/1/2020.
Filed Date: 1/30/20.
Accession Number: 20200130–5107.
Comments Due: 5 p.m. ET 2/20/20.

Docket Numbers: ER20–500–001.
Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.
Description: Tariff Amendment: 2020–01–30_SA 3383 OTP-Crowned Ridge Wind II Substitute FSA (G736 J442) to be effective 2/1/2020.
Filed Date: 1/30/20.
Accession Number: 20200130–5109.
Comments Due: 5 p.m. ET 2/20/20.

Docket Numbers: ER20–514–001.
Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.
Description: Tariff Amendment: 2020–01–30_SA 3384 OTP-Dakota Range III Substitute FSA (J488) Hankinson-Wahpeton to be effective 2/3/2020.
Filed Date: 1/30/20.
Accession Number: 20200130–5111.
Comments Due: 5 p.m. ET 2/20/20.

Docket Numbers: ER20–515–001.
Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.
Description: Tariff Amendment: 2020–01–30_SA 3385 OTP-Deuel Harvest Substitute FSA (J526) Hankinson-Wahpeton to be effective 2/3/2020.
Filed Date: 1/30/20.
Accession Number: 20200130–5112.
Comments Due: 5 p.m. ET 2/20/20.

Docket Numbers: ER20–906–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2956R1 American Electric Power NITSA and NOA to be effective 1/1/2020.
Filed Date: 1/29/20.
Accession Number: 20200129–5151.
Comments Due: 5 p.m. ET 2/19/20.

Docket Numbers: ER20–907–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Revisions to Attachment AO to be effective 3/30/2020.
Filed Date: 1/29/20.
Accession Number: 20200129–5152.
Comments Due: 5 p.m. ET 2/19/20.

Docket Numbers: ER20–908–000.
Applicants: Grays Ferry Cogeneration Partnership.
Description: § 205(d) Rate Filing: Notice of Non-Material Change in Status & Request for NE Cat. 1 Seller Status to be effective 1/30/2020.
Filed Date: 1/29/20.
Accession Number: 20200129–5154.
Comments Due: 5 p.m. ET 2/19/20.

Docket Numbers: ER20–909–000.
Applicants: Kendall Green Energy LLC.
Description: § 205(d) Rate Filing: Notice of Non-Material Change in Status & Request for NE Cat. 1 Seller Status to be effective 1/30/2020.
Filed Date: 1/29/20.
Accession Number: 20200129–5155.
Comments Due: 5 p.m. ET 2/19/20.

Docket Numbers: ER20–910–000.
Applicants: Public Service Company of Colorado.
Description: Tariff Cancellation: Town of Center PPA—NOC Filing to be effective 4/1/2020.
Filed Date: 1/30/20.
Accession Number: 20200130–5057.
Comments Due: 5 p.m. ET 2/20/20.

Docket Numbers: ER20–911–000.
Applicants: Nevada Power Company.
Description: § 205(d) Rate Filing: Service Agreement No. 19–000.60 to be effective 1/1/2020.
Filed Date: 1/30/20.
Accession Number: 20200130–5058.
Comments Due: 5 p.m. ET 2/20/20.

Docket Numbers: ER20–912–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 607R36 Evergy Kansas Central, Inc. NITSA NOA to be effective 1/1/2020.
Filed Date: 1/30/20.
Accession Number: 20200130–5102.
Comments Due: 5 p.m. ET 2/20/20.

Docket Numbers: ER20–913–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2142R3 Golden Spread Electric Cooperative, Inc. NITSA NOA to be effective 1/1/2020.
Filed Date: 1/30/20.
Accession Number: 20200130–5114.
Comments Due: 5 p.m. ET 2/20/20.

Docket Numbers: ER20–914–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: MAIT submits OIA SA No. 4577 to be effective 3/30/2020.
Filed Date: 1/30/20.
Accession Number: 20200130–5123.
Comments Due: 5 p.m. ET 2/20/20.

Docket Numbers: ER20–915–000.
Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: ATSI submits 4 ECSAs, Service Agreement Nos. 5135, 5505, 5517, 5520 to be effective 3/30/2020.
Filed Date: 1/30/20.
Accession Number: 20200130–5125.
Comments Due: 5 p.m. ET 2/20/20.

Docket Numbers: ER20–916–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: MAIT submits OIA SA No. 4578 to be effective 3/30/2020.
Filed Date: 1/30/20.
Accession Number: 20200130–5126.
Comments Due: 5 p.m. ET 2/20/20.

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: January 30, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–02287 Filed 2–5–20; 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: PR20–26–000.
Applicants: Columbia Gas of Maryland, Inc.
Description: Tariff filing per 284.123(b),(e)/: CMD SOC Rates

effective 12–18–2019 to be effective 12/18/2019. Filing Type: 980.

Filed Date: 1/28/2020.

Accession Number: 20200128–5022.

Comments/Protests Due: 5 p.m. ET 2/18/2020.

Docket Numbers: CP20–46–000.

Applicants: Southern Natural Gas.

Description: Application for the Authorization of Abandonment for Rate Schedules X–48, X–49, X59 and X63 Southern Natural Gas Company, L.L.C under CP20–46.

Filed Date: 1/29/2020.

Accession Number: 20200129–5099.

Comments Due: 5 p.m. ET 2/19/20.

Docket Numbers: RP20–453–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Compliance filing 012820 System MAP URL Update, Compliance Filing to be effective 1/29/2020.

Filed Date: 1/28/20.

Accession Number: 20200128–5020.

Comments Due: 5 p.m. ET 2/10/20.

Docket Numbers: RP20–454–000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: § 4(d) Rate Filing: Vol. 2—Negotiated Rate Agreement—Scout Energy Group III to be effective 2/1/2020.

Filed Date: 1/29/20.

Accession Number: 20200129–5014.

Comments Due: 5 p.m. ET 2/10/20.

Docket Numbers: RP20–455–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: § 4(d) Rate Filing: Priority of Service—Clarification and Clean-Up to be effective 2/29/2020.

Filed Date: 1/29/20.

Accession Number: 20200129–5057.

Comments Due: 5 p.m. ET 2/10/20.

Docket Numbers: RP20–456–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Conoco Feb 20) to be effective 2/1/2020.

Filed Date: 1/29/20.

Accession Number: 20200129–5063.

Comments Due: 5 p.m. ET 2/10/20.

Docket Numbers: RP20–457–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Boston Gas 510798 releases eff 2–1–2020 to be effective 2/1/2020.

Filed Date: 1/29/20.

Accession Number: 20200129–5068.

Comments Due: 5 p.m. ET 2/10/20.

Docket Numbers: RP20–458–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Boston Gas 510807 releases eff 2–1–2020 to be effective 2/1/2020.

Filed Date: 1/29/20.

Accession Number: 20200129–5073.

Comments Due: 5 p.m. ET 2/10/20.

Docket Numbers: RP20–459–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Boston Gas 511109 releases eff 2–1–2020 to be effective 2/1/2020.

Filed Date: 1/29/20.

Accession Number: 20200129–5106.

Comments Due: 5 p.m. ET 2/10/20.

Docket Numbers: RP20–460–000.

Applicants: Cameron Interstate Pipeline, LLC.

Description: § 4(d) Rate Filing: Rate Schedule PAL, Tariff Updates, and Housekeeping Revisions to be effective 3/1/2020.

Filed Date: 1/29/20.

Accession Number: 20200129–5119.

Comments Due: 5 p.m. ET 2/10/20.

Docket Numbers: RP20–461–000.

Applicants: Kinder Morgan Illinois Pipeline LLC.

Description: Compliance filing Penalty Revenue Annual Report for 2019 to be effective N/A.

Filed Date: 1/29/20.

Accession Number: 20200129–5136.

Comments Due: 5 p.m. ET 2/10/20.

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: January 30, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–02293 Filed 2–5–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IS20–83–000]

Ship Shoal Pipeline Company; Notice of Technical Conference

Take notice that a technical conference will be held Wednesday, March 3, 2020 at 10:00 a.m. (Eastern Standard Time), in a room to be designated, at the offices of the Federal Energy Regulatory Commission (Commission), 888 First Street NE, Washington, DC 20426.

At the technical conference, the Commission Staff and the parties to the proceeding should be prepared to discuss all issues raised by the filing as stated by the Commission in its December 30, 2019 order.[1] All interested persons are permitted to attend.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–502–8659 (TTY); or send a fax to 202–208–2106 with the required accommodations.

For more information about this technical conference please contact Adrianne Cook at (202) 502–8849 or *adrianne.cook@ferc.gov,* or Glenna Riley at (202) 502–8620 or *glenna.riley@ferc.gov.*

Dated: January 30, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–02284 Filed 2–5–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–45–000]

Saltville Gas Storage Company L.L.C.; Notice of Application

Take notice that on January 24, 2020, Saltville Gas Storage Company L.L.C. (Saltville), 5400 Westheimer Court, Houston, TX 77056, filed an application under section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's rules and regulations to amend its certificate authorizations for its existing natural gas storage facilities located in Smyth, Scott, and

[1] *Ship Shoal Pipeline Co.,* 169 FERC ¶ 61,259 (2019).

Washington Counties, Virginia. Specifically, Saltville is requesting authorization to reduce the certificated storage working capacity at its natural gas storage facilities to 5.0 billion cubic feet (Bcf) from 5.4 Bcf, all as more fully described in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Saltville states that it is not proposing to construct, remove, or modify any facilities as part of this application. Furthermore, Saltville states that it is not proposing any changes to its rates or FERC Gas Tariff.

Any questions regarding this application should be directed to Lisa A. Connolly, Director, Rates and Certificates, Saltville Gas Storage Company L.L.C., P.O. Box 1642, Houston, Texas 77251–1642, or call (713) 627–4102, fax (713) 627–5947, or email: *lisa.connolly@enbridge.com.*

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 3 copies of filings made with the Commission and must provide a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16–4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new Natural Gas Act section 3 or section 7 proceeding.[1] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to ''show good cause why the time limitation should be waived,'' and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.[2]

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on February 20, 2020.

Dated: January 30, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–02282 Filed 2–5–20; 8:45 am]

BILLING CODE 6717–01–P

[1] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC 61,167 at 50 (2018).

[2] 18 CFR 385.214(d)(1).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–619–167]

Pacific Gas and Electric Company, City of Santa Clara, California; 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. *Type of Application:* Temporary variance of required minimum streamflows and reservoir elevation.

b. *Project No.:* 619–167.

c. *Date Filed:* December 11, 2019.

d. *Applicants:* Pacific Gas and Electric Company and the City of Santa Clara, California.

e. *Name of Project:* Bucks Creek Hydroelectric Project.

f. *Location:* The project is located on the North Fork Feather River and Bucks and Grizzly creeks in Plumas County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Jamie Visinoni, 245 Market Street, San Francisco, CA 94105, 530–894–4779.

i. *FERC Contact:* Mr. Steven Sachs, (202) 502–8666, *Steven.Sachs@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance of this notice by the Commission. 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/doc-sfiling/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–619–167.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicants request a temporary variance to reduce the required minimum flow in Bucks Creek below Lower Bucks Lake from 8 to 6 cubic feet per second (cfs) during the month of June 2020, and to pass only natural streamflow into the Grizzly Creek below Grizzly Forebay from July 1 through November 1, 2020, which may drop below the required minimum flow of 6 cfs. The applicants also request to temporarily modify the minimum flow requirements such that compliance would be determined by calculating the average of all daily flow measurements rather than complying with instantaneous measurements. The applicants propose to implement the daily average compliance protocols for the Bucks Creek streamflow from May 1 through November 1, 2020, and for the Grizzly Creek requirement from July 1 through November 1, 2020. Additionally, the applicants propose to dewater Lower Bucks Lake, taking it below its minimum required elevation of 4,966 feet from May 1 through November 1, 2020. The applicants state the variances are necessary to facilitate repairs and maintenance at the Lower Bucks dam and Grizzly forebay.

l. *Locations of the Applications:* 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. The filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* 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.

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, Motions to Intervene, or Protests:* Anyone may submit comments, a motion to intervene, or a protest in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, motions to intervene, or protests must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, MOTION TO INTERVENE, or PROTEST as applicable; (2) set forth in the heading the name of the applicant(s) and the project number(s) of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person intervening or protesting; 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. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: January 30, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–02285 Filed 2–5–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 619–164]

Pacific Gas and Electric Company and City of Santa Clara, California; Notice of Availability of the Final Environmental Impact Statement for the Bucks Creek Hydropwer Project

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for license for the Bucks Creek Hydropower Project (FERC No. 619) and has prepared a final environmental impact statement (EIS) for the project. The project is located on Bucks, Grizzly, and Milk Ranch Creeks in Plumas County, California. Portions of the project are located within the Plumas National Forest.

The final EIS contains staff's evaluations of the co-applicants' proposal and the alternatives for relicensing the Bucks Creek Hydropower Project. The final EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicants, and Commission staff.

A copy of the final EIS is available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street NE, Washington, DC 20426. The final EIS also may be viewed on the Commission's website at *http://www.ferc.gov* under the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

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.

For further information, please contact Alan Mitchnick at (202) 502–6074 or at *alan.mitchnick@ferc.gov.*

Dated: January 28, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–02351 Filed 2–5–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2019–0644; FRL–10003–63]

Agency Information Collection Activities; Proposed Renewal of an Existing Collection (EPA ICR No. 0277.20; OMB Control No. 2070–0060); Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICR, entitled: ''Application for New and Amended Pesticide Registration'' and identified by EPA ICR No. 0277.20 and OMB Control No. 2070–0060, represents the renewal of an existing ICR that is scheduled to expire on September 30, 2020. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be received on or before April 6, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2019–0644, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Callie Koller, Field and External Affairs Division, 7650P, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–8248; email address: *koller.callie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What information collection activity or ICR does this action apply to?

Title: Application for New and Amended Pesticide Registration.

EPA ICR number: 0277.20.

OMB control number: OMB Control No. 2070–0060.

ICR status: This ICR is currently scheduled to expire on September 30, 2020.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The information collected under this ICR is used by EPA to evaluate an application for the registration of a pesticide product under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). FIFRA provides EPA with the authority to regulate the distribution, sale and use of pesticides in the United States to ensure that they will not pose unreasonable adverse effects to human health and the environment. Pesticides that meet this test receive a license or ''registration.''

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to range from 14 hours to 646 hours per response, depending upon the type of activity. Estimates for the respondent's application burden for this collection of information average 194 hours per application for ''Type A'' activities (which include new active ingredients and new uses) and 14 hours per application for ''Type B'' activities (which include amendments and notifications). The burden estimate for ''Type C'' reduced risk applications, which are handled only by RD, is an average of 646 hours per response. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Respondents/Affected Entities: Entities potentially affected by this ICR are pesticide and other agricultural chemical manufacturing engaged in activities related to the registration of a pesticide product.

Estimated total number of potential respondents: 1,808.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 7,440.

Estimated total annual burden hours: 145,840–1,595,306 hours.

Estimated total annual costs: $43,675,000–$64,424,000. This includes an estimated cost of $0 for capital investment or maintenance and operational costs.

III. Are there changes in the estimates from the last approval?

There is an increase of 627 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects anticipated burden associated with several new registration-related programs that are online and anticipated to come online in the next three years. This change is an adjustment.

IV. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: January 30, 2020.

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2020–02378 Filed 2–5–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10004–93–OAR]

Alternative Methods for Calculating Off-Cycle Credits Under the Light-Duty Vehicle Greenhouse Gas Emissions Program: Applications From Ford Motor Company, American Honda Motor Company, and Nissan North America, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is requesting comment on applications from Ford Motor Company (''Ford''), Honda Motor Company (''Honda''), and Nissan North America, Inc. (Nissan) for off-cycle carbon dioxide (CO_2) credits under EPA's light-duty vehicle greenhouse gas emissions standards. ''Off-cycle'' emission reductions can be achieved by employing technologies that result in real-world benefits, but where that benefit is not adequately captured on the test procedures used by manufacturers to demonstrate compliance with emission standards. EPA's light-duty vehicle greenhouse gas program acknowledges these benefits by giving automobile manufacturers several options for generating ''off-cycle'' CO_2 credits. Under the regulations, a manufacturer may apply for CO_2 credits for off-cycle technologies that result in off-cycle benefits. In these cases, a manufacturer must provide EPA with a proposed methodology for determining the real-world off-cycle benefit. Ford, Honda, and Nissan have submitted applications that describe methodologies for determining off-cycle credits from technologies described in their applications. Pursuant to applicable regulations, EPA is making these off-cycle credit calculation methodologies available for public comment.

DATES: Comments must be received on or before March 9, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2020–0015, to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Roberts French, Environmental Protection Specialist, Office of Transportation and Air Quality, Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105. Telephone: (734) 214–4380. Fax: (734) 214–4869. Email address: *french.roberts@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

EPA's light-duty vehicle greenhouse gas (GHG) program provides three pathways by which a manufacturer may accrue off-cycle carbon dioxide (CO_2) credits for those technologies that achieve CO_2 reductions in the real world but where those reductions are not adequately captured on the test used to determine compliance with the CO_2 standards, and which are not otherwise reflected in the standards' stringency. The first pathway is a predetermined list of credit values for specific off-cycle technologies that may be used beginning in model year 2014.[1] This pathway allows manufacturers to use conservative credit values established by EPA for a wide range of technologies, with minimal data submittal or testing requirements, if the technologies meet EPA regulatory definitions. In cases where the off-cycle technology is not on the menu but additional laboratory testing can demonstrate emission benefits, a second pathway allows manufacturers to use a broader array of emission tests (known as ''5-cycle'' testing because the methodology uses five different testing procedures) to demonstrate and justify off-cycle CO_2 credits.[2] The additional emission tests allow emission benefits to be demonstrated over some elements of real-world driving not adequately captured by the GHG compliance tests, including high speeds, hard accelerations, and cold temperatures. These first two methodologies were completely defined through notice and comment rulemaking and therefore no additional process is necessary for manufacturers to use these methods. The third and last pathway allows manufacturers to seek EPA approval to use an alternative methodology for determining the off-cycle CO_2 credits.[3] This option is only available if the benefit of the technology cannot be adequately demonstrated using the 5-cycle methodology. Manufacturers may also use this option to demonstrate reductions that exceed those available via use of the predetermined list.

Under the regulations, a manufacturer seeking to demonstrate off-cycle credits with an alternative methodology (*i.e.,* under the third pathway described above) must describe a methodology that meets the following criteria:

- Use modeling, on-road testing, on-road data collection, or other approved analytical or engineering methods;
- Be robust, verifiable, and capable of demonstrating the real-world emissions benefit with strong statistical significance;
- Result in a demonstration of baseline and controlled emissions over a wide range of driving conditions and number of vehicles such that issues of data uncertainty are minimized;
- Result in data on a model type basis unless the manufacturer demonstrates that another basis is appropriate and adequate.

Further, the regulations specify the following requirements regarding an application for off-cycle CO_2 credits:

[1] See 40 CFR 86.1869–12(b).

[2] See 40 CFR 86.1869–12(c).

[3] See 40 CFR 86.1869–12(d).

• A manufacturer requesting off-cycle credits must develop a methodology for demonstrating and determining the benefit of the off-cycle technology and carry out any necessary testing and analysis required to support that methodology.

• A manufacturer requesting off-cycle credits must conduct testing and/or prepare engineering analyses that demonstrate the in-use durability of the technology for the full useful life of the vehicle.

• The application must contain a detailed description of the off-cycle technology and how it functions to reduce CO_2 emissions under conditions not represented on the compliance tests.

• The application must contain a list of the vehicle model(s) which will be equipped with the technology.

• The application must contain a detailed description of the test vehicles selected and an engineering analysis that supports the selection of those vehicles for testing.

• The application must contain all testing and/or simulation data required under the regulations, plus any other data the manufacturer has considered in the analysis.

Finally, the alternative methodology must be approved by EPA prior to the manufacturer using it to generate credits. As part of the review process defined by regulation, the alternative methodology submitted to EPA for consideration must be made available for public comment.[4] EPA will consider public comments as part of its final decision to approve or deny the request for off-cycle credits.

II. Off-Cycle Credit Applications

A. Valeo Air Conditioning Compressor With Variable Bleed Valve

Using the alternative methodology approach discussed above, Ford is applying for credits for an air conditioning compressor manufactured by Valeo that results in air conditioning efficiency credits beyond those provided in the regulations. Valeo's air conditioning compressor with variable bleed valve improves energy consumption compared to the current generation compressor technology. Current technology is a compromise of all load conditions. The variable bleed valve improves the coefficient of performance under low and mid load conditions decreasing CO_2 emissions. The variable bleed valve is designed to vary the bleed valve diameter, making it smaller to control internal control gas for improved coefficient of performance, but also be able to increase for liquid start up conditions. The optimized valves reduce losses within the A/C compressor increasing efficiency. The additional variable bleed valve improves the compressor over previous externally-controlled variable displacement compressor designs.

The credits calculated for the Valeo air conditioning compressor with variable bleed valve would be in addition to the credits of 1.7 grams/mile for variable-displacement A/C compressors already allowed under EPA regulations.[5] However, it is important to note that EPA regulations place a limit on the cumulative credits that can be claimed for improving the efficiency of A/C systems, and EPA has typically required that A/C-related technologies for which credits are sought through the off-cycle program must also comply with these limits. The rationale for the limits is that the additional fuel consumption of A/C systems can never be reduced to zero, and the limits established by regulation reflect the maximum possible reduction in fuel consumption projected by EPA for a typical A/C system. To date, EPA has required that these limits, or caps, on credits for A/C efficiency be applied to A/C efficiency credits granted under the off-cycle credit approval process. In other words, EPA has required that cumulative A/C efficiency credits for an A/C system—from the A/C efficiency regulations and those granted via the off-cycle regulations—comply with the stated limits.

The Ford application contains a detailed analysis supporting their conclusion that the variable bleed valve is complementary to other A/C efficiency technologies and, as such, should not be limited by the cap. However, the fundamental approach of the A/C efficiency improvement program is premised on limits to the overall impact of the A/C system on CO_2 and fuel economy, and EPA therefore established caps based on a finite level of improvement (*i.e.* A/C operation will always use some energy, fuel or electric power) that is achievable. These caps or limits to improvements in A/C efficiency were considered when establishing the GHG standards. Had the Agency believed that improvements beyond the menu were possible, the caps may have been different and the level of the final GHG standard may have been set to a different stringency level. While we still believe that the opportunity for improvements has a theoretical limit, we understand that technologies may exist outside of the A/C credit menu that go beyond the current cap limits and that provide real-world CO_2 reductions.

Since both the total impact of the A/C system on CO_2 used to establish the GHG standards was premised on some nominal car and truck levels not specific to any vehicle, it is difficult to use the test results on any individual technology to determine what a new cap or limit should be, since the A/C system operates with interactions across all A/C components and parts of the system. This is consistent with Ford's identification of system interactions with the Denso SAS and Valeo VBV compressors and the A/C menu technologies. The Agency believes a reasonable balance may be to continue to use the nominal values for the total impact of the A/C system (11.9 grams per mile for cars and 17.2 grams per mile for truck), but then use AC17 test results to establish a higher cap or limit on the additional technologies beyond the menu technologies. The results of the AC17 test could be used to establish a ratio of CO_2 emissions or energy used *with* the technology improvements to total A/C usage *without* the technologies. This ratio could then be used with the previously established values mentioned above for the average car or truck A/C usage impacts to establish a new, A/C system-specific, cap that accounts for the actual A/C-related emissions of the system and all the A/C efficiency technologies. This is a conceptual framework that manufacturers might use to support off-cycle petitions for A/C system credits. The Agency requests comment on this or similar approaches that make use of the AC17 test procedure to demonstrate A/C-related credits and determine an expanded cap on credits. EPA continues to evaluate Ford's rationale and will make a final decision after evaluating any public comments received on this issue.

B. High-Efficiency Alternators

Using the alternative methodology approach discussed above, Honda and Nissan are applying for credits for model years 2017 and later for off-cycle credits using the alternative demonstration methodology pathway for high-efficiency alternators. Automotive alternators convert mechanical energy from a combustion engine into electrical energy that can be used to power a vehicle's electrical systems. Alternators inherently place a load on the engine, which results in increased fuel consumption and CO_2 emissions. High efficiency alternators use new technologies to reduce the overall load on the engine yet continue

[4] See 40 CFR 86.1869–12(d)(2).

[5] See 40 CFR 86.1868–12.

to meet the electrical demands of the vehicle systems, resulting in lower fuel consumption and lower CO_2 emissions. Some comments on EPA's proposed rule for GHG standards for the 2016–2025 model years suggested that EPA provide a credit for high-efficiency alternators on the pre-defined list in the regulations. While EPA agreed that high-efficiency alternators can reduce electrical load and reduce fuel consumption, and that these impacts are not seen on the emission test procedures because accessories that use electricity are turned off, EPA noted the difficulty in defining a one-size-fits-all credit due to lack of data. Since then, however a methodology has been developed that scales credits based on the efficiency of the alternator; alternators with efficiency (as measured using an accepted industry standard procedure) above a baseline value could get credits. EPA has previously approved credits for high-efficiency alternators using this methodology for Ford Motor Company, General Motors Corporation, Fiat Chrysler Automobiles, Hyundai, Kia, and Toyota Motor Company. Details of the testing and analysis can be found in the manufacturer's applications.

III. EPA Decision Process

EPA has reviewed the applications for completeness and is now making the applications available for public review and comment as required by the regulations. The off-cycle credit applications submitted by the manufacturer (with confidential business information redacted) have been placed in the public docket (see **ADDRESSES** section above) and on EPA's website at *https://www.epa.gov/vehicle-and-engine-certification/compliance-information-light-duty-greenhouse-gas-ghg-standards.*

EPA is providing a 30-day comment period on the applications for off-cycle credits described in this notice, as specified by the regulations. The manufacturers may submit a written rebuttal of comments for EPA's consideration, or may revise an application in response to comments. After reviewing any public comments and any rebuttal of comments submitted by manufacturers, EPA will make a final decision regarding the credit requests. EPA will make its decision available to the public by placing a decision document (or multiple decision documents) in the docket and on EPA's website at the same manufacturer-specific pages shown above. While the broad methodologies used by these manufacturers could potentially be used for other vehicles and by other manufacturers, the vehicle specific data needed to demonstrate the off-cycle emissions reductions would likely be different. In such cases, a new application would be required, including an opportunity for public comment.

Dated: January 27, 2020.

Byron J. Bunker,

Director, Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2020–02370 Filed 2–5–20; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Sunshine Act Meeting

Notice of a Partially Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND DATE: Thursday, February 20, 2020 at 9:30 a.m.

PLACE: The meeting will be held at Ex-Im Bank in Room 1125, 811 Vermont Avenue NW, Washington, DC 20571.

STATUS: The meeting will be open to public observation for Item No. 1 only.

MATTERS TO BE CONSIDERED: Item No. 1 Small Business Update.

CONTACT PERSON FOR MORE INFORMATION: Members of the public who wish to attend the meeting should call Joyce Stone, Office of the General Counsel, 811 Vermont Avenue NW, Washington, DC 20571 (202) 565–3336 by close of business Monday, February 17, 2020.

Joyce Brotemarkle Stone,

Assistant Corporate Secretary.

[FR Doc. 2020–02464 Filed 2–4–20; 4:15 pm]

BILLING CODE 6690–01–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board

AGENCY: Farm Credit Administration.

ACTION: Notice, Regular Meeting.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act, of the regular meeting of the Farm Credit Administration Board (Board).

DATES: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on February 13, 2020, from 9:00 a.m. until such time as the Board concludes its business.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: Name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale Aultman, Secretary to the Farm Credit Administration Board, at (703) 883–4009. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- January 9, 2020

B. New Business

- Proposed Rule: Tier 1/Tier 2 Capital Framework—Clarifying Corrections and Revisions
- Final Rule: Criteria to Reinstate Non-Accrual Loans
- Final Rule: Eligibility Criteria for Outside Directors

Closed Session

- OSMO Periodic Report [1]

Dated: February 4, 2020.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2020–02465 Filed 2–4–20; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1222; FRS 16459]

Information Collection Approved by the Office of Management and Budget (OMB)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public

[1] Session Closed-Exempt pursuant to 5 U.S.C. Section 552b(c)(8) and (9).

information collection pursuant to the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid control number. Comments concerning the accuracy of the burden estimates and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Nicole Ongele, *Nicole.Ongele@fcc.gov,* (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1222.

OMB Approval Date: January 28, 2020.

OMB Expiration Date: January 31, 2023.

Title: Inmate Calling Services, Annual Reporting, Certification, and Consumer Disclosure Requirements.

Form Number(s): FCC Form 2301(a) and FCC Form 2301(b).

Respondents: Business or other for-profit entities.

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.

Total Annual Burden: 2,000 hours.

Total Annual Cost: No cost.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 CFR 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), 154(j), 201, 225, 276, and 303(r).

Privacy Act Impact Assessment: No impact.

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 and its delegated authority, the Bureau 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 Bureau's continued administration of the ICS data collection, the Bureau 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 Bureau, 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.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–02343 Filed 2–5–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0798 and OMB 3060–0800; FRS 16466]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of

information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid 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 April 6, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the PRA, 44 U.S.C. 3501–3520, the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0798.

Title: FCC Application for Radio Service Authorization; Wireless Telecommunications Bureau; Public Safety and Homeland Security Bureau.

Form Number: FCC Form 601.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals and households; Business or other for-profit entities; Not-for-profit institutions; and State, local or tribal governments.

Number of Respondents and Responses: 255,352 respondents and 255,352 responses.

Estimated Time per Response: 0.5–1.25 hours.

Frequency of Response: Recordkeeping requirement, third party disclosure requirement, on occasion reporting requirement and periodic reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 151, 152, 154, 154(i), 155(c), 157, 201, 202, 208, 214, 301, 302a, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 331, 332, 333, 336, 534, 535 and 554.

Total Annual Burden: 222,055 hours.

Total Annual Cost: $71,306,250.

Privacy Impact Assessment: Yes.

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: FCC Form 601 is a consolidated, multi-part application form that is used for market-based and site-based licensing for wireless telecommunications services, including public safety licenses, which are filed through the Commission's Universal Licensing System (ULS). FCC Form 601 is composed of a main form that contains administrative information and a series of schedules used for filing technical and other information. This form is used to apply for a new license, to amend or withdraw a pending application, to modify or renew an existing license, cancel a license, request a duplicate license, submit required notifications, request an extension of time to satisfy construction requirements, or request an administrative update to an existing license (such as mailing address change), request a Special Temporary Authority or Developmental License. Respondents are encouraged to submit FCC Form 601 electronically and are required to do so when submitting FCC Form 601 to apply for an authorization for which the applicant was the winning bidder in a spectrum auction.

The data collected on FCC Form 601 includes the FCC Registration Number (FRN), which serves as a ''common link'' for all filings an entity has with the FCC. The Debt Collection Improvement Act of 1996 requires entities filing with the Commission to use an FRN.

On August 3, 2017, the Commission released the WRS Reform Second Report and Order in which it consolidated the hodgepodge of service-specific renewal and permanent discontinuance rules into consolidated Part 1 rules, 1.949 and 1.953, respectively (See Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 17–105, (WRS Reform Second Report and Order)). Of relevance to the information collection at issue here, the Commission established a consistent standard for renewing wireless licenses and set forth safe harbors providing expedited renewal for licensees that meet their initial term construction requirement and remain operating at or above that level. In addition, the Commission adopted consistent service continuity rules, which provide for automatic termination of any license on which a licensee permanently discontinues service or operation.

The Commission now seeks approval for revisions to its currently approved collection of information under OMB Control Number 3060–0798 to permit (1) the collection of renewal-related information for Wireless Radio Service (WRS) licenses, and (2) the filing of requests to extend a permanent discontinuance period for good cause. Regarding renewal of WRS licenses, § 1.949(d) of the Commission's rules requires an applicant for renewal of certain WRS licenses to meet the Renewal Standard, *i.e.,* the applicant must demonstrate that over the course of the license term, the licensee provided and continues to provide service to the public, or operated and continues to operate the license to meet the licensee(s)' private, internal communications needs. A renewal applicant can meet the Renewal Standard by certifying compliance with one of the safe harbors enumerated in § 1.949(e) of the Commission's rules, or, if the applicant cannot satisfy the requirements of one of the safe harbors, the applicant must make a Renewal Showing consistent with § 1.949(f). In addition, a renewal applicant must make a Regulatory Compliance Certification certifying that it has substantially complied with all applicable FCC rules, policies, and the

Communications Act of 1934, as amended. If an applicant is unable to make this substantial compliance certification, it will need to provide an explanation of the circumstances preventing such a certification and why renewal of the subject license should still be granted.

We do not anticipate that these revisions will have any impact on the burden to complete FCC Form 601. The renewal process remains virtually unchanged for site-based licensees, which will continue to have streamlined processes for renewal under the safe harbors adopted in the WRS Reform Second Report and Order. For licensees which had to make renewal showings under the Commissions' prior, service-specific renewal rules, including 700 MHz Commercial Services, 600 MHz Service, H-Block Service, AWS–3, AWS–4, and 218–219 MHz Service, the rules now provide for streamlined renewal processes under the safe harbor provisions in § 1.949(e), which minimize the burdens on such licensees. The Commission expects that most licensees will be able to avail themselves of the streamlined safe harbor process.

Although some licensees will be required to make a renewal showing, on balance, we believe there will be no increase in the overall annual burden to complete the form. Further, the Commission's experience with requests to extend the discontinuance period for licensees in the cellular service leads us to anticipate few, if any, such requests will be filed under our new rules. Specifically, we are unaware of any requests to extend a cellular discontinuance period. Thus, we believe there will be a negligible, if any, impact on the annual burden to complete the form.

The Commission therefore seeks approval for a revision to its currently approved information collection on FCC Form 601 to revise FCC Form 601 accordingly.

OMB Control Number: 3060–0800.

Title: FCC Application for Assignments of Authorization and Transfers of Control: Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau.

Form Number: FCC Form 603.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, Individuals or households, not-for-profit institutions, and State, Local or Tribal Governments.

Number of Respondents and Responses: 2,447 respondents; 2,447 responses.

Estimated Time per Response: 0.5 hours–1.75 hours.

Frequency of Response: Recordkeeping requirement, on occasion reporting requirement and periodic reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 154, 155, 158, 161, 301, 303(r), 308, 309, 310 and 332.

Total Annual Burden: 2,759 hours.

Annual Cost Burden: $366,975.

Privacy Act Impact Assessment: Yes.

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: FCC Form 603 is a multi-purpose form that is used by radio services in Wireless Services within the Universal Licensing System (ULS). FCC 603 is composed of a main form that contains the administrative information and a series of schedules used for filing technical information. These schedules are required when applying for Auctioned Services, Partitioning and Disaggregation, Undefined Geographical Area Partitioning, and Notification of Consummation or Request for Extension of Time for Consummation. Applicants/licensees in the Public Mobile Services, Personal Communications Services, Private Land Mobile Radio Services, Broadband Radio Service, Educational Broadband Service, Maritime Services (excluding Ship), and Aviation Services (excluding Aircraft) use FCC Form 603 to apply for an assignment or transfer, to establish their parties' basic eligibility and qualifications, to classify the filing, and/or to determine the nature of the proposed service. This form is also used to notify the FCC of consummated assignments and transfers of wireless licenses to which the Commission has previously consented or for which notification but not prior consent is required. Respondents are encouraged to submit FCC 603 electronically.

The data collected on FCC 603 include the FCC Registration Number (FRN), which serves as a ''common link'' for all filings an entity has with the FCC. The Debt Collection Improvement Act of 1996 required that those filing with the Commission to use an FRN, effective December 3, 2001.

Records may include information about individuals or households, *e.g.,* personally identifiable information or PII, and the use(s) and disclosure of this information are governed by the requirements of a system of records notice or 'SORN', FCC/WTB–1, ''Wireless Services Licensing Records.'' There are no additional impacts under the Privacy Act.

On August 3, 2017, the Commission released the WRS Reform Second Report and Order in which it consolidated the hodgepodge of service-specific geographic partitioning and spectrum disaggregation rules into a consolidated Part 1 rule, 1.950 (See Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 17–105, (WRS Reform Second Report and Order)). Of relevance to the information collection at issue here, the Commission required that when portions of geographic licenses are sold, both parties to the transaction have a clear construction obligation and penalty in the event of failure.

Specifically, § 1.950(c) requires parties seeking approval for geographic partitioning, spectrum disaggregation, or a combination of both must apply for a partial assignment of authorization by filing FCC Form 603 pursuant to § 1.948 of the Commission's rules. Each request for geographic partitioning must include an attachment defining the perimeter of the partitioned area by geographic coordinates to the nearest second of latitude and longitude, based upon the 1983 North American Datum (NAD83). Alternatively, applicants may specify an FCC-recognized service area (*e.g.,* Basic Trading Area, Economic Area, Major Trading Area, Metropolitan Service Area, or Rural Service Area), county, or county equivalent, in which case, applicants need only list the specific FCC-recognized service area, county, or county equivalent names comprising the partitioned area. Additionally, applicants have the option to submit geographic data associated with applications to partition and/or disaggregate their license using a shapefile, KML or Geojson file format.

In addition, § 1.950(d) requires applicants for geographic partitioning, spectrum disaggregation, or a combination of both, to include, if applicable, a certification with their partial assignment of authorization application stating which party will meet any incumbent relocation requirements, except as otherwise stated in service-specific rules. Further, § 1.950(g) provides parties to geographic partitioning, spectrum disaggregation, or a combination of both, with two options to satisfy service-specific performance requirements (*i.e.,* construction and operation requirements). Under the first option, each party may certify that it will individually satisfy any service-

specific requirements and, upon failure, must individually face any service-specific performance penalties. Under the second option, both parties may agree to share responsibility for any service-specific requirements. Upon failure to meet their shared service-specific performance requirements, both parties will be subject to any service-specific penalties. The Commission seeks approval for revisions to its currently approved collection of information under OMB Control Number 3060–0800 to permit the collection of the additional information in connection with partial assignments of authorizations for geographic partitioning, spectrum disaggregation, or a combination of both, pursuant to the rules and information collection requirements adopted by the Commission in the WRS Reform Second Report and Order. We do not anticipate that these revisions will impact the collection filing burden.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–02344 Filed 2–5–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[EB Docket No. 04–296, PS Docket No. 15–94, FCC 19–57; FR 16456]

Agency Information Collection Activities; Proposals, Submissions, and Approvals: Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

FOR FURTHER INFORMATION CONTACT: David Munson, Attorney Advisor, Public Safety and Homeland Security Bureau, at (202) 418–2921, or by email at *David.Munson@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on December 26, 2019, OMB approved, until December 31, 2022, the information collection requirements associated with the revised testing requirements for Satellite Digital Audio Radio Service (SDARS) providers contained in the Commission's *Order* in EB Docket No. 04–296 and PS Docket No. 15–94, FCC 19–57, adopted on June 25, 2019, and released on June 27, 2019 (the Order has not yet been published in the **Federal Register**).

If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, Room 1–A620, 445 12th Street SW, Washington, DC 20554. Please include the OMB Control Number, 3060–0207, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

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 and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

OMB Control Number: 3060–0207.

OMB Approval Date: December 26, 2019.

OMB Expiration Date: December 31, 2022.

Title: Part 11, Emergency Alert System, (EAS), Order, FCC 19–57.

Form Number: N/A.

Respondents: Business and other for-profit entities, Not-for-profit institutions, and State, Local and Tribal Government.

Number of Respondents and Responses: 63,084 respondents; 3,588,830 responses.

Estimated Time per Response: 0.017 hours–100 hours for the entire collection; for the newly dopted requirements the estimated time per response is 0.017–0.68 hours.

Frequency of Response: Recordkeeping and third party disclosure requirements.

Obligation to Respond: Mandatory. The statutory authority for this information collection is contained in sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g),706, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 615.

Total Annual Burden: 140,751 hours.

Total Annual Cost: No Cost.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: Section 11.61 of the Commission's Part 11 (EAS) rules, 47 CFR 11.61, specifies weekly, monthly and periodic testing requirements with which entities subject to the EAS rules must comply. The rules adopted in the *Order* harmonize the testing requirements that apply to SDARS providers with those that apply to Direct Broadcast Satellite (DBS) providers primarily on grounds that these services are technologically similar, and that the underlying purpose of the testing rules will continue to be fully realized by applying the weekly and monthly DBS testing requirements to SDARS providers.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–02149 Filed 2–5–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday, February 11, 2020 at 10:00 a.m.

PLACE: 1050 First Street NE, Washington, DC.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Compliance matters pursuant to 52 U.S.C. 30109.

Matters relating to internal personnel decisions, or internal rules and practices.

Investigatory records compiled for law enforcement purposes and production would disclose investigative techniques.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2020–02499 Filed 2–4–20; 4:15 pm]

BILLING CODE 6715–01–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 applications 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 Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than February 20, 2020.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Orpheus Capital Limited Partnership, Steven Lange Ranzini and Dr. Joseph Lange Ranzini, as general partners; Joseph Louis Ranzini Trust dated 12/20/1989, Stephen Lange Ranzini and Dr. Joseph Louis Ranzini, as co-trustees; Stephen Lange Ranzini; Stephen Lange Ranzini and Lisa Ranzini as joint tenants with right of survivorship; University Bancorp, Inc. Employee Stock Ownership and Retirement Savings Plan, Stephen Lange Ranzini, trustee, all of Ann Arbor, Michigan; Mildred Lange Ranzini, Gainseville, Georgia; Dr. Joseph Lange Ranzini and Marjorie Joan Huiner Ranzini, joint tenants with right of survivorship; Dr. Joseph Lange Ranzini Retirement Savings Plan, Dr. Joseph Lange Ranzini, trustee, all of Waynesboro, Virginia; Angela Clare Ranzini; Angela Clare Ranzini and Christopher Ko Hu as joint tenants in common; and Christopher Ko Hu, all of Shaker Heights, Ohio;* as members of the Ranzini Family Group acting in concert to retain voting shares of University Bancorp, Inc., and thereby indirectly retain voting shares of University Bank, both of Ann Arbor, Michigan.

B. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Gale M. Hoese, Glencoe, Minnesota;* to acquire voting shares of Redwood Financial, Inc., and thereby indirectly acquire HomeTown Bank, both of Redwood Falls, Minnesota. In addition, Gale M. Hoese together with the Todd C. Hoese Revocable Trust, Waconia, Minnesota, Jonathan T. Hoese, Golden Valley, Minnesota, trustee; Security Bancshares Co., Glencoe, Minnesota; Jonathan T. Hoese, Golden Valley, Minnesota; David J. Schornack and Denise N. Schornack, both of Perham, Minnesota; Andrew Schornack and Jill Schornack, both of Rosemount, Minnesota; Tamara Jo Hoese Retka and Noah D. Retka, Glencoe, Minnesota, as members of a group acting in concert to retain voting shares of Redwood Financial Inc., and thereby indirectly retain voting shares of HomeTown Bank.

Board of Governors of the Federal Reserve System, January 31, 2020.

Ann Misback,

Secretary of the Board.

[FR Doc. 2020–02316 Filed 2–5–20; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than March 6, 2020.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *New London Bancshares, Inc., New London, Missouri;* to acquire Saints Avenue Bancshares, Inc., Saint Charles, Missouri, and thereby indirectly acquire Saints Avenue Bank, New London, Missouri.

Board of Governors of the Federal Reserve System, January 31, 2020.

Ann Misback,

Secretary of the Board.

[FR Doc. 2020–02317 Filed 2–5–20; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC–2019–0018; Docket Number NIOSH–328]

Final National Occupational Research Agenda for Healthy Work Design and Well-Being

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: NIOSH announces the availability of the final *National Occupational Research Agenda for Healthy Work Design and Well-Being.*

DATES: The final document was published on January 31, 2020 on the CDC website.

ADDRESSES: The document may be obtained at the following link: *https://www.cdc.gov/nora/councils/hwd/research-agenda.html.*

FOR FURTHER INFORMATION CONTACT: Emily Novicki, M.A., M.P.H. (*NORACoordinator@cdc.gov*), National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Mailstop V24–4, 1600 Clifton Road NE, Atlanta, GA 30329, phone (404) 498–2581 (not a toll free number).

SUPPLEMENTARY INFORMATION: On March 12, 2019, NIOSH published a request for public comment on the draft version of the *National Occupational Research*

Agenda for Healthy Work Design and Well-Being (84 FR 8871). NIOSH received comments from eleven commenters. These commenters included academia, professional organizations, and the general public. All comments received were carefully reviewed and addressed where appropriate by the NORA Healthy Work Design and Well-Being Cross-Sector Council.

Throughout the final document, the descriptive text and accompanying research objectives were revised and expanded in response to comments, usually to clarify meaning or add nuance. Among the changes, the background under Objective 2: *Improve the Safety, Health, and Well-Being of Workers with Non-Standard Work Arrangements,* was expanded to include additional survey data, discussion of holding multiple jobs simultaneously, and the connection between non-standard work arrangements and chronic opioid use. The research gaps were revised and expanded accordingly. The Council also clarified that interactions among research strategies aiming to address individual objectives are encouraged even when not explicitly noted as a means to identify and address solutions at the intersections of the objectives. A Response to Public Comment document can be found in the Supporting Documents tab for this docket on *www.regulations.gov.*

John J. Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2020–02328 Filed 2–5–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Formative Evaluation of Family Unification Program (FUP) Vouchers for Youth Transitioning Out of Foster Care (New Collection)

AGENCY: Office of Planning, Research, and Evaluation; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF), Office of Planning, Research, and Evaluation is requesting public comment on data collection activities as part of the Formative Evaluation of Family Unification Program (FUP) Vouchers for Youth Transitioning Out of Foster Care. The purpose of the request is to conduct information collection activities, including an online survey, interviews, and focus group discussions.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by emailing *OPREinfocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The ACF Office of Planning, Research, and Evaluation is proposing a new information collection. The information collection activities are part of the Formative Evaluation of Family Unification Program (FUP) Vouchers for Youth Transitioning Out of Foster Care. The purpose of the request is to conduct information collection activities, which consist of an online survey of FUP liaisons from agencies and organizations serving transition-age youth in foster care and site visits to selected agencies and organizations that have allocated a significant number of FUP vouchers to youth. During site visits, staff from the Urban Institute and Chapin Hall at the University of Chicago will interview agency and program leaders, frontline staff, and participants. The information collection also includes collection of administrative data from sites selected for visits. This descriptive work will capture how FUP for youth has been administered on the ground, how eligible youth are identified and referred by the public child welfare agency (PCWA), barriers to obtaining a voucher or leasing-up into housing, what public housing authorities (PHAs) and public child welfare agencies have done to streamline the application process, and other aspects of program operations. The activities and products from this project will help ACF to fulfill its ongoing legislative mandate for program evaluation specified in the Foster Care Independence Act of 1999.

Respondents: PCWA and PHA agency administrators, program managers/FUP liaisons, front-line staff, and young adults being served by FUP.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
PHA survey	111	56	1	0.58	32
PCWA survey	72	36	1	0.58	21
CoC survey	99	50	1	0.58	29
Interview guide for FSS manager	8	4	1	1	4
Interview guide for CoC lead organization administrator and FUP liaison	16	8	1	1	8
Focus group guide for PHA intake workers and case managers	192	96	1	1.5	144
Focus group guide for PCWA caseworkers, referring partners, and service provider partners	312	156	1	1.5	234
Interview guide for service provider FUP leads	7	4	1	1	4
Interview guide for PCWA administrator and FUP liaison	16	8	1	1	8

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Interview guide for PHA administrator and FUP liaison	16	8	1	1	8
Focus group guide for youth	96	48	1	1.5	72
Administrative data list	24	12	1	5	60
Total					624

Estimated Total Annual Burden Hours: 624.

Authority: Title IV–E of the Social Security Act, IV–E § 477(g)(1–2), as amended by the Foster Care Independence Act of 1999.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–02315 Filed 2–5–20; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.587]

Notice for Public Comment on Administration for Native Americans' Program Policies Relating to the Native American Language Preservation and Maintenance—Esther Martinez Immersion Funding Opportunity

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 the notice requirements of NAPA, ANA herein describes proposed general statements of policy that relate to the Native American Language Preservation and Maintenance—Esther Martinez Immersion (EMI) funding opportunity announcement (FOA) in fiscal year (FY) 2020.

DATES: Comments are due by March 9, 2020. If ANA does not receive any significant comments on the statements of policy within the 30-day comment period, ANA will proceed with the proposed changes in the published FOA. The FOA 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. ANA voluntarily provides notices of its rules of practice and procedure in an effort to be transparent. ANA published a notice in the **Federal Register** on December 27, 2019, located at 84 FR 71428, pages 71428–71430, that lays out changes ANA intends to implement in its FOAs for FY 2020. This notice provides information on additional changes that will be implemented in the FY 2020 EMI FOA.

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.*

1. On December 20, 2019, President Trump signed into law the Esther Martinez Native American Languages Programs Reauthorization Act (Reauthorization Act). The statute amended NAPA to allow ANA to set the project period of EMI grants to up to 60 months. Because of the complexity of language grants that provide immersion instruction and because Native American communities are most knowledgeable about their language programs and the length of time necessary to implement them, ANA has determined to use this new authority to give tribes maximum flexibility on the length of their grant and allow the project period for the FY 2020 EMI grants to be up to 60 months. Previously, awards were limited to a 36-month project period. FY 2020 awards will be made for a project period of 36 months, 48 months, or 60 months. An initial award will be for a 12-month budget period. Non-competing continuation (NCC) awards will be awarded on the basis of annual NCC applications, availability of funds, satisfactory progress, on-time completion of grant reporting requirements, and a determination that continued funding would be in the best interest of the government.

2. ANA had intended to accept applications for the EMI grants for 90 days, in-line with its other grants. However, because ANA is making additional changes to the EMI grant to implement the Reauthorization Act, ANA will reduce the period for accepting applications in order to issue the EMI awards in a timely manner. The EMI FOA, HHS–2018–ACF–ANA–NB–1343, will accept applications for 60 days from the date it is published on *Grants.gov.*

3. ANA plans to change the order of the publication of the FOAs. In the Notice of Public Comment published on December 27, 2019, 84 FR 71428, pages 71428–71430, Supplementary Information, ANA stated that it planned to publish the FOAs for the EMI, Native American Language Preservation and Maintenance (P&M), and Environmental Regulatory Enhancement (ERE) grants first and then allow a 2-week period before the Social and Economic Development Strategies (SEDS) and Social and Economic Development Strategies-Alaska (SEDS–AK) FOAs were published. However, because of the changes to the EMI grant described above, ANA will need additional time to publish the EMI FOA. In order to continue to stagger the submission deadlines, ANA has decided it will publish the P&M, ERE, and SEDS–AK FOAs first and then allow a 2-week period before the SEDS and EMI FOAs are published. As this is a change in

agency procedure, the change will be made without reviewing comments.

Statutory Authority: Section 814 of the Native American Programs Act of 1974, as amended.

Elizabeth Leo,

Senior Grants Policy Specialist, Division of Grants Policy, Office of Administration.

[FR Doc. 2020–02319 Filed 2–5–20; 8:45 am]

BILLING CODE 4184–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0118]

Agency Information Collection Activities; Proposed Collection; Comment Request; Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. 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 of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of our regulations requiring that the Agency receive prior notice before food is imported or offered for import into the United States.

DATES: Submit either electronic or written comments on the collection of information by April 6, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 6, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 6, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2010–N–0118 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

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: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''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 provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an

existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002—21 CFR 1.278 to 1.285

OMB Control Number 0910–0520—Extension

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Act) added section 801(m) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 381(m)), which requires that FDA receive prior notice for food, including food for animals, that is imported or offered for import into the United States. Sections 1.278 to 1.282 of FDA regulations (21 CFR 1.278 to 1.282) set forth the requirements for submitting prior notice; §§ 1.283(d) and 1.285(j) (21 CFR 1.283(d) and 1.285(j)) set forth the procedure for requesting Agency review after FDA has refused admission of an article of food under section 801(m)(1) of the FD&C Act or placed an article of food under hold under section 801(l) of the FD&C Act; and § 1.285(i) sets forth the procedure for post-hold submissions.

Section 304 of the FDA Food Safety Modernization Act (Pub. L. 111–353) amended section 801(m) of the FD&C Act to require a person submitting prior notice of imported food, including food for animals, to report, in addition to other information already required, ''any country to which the article has been refused entry.'' Advance notice of imported food allows FDA, with the support of the U.S. Customs and Border Protection (CBP), to target import inspections more effectively and help protect the nation's food supply against terrorist acts and other public health emergencies. By requiring that a prior notice contain specific information that indicates prior refusals by any country and identifies the country or countries, the Agency may better identify imported food shipments that may pose safety and security risks to U.S. consumers.

This information collection enables FDA to make better informed decisions in managing the potential risks of imported food shipments into the United States. Any person with knowledge of the required information may submit prior notice for an article of food. Thus, the respondents to this information collection may include importers, owners, ultimate consignees, shippers, and carriers.

FDA regulations require that prior notice of imported food be submitted electronically using CBP's Automated Broker Interface of the Automated Commercial System (ABI/ACS) (§ 1.280(a)(1)) or the FDA Prior Notice System Interface (PNSI) (Form FDA 3540) (§ 1.280(a)(2)). PNSI is an electronic submission system available on the FDA Industry Systems page at *http://www.access.fda.gov/*. Information the Agency collects in the prior notice submission includes: (1) The submitter and transmitter (if different from the submitter); (2) entry type and CBP identifier; (3) the article of food, including complete FDA product code; (4) the manufacturer, for an article of food no longer in its natural state; (5) the grower, if known, for an article of food that is in its natural state; (6) the FDA Country of Production; (7) the name of any country that has refused entry of the article of food; (8) the shipper, except for food imported by international mail; (9) the country from which the article of food is shipped or, if the food is imported by international mail, the anticipated date of mailing and country from which the food is mailed; (10) the anticipated arrival information or, if the food is imported by international mail, the U.S. recipient; (11) the importer, owner, and ultimate consignee, except for food imported by international mail or transshipped through the United States; (12) the carrier and mode of transportation, except for food imported by international mail; and (13) planned shipment information, except for food imported by international mail (§ 1.281).

Much of the information collected for prior notice is identical to the information collected for FDA importer's entry notice, which has been approved under OMB control number 0910–0046. The information in an importer's entry notice is collected electronically via CBP's ABI/ACS at the same time the respondent files an entry for import with CBP. To avoid double-counting the burden hours already counted in the importer's entry notice information collection, the burden hour analysis in table 1 reflects FDA's estimate of the reduced burden for prior notice submitted through ABI/ACS in column 6 entitled ''Average Burden per Response.''

In addition to submitting a prior notice, a submitter should cancel a prior notice and must resubmit the information to FDA if information changes after the Agency has confirmed a prior notice submission for review (*e.g.,* if the identity of the manufacturer changes) (§ 1.282). However, changes in the estimated quantity, anticipated arrival information, or planned shipment information do not require resubmission of prior notice after the Agency has confirmed a prior notice submission for review (§ 1.282(a)(1)(i) to (iii)). In the event that FDA refuses admission to an article of food under section 801(m)(1) or the Agency places it under hold under section 801(l) of the FD&C Act, §§ 1.283(d) and 1.285(j) set forth the procedure for requesting FDA's review and the information required in a request for review. In the event that the Agency places an article of food under hold under § 801(l) of the FD&C Act, § 1.285(i) sets forth the procedure for, and the information to be included in, a post-hold submission.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Prior Notice Submissions: Through ABI/ACS						
1.280 through 1.281	N/A	1,700	7,647	12,999,900	0.167 (10 minutes)	[2] 2,170,983
Through PNSI						
1.280 through 1.281	3540 [3]	27,000	70	1,890,000	0.384 (23 minutes)	725,760
Subtotal						2,896,743
Cancellations: Through ABI/ACS						
1.282	3540	7,040	1	7,040	0.25 (15 minutes)	1,760
Through PNSI						
1.282 and 1.283(a)(5)	3540	35,208	1	35,208	0.25 (15 minutes)	8,802
Subtotal						10,562
Requests for Review and Post-hold Submissions						
1.283(d) and 1.285(j)	N/A	1	1	1	8	8
1.285(i)	N/A	263	1	263	1	263
Subtotal						271
Total				14,932,412		2,907,576

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] To avoid double-counting, an estimated 396,416 burden hours already accounted for in the Importer's Entry Notice information collection approved under OMB control number 0910–0046 are not included in this total.
[3] The term "Form FDA 3540" refers to the electronic submission system known as PNSI, which is available at *https://www.access.fda.gov.*

Based on our experience and the average number of prior notice submissions, cancellations, and requests for review received in the past 3 years, we have made no adjustments in our burden estimate for the information collection. We estimate that 1,700 users of ABI/ACS will submit an average of 7,647 prior notices annually, for a total of 12,999,900 prior notices received through ABI/ACS. We assume the reporting burden for a prior notice submitted through ABI/ACS to be 10 minutes, or 0.167 hour, per notice, for a total annual burden of 2,170,983 hours. This estimate takes into consideration the burden hours already counted in the information collection approval for FDA importer's entry notice (OMB control number 0910–0046), as previously discussed.

We estimate that 27,000 registered users of PNSI will submit an average of 70 prior notices annually, for a total of 1,890,000 prior notices received annually. We assume the reporting burden for a prior notice submitted through PNSI to be 23 minutes, or 0.384 hour, per notice, for a total burden of 725,760 hours.

We estimate that 7,040 users of ABI/ACS will submit an average of 1 cancellation annually, for a total of 7,040 cancellations received annually through ABI/ACS. We assume the reporting burden for a cancellation submitted through ABI/ACS to be 15 minutes, or 0.25 hour, per cancellation, for a total burden of 1,760 hours.

We estimate that 35,208 registered users of PNSI will submit an average of 1 cancellation annually, for a total of 35,208 cancellations received annually. We assume the reporting burden for a cancellation submitted through PNSI to be 15 minutes, or 0.25 hour, per cancellation, for a total burden of 8,802 hours.

We estimate that one or fewer requests for review under § 1.283(d) or § 1.285(j) will be submitted annually. We assume that it will take respondents 8 hours to prepare the factual and legal information necessary to prepare a request for review. Thus, we estimate a total reporting burden of 8 hours.

We estimate that 263 post-hold submissions under § 1.285(i) will be submitted annually. We assume that it will take about 1 hour to prepare the written notification described in § 1.285(i)(2)(i), for a total reporting burden of 263 hours.

Dated: January 29, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–02371 Filed 2–5–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–3324]

Use of Serological Tests To Reduce the Risk of Transfusion-Transmitted Human T-Lymphotropic Virus Types I and II; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled "Use of Serological Tests to Reduce the Risk of Transfusion-Transmitted Human T-Lymphotropic Virus Types I and II (HTLV–I/II)." The guidance document provides blood collection establishments with recommendations regarding the use of

serological tests to reduce the risk of HTLV–I/II transmission by blood and blood components. The guidance announced in this notice finalizes the draft guidance entitled ''Recommendations for Requalification of Blood Donors Deferred Because of Reactive Test Results for Antibodies to Human T-Lymphotropic Virus Types I and II (anti-HTLV–I/II)'' dated September 2018. The guidance also consolidates FDA's other previously issued recommendations on HTLV–I/II into one document. Therefore, the guidance also supersedes the recommendations specific to HTLV–1 contained in the memorandum to blood establishments entitled ''Recommendations for the Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Tests for Hepatitis B Virus (HBV), Hepatitis C Virus (HCV), and Human T-Lymphotropic Virus Type I (HTLV–I)'' dated July 1996. In addition, the guidance supersedes the memorandum to blood establishments entitled ''HTLV–I Antibody Testing, Memorandum'' dated November 1988; the memorandum to blood establishments entitled ''HTLV–I Antibody Testing, Memorandum'' dated July 1989; and the document entitled ''Guidance for Industry: Donor Screening for Antibodies to HTLV–II'' dated August 1997.

DATES: The announcement of the guidance is published in the **Federal Register** on February 6, 2020.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–3324 for ''Use of Serological Tests to Reduce the Risk of Transfusion Transmitted Human T-Lymphotropic Virus Types I and II (HTLV–I/II).'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Melissa Segal, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Use of Serological Tests to Reduce the Risk of Transfusion-Transmitted Human T-Lymphotropic Virus Types I and II (HTLV–I/II).'' The guidance document provides blood collection establishments with recommendations regarding the use of serological tests to reduce the risk of HTLV–I/II transmission by blood and blood components.

In the **Federal Register** of September 25, 2018 (83 FR 48448), FDA announced the availability of the draft guidance entitled ''Recommendations for Requalification of Blood Donors Deferred Because of Reactive Test Results for Antibodies to Human T-Lymphotropic Virus Types I and II (anti-HTLV–I/II)'' dated September 2018. FDA received a few comments on the draft guidance and those comments

were considered as the guidance was finalized.

The guidance announced in this notice finalizes the draft guidance entitled ''Recommendations for Requalification of Blood Donors Deferred Because of Reactive Test Results for Antibodies to Human T-Lymphotropic Virus Types I and II (anti-HTLV–I/II)'' dated September 2018. The guidance also consolidates FDA's other previously issued recommendations on HTLV–I/II into one document. Therefore, the guidance also supersedes the recommendations specific to HTLV–1 contained in the memorandum to blood establishments, entitled ''Recommendations for the Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Tests for Hepatitis B Virus (HBV), Hepatitis C Virus (HCV), and Human T-Lymphotropic Virus Type I (HTLV–I)'' dated July 1996. In addition, the guidance supersedes the memorandum to blood establishments entitled ''HTLV–I Antibody Testing, Memorandum'' dated November 1988; the memorandum to blood establishments entitled ''HTLV–I Antibody Testing, Memorandum'' dated July 1989; and the document entitled ''Guidance for Industry: Donor Screening for Antibodies to HTLV–II'' dated August 1997.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on the use of serological tests to reduce the risk of transfusion-transmitted human T-lymphotropic virus types I and II. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 601 and Form FDA 356h have been approved under OMB control number 0910–0338, and the collections of information in 21 CFR parts 610 and 606 have been approved under OMB control number 0910–0116.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances* or *https://www.regulations.gov.*

Dated: February 3, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–02373 Filed 2–5–20; 8:45 am]

BILLING CODE 4164–01–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; Ending the HIV Epidemic (EHE), OMB No. 0906–xxxx—New

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR 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 March 9, 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.

A 60-day notice was published in the **Federal Register** on October 15, 2019, vol. 84, No. 199; pp. 55163–64. There was one public comment.

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: Ending the HIV Epidemic (EHE) Triannual Module, OMB No. 0906–xxxx—New.

Abstract: HRSA's Ryan White HIV/AIDS Program (RWHAP) funds and coordinates with cities, states, and local clinics/community-based organizations to deliver efficient and effective HIV care, treatment, and support to low income people with HIV. Nearly two-thirds of clients (patients) live at or below 100 percent of the federal poverty level and approximately three-quarters of RWHAP clients are racial/ethnic minorities. Since 1990, the RWHAP has developed a comprehensive system of safety net providers who deliver high quality direct health care and support services to over half a million people with HIV—more than 50 percent of all people with diagnosed HIV in the United States.

Ending the HIV Epidemic: A Plan for America

In February 2019, the Administration announced a new initiative, *Ending the HIV Epidemic: A Plan for America* (EHE). Authorized by section 311(c) and title XXVI of the Public Health Service Act, this 10-year initiative beginning in FY 2020 seeks to achieve the important goal of reducing new HIV infections in the United States to fewer than 3,000 per year by 2030. EHE will focus on 48 counties, Washington, DC, San Juan, Puerto Rico, and 7 states that have a substantial rural HIV burden. By focusing on these jurisdictions in the first phase of the EHE, HHS plans to reduce new HIV infections by 75 percent within 5 years. Across the United States, the EHE will promote and implement four Pillars to substantially reduce HIV transmissions—diagnose, treat, prevent, and respond. EHE is a collaborative effort among key HHS agencies, primarily HRSA, the Centers for Disease Control and Prevention, the National Institutes of Health, the Indian Health Service, and the Substance Abuse and Mental Health Services Administration. RWHAP will focus on implementing activities in the *Pillar Two: Treat* and supporting *Pillar Four: Respond* for this important initiative.

HRSA identified proposed data collection needs to support HRSA's efforts toward ending the HIV epidemic. To reach this goal, HRSA needs to have the ability to monitor initiative activities including funding allocations, expenditures, service utilization, and clients served; and assess progress toward meeting national goals for ending the HIV epidemic. HRSA proposes that recipients and service providers (subrecipients) who receive EHE initiative funding report on the

reach of EHE initiative activities in a new EHE Triannual Module.

Need and Proposed Use of the Information: HRSA proposes that service providers who receive EHE Initiative funding report aggregate information on the number of clients receiving specific services and the number of clients who were prescribed antiretroviral medications in the previous four months (beginning in March 2020). This information would complement the annual information collected through the Ryan White Services Report (RSR) and other reporting mechanisms. Service providers will report three times per year on clients who received at least one service during the previous four month period.

This module will provide HRSA with frequent and timely data on EHE Initiative progress by providing information on the number of clients who are reached through the EHE Initiative during each four month reporting period. In addition, HRSA can calculate the number of clients who did not receive services in the previous year by subtracting the number of clients who received services in the previous year and the number of new clients from the total number of clients. This will provide valuable information on the scope of outreach to new clients and clients who have had a lapse in service which could be an indication of reengagement in care. These calculations will be similar to calculations using the new RSR variables. This module will support project officer monitoring and HRSA's understanding of service provision.

Likely Respondents: RWHAP Part A and Part B Recipients and Subrecipients funded by the EHE Initiative.

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
EHE Triannual Module	47	3	141	1	141
Total	47		141		141

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–02354 Filed 2–5–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Establishment and Solicitation of Nominations for Tribal Advisory Council

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Establishment of HRSA Tribal Advisory Council and Request for Tribal Delegate Member Nominations.

SUMMARY: HRSA is soliciting comments and recommendations regarding HRSA's intent to establish the HRSA Tribal Advisory Council (TAC) and is seeking nominations of qualified tribal officials as candidates for consideration for appointment as voluntary delegate members of the HRSA TAC. The HRSA TAC will engage in regular and meaningful collaboration and consultation with tribal officials on policies that have tribal implications and a substantial direct effect on Indian tribes. The HRSA TAC will be the vehicle for acquiring a broad range of tribal views, determining the impact of HRSA programs on the American Indian/Alaska Native (AI/AN) health systems and population, developing innovative approaches to deliver health care and assisting with effective tribal consultations. HRSA is also seeking nominations of qualified candidates to fill up to 12 positions on the HRSA TAC; one authorized tribal representative (and one designated alternate) from each of the 12 Indian Health Service geographic areas.

DATES: Nominations for membership on the HRSA TAC must be received on or before May 7, 2020.

ADDRESSES: Written comments on the described intent to establish the HRSA TAC and nomination packages must be submitted to:

1. *Submission of comments on the intent to establish the HRSA TAC.* CAPT Elijah K. Martin, Jr., EdD, MPH, Manager, Tribal Health Affairs, Office of Health Equity (OHE), HRSA, 5600 Fishers Lane, Room 13N44, Rockville, Maryland 20857, ATTN: HRSA TAC Establishment.

2. *Submission of HRSA TAC nomination packages.* CAPT Elijah K. Martin, Jr., EdD, MPH, Manager, Tribal Health Affairs, OHE, HRSA, 5600 Fishers Lane, Room 13N44, Rockville, Maryland 20857, ATTN: HRSA TAC Nomination Package.

3. *Electronic submission of comments on the intent to establish the HRSA TAC: aianhealth@hrsa.gov,* SUBJECT: HRSA TAC Establishment.

4. *Electronic submission of HRSA TAC Nomination Packages: aianhealth@hrsa.gov,* SUBJECT: HRSA TAC Nomination Package.

FOR FURTHER INFORMATION CONTACT: CAPT Elijah K. Marin, Jr., EdD, MPH, Manager, using the contact information provided above, or Michelle Allender, RN, BSN, MS, Director, OHE, HRSA, 5600 Fishers Lane, Room 13N09, Rockville, Maryland 20857, or 301–443–7526.

A copy of the HRSA TAC charter and list of the membership, once established, may be obtained by submitting a written request to: *aianhealth@hrsa.gov.*

SUPPLEMENTARY INFORMATION: The HRSA TAC will be established to engage in regular and meaningful collaboration and consultation with tribal officials on policies that have tribal implications

and substantial direct effect on Indian tribes. The HRSA TAC will be the vehicle for acquiring a broad range of tribal views, determining the impact of HRSA programs on the AI/AN health systems and population, developing innovative approaches to deliver health care, and assisting with effective tribal consultation. The HRSA TAC will hold one meeting each calendar year, or at the discretion of HRSA in consultation with the Chair. These meetings may be held in-person or virtually.

The HRSA TAC will support, not supplant, any other government-to-government consultation activities that HRSA undertakes. In addition to assisting HRSA in the planning and coordination of tribal consultation sessions, the HRSA TAC will advise HRSA regarding the government-to-government consultation process and will help ensure that HRSA activities and policies that impact Indian country are brought to the attention of all tribal leaders. The HRSA TAC Charter will comply with the ''Unfunded Mandates Reform Act Exemption'' to the Federal Advisory Committee Act (FACA) found in Section 204 of the Unfunded Mandates Reform Act, P.L. 104–4, and therefore will be exempt from FACA, 5 U.S.C. App. 2.[1]

Nominations: HRSA is requesting nominations of tribal officials to serve as HRSA TAC delegate members to fill up to 12 voluntary positions on the HRSA TAC; one authorized tribal representative (and one designated alternate) from each of the 12 Indian Health Service geographic areas. The HRSA Administrator will appoint HRSA TAC delegate members with the expertise needed to fulfill the duties of the HRSA TAC. Nominees will be considered in the following priority order:

1. Tribal president, chairperson, or governor;
2. Tribal vice president, vice-chairperson, or lieutenant governor;
3. Elected or appointed tribal official; and
4. Designated tribal official.

Interested applicants may self-nominate or be nominated by another individual or organization.

Individuals selected for appointment to the HRSA TAC will be invited to serve terms of up to 2 years. Appointed delegate members will receive per diem and travel expenses incurred for attending HRSA TAC meetings and/or conducting other authorized and approved business on behalf of the HRSA TAC.

The following information must be included in the package of materials submitted for each individual nominated for consideration: (1) Name of the nominee, a description of the interests the nominee would represent, a description of the nominee's experience and interest in AI/AN access to health care, and share if the nominee has knowledge and experience with HRSA programs (optional); (2) evidence that the nominee is a duly elected or appointed tribal leader or tribal officer, or has been designated with authority to act on behalf of the duly elected or appointed tribal leader or officer, and is authorized to represent a tribal government; (3) a written commitment from the nominee that they will actively participate in good faith in HRSA TAC meetings; and (4) a current copy of the nominee's curriculum vitae. Nomination packages may be submitted directly by the individual being nominated or by the person/organization recommending the candidate.

HHS endeavors to ensure that the membership of the HRSA TAC is fairly balanced in terms of points of view represented and that individuals from a broad representation of geographic areas, gender, and ethnic and minority groups, as well as individuals with disabilities, are considered for membership. Appointments shall be made without discrimination on the basis of age, ethnicity, gender, sexual orientation, or cultural, religious, or socioeconomic status.

Authority: Pursuant to Presidential Executive Order No. 13175 (November 6, 2000) and the Presidential Memorandum of November 5, 2009, HRSA has established a Tribal Consultation Policy for working with federally-recognized tribes on a government-to-government basis. HHS has adopted a Tribal Consultation Policy that applies to all HHS Operating Divisions, including HRSA. The HHS Tribal Consultation Policy directs Operating Divisions to establish a process to ensure meaningful consultation and timely input from Indian tribes before actions are taken that will significantly affect Indian tribe(s).

Additionally and pursuant to the authority of the Secretary's Tribal Advisory Committee (STAC) Rules of Order, the HRSA TAC may be established per the Acting Assistant Secretary's Memorandum of March 7, 2013, which provides the authority to establish committees to support and accomplish the objectives of HHS.

Dated: January 30, 2020.

Thomas J. Engels,

Administrator.

[FR Doc. 2020–02356 Filed 2–5–20; 8:45 am]

BILLING CODE 4165–15–P

[1] In particular, the HRSA TAC meetings will be held exclusively between federal officials and elected officers of state, local, and tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities; and such meetings will be solely for the purposes of exchanging views, information, or advice relating to the management or implementation of federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration.

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 grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis; Panel NIAID New Innovators Awards (DP2 Clinical Trial Not Allowed).

Date: March 12–13, 2020.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, National Room, 2121 P Street NW, Washington, DC 20037.

Contact Person: Jennifer H. Meyers, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Research, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F52, MSC–9823, Rockville, MD 20852, 301–761–6602, *jennifer.meyers@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: January 31, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02325 Filed 2–5–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed 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 Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

Date: March 4, 2020.

Time: 3:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Room 3G40, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Priti Mehrotra, Ph.D., Chief, Immunology Review Branch, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room #3G40, MSC 9823, Bethesda, MD 20892–7616, 240–669–5066, *pmehrotra@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 31, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02324 Filed 2–5–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Clinical Neuroscience and Neurodegeneration Study Section, February 10, 2020, 8:00 a.m. to February 11, 2020 at the National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on January 17, 2020, 85 FR 3063.

The meeting will be held at the Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817. The meeting date and time remain the same. The meeting is closed to the public.

Dated: January 31, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02276 Filed 2–5–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed 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 Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

Date: March 13, 2020.

Time: 11:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Kelly L. Hudspeth, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G41, MSC–9823, Rockville, MD 20852, 240–669–5067, *kelly.hudspeth@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: January 31, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02323 Filed 2–5–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0048]

National Offshore Safety Advisory Committee

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The National Offshore Safety Advisory Committee and its Subcommittee are meeting in New Orleans, Louisiana to discuss Committee matters relating to the safety of operations and other matters affecting the offshore oil and gas industry. All meetings will be open to the public.

DATES:

Meetings: The National Offshore Safety Advisory Committee and its Subcommittee will meet on Tuesday, March 24, 2020 and on Wednesday, March 25, 2020. The Lifeboats and Rescue Craft Safety on the Outer Continental Shelf Subcommittee will meet on Tuesday, March 24, 2020 from 1 p.m. to 4 p.m. The full Committee will meet on Wednesday, March 25, 2020 from 8 a.m. to 6 p.m. (All times are Central Time). Please note that these meetings may close early if the Committee has completed its business.

Comments and supporting documentation: To ensure your comments are received by Committee members before the meetings, submit your written comments no later than March 17, 2020.

ADDRESSES: All meetings will be held at the Omni Riverfront Hotel, 701 Convention Center Boulevard, New Orleans, Louisiana 70130. Hotel information may be found at *https://www.omnihotels.com/hotels/new-orleans-riverfront* or by calling the hotel at (504) 524–8200.

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the meetings, but if you want

Committee members to review your comment before the meetings, please submit your comments no later than March 17, 2020. We are particularly interested in the comments in the ''Agenda'' section below. You must include ''Department of Homeland Security'' and docket number USCG–2020–0048. Written comments may also be submitted using the Federal eRulemaking Portal at *http://www.regulations.gov.* If you encounter technical difficulties with comments submission, contact the individual listed in the **FOR FUTHER INFORMATION CONTACT** section below. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. For more information about the privacy and docket, review the Privacy and Security Notice for the Federal Docket Management System at *https://www.regulations.gov/privacyNotice.*

Docket Search: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov,* and insert ''USCG–2020–0048'' in the ''Search'' box, press Enter, and then click on the item you wish to view.

FOR FURTHER INFORMATION CONTACT: Commander Myles Greenway, Designated Federal Officer of the National Offshore Safety Advisory Committee, Commandant (CG–OES–2), U.S. Coast Guard, 2703 Martin Luther King Jr. Avenue SE, Stop 7509, Washington, DC 20593–7509; telephone (202) 372–1410, fax (202) 372–8382 or email: *Myles.J.Greenway@uscg.mil,* or Mr. Patrick Clark, telephone (202) 372–1358, fax (202) 372–8382 or email *patrick.w.clark@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the *Federal Advisory Committee Act,* (Title 5 U.S.C. Appendix). The National Offshore Safety Advisory Committee provides advice and recommendations to the Department of Homeland Security on matters relating to activities directly involved with or in support of the exploration of offshore mineral and energy resources insofar as they relate to matters within Coast Guard jurisdiction.

Agenda

Day 1

The National Offshore Safety Advisory Committee's Lifeboats and Rescue Craft Safety on the Outer Continental Shelf Subcommittee will meet on March 24, 2020 from 1:00 p.m. to 4:00 p.m. (Central Time) to review, discuss and formulate recommendations to be presented to the full Committee during the March 25, 2020 public meeting.

Day 2

The National Offshore Safety Advisory Committee will hold a public meeting on March 25, 2020 from 8 a.m. to 6 p.m. (Central Time) to review and discuss the progress of, and any reports and recommendations received from the above listed subcommittee from their deliberations. The Committee will then use this information and consider public comments in discussing and formulating recommendations to the United States Coast Guard. Public comments or questions will be taken at the discretion of the Designated Federal Officer during the discussion and recommendation portions of the meeting and during the public comment period, see Agenda item (5). A complete agenda for the March 25, 2020 full Committee meeting is as follows:

(1) Welcoming remarks.

(2) General administration and acceptance of minutes from the September 11, 2019 National Offshore Safety Advisory Committee public meeting.

(3) Current business—Presentation and discussion of progress from the Lifeboats and Rescue Craft Safety on the Outer Continental Shelf (OCS) Subcommittee.

(4) New Business—

(a) Discussion on Source Control Response Centers in an Incident Command.

(b) Discussion on Coast Guard initiatives relating to the Offshore Oil and Gas industries.

(c) Presentation on the status of the Shell Auger lifeboat accident investigation.

(d) Bureau of Safety and Environmental Enforcement—Agency updates on OCS related issues.

(e) Maritime Administration—Agency Updates on OCS related issues.

(f) International Association of Drilling Contractors—Industry Brief

(5) Public comment period.

A copy of all pre-meeting documentation will be available at *https://homeport.uscg.mil/missions/ports-and-waterways/safety-advisory-committees/nosac/meetings* no later than March 17, 2020. Alternatively, you may contact Commander Myles Greenway or Mr. Patrick Clark as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

Public comments or questions will be taken throughout the meeting as the Committee discusses the issues and prior to deliberations and voting. There will also be a public comment period at the end of the meeting. Speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the period allotted, following the last call for comments. Contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section above to register as a speaker.

Dated: January 31, 2020.

Jeffery G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2020–02345 Filed 2–5–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2019–0876]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0066

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0066, Vessel and Facility Response Plans (Domestic and Int'l), and Additional Response Requirements for Prince William Sound; without change. Our ICR describe the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before March 9, 2020.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2019–0876] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: OIRA-submission@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Fax:* 202–395–6566. To ensure your comments are received in a timely

manner, mark the fax, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Albert Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8413, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2019–0876], and must be received by March 9, 2020.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0066.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (84 FR 59395, November 4, 2019) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Vessel and Facility Response Plans (Domestic and Int'l), and Additional Response Requirements for Prince William Sound.

OMB Control Number: 1625–0066.

Summary: The Oil Pollution Act of 1990 (OPA 90) required the development of Vessel and Facility Response Plans to minimize the impact of oil spills. OPA 90 also required additional response requirements for Prince William Sound. Shipboard Oil Pollution Emergency Plans and Shipboard Marine Pollution Emergency Plans are required of other vessels to minimize imparts of oil spills.

Need: This information is needed to ensure that vessels and facilities are prepared to respond in event of a spill incident. The information is reviewed by the Coast Guard to assess the effectiveness of the response plan.

Forms: N/A.

Respondents: Owners and operators of vessels and facilities.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 75,380 hours to 88,381 hours a year, due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: January 31, 2020.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2020–02331 Filed 2–5–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4473–DR; Docket ID FEMA–2020–0001]

Puerto Rico; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA–4473–DR), dated January 16, 2020, and related determinations.

DATES: The declaration was issued January 16, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 16, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the Commonwealth of Puerto Rico resulting from earthquakes beginning on December 28, 2019, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such

a major disaster exists in the Commonwealth of Puerto Rico.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program in the designated areas any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs).

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Alexis Amparo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Puerto Rico have been designated as adversely affected by this major disaster:

The municipalities of Guánica, Guayanilla, Peñuelas, Ponce, Utuado, and Yauco for Individual Assistance.

The municipalities of Guánica, Guayanilla, Peñuelas, Ponce, San Germán, and Yauco for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–02302 Filed 2–5–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0001]

Notice of Adjustment of Statewide per Capita Indicator for Recommending a Cost Share Adjustment

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: FEMA gives notice that the statewide per capita indicator for recommending cost share adjustments for major disasters declared on or after January 1, 2020, through December 31, 2020 is $149.

DATES: This notice applies to major disasters declared on or after January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Tod Wells, Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–3834.

SUPPLEMENTARY INFORMATION: Pursuant to 44 CFR 206.47, the statewide per capita indicator that is used to recommend an increase of the Federal cost share from seventy-five percent (75%) to not more than ninety percent (90%) of the eligible cost of permanent work under section 406 and emergency work under section 403 and section 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act is adjusted annually. The adjustment to the indicator is based on the Consumer Price Index for All Urban Consumers published annually by the U.S. Department of Labor. For disasters declared on January 1, 2020, through December 31, 2020, the qualifying indicator is $149 per capita of state or tribal population.

This adjustment is based on an increase of 2.3 percent in the Consumer Price Index for All Urban Consumers for the 12-month period that ended December 2019. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on January 14, 2020.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–02298 Filed 2–5–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3426–EM; Docket ID FEMA–2020–0001]

Puerto Rico; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Commonwealth of Puerto Rico (FEMA–3426–EM), dated January 7, 2020, and related determinations.

DATES: The declaration was issued January 7, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 7, 2020, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in the Commonwealth of Puerto Rico resulting from earthquakes beginning on December 28, 2019, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such an emergency exists in the Commonwealth of Puerto Rico.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Alexis Amparo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the Commonwealth of Puerto Rico have been designated as adversely affected by this declared emergency:

All municipalities in the Commonwealth of Puerto Rico for emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–02300 Filed 2–5–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4468–DR; Docket ID FEMA–2020–0001]

Florida; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Florida (FEMA–4468–DR), dated October 21, 2019, and related determinations.

DATES: This change occurred on January 7, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gary R. Stanley, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Thomas J. McCool as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–02301 Filed 2–5–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4473–DR; Docket ID FEMA–2020–0001]

Puerto Rico; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–4473–DR), dated January 16, 2020, and related determinations.

DATES: This amendment was issued January 22, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of January 16, 2020.

The municipalities of Adjuntas, Cabo Rojo, Corozal, Jayuya, Lajas, Lares, Maricao, San Sebastián, and Villalba for Individual Assistance.

The municipality of San Germán for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–02303 Filed 2–5–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6195–N–01]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: This Notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Administration under the provisions of the National Housing Act (the Act). The interest rate for debentures issued under Section 221(g)(4) of the Act during the 6-month period beginning January 1, 2020, is 2¼ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning January 1, 2020, is 1¾ percent.

FOR FURTHER INFORMATION CONTACT: Elizabeth Olazabal, Department of Housing and Urban Development, 451 Seventh Street SW, Room 5146, Washington, DC 20410–8000; telephone (202) 402–4608 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (12 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning January 1, 2020, is 1¾ percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 1¾ percent for the 6-month period beginning January 1, 2020. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with insurance commitment or endorsement date (as applicable) within the first 6 months of 2020).

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1. 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993	Jan. 1, 1994.
6⅝	Jan. 1, 1994	July 1, 1994.
7¾	July 1, 1994	Jan. 1, 1995.
8⅜	Jan. 1, 1995	July 1, 1995.
7¼	July 1, 1995	Jan. 1, 1996.
6½	Jan. 1, 1996	July 1, 1996.
7¼	July 1, 1996	Jan. 1, 1997.
6¾	Jan. 1, 1997	July 1, 1997.
7⅛	July 1, 1997	Jan. 1, 1998.
6⅜	Jan. 1, 1998	July 1, 1998.
6⅛	July 1, 1998	Jan. 1, 1999.
5½	Jan. 1, 1999	July 1, 1999.
6⅛	July 1, 1999	Jan. 1, 2000.
6½	Jan. 1, 2000	July 1, 2000.
6½	July 1, 2000	Jan. 1, 2001.
6	Jan. 1, 2001	July 1, 2001.
5⅞	July 1, 2001	Jan. 1, 2002.
5¼	Jan. 1, 2002	July 1, 2002.
5¾	July 1, 2002	Jan. 1, 2003.
5	Jan. 1, 2003	July 1, 2003.
4½	July 1, 2003	Jan. 1, 2004.
5⅛	Jan. 1, 2004	July 1, 2004.
5½	July 1, 2004	Jan. 1, 2005.
4⅞	Jan. 1, 2005	July 1, 2005.
4½	July 1, 2005	Jan. 1, 2006.
4⅞	Jan. 1, 2006	July 1, 2006.
5⅜	July 1, 2006	Jan. 1, 2007.
4¾	Jan. 1, 2007	July 1, 2007.
5	July 1, 2007	Jan. 1, 2008.
4½	Jan. 1, 2008	July 1, 2008.
4⅝	July 1, 2008	Jan. 1, 2009.
4⅛	Jan. 1, 2009	July 1, 2009.
4⅛	July 1, 2009	Jan. 1, 2010.
4¼	Jan. 1, 2010	July 1, 2010.
4⅛	July 1, 2010	Jan. 1, 2011.
3⅞	Jan. 1, 2011	July 1, 2011.
4⅛	July 1, 2011	Jan. 1, 2012.
2⅞	Jan. 1, 2012	July 1, 2012.
2¾	July 1, 2012	Jan. 1, 2013.
2½	Jan. 1, 2013	July 1, 2013.
2⅞	July 1, 2013	Jan. 1, 2014.
3⅝	Jan. 1, 2014	July 1, 2014.
3¼	July 1, 2014	Jan. 1, 2015.
3	Jan. 1, 2015	July 1, 2015.
2⅞	July 1, 2015	Jan. 1, 2016.
2⅞	Jan. 1, 2016	July 1, 2016.
2½	July 1, 2016	Jan. 1, 2017.
2¾	Jan. 1, 2017	July 1, 2017.
2⅞	July 1, 2017	Jan. 1, 2018.
2¾	Jan. 1, 2018	July 1, 2018.
3⅛	July 1, 2018	Jan. 1, 2019.
3⅜	Jan. 1, 2019	July 1, 2019.
2¾	July 1, 2019	Jan. 1, 2020.
1¾	Jan. 1, 2020	July 1, 2020.

Section 215 of Division G, Title II of Public Law 108–199, enacted January 23, 2004 (HUD's 2004 Appropriations Act) amended Section 224 of the Act, to change the debenture interest rate for purposes of calculating certain insurance claim payments made in cash. Therefore, for all claims paid in cash on mortgages insured under Section 203 or 234 of the National Housing Act and endorsed for insurance after January 23, 2004, the debenture interest rate will be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years, as found in Federal Reserve Statistical Release H–15. The Federal Housing Administration has codified this provision in HUD regulations at 24 CFR 203.405(b) and 24 CFR 203.479(b).

Similarly, Section 520(a) of the National Housing Act (12 U.S.C. 1735d) provides for the payment of an insurance claim in cash on a mortgage

or loan insured under any section of the National Housing Act before or after the enactment of the Housing and Urban Development Act of 1965. The amount of such payment shall be equivalent to the face amount of the debentures that would otherwise be issued, plus an amount equivalent to the interest which the debentures would have earned, computed to a date to be established pursuant to regulations issued by the Secretary. The implementing HUD regulations for multifamily insured mortgages at 24 CFR 207.259(e)(1) and (e)(6), when read together, provide that debenture interest on an multifamily insurance claim that is paid in cash is paid from the date of the loan default at the debenture rate in effect at the time of commitment or endorsement (or initial endorsement if there are two or more endorsements) of the loan, whichever is higher.

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the ''going Federal rate'' in effect at the time the debentures are issued. The term ''going Federal rate'' is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the 6-month period beginning January 1, 2020, is 2¼ percent.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

(Authority: Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).)

Dated: January 22, 2020.

John L. Garvin,

General Deputy Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 2020–02295 Filed 2–5–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2020–0002; FXIA16710900000–201–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

DATES: We must receive comments by March 9, 2020.

ADDRESSES:

Obtaining Documents: The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *http://www.regulations.gov* in Docket No. FWS–HQ–IA–2020–0002.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: http://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2020–0002.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2020–0002; U.S. Fish and Wildlife Service Headquarters, MS: PERMA; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2185, via email at *DMAFR@fws.gov,* or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or fax, or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *http://www.regulations.gov,* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *http://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and

in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications.

Applicant: Kristine Holmberg, Seattle, WA; Permit No. 44219B

The applicant requests renewal of a captive-bred wildlife registration under 50 CFR 17.21(g) for red siskin (*Carduelis cucullata*) to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Bar H Bar Land and Cattle Company, Lampasas, TX; Permit No. 63871A

The applicant requests renewal of a captive-bred wildlife registration under 50 CFR 17.21(g) for red lechwe (*Kobus leche*) to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Stephen Hall, Fort Worth, TX; Permit No. 796988

The applicant requests renewal of a captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata*) to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Toledo Zoological Society, Toledo, OH; Permit No. 49149D

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for Cabot's tragopan pheasant (*Tragopan caboti*) and amur leopard (*Panthera pardus orientalis*) to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Bar H Bar Land and Cattle Company, Lampasas, TX; Permit No. 85763C

The applicant requests a permit authorizing the culling of excess red lechwe (*Kobus leche*) from the captive herd maintained at their facility, to enhance the species' propagation and survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Trophy Applicants

The following applicants request permits to import sport-hunted trophies of male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancing the propagation or survival of the species.

Applicant: Loyd Keith, Madison, TN; Permit No. 60450D

Applicant: David Cordes, Aurora, CO; Permit No. 59081D

Applicant: Abraham Garza, Missouri City, TX; Permit No. 59526D

Applicant: Davis Jones, Colleyville, TX, Permit No. 61538D

Applicant: William Stroud, Dallas, TX, Permit No. 62051D

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *http://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to *regulations.gov* and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Brenda Tapia,

Management Analyst/Program Analyst Branch of Permits, Division of Management Authority.

[FR Doc. 2020–02327 Filed 2–5–20; 8:45 am]

BILLING CODE 4333–15–P

NATIONAL INDIAN GAMING COMMISION

Notice of Approved Class III Tribal Gaming Ordinance

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of the approval of Coquille Tribe of Oregon's Class III gaming ordinance by the Chairman of the National Indian Gaming Commission.

DATES: This notice is effective upon date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Frances Fragua, Office of General Counsel at the National Indian Gaming Commission, 202–632–7003, or by facsimile at 202–632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.,* established the National Indian Gaming Commission (Commission). Section 2710 of IGRA authorizes the Chairman of the Commission to approve Class II and Class III tribal gaming ordinances. Section 2710(d)(2)(B) of IGRA, as implemented by NIGC regulations, 25 CFR 522.8, requires the Chairman to publish, in the **Federal Register**, approved Class III tribal gaming ordinances and the approvals thereof.

IGRA requires all tribal gaming ordinances to contain the same requirements concerning tribes' sole proprietary interest and responsibility for the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees and primary management officials. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in unnecessary cost to the Commission.

Thus, the Commission believes that publishing a notice of approved Class III tribal gaming ordinances in the **Federal Register**, is sufficient to meet the requirements of 25 U.S.C. 2710(d)(2)(B). Every approved tribal gaming ordinance, every approved ordinance amendment, and the approval thereof, are posted on the Commission's website.

As of January 29, 2020, the Coquille Tribe of Oregon's Class III gaming ordinance became approved by operation of law. Under 25 U.S.C. 2710(e), the NIGC Chair has ninety days from the date of submission to either approve or disapprove a gaming ordinance. Any ordinance not acted upon at the end of the ninety-day period is considered to have been approved by the Chair to the extent it is consistent with the provisions of IGRA. Because no action was taken by the Chair within the ninety-day period, the Tribe's amended ordinance is considered approved to the extent it is consistent with IGRA. It is

the opinion of the Office of General Counsel that the Coquille Tribe of Oregon's Class III gaming ordinance is compliant with the requirements of IGRA and NIGC regulations. A copy of the ordinance and approval letter can be found on the NIGC's website (*www.nigc.gov*) under General Counsel, Gaming Ordinances. A copy of the approved Class III gaming ordinance will also be made available upon request. Requests can be made in writing to the Office of General Counsel, National Indian Gaming Commission, Attn: Frances Fragua, 1849 C Street NW, MS #1621, Washington, DC 20240.

National Indian Gaming Commission.

Dated: January 31, 2020.

Michael Hoenig,

General Counsel.

[FR Doc. 2020–02353 Filed 2–5–20; 8:45 am]

BILLING CODE 7565–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1024]

Certain Integrated Circuits With Voltage Regulators and Products Containing Same; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation for Good Cause; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined not to review an initial determination (''ID'') (Order No. 59) that grants a joint motion to terminate this investigation for good cause. This investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Ron Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–3427. Copies of non-confidential documents filed in connection with this investigation are or will be 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, Washington, DC 20436, telephone 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.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone 202–205–1810.

SUPPLEMENTARY INFORMATION: On October 18, 2016, the Commission instituted this investigation based on a complaint filed by R2 Semiconductor, Inc. of Sunnyvale, California. 81 FR 71764 (Oct. 18, 2016). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337'') based upon the importation into the United States, the sale for importation, or the sale within the United States after importation of certain integrated circuits with voltage regulators and products containing the same by reason of infringement of certain claims of U.S. Patent No. 8,233,250 (''the '250 patent''). *Id.* The Commission's notice of investigation named as respondents Intel Corporation of Santa Clara, California; Intel Ireland Ltd. of Leixlip, Ireland; Intel Products Vietnam Co., Ltd. of Ho Chi Minh City, Vietnam; Intel Israel 74 Ltd. of Haifa, Israel; Intel Malaysia Sdn. Berhad of Penang, Malaysia; Intel China, Ltd. of Beijing, China; Dell, Inc. of Round Rock, Texas; Dell Technologies Inc. of Round Rock, Texas; HP Inc. of Palo Alto, California; and Hewlett Packard Enterprise Co. of Palo Alto, California (collectively, ''Respondents''). *Id.* The Office of Unfair Import Investigations (''OUII'') is participating in this investigation. *Id.*

On July 31, 2018, the Patent Trial and Appeal Board (''PTAB'') issued final written decisions in inter partes review proceedings, finding all asserted claims of the '250 patent to be invalid. On August 16, 2018, Respondents filed an unopposed motion to stay this investigation pending appellate review of those decisions by the Federal Circuit. On August 31, 2018, the presiding administrative law judge (''ALJ'') granted that motion. Order No. 55 (Aug. 31, 2018).

On December 23, 2019, R2 and Respondents filed a joint motion to terminate this investigation in its entirety for good cause in light of the Federal Circuit's November 13, 2019 decision affirming the PTAB's decision finding all asserted claims of the '250 patent unpatentable. OUII did not oppose the motion.

On January 10, 2020, the ALJ issued the subject ID (Order No. 59), which grants the motion. The ALJ found that the motion complies with Commission Rule 210.21(a) and that no extraordinary circumstances prohibit termination of the investigation. No petitions for review were filed.

The Commission has determined not to review the subject ID. This investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: January 31, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–02292 Filed 2–5–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1147]

Certain Blood Separation and Cell Preparation Devices; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on the Withdrawal of the Complaint; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined not to review an initial determination (''ID'') (Order No. 17) that grants the complainant's motion to terminate this investigation based on the withdrawal of the complaint. This investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Ron Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–3427. Copies of non-confidential documents filed in connection with this investigation are or will be 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, Washington, DC 20436, telephone 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.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 12, 2019, based on a complaint filed by RegenLab USA LLC of New York, New York (''RegenLab''). 84 FR 8891 (Mar. 12, 2019). The complaint, as amended, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''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 blood separation and cell preparation devices by reason of infringement of certain claims of U.S. Patent No. 10,064,894. *Id.* The amended complaint further alleges that an industry in the United States exists as required by section 337. *Id.* The notice of investigation named as respondents Estar Technologies, Ltd. of Holon, Israel, and Eclipse MedCorp, LLC of The Colony, Texas (collectively, ''Respondents''). *Id.* The Office of Unfair Import Investigations (''OUII'') was named as a party to the investigation. *Id.*

On November 13, 2019, RegenLab filed a motion to terminate the investigation in its entirety based on the withdrawal of the complaint. On November 15, 2019, Respondents filed a response stating that they did not oppose the motion to terminate, on the condition that an order to show cause issue regarding whether RegenLab and its previous counsel should not be sanctioned. On November 22, 2019, Respondents filed a motion seeking that show cause order. On November 25, 2019, OUII filed a response supporting the motion to terminate the investigation.

On December 20, 2019, the presiding administrative law judge (''ALJ'') issued Order No. 16, which denied Respondents' motion for the show cause order.

Also on December 20, 2019, the ALJ issued Order No. 17, the subject ID, granting pursuant to 19 CFR 210.21(a) RegenLab's motion to terminate the investigation. The ID finds that RegenLab's motion complies with the Commission's Rules. No petitions for review were filed.

The Commission has determined not to review the subject ID. However, the Commission notes that RegenLab filed its motion to terminate six days before the hearing was scheduled to begin, after extensive proceedings, including discovery, had occurred before the ALJ. As a general matter, the Commission notes that withdrawal of a complaint at such a late stage of the investigation raises questions about what effect, if any, termination would have on a future complaint that might be filed based on the same or similar alleged violations of section 337 by the same respondents, and how the record from the terminated investigation may be used in such a future investigation. This investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: January 31, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–02337 Filed 2–5–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1089]

Certain Memory Modules and Components Thereof; Commission Determination To Review in Part a Final Initial Determination Finding a Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding; Extension of the Target Date

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part a final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ''), finding a violation of section 337 of the Tariff Act of 1930. The Commission requests briefing from the parties on certain issues under review, as indicated in this notice. The Commission also requests briefing from the parties and interested persons on the issues of remedy, the public interest, and bonding. The Commission has also determined to extend the target date for the completion of the above-captioned investigation to April 7, 2020.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be 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, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 4, 2017, based on a complaint filed by Netlist, Inc. of Irvine, California (''Netlist''). 82 FR 57290–91. The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain memory modules and components thereof that infringe claims 1–8, 10, 12, 14, 16–22, 24, 25, 27, 29–35, 38, 43–45, 47, 48, 50, 52, and 58 of U.S. Patent No. 9,606,907 (''the '907 patent'') and claims 1–5, 7–15, 17–25, 27, and 29 of U.S. Patent No. 9,535,623 (''the '623 patent''). *Id.* The Commission's notice of investigation named as respondents SK hynix Inc. of the Republic of Korea; SK hynix America Inc. of San Jose, California; and SK hynix memory solutions Inc. of San Jose, California (together, ''SK hynix''). *Id.* at 57291. The Office of Unfair Import Investigations (''OUII'') is also participating in this investigation. *Id.*

The Commission subsequently terminated the investigation with respect to claims 16–22, 24, 25, 27, 29–35, 38, 43–45, 47, 48, 50, 52, and 58 of the '907 patent and claims 12–15, 17–25, 27, and 29 of the '623 patent based on Netlist's partial withdrawal of its complaint. *See* Order. No. 12 (Mar. 19, 2018), *not reviewed,* Notice (Apr. 5, 2019); Order. No. 19 (Sept. 25, 2018), *not reviewed,* Notice (Oct. 15, 2018); Order. No. 27 (Dec. 6, 2018), *not reviewed,* Notice (Dec. 21, 2018). Accordingly, at the time of the Final ID, the remaining asserted claims were claims 1–8, 10, 12, 14, and 15 of the '907 patent and claims 1–5 and 7–11 of the '623 patent.

On October 19, 2019, the ALJ issued a final initial determination (''Final ID'') finding a violation of section 337 with respect to claims 6 and 12 of the '907 patent. Final ID at 164–65. The ALJ found that Netlist showed that SK hynix infringes claims 1–8, 10, 12, 14, and 15 of the '907 patent, but failed to show

that SK hynix infringed any claim of the '623 patent. The ALJ also found that SK hynix showed that claims 1–5, 7, 8, 10, 14, and 15 of the '907 patent are invalid as obvious, but failed to show the invalidity of claims 6 and 12. Finally, the ALJ found that Netlist satisfied the domestic industry requirement with respect to the '907 patent, but did not satisfy the domestic industry requirement with respect to the '623 patent.

On November 4, 2019, SK hynix and OUII petitioned for review of the Final ID with respect to many issues involved in the finding of violation with respect to the '907 patent. Also on November 4, 2019, Netlist contingently petitioned for review of the Final ID with respect to certain issues related to the '907 patent. On November 12, 2019, the parties filed responses to each other's petitions. Because Netlist did not petition for review of the Final ID's finding that SK hynix did not violate section 337 with respect to the '623 patent, the Commission finds that Netlist has abandoned that contention and that there is no violation of section 337 with respect to the '623 patent. *See* 19 CFR 210.43(b)(2) (stating that ''[a]ny issue not raised in petition for review will be deemed to have been abandoned by the petitioning party'').

Having examined the record of this investigation, including the ALJ's final ID, the petition for review, and the responses thereto, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review the following issues: (1) The construction of the limitation ''receive'' in the asserted claims of the '907 patent, as well as related issues of infringement and invalidity; (2) the construction of the limitation ''produce first module control signals and second module control signals in response to the set of input address and control signals'' in the asserted claims of the '907 patent, as well as related issues of infringement and invalidity; (3) the domestic industry requirement with respect to both of the '623 and '907 patents; and (4) the findings with respect to both of the '623 and '907 patents regarding whether SK hynix showed that Netlist violated its obligations, if any, to offer a license on reasonable and non-discriminatory (RAND) terms. The Commission has determined not to review any other findings presented in the Final ID.

The Commission has also determined to extend the target date for the completion of the investigation until April 7, 2020.

In connection with its review, the Commission is interested in briefing on certain issues. The Commission is not requesting new argument, so for each response, the parties are to identify where they previously made such an argument in their pre- and post-hearing briefs. The Commission is interested in briefing on the following issues:

1. If the Commission were to view the limitation ''set of input address and control signals'' as referring to a group of input address and control signals, what evidence is there in the record regarding whether or not the accused products and domestic industry products satisfy the limitation ''produce first module control signals and second module control signals in response to the set of input address and control signals''?

2. Please explain, with reference to supporting evidence in the record, whether the '907 and '623 patents are essential to any JEDEC standard.

3. Please explain, with reference to supporting evidence in the record, whether the alleged domestic industry products' compliance with JEDEC standards is sufficient to satisfy each and every limitation of a claim of the '907 patent.

4. Please describe the status of Netlist's activities and investments with respect to the articles protected by the '907 and '623 patents at the time of Netlist's filing of the complaint in this investigation. Additionally, please describe the current status of Netlist's domestic industry investments and activities with respect to the articles protected by the '907 and '623 patents.

The parties are invited to brief only the discrete issues described above, with reference to the applicable law and evidentiary record. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the statute authorizes issuance of (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (December 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation. The Commission is particularly interested in briefing on the following issues:

1. Please discuss whether the market demand in the United States for memory modules and components thereof would be satisfied if the Commission issued remedial relief against SK hynix regarding the '907 patent. Please address whether that that demand could be satisfied by non-infringing RDIMMs, Netlist licensees, or others.

2. Please discuss the types of U.S. consumers that purchase and use the accused products, and discuss the potential impact on those consumers if the Commission were to issue remedial relief against SK hynix regarding the '907 patent.

3. Please explain whether and to what extent servers require uniform memory modules, so the operator of a server would have to replace the whole server system based on the failure of a single memory module if that specific memory module was no longer available. Please explain whether the issuance of remedial relief against SK hynix regarding the '907 patent would have such an effect, and, if so, the extent of that effect.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The Commission requests that the parties to the investigation file written submissions on the issues identified in this notice. The Commission encourages parties to the investigation, interested government agencies, and any other

interested parties to file written submissions on the issues of remedy, the public interest, and bonding. Such initial written submissions should include views on the recommended determination by the ALJ on remedy, the public interest, and bonding, which issued in the same document as the Final ID on October 21, 2019. Netlist and the Commission Investigative Attorney are also requested to identify the form of the remedy sought and to submit proposed remedial orders for the Commission's consideration in their initial written submissions. Netlist is further requested to state the date when the '907 patent expires, provide the HTSUS numbers under which the subject articles are imported, and supply a list of known importers of the subject article. The written submissions, exclusive of any exhibits, must not exceed 50 pages, and must be filed no later than close of business on February 14, 2020. Reply submissions must not exceed 25 pages, and must be filed no later than the close of business on February 21, 2020. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–1089'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[1] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: January 31, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–02336 Filed 2–5–20; 8:45 am]

BILLING CODE 7020–02–P

[1] All contract personnel will sign appropriate nondisclosure agreements.

DEPARTMENT OF JUSTICE

[OMB Number 1124–0001]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection; Registration Statement of Foreign Agents (FORM NSD–1)

AGENCY: Foreign Agents Registration Act Unit (FARA Unit), Counterintelligence and Export Control Section (CES), National Security Division (NSD), U.S. Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Foreign Agents Registration Act (FARA Unit), Counterintelligence and Export Control Section (CES), National Security Division (NSD), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until April 6, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Brandon L. Van Grack, Deputy Section Chief, Counterintelligence and Export Control Section, National Security Division, 175 N Street NE, Constitution Square Building Three (''3CON'')—Room 1.100, Washington, DC 20002 (phone: 202–233–0776).

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 National Security Division, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Registration Statement (Foreign Agents).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is NSD–1. The applicable component within the Department of Justice is the Foreign Agents Registration Act (FARA Unit), Counterintelligence and Export Control Section, in the National Security Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Private Sector, Business or other for-profit, Not-for-profit institutions, and individuals. The form contains Registration Statement

information used for registering foreign agents under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611 *et seq.,* (FARA).

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Based on the projected increases in registrations from 2017 to 2020, an estimated 140 new registrants will complete Form NSD–1 (OMB 1124–0001). Based on sample testing, each respondent will need .75 hours to complete the form, which takes into consideration the improved e-File 4.0 webform features. The following factors were considered when creating the burden estimate: the estimated total number of respondents, the intuitive online FARA e-File registration process, and the prior collection of the necessary data to accurately complete the filing. NSD estimates that all of the approximately 140 respondents will fully complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 105 annual burden hours. It is estimated that respondents will take .75 hours to complete the form. (140 respondents × .75 hours = 105 annual burden hours).

7. Beginning September 23, 2019, NSD completed its ongoing multi-year design review, testing, and requirements enhancement efforts under the FARA e-File 4.0 initiative to a level where it began to rollout initial capabilities for new registrants only. NSD continues to make progress in enhancing the functionality of FARA e-File and Form NSD–1.

If additional information is required contact: Melody D. Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: February 3, 2020.

Melody D. Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–02346 Filed 2–5–20; 8:45 am]

BILLING CODE 4410–PF–P

DEPARTMENT OF JUSTICE

[OMB Number 1124–0005]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection; Short Form to Registration Statement of Foreign Agents (FORM NSD–6)

AGENCY: Foreign Agents Registration Act Unit (FARA Unit), Counterintelligence and Export Control Section (CES), National Security Division (NSD), U.S. Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Foreign Agents Registration Act (FARA Unit), Counterintelligence and Export Control Section (CES), National Security Division (NSD), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until April 6, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Brandon L. Van Grack, Deputy Section Chief, Counterintelligence and Export Control Section, National Security Division, 175 N Street NE, Constitution Square Building Three (''3CON'')—Room 1.100, Washington, DC 20002 (phone: 202–233–0776).

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 National Security Division, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Short Form to Registration Statement (Foreign Agents).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is NSD–6. The applicable component within the Department of Justice is the Foreign Agents Registration Act (FARA Unit), Counterintelligence and Export Control Section, in the National Security Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Private Sector, Business or other for-profit, Not-for-profit institutions, and individuals. The form contains Short Form to Registration Statement information used for registering foreign agents under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611 *et seq.,* (FARA).

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Based on the projected increases in registrations from 2017 to 2020, an estimated 892 new individual foreign agents will complete Form NSD–6 (OMB 1124–0005). Based on sample testing, each respondent will need .23 hours to complete the form, which takes into consideration the improved e-File 4.0 webform features. The following factors were considered when creating the burden estimate: The estimated total number of respondents, the intuitive online FARA e-File registration process, and the prior collection of the necessary data to accurately complete the filing. NSD estimates that all of the approximately 892 respondents will fully complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 205.16 annual burden hours. It is estimated that

respondents will take .23 hours to complete the form. (892 respondents × .23 hours = 205.16 annual burden hours).

7. Beginning September 23, 2019, NSD completed its ongoing multi-year design review, testing, and requirements enhancement efforts under the FARA e-File 4.0 initiative to a level where it began to rollout initial capabilities for new registrants only. NSD continues to make progress in enhancing the functionality of FARA e-File and Form NSD–6.

If additional information is required contact: Melody D. Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: February 3, 2020.

Melody D. Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–02350 Filed 2–5–20; 8:45 am]

BILLING CODE 4410–PF–P

DEPARTMENT OF JUSTICE

[OMB Number 1124–0004]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection; Exhibit B to Registration Statement of Foreign Agents (FORM NSD–4)

AGENCY: Foreign Agents Registration Act Unit (FARA Unit), Counterintelligence and Export Control Section (CES), National Security Division (NSD), U.S. Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Foreign Agents Registration Act (FARA Unit), Counterintelligence and Export Control Section (CES), National Security Division (NSD), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until April 6, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Brandon L. Van Grack, Deputy Section Chief, Counterintelligence and Export Control Section, National Security Division, 175 N Street NE, Constitution Square Building Three (''3CON'')—Room 1.100, Washington, DC 20002 (phone: 202–233–0776).

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 National Security Division, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Exhibit B to Registration Statement (Foreign Agents).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is NSD–4. The applicable component within the Department of Justice is the Foreign Agents Registration Act (FARA Unit), Counterintelligence and Export Control Section, in the National Security Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Private Sector, Business or other for-profit, Not-for-profit institutions, and individuals. The form contains Exhibit B to Registration Statement information used for registering foreign agents under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611 *et seq.,* (FARA).

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Based on the projected increases in registrations from 2017 to 2020, an estimated 296 respondents will complete Form NSD–4 (OMB 1124–0004). Based on sample testing, each respondent will need .32 hours to complete the form, which takes into consideration the improved e-File 4.0 webform features. The following factors were considered when creating the burden estimate: The estimated total number of respondents, the intuitive online FARA e-File registration process, and the prior collection of the necessary data to accurately complete the filing. NSD estimates that all of the approximately 296 respondents will fully complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 94.72 annual burden hours. It is estimated that respondents will take .32 hours to complete the form. (296 respondents × .32 hours = 94.72 annual burden hours).

7. Beginning September 23, 2019, NSD completed its ongoing multi-year design review, testing, and requirements enhancement efforts under the FARA e-File 4.0 initiative to a level where it began to rollout initial capabilities for new registrants only. NSD continues to make progress in enhancing the functionality of FARA e-File and Form NSD–4.

If additional information is required contact: Melody D. Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: February 3, 2020.

Melody D. Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–02349 Filed 2–5–20; 8:45 am]

BILLING CODE 4410–PF–P

DEPARTMENT OF JUSTICE

[OMB Number 1124–0003]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection; Amendment to Registration Statement of Foreign Agents (FORM NSD–5)

AGENCY: Foreign Agents Registration Act Unit (FARA Unit), Counterintelligence and Export Control Section (CES), National Security Division (NSD), U.S. Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Foreign Agents Registration Act (FARA Unit), Counterintelligence and Export Control Section (CES), National Security Division (NSD), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until April 6, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Brandon L. Van Grack, Deputy Section Chief, Counterintelligence and Export Control Section, National Security Division, 175 N Street NE, Constitution Square Building Three (''3CON'')—Room 1.100, Washington, DC 20002 (phone: 202–233–0776).

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 National Security Division, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Amendment to Registration Statement (Foreign Agents).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is NSD–5. The applicable component within the Department of Justice is the Foreign Agents Registration Act (FARA Unit), Counterintelligence and Export Control Section, in the National Security Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Private Sector, Business or other for-profit, Not-for-profit institutions, and individuals. The form contains Amendment to Registration Statement information used for registering foreign agents under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611 *et seq.,* (FARA).

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Based on the projected increases in registrations from 2017 to 2020, an estimated 556 responses by respondents will complete Form NSD–5 (OMB 1124–0003). Based on sample testing, each respondent will need .75 hours to complete the form, which takes into consideration the improved e-File 4.0 webform features. The following factors were considered when creating the burden estimate: The estimated total number of respondents, the intuitive online FARA e-File registration process, and the prior collection of the necessary data to accurately complete the filing. NSD estimates that all of the approximately 556 respondents will fully complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 417 annual burden hours. It is estimated that respondents will take .75 hours to complete the form. (556 respondents × .75 hours = 417 annual burden hours).

7. Beginning September 23, 2019, NSD completed its ongoing multi-year design review, testing, and requirements enhancement efforts under the FARA e-File 4.0 initiative to a level where it began to rollout initial capabilities for new registrants only. NSD continues to make progress in enhancing the functionality of FARA e-File and Form NSD–5.

If additional information is required contact: Melody D. Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: February 3, 2020.

Melody D. Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–02348 Filed 2–5–20; 8:45 am]

BILLING CODE 4410–PF–P

DEPARTMENT OF JUSTICE

[OMB Number 1124–0006]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection; Exhibit A to Registration Statement of Foreign Agents (FORM NSD–3)

AGENCY: Foreign Agents Registration Act Unit (FARA Unit), Counterintelligence and Export Control Section (CES), National Security Division (NSD), U.S. Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Foreign Agents Registration Act (FARA Unit), Counterintelligence and Export Control Section (CES), National Security Division (NSD), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until April 6, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the

proposed information collection instrument with instructions or additional information, please contact Brandon L. Van Grack, Deputy Section Chief, Counterintelligence and Export Control Section, National Security Division, 175 N Street NE, Constitution Square Building Three (''3CON'')—Room 1.100, Washington, DC 20002 (phone: 202–233–0776).

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 National Security Division, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Exhibit A to Registration Statement (Foreign Agents).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is NSD–3. The applicable component within the Department of Justice is the Foreign Agents Registration Act (FARA Unit), Counterintelligence and Export Control Section, in the National Security Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Private Sector, Business or other for-profit, Not-for-profit institutions, and individuals. The form contains Exhibit A to Registration Statement information used for registering foreign agents under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611 *et seq.,* (FARA).

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Based on the projected increases in registrations from 2017 to 2020, an estimated 296 new registrants will complete Form NSD–3 (OMB 1124–0006). Based on sample testing, each respondent will need .22 hours to complete the form, which takes into consideration the improved e-File 4.0 webform features. The following factors were considered when creating the burden estimate: The estimated total number of respondents, the intuitive online FARA e-File registration process, and the prior collection of the necessary data to accurately complete the filing. NSD estimates that all of the approximately 296 respondents will fully complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 65.12 annual burden hours. It is estimated that respondents will take .22 hours to complete the form. (296 respondents × .22 hours = 65.12 annual burden hours).

7. Beginning September 23, 2019, NSD completed its ongoing multi-year design review, testing, and requirements enhancement efforts under the FARA e-File 4.0 initiative to a level where it began to rollout initial capabilities for new registrants only. NSD continues to make progress in enhancing the functionality of FARA e-File and Form NSD–3.

If additional information is required contact: Melody D. Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: February 3, 2020.

Melody D. Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–02342 Filed 2–5–20; 8:45 am]

BILLING CODE 4410–PF–P

DEPARTMENT OF JUSTICE

[OMB Number 1124–0002]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection; Supplemental Statement of Foreign Agents (FORM NSD–2)

AGENCY: Foreign Agents Registration Act Unit (FARA Unit), Counterintelligence and Export Control Section (CES), National Security Division (NSD), U.S. Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Foreign Agents Registration Act (FARA Unit), Counterintelligence and Export Control Section (CES), National Security Division (NSD), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until April 6, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Brandon L. Van Grack, Deputy Section Chief, Counterintelligence and Export Control Section, National Security Division, 175 N Street NE, Constitution Square Building Three (''3CON'')—Room 1.100, Washington, DC 20002 (phone: 202–233–0776).

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 National Security Division, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Supplemental Statement (Foreign Agents).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is NSD–2. The applicable component within the Department of Justice is the Foreign Agents Registration Act (FARA Unit), Counterintelligence and Export Control Section, in the National Security Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Private Sector, Business or other for-profit, Not-for-profit institutions, and individuals. The form contains Supplemental Statement information used for registering foreign agents under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611 *et seq.,* (FARA).

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Based on the projected increases in registrations from 2017 to 2020, an estimated number of responses to the form is 416 @2 responses annually (832) who will complete Form NSD–2 (OMB 1124–0002). Based on sample testing, each respondent will need 1.17 hours to complete the form, which takes into consideration the improved e-File 4.0 webform features. The following factors were considered when creating the burden estimate: The estimated total number of respondents, the intuitive online FARA e-File registration process, and the prior collection of the necessary data to accurately complete the filing. NSD estimates that all of the approximately 416 respondents will fully complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 973.44 annual burden hours. It is estimated that respondents will take 1.17 hours to complete the form. (416 respondents (2 responses annually) × 1.17 hours = 973.44 annual burden hours).

7. Beginning September 23, 2019, NSD completed its ongoing multi-year design review, testing, and requirements enhancement efforts under the FARA e-File 4.0 initiative to a level where it began to rollout initial capabilities for new registrants only. NSD continues to make progress in enhancing the functionality of FARA e-File and Form NSD–2.

If additional information is required contact: Melody D. Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: February 3, 2020.

Melody D. Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–02347 Filed 2–5–20; 8:45 am]

BILLING CODE 4410–PF–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Issuance of Insurance Policy

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation (OWCP) sponsored information collection request (ICR) titled, ''Notice of Issuance of Insurance Policy,'' to the Office of Management and Budget (OMB) for review and reinstatement for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before March 9, 2020.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201910-1240-005* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor–OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to reinstate PRA authority for the Notice of Issuance of Insurance Policy information collection. The Black Lung Benefits Act (the Act), 30 U.S.C. 901–944, requires coal mine operators to be insured (either by qualifying as a self-insurer or obtaining commercial insurance) for liabilities arising from the Act; failure to do so may result in civil money penalties. 30 U.S.C. 933. Accordingly, 20 CFR part V, subpart C, 726.208–.213 requires insurance carriers to report to the Division of Coal Mine Workers' Compensation (DCMWC) each policy and endorsement issued, cancelled, or renewed with respect to operators in such a manner and on such form as DCMWC may require. These regulations also require carriers to file a separate report for each operator it insures. Carriers use Form CM–921, Notice of Issuance of Insurance Policy, to report issuance of insurance policies to operators. 30 U.S.C. 901 and 20 CFR 725.535 authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of

information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL requests OMB reinstatement for this information collection under Control Number 1240–0048.

OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL seeks to reinstate PRA authorization for this information collection for three (3) more years, without any change to existing requirements. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 13, 2019 (84 FR 61657).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0048. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OWCP.

Title of Collection: Notice of Issuance of Insurance Policy.

OMB Control Number: 1240–0048.

Affected Public: Private Sector: Businesses or other for-profits.

Total Estimated Number of Respondents: 3,465.

Total Estimated Number of Responses: 3,465.

Total Estimated Annual Time Burden: 58 hours.

Total Estimated Annual Other Costs Burden: $9.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: January 28, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–02305 Filed 2–5–20; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0018]

Asbestos in General Industry; Extension of the Office of Management and Budget's (OMB) Approval of Collection of Information

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 collection of information contained in the Standard on Asbestos in General Industry.

DATES: Comments must be submitted (postmarked, sent, or received) by April 6, 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–2010–0018, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the OSHA Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA–2010–0018) for the 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 (202) 693–2222 to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of 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 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 (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 OSHA to 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 said information (29 U.S.C. 657).

The basic purpose of the collection of information in the Asbestos in General Industry Standard (29 CFR 1910.1001) (the Standard) is to document that employers in general industry are

providing their workers with protection from exposure to hazardous asbestos. Asbestos exposure results in asbestosis, an emphysema-like condition; lung cancer; mesothelioma; and gastrointestinal cancer.

Several provisions of the Standard require a collection of information, including: Implementing an exposure monitoring program that notifies workers of their exposure monitoring results, establishing a written compliance program, and informing laundry personnel of the requirement to prevent release of airborne asbestos above the time-weighted average and excursion limit. Other information collection in the Standard include: Maintaining records of information obtained concerning the presence, location, and quantity of asbestos-containing materials (ACMs) and/or presumed asbestos-containing materials (PACMs) in a building/facility; notifying housekeeping workers of the presence and location of ACMs and PACMs in areas they may occupy during their work; and using information, data, and analyses to demonstrate that PACMs do not contain asbestos. In addition, the collection of information in the Standard includes: Providing medical surveillance for workers potentially exposed to ACMs and/or PACMs, including administering a worker medical questionnaire, providing information to the examining physician, and providing the physician's written opinion to the worker; maintaining records of exposure monitoring, objective data used for exposure determinations, and medical surveillance; and making specified records (*e.g.,* exposure monitoring and medical surveillance records) available to designated parties.

This collection of information permits employers, workers and their designated representatives, OSHA, and other specified parties to determine the effectiveness of an employer's asbestos-control program. Accordingly, the requirements ensure that workers exposed to asbestos receive all of the protections afforded by the Standard.

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 an adjustment increase in the burden hours from 11,688 hours to 11,745 hours, for a total increase of 57 hours. The increase is due to the agency's use of a new method for rounding burden hours. Capital costs increased, from $963,650 to $1,018,728, an increase of $55,078. This adjustment is related to increased costs to conduct a medical examination (from $156 to $165). In addition, the estimated costs for contract industrial hygiene services to conduct exposure monitoring sampling increased from $50.25 to $52.52. The increase in the exposure monitoring sampling cost is due to the agency's use of a different method of calculating employee compensation.

OSHA is providing the following summary information about the Asbestos in General Industry information collection:

Type of Review: Extension of a currently approved collection.

Title: Asbestos in General Industry (29 CFR 1910.1001).

OMB Control Number: 1218–0133.

Affected Public: Businesses or other for-profits.

Number of Respondents: 121.

Frequency of Responses: Varies.

Total Responses: 30,847.

Average Time per Response: Varies.

Estimated Total Burden Hours: 11,745.

Estimated Cost (Operation and Maintenance): $1,018,728.

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–2010–0018). 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.

Due to security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as their 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 January 29, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020–02306 Filed 2–5–20; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these

meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. These meetings will primarily take place at NSF's headquarters, 2415 Eisenhower Avenue, Alexandria, VA 22314.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF website: *https://www.nsf.gov/events/advisory.jsp.* This information may also be requested by telephoning, 703/292–8687.

Dated: February 3, 2020.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2020–02329 Filed 2–5–20; 8:45 am]

BILLING CODE 7555–01–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* February 6, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on January 31, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 590 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–89, CP2020–88.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–02309 Filed 2–5–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* February 6, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on January 31, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 591 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–91, CP2020–90.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–02311 Filed 2–5–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* February 6, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on January 31, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 588 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–87, CP2020–86.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–02307 Filed 2–5–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* February 6, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on January 31, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 140 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–90, CP2020–89.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–02310 Filed 2–5–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* February 6, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on January 31, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 589 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–88, CP2020–87.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–02308 Filed 2–5–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* February 6, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on January 31, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 592 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–92, CP2020–91.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–02312 Filed 2–5–20; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88109; File No. SR–NYSENAT–2019–31]

Self-Regulatory Organizations; NYSE National, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Establish Fees for the NYSE National Integrated Feed

January 31, 2020.

I. Introduction

On December 4, 2019, NYSE National, Inc. (''NYSE National'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish fees for the NYSE National Integrated Feed. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on December 26, 2019.[4] The Commission received two comment letters on the proposal.[5] Pursuant to Section 19(b)(3)(C) of the Act,[6] the Commission is hereby: (1) Temporarily suspending the proposed rule change; and (2) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to establish fees for the NYSE National Integrated Feed and to make these fees operative on February 3, 2020.[7] According to the Exchange, the NYSE National Integrated Feed is a NYSE National-only market data feed that provides vendors and subscribers on a real-time basis with a unified view of events, in sequence, as they appear on the NYSE National matching engine.[8] The NYSE National Integrated Feed includes depth-of-book order data, last sale data, security status updates (*e.g.,* trade corrections and trading halts), and stock summary messages.[9] It also includes information about the Exchange's best bid or offer at any given time.[10] The Exchange proposes the following fees for the NYSE National Integrated Feed:

- $2,500 per month access fee, which would be charged (once per firm) to any data recipient that receives a data feed of the NYSE National Integrated Feed; [11]
- $1,500 per month redistribution fee, which would be charged (once per redistributor account) to any redistributor [12] of the NYSE National Integrated Feed;
- $10 per month professional per user fee and $1 per month non-professional per user fee, which would apply to each display device that has access to the NYSE National Integrated Feed; [13]
- Non-display use [14] fees:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii). However, the Commission notes that, by its terms, the proposed rule change would not impose any fees for the NYSE National Integrated Feed until February 3, 2020. *See infra note* 7 and accompanying text.

[4] *See* Securities Exchange Act Release No. 87797 (December 18, 2019), 84 FR 71025 (December 26, 2019) (''Notice'').

[5] *See* Letter from Tyler Gellasch, Executive Director, The Healthy Markets Association, to Vanessa Countryman, Office of the Secretary, Commission, dated January 16, 2020 (''Healthy Markets Letter''); Letter from Robert Toomey, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (''SIFMA''), to Vanessa Countryman, Secretary, Commission, dated January 21, 2020 (''SIFMA Letter'').

[6] 15 U.S.C. 78s(b)(3)(C).

[7] The Exchange currently does not charge any fees for the NYSE National Integrated Feed. *See* Notice, *supra* note 4, at 71026.

[8] *See id.*

[9] *See id.*

[10] *See id.*

[11] Data recipients that only use display devices to view NYSE National Integrated Feed data and do not separately receive a data feed would not be charged an access fee. *See id.*

[12] A redistributor would be a vendor or person that provides a real-time NYSE National market data product externally to a data recipient that is not its affiliate or wholly owned subsidiary, or to any system that an external data recipient uses, irrespective of the means of transmission or access. *See id.*

[13] *See id.*

[14] Non-display use would mean accessing, processing, or consuming the NYSE National Integrated Feed, delivered directly or through a redistributor, for a purpose other than in support of a data recipient's display or further internal or external redistribution. *See id.* at 71026–27. As proposed, non-display use would include trading uses such as high frequency or algorithmic trading, as well as any trading in any asset class, automated order or quote generation and order pegging, price referencing for algorithmic trading or smart order routing, operations controls programs, investment analysis, order verification, surveillance programs, risk management, compliance, and portfolio management. *See id.* at 71027. One, two, or three categories of non-display use may apply to a data recipient. *See id.* Moreover, data recipients that receive the NYSE National Integrated Feed for non-display use would be required to complete and submit a non-display use declaration before they would be authorized to receive the feed. *See id.* In addition, if a data recipient's use of the NYSE National Integrated Feed data changes at any time after the data recipient submits a non-display use declaration, the data recipient must inform the

○ $5,000 per month category 1 non-display fee, which would apply when a data recipient's non-display use of real-time market data is on its own behalf;

○ $5,000 per month category 2 non-display fee, which would apply when a data recipient's non-display use of real-time data is on behalf of its clients;

○ $5,000 per platform per month category 3 non-display fee (capped at $15,000), which would apply when a data recipient's non-display use of real-time market data is for the purpose of internally matching buy and sell orders within an organization, including matching customer orders on a data recipient's own behalf and on behalf of its clients; [15]

• $1,000 per month non-display use declaration late fee, which would apply to any data recipient that is paying an access fee for the NYSE National Integrated Feed and that fails to complete and submit the annual non-display use declaration by December 31 of the year, and would apply beginning January 1 and for each month thereafter until the data recipient has completed and submitted the annual non-display use declaration; [16] and

• $200 per month multiple data feed fee, which would apply to any data recipient that takes a data feed for a market data product in more than two locations, and would apply to each location, beyond the first two locations, where the data recipient receives a data feed.[17]

The access fees, professional user fees, and non-display fees would not apply to Federal agencies [18] that subscribe to the products listed on the proposed fee schedule that includes such fees.[19]

Finally, first-time subscribers [20] would be eligible for a free trial by contacting the Exchange and would not be charged the access fee, the non-display fee, any applicable professional and non-professional user fee, and the redistribution fee for one calendar month for each of the products listed on the proposed fee schedule.[21] The free trial would be for the first full calendar month following the date a subscriber is approved to receive trial access to NYSE National market data.[22] As proposed, the Exchange would provide the one-month free trial for a particular product to each subscriber only once.

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[23] at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,[24] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') 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. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

The Exchange proposes to adopt fees for the NYSE National Integrated Feed and provides various arguments to support the proposal's consistency with the Act. With respect to whether the proposed fees are reasonable, the Exchange states that exchanges in general function as platforms between consumers of market data and consumers of trading services, and that overall competition between exchanges will limit their overall profitability.[25] In connection with these arguments, the Exchange also attaches a report by Marc Rysman,[26] which finds that the introduction of the NYSE Integrated Feed in 2015 attracted more trading to NYSE by both subscribers and non-subscribers to the NYSE Integrated Feed,[27] and concludes that overall competition between exchanges will limit their overall profitability (not margins on any particular side of the platform).[28] According to the Exchange, given the conclusion in the Rysman Paper that exchanges are platforms for market data and transaction services, competition for order flow on the trading side of the platform acts to constrain the pricing of market data on the other side of the platform.[29]

In addition, the Exchange argues that, due to the ready availability of substitutes and the low cost to move order flow to the 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.[30] The Exchange argues that subscribing to the NYSE National Integrated Feed is optional, that its customers may choose to discontinue using the feed once the proposed fees are effective, and that any customers who choose to discontinue using the feed may choose to shift order flow away from the Exchange.[31] Similarly, the Exchange argues that its market data pricing is constrained by the availability of numerous substitute platforms offering competing proprietary market data products and trading services.[32]

Moreover, the Exchange argues that its market data is sold in a competitive market and attaches a report by Charles M. Jones,[33] which concludes that exchanges compete with each other in selling proprietary market data products, as well as with consolidated data feeds and with data provided by ATSs.[34] The Exchange also more

Exchange of the change by completing and submitting an updated declaration reflecting the change of use at the time of the change. *See id.*

[15] According to the Exchange, category 3 non-display fees would apply to non-display use in trading platforms, such as, but not limited to, alternative trading systems (''ATSs''), broker crossing networks, broker crossing systems not filed as ATSs, dark pools, multilateral trading facilities, exchanges, and systematic internalization systems. *See id.*

[16] *See id.*

[17] *See id.*

[18] The term ''Federal agencies'' as used in the proposed fee schedule would include all Federal agencies subject to the Federal Acquisition Regulation (''FAR''), as well as any Federal agency not subject to FAR that has promulgated its own procurement rules. *See id.* All Federal agencies that subscribe to the NYSE National real-time proprietary market data products would continue to be required to execute the appropriate subscriber agreement, which includes, among other things, provisions against the redistribution of data. *See id.* at 70128.

[19] The proposed fee schedule lists NYSE National BBO, NYSE National Trades, and NYSE National Integrated Feed, and specifies that there would be no fees for NYSE National BBO and NYSE National Trades.

[20] A first-time subscriber would be any firm that has not previously subscribed to a particular product listed on the proposed fee schedule. *See* Notice, *supra* note 4, at 70128.

[21] *See id.*

[22] *See id.*

[23] 15 U.S.C. 78s(b)(3)(C).

[24] 15 U.S.C. 78s(b)(1).

[25] *See* Notice, *supra* note 4, at 71030.

[26] *See* Marc Rysman, *Stock Exchanges as Platforms for Data and Trading* (December 2, 2019) (''Rysman Paper''), *available at https://www.sec.gov/rules/sro/nysenat/2019/34-87797-ex3b.pdf.*

[27] The Exchange also states that, since May 2018, when NYSE National relaunched trading, the Exchange has observed a direct correlation between the steady increase of subscribers to the NYSE National Integrated Feed and the increase in the Exchange's transaction market share volume over the same period. *See* Notice, *supra* note 4, at 71028. The Exchange states that, over an 18-month period since it commenced operations in May 2018, it has grown from 0% to nearly 2% market share of consolidated trading volume, and the number of NYSE National Integrated Feed subscribers increased from 12 to 56. *See id.* at 71028, 71031.

[28] *See id.* at 71030.

[29] *See id.* at 71031.

[30] *See id.*

[31] *See id.* at 71029, 71031.

[32] *See id.* at 71031.

[33] *See* Charles M. Jones, *Understanding the Market for U.S. Equity Market Data* (August 31, 2018) (''Jones Paper''), *available at https://www.sec.gov/rules/sro/nysenat/2019/34-87797-ex3a.pdf.*

[34] *See* Notice, *supra* note 4, at 71029. The Jones Paper also states that the market for order flow and

Continued

specifically argues that NYSE National BBO (which includes best bid and offer information for NYSE National on a real-time basis), NYSE National Trades (which includes NYSE National last sale information on a real-time basis), and consolidated data feeds are substitutes for the NYSE National Integrated Feed and constrain the Exchange's ability to charge supracompetitive prices for the feed.[35]

With respect to the other requirements under the Act, the Exchange argues that the proposed fees are equitably allocated and are not unfairly discriminatory because they would apply on an equal basis to all data recipients that choose to subscribe to the data in a manner that is subject to an applicable fee and because any differences among categories of users are justified.[36] Specifically, the Exchange argues that the professional and non-professional user fee structure has long been used by the Exchange to reduce the price of data to non-professional users and make it more broadly available, and that the non-display fee structure results in subscribers with greater uses of the data paying higher fees and subscribers with fewer uses of the data paying lower fees.[37] For similar reasons, and because it claims numerous substitute market data products are available, the Exchange argues that the proposed fees do not impose an unnecessary or inappropriate burden on competition.[38]

With respect to the redistribution fee, the Exchange argues that the proposed fee is reasonable, equitable, and not unfairly discriminatory because vendors that would be charged the proposed fee would profit by re-transmitting the Exchange's market data to their customers.[39] Similarly, with respect to category 3 non-display fees, which would be charged to each trading platform on which the customer uses non-display data (capped at three platforms), the Exchange argues that the proposal is reasonable, equitable, and not unfairly discriminatory because such use of data is directly in competition with the Exchange and the Exchange should be permitted to recoup some of its lost trading revenue by charging for the data that makes such competition possible.[40]

Finally, with respect to the non-display use declaration late fee and the multiple data feed fee, the Exchange claims that these fees are reasonable, equitable, and not unfairly discriminatory because they would offset the Exchange's administrative burdens and costs associated with incorrect billing, late payments, and tracking data usage locations.[41]

The Commission received two comment letters that express concerns regarding the proposed rule change. One commenter states that the Exchange does not provide sufficient information to establish that the proposed fees are consistent with the Act and Commission rules.[42] This commenter states its belief that the Exchange's discussions regarding the reasonableness of the proposed fees (*i.e.,* the comparison to similar fees charged by affiliated exchanges, the nature of the market for order flow, the availability of other data options, and the lack of a relation between the proposed fees and the costs of production) do not support a finding that the proposed fees are reasonable.[43] This commenter also states that the Exchange does not provide any information about the costs of production for the NYSE National Integrated Feed, how much revenue the Exchange projects to generate from the proposed fees, how the proposed fees would impact subscribers, the competition between subscribers and non-subscribers, and how the proposed fees would be equitably allocated and would not impose any undue burden on competition.[44] In addition, the commenter states that the Exchange does not provide any information about the latency difference between the NYSE National Integrated Feed and the consolidated data feed or other methods of getting comparable data.[45] Moreover, this commenter questions the Exchange's assertion that market participants have the ability to choose whether or not to connect to the NYSE National Integrated Feed and believes instead that many market participants must buy the feed.[46] The commenter also objects to what it describes as conflicting statements by the Exchange: That the NYSE National Integrated Feed is valuable to market participants, but that the feed is also not essential for market participants because it can be sufficiently replaced by substitutes.[47]

Another commenter also states that the Exchange fails to provide the necessary information to demonstrate that the proposed fees meet the requirements of the Act.[48] This commenter similarly argues that the NYSE National Integrated Feed is not subject to competitive forces because there are no available substitutes for the Exchange's depth-of-book product.[49] The commenter also claims that depth-of-book information is ''essential'' for many broker-dealers to provide customers with the best and most competitive order routing capabilities and execution quality, and that the Exchange is the exclusive purveyor of that information.[50] With respect to competition by data vendors, the commenter argues that because any vendors must first purchase the data from the Exchange (subject to the Exchange's terms and pricing) before being able to resell such data, these vendors cannot offer a competing product.[51]

In addition, this commenter disagrees that fees for the NYSE National Integrated Feed will be constrained by competition for order flow under the ''platform theory'' of competition.[52] The commenter argues that the decision of where to trade occurs in milliseconds, while market data is purchased and charged monthly, independent of decisions on where to trade.[53] The commenter also states that not all purchasers of market data execute trades solely on exchanges, which limits the theoretical ability to constrain market data prices by routing order flow to other exchanges.[54] Moreover, the commenter cites a report by Lawrence R. Glosten to support its claim that exchanges have little incentive to reduce the prices for their own market data, because any theoretical increase in demand would be shared with other exchanges.[55] The commenter further

the market for market data are closely linked, and that an exchange needs to consider the negative impact on its order flow if it raises the price of market data. *See id.*

[35] *See id.* at 71032.

[36] *See id.* at 71034–36.

[37] *See id.*

[38] *See id.* at 71036.

[39] *See id.* at 71032.

[40] *See id.* at 71033, 71035–36.

[41] *See id.* at 71033–36.

[42] *See* Healthy Markets Letter, *supra* note 5.

[43] *See id.* at 5.

[44] *See id.* at 5–6.

[45] *See id.* at 6.

[46] *See id.* at 3–4. The commenter states that a market participant that does not purchase the NYSE National Integrated Feed would be at a competitive disadvantage to firms that have purchased it and questions how a non-purchasing broker could provide best execution to its customers. *See id.* at 4.

[47] *See id.* at 5.

[48] *See* SIFMA Letter, *supra* note 5, at 1.

[49] *See id.* at 2. Specifically, the commenter states that the Exchange cites alternatives to the NYSE National Integrated Feed that do not contain depth-of-book information, which the commenter claims are ''inferior products.'' *See id.*

[50] *See id.*

[51] *See id.*

[52] *See id.*

[53] *See id.*

[54] *See id.*

[55] *See id.* (citing Lawrence R. Glosten, *Economics of the Stock Exchange Business: Proprietary Market Data* (January 2020), *available at https://www.sec.gov/comments/4-729/4729-6678493-203560.pdf*).

states that the exchanges have yet to show an increase (or decrease) in trading volume after reducing (or increasing) a respective exchange's price of market data.[56]

Lastly, this commenter argues that the Exchange fails to provide supporting information for its claim that the proposed fees for the NYSE National Integrated Feed are based on the purported increased value of such data as measured by the Exchange's expanded market share.[57] The commenter states that, during the same May 2018 to December 2019 time period that NYSE National's market share increased from 0% to 2.12%, the market shares of New York Stock Exchange LLC (''NYSE'') and NYSE Arca, Inc. decreased, but neither exchange responded by reducing the cost of its market data.[58] The commenter thus asserts that the Exchange's proposal would ''significantly increase the overall cost of market data for NYSE exchanges when the overall market share for NYSE exchanges increased by only 0.34% from May 2018 to December 2019.'' [59] The commenter believes that the Exchange has offered no evidence to show that competition for order flow constrains the price for market data and that the Exchange should provide additional information on the cost of its market data to support its proposal.[60]

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[61] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [62]

Section 6 of the Act, including Sections 6(b)(4), (5), and (8), require the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities;[63] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;[64] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[65]

In temporarily suspending the Exchange's proposed rule change, the Commission intends to further consider whether the proposal to establish fees for the NYSE National Integrated Feed is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[66]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[67]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

In addition to temporarily suspending the proposal, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C)[68] and 19(b)(2)(B) of the Act[69] to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[70] the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether the Exchange has demonstrated how its proposed fees are consistent with Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities''; [71]
- Whether the Exchange has demonstrated how its proposed fees are consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers''; [72] and
- Whether the Exchange has demonstrated how its proposed fees are consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [73]

As discussed in Section III above, the Exchange made various arguments in support of its proposal and the Commission received two comment letters that expressed concerns regarding the proposal, including in particular that the Exchange did not provide sufficient information to establish that the proposed fees are consistent with the Act and the rules thereunder.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule

[56] *See id.*

[57] *See id.*

[58] *See id.* The commenter also states that the market share of NYSE Chicago, Inc. decreased during this period. *See id.* Moreover, the commenter states that the market share of NYSE American LLC (''NYSE American'') increased during this period and that NYSE American similarly charges various fees for its market data products. *See id.*

[59] *Id.* at 3 (footnote omitted).

[60] *See id.*

[61] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[62] *See id.*

[63] 15 U.S.C. 78f(b)(4).

[64] 15 U.S.C. 78f(b)(5).

[65] 15 U.S.C. 78f(b)(8).

[66] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[67] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[68] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[69] 15 U.S.C. 78s(b)(2)(B).

[70] *Id.* Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[71] 15 U.S.C. 78f(b)(4).

[72] 15 U.S.C. 78f(b)(5).

[73] 15 U.S.C. 78f(b)(8).

change.'' [74] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[75] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[76]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated, not be unfairly discriminatory, and not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[77]

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by February 27, 2020. Rebuttal comments should be submitted by March 12, 2020. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.[78]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, 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 No. SR–NYSENAT–2019–31 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 No. SR–NYSENAT–2019–31. The 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 such 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 publicly available. All submissions should refer to File No. SR–NYSENAT–2019–31 and should be submitted on or before February 27, 2020. Rebuttal comments should be submitted by March 12, 2020.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[79] that File No. SR–NYSENAT–2019–31, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[80]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–02280 Filed 2–5–20; 8:45 am]

BILLING CODE 8011–01–P

[74] 17 CFR 201.700(b)(3).

[75] *See id.*

[76] *See id.*

[77] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

[78] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[79] 15 U.S.C. 78s(b)(3)(C).

[80] 17 CFR 200.30–3(a)(57) and (58).

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–10752; 34–88113; File No. 265–28]

Investor Advisory Committee Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of public meeting of Securities and Exchange Commission Investor Advisory Committee.

SUMMARY: The Securities and Exchange Commission Investor Advisory Committee, established pursuant to Section 911 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, is providing notice that it will hold a public meeting. The public is invited to submit written statements to the Committee.

DATES: The meeting will be held on Thursday, February 27, 2020 from 9:30 a.m. until 3:00 p.m. (ET). Written statements should be received on or before February 27, 2020.

ADDRESSES: The meeting will be held in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE, Washington, DC 20549. The meeting will be webcast on the Commission's website at *www.sec.gov.* Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email message to *rules-comments@sec.gov.* Please include File No. 265–28 on the subject line; or

Paper Statements

- Send paper statements to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. 265–28. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method.

Statements also will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Room 1503, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements 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.

FOR FURTHER INFORMATION CONTACT: Marc Oorloff Sharma, Chief Counsel, Office of the Investor Advocate, at (202) 551–3302, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public, except during that portion of the meeting reserved for an administrative work session during lunch. Persons needing special accommodations to take part because of a disability should notify the contact person listed in the section above entitled **FOR FURTHER INFORMATION CONTACT**.

The agenda for the meeting includes: Welcome remarks; an update for investors regarding accounting and auditing trends; a discussion regarding the potential impact of the LIBOR transition on investors; subcommittee reports; and a nonpublic administrative work session during lunch.

Dated: February 3, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–02375 Filed 2–5–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88108; File No. SR–CboeBZX–2019–102)]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Clearbridge Focus Value ETF Under BZX Rule 14.11(k)

January 31, 2020.

On November 27, 2019, Cboe BZX Exchange, Inc. filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Clearbridge Focus Value ETF under BZX Rule 14.11(k) (Managed Portfolio Shares). The proposed rule change was published for comment in the **Federal Register** on December 17, 2019.[3] On December 16, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[4] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act [5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is January 31, 2020. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates March 16, 2020, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File Number SR–CboeBZX–2019–102).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–02279 Filed 2–5–20; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87719 (December 11, 2019), 84 FR 68999.

[4] Amendment No. 1 is available on the Commission's website at *https://www.sec.gov/comments/sr-cboebzx-2019-102/srcboebzx2019102-6634920-203299.pdf.*

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33796]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

January 31, 2020.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of January 2020. A copy of each 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. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 25, 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 writer'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 the Commission's Secretary.

Address: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

For Further Information Contact: Shawn Davis, Assistant Director, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

Oppenheimer Limited-Term Government Fund [File No. 811–04563]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to AIM Investment Securities Funds (Invesco Investment Securities Funds), and on May 24, 2019 made a final distribution to its shareholders based on net asset value. Expenses of $1,300,306.94 incurred in connection with the reorganization were paid by the applicant's investment adviser and the acquiring fund's

investment adviser, and/or their affiliates.

Filing Date: The application was filed on November 4, 2019.

Applicant's Address: 6803 South Tucson Way, Centennial, Colorado 80112.

Seligman Capital Fund, Inc. [File No. 811–01886]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Columbia Mid Cap Growth Fund, a series of Columbia Funds Series Trust I, and on April, 8 2011, made a final distribution to its shareholders based on net asset value. Expenses of $63,153 incurred in connection with the reorganization were paid by the applicant.

Filing Dates: The application was filed on October 4, 2013, and amended on November 14, 2019.

Applicant's Address: 225 Franklin Street, Boston, Massachusetts 02110.

For the Commission by the Division of Investment Management pursuant to delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–02277 Filed 2–5–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88107; File No. SR–CboeBZX–2020–008]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To List and Trade Shares of the Hartford Core Bond ETF of the Hartford Funds Exchange-Traded Trust Under Rule 14.11(i), Managed Fund Shares

January 31, 2020.

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 January 21, 2020, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to list and trade shares of the Hartford Core Bond ETF (the ''Fund'') of the Hartford Funds Exchange-Traded Trust (the ''Trust'') under Rule 14.11(i) (''Managed Fund Shares'').

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares under Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange.[5] The Fund will be an actively managed fund. The shares will be offered by the Trust, which was established as a Delaware statutory trust on September 20, 2010. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Fund on Form N–1A (''Registration Statement'') with the Commission.[6]

Rule 14.11(i)(4)(C)(ii)(d) requires that component securities that in aggregate account for at least 90% of the fixed income weight of the portfolio must satisfy at least one of five conditions. The Exchange submits this proposal because the Fund will not meet this requirement;[7] however, it will meet all of the other requirements of Rule 14.11(i). The Exchange notes that this proposed exception to Rule 14.11(i)(4)(C)(ii)(d) is substantively identical to an exception included in several other rule filings that were either immediately effective or approved by the Commission.[8]

Hartford Funds Management Company LLC acts as adviser to the Fund (the ''Adviser''). Wellington Management is the sub-adviser (''Sub-Adviser'') to the Fund. State Street Bank and Trust Company is the administrator, custodian, and transfer agent for the Trust. ALPS Distributors, Inc. serves as the distributor for the Trust.

Rule 14.11(i)(7) provides that, if the investment adviser or sub-adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Commission approved Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018) and subsequently approved generic listing standards for Managed Fund Shares under Rule 14.11(i) in Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016) (SR–BATS–2015–100).

[6] The Trust filed a post-effective amendment to the Registration Statement on March 1, 2019 (the ''Registration Statement''). *See* Registration Statement on Form N–1A for the Trust (File Nos. 333–215165 and 811–23222). The descriptions of the Fund and the Shares contained herein are based, in part, on information included in the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust and affiliated persons under the Investment Company Act of 1940 (the ''1940 Act'') (15 U.S.C. 80a-1). *See* Investment Company Act Release No. 30695 (September 24, 2013) (File No. 812- 14178).

[7] Rule 14.11(i)(4)(C)(ii)(d) provides that ''component securities that in aggregate account for at least 90% of the fixed income weight of the portfolio must be either: (a) From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (c) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.'' The Exchange instead is proposing that the fixed income portion of the portfolio excluding Non-Agency ABS and MBS, as defined below, will satisfy this 90% requirement.

[8] *See* Securities Exchange Act Release Nos. 84047 (September 6, 2018), 83 FR 46200 (September 12, 2018) (SR–NASDAQ–2017–128) (the ''Nasdaq Approval Order''); and 85701 (April 22, 2019), 84 FR 17902 (April 26, 2019) (SR–CboeBZX–2019–016) (the ''Exchange Approval Order''). The Exchange notes that it filed a non-controversial rule change related to another fund issued by the Trust that allows for an identical exception to Rule 14.11(i)(4)(C)(ii)(d). *See also* Securities Exchange Act Release No. 87651 (December 3, 2019), 84 FR 67327 (December 9, 2019) (SR–CboeBZX–2019–099).

dealer, such investment adviser or sub-adviser shall erect and maintain a ''fire wall'' between the investment adviser or sub-adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[9] In addition, Rule 14.11(i)(7) further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. Rule 14.11(i)(7) is similar to Rule 14.11(b)(5)(A)(i), however, Rule 14.11(i)(7) in connection with the establishment of a ''fire wall'' between the investment adviser or sub-adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser and Sub-Adviser are not a registered broker-dealer, but the Adviser and Sub-Adviser are affiliated with a broker-dealer and have implemented and will maintain ''fire walls'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, Adviser and Sub-Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio. In the event that (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with another broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Hartford Core Bond ETF

According to the Registration Statement, the Fund seeks to provide long-term total return. In order to achieve its investment objective, under Normal Market Conditions,[10] the Fund will invest primarily in investment grade fixed-income securities. Under Normal Market Conditions, the Fund will invest at least 80% of its assets (including any borrowings for investment purposes) in fixed income securities, as described in Rule 14.11(i)(4)(C)(ii), including: (1) Securities issued or guaranteed as to principal or interest by the U.S. Government, its agencies or instrumentalities; (2) non-convertible and convertible debt securities issued or guaranteed by U.S. corporations or other issuers (including foreign issuers); (3) asset-backed and mortgage-related securities, including collateralized mortgage and loan obligations; and (4) securities and loans issued or guaranteed as to principal or interest by a sovereign government or one of its agencies or political subdivisions (including quasi-sovereigns), supranational entities such as development banks, non-U.S. corporations, banks or bank holding companies, or other foreign issuers. Such holdings in fixed income securities will meet the requirements for fixed income instruments in Rule 14.11(i)(4)(C)(ii) except for Rule 14.11(i)(4)(C)(ii)(d), as discussed in more detail below.

Among others, such fixed income securities that may be held by the Fund include non-agency, non-GSE,[11] and privately-issued mortgage-related and other asset-backed securities (collectively, ''Non-Agency ABS and MBS''), which it generally expects to include (but not be limited to) the following sectors: Private mortgage backed securities, commercial mortgage backed securities, asset-backed securities (including autos, credit cards, equipment, consumer loans), and collateralized loan obligations. In accordance with Rule 14.11(i)(4)(C)(ii)(e), the Fund's holdings in Non-Agency ABS and MBS will not account for more than 20% of the weight of the total portfolio, in the aggregate.

The Fund will also generally invest up to 20% of its assets in cash and Cash Equivalents,[12] listed derivatives,[13] and OTC derivatives,[14] although such holdings may exceed 20%. The Fund's holdings in cash and Cash Equivalents, listed derivatives, and OTC derivatives will be in compliance with all generic listing standards, including those in Rules 14.11(i)(4)(C)(iii), 14.11(i)(4)(C)(iv), 14.11(i)(4)(C)(v), and 14.11(i)(4)(C)(vi).

The Fund's investments, including derivatives, will be consistent with the 1940 Act and the Fund's investment objective and policies and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage).[15]

[9] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and their Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[10] As provided in Rule 14.11(i)(3)(E), the term ''Normal Market Conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[11] A ''GSE'' is a type of financial services corporation created by the United States Congress. GSEs include Fannie Mae and Freddie Mac, but not Sallie Mae, which is no longer a government entity.

[12] As defined in Exchange Rule 14.11(i)(4)(C)(iii)(b), Cash Equivalents are short-term instruments with maturities of less than three months, which includes only the following: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

[13] For purposes of this filing, listed derivatives include only the following instruments: Treasury futures, U.S. interest rate futures, and Eurodollar futures.

[14] For purposes of this filing, OTC derivatives include only the following instruments: interest rate swaps, currency forwards, and credit default swap indices.

[15] The Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of a fund, including a fund's use of derivatives, may give rise to leverage, causing a fund to be more volatile than if it had not been leveraged. To mitigate leveraging risk, the Fund will segregate or earmark liquid assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees and in accordance with the 1940 Act (or,

Continued

That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A). The Fund will only use those derivatives described above. The Fund's use of derivative instruments will be collateralized.

Discussion

If the Fund had full flexibility to invest in a manner consistent with its investment strategy, it might not meet the requirements of Rule 14.11(i)(4)(C)(ii)(d) because certain Non-Agency ABS and MBS by their nature cannot satisfy these requirements. As described above, the Exchange is instead proposing that the fixed income portion of the portfolio excluding Non-Agency ABS and MBS will satisfy this 90% requirement. The Exchange believes that this alternative limitation is appropriate because Rule 14.11(i)(4)(C)(ii)(d) is not designed for structured finance vehicles such as Non-Agency ABS and MBS and the overall weight of the Non-Agency ABS and MBS held by the Fund will be limited to 20% of the total portfolio as required under Rule 14.11(i)(4)(C)(ii)(e). The Exchange also notes that the Fund's portfolio is consistent with the policy issues underlying the rule as a result of the diversification provided by the investments and the Adviser's and Sub-Adviser's selection process, which closely monitors investments to ensure maintenance of credit and liquidity standards. As noted above, the remainder of the fixed income securities held by the Fund will satisfy the requirements of Rule 14.11(i)(4)(C)(ii)(d) and the remainder of the Fund's portfolio, including fixed income securities, will meet all other applicable generic listing standards under Rule 14.11(i)(4)(C). Further, the exception to Rule 14.11(i)(4)(C)(ii)(d) proposed herein is identical to the exception to Rule 14.11(i)(4)(C)(ii)(d) laid out in an immediately effective rule change related to another fund issued by the Trust.[16] Allowing the Fund full flexibility to implement its fixed income strategy and further diversify its holdings to provide exposure to a broader array of fixed income securities would allow the Fund to better achieve its investment objective and, as such, benefit both investors [sic] in the Fund.

The Exchange represents that the Shares of the Fund will comply with all other requirements applicable to Managed Fund Shares, which include the dissemination of key information such as the Disclosed Portfolio,[17] Net Asset Value,[18] and the Intraday Indicative Value,[19] suspension of trading or removal,[20] trading halts,[21] surveillance,[22] minimum price variation for quoting and order entry,[23] the information circular,[24] and firewalls [25] as set forth in Exchange rules applicable to Managed Fund Shares and the orders approving such rules. The Exchange or FINRA, on behalf of the Exchange, or both will communicate as needed regarding trading in the Shares and the underlying futures contracts with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from market and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement [26] All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference asset and Intraday Indicative Values (as applicable), or the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Shares. The Fund has represented to the Exchange that it will advise the Exchange of any failure by the Fund or Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with respect to such Fund under Exchange Rule 14.12.

Availability of Information

As noted above, the Fund will comply with the requirements under Rule 14.11(i) related to Disclosed Portfolio, NAV, and the Intraday Indicative Value. Intraday price quotations on fixed income securities and OTC derivative instruments are available from major broker-dealer firms and from third-parties, which may provide prices free with a time delay or in real-time for a paid fee. Additionally, the intraday, closing and settlement prices of futures contracts held by the Fund will be readily available from the exchanges on which such products are listed, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Price information for Cash Equivalents will be available from major market data vendors. The Disclosed Portfolio will be available on the Fund's website (*www.hartfordfunds.com*) free of charge. The Fund's website will include the prospectus for the Fund and additional information related to NAV and other applicable quantitative information. Information regarding market price and trading volume of the Shares will be continuously available throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume for the Shares will be published daily in the financial section of newspapers. Trading in the Shares may be halted for market conditions or for reasons that, in the view of the Exchange, make trading inadvisable. The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange has appropriate rules to facilitate trading in the Shares during all trading sessions.

as permitted by applicable regulations, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. *See* 15 U.S.C. 80a-18; Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128 (April 27, 1979); Dreyfus Strategic Investing, Commission No-Action Letter (June 22, 1987); Merrill Lynch Asset Management, L.P., Commission No-Action Letter (July 2, 1996).

[16] *See* Securities Exchange Act Release No. 87651 (December 3, 2019) 84 FR 67327 (December 9, 2019) (SR–CboeBZX–2019–099).

[17] *See* Rule 14.11(i)(4)(A)(ii) and 14.11(i)(4)(B)(ii).

[18] *See* Rule 14.11(i)(4)(A)(ii).

[19] *See* Rule 14.11(i)(4)(B)(i).

[20] *See* Rule 14.11(i)(4)(B)(iii).

[21] *See* Rule 14.11(i)(4)(B)(iv).

[22] *See* Rule 14.11(i)(2)(C).

[23] *See* Rule 14.11(i)(2)(B).

[24] *See* Rule 14.11(i)(6).

[25] *See* Rule 14.11(i)(7).

[26] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange prohibits the distribution of material non-public information by its employees. Quotation and last sale information for the Shares will be available via the CTA high-speed line.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [27] in general and Section 6(b)(5) of the Act [28] 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 mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest in that the Shares will meet each of the continued listing criteria in BZX Rule 14.11(i) with the exception of Rule 14.11(i)(4)(C)(ii)(d) as specifically discussed herein.

If the Fund were permitted full flexibility to invest consistent with its investment strategy, it might not meet the requirements of Rule 14.11(i)(4)(C)(ii)(d) because certain Non-Agency ABS and MBS by their nature cannot satisfy these requirements. The Exchange believes that excluding Non-Agency ABS and MBS from this calculation is consistent with the Act because the Fund's portfolio will minimize the risk associated with any particular holding of the Fund as a result of the diversification provided by the investments and the Adviser's selection process, which closely monitors investments to ensure maintenance of credit and liquidity standards. Further, the Exchange believes that this alternative limitation is appropriate because Rule 14.11(i)(4)(C)(ii)(d) is not designed for structured finance vehicles such as Non-Agency ABS and MBS and the overall weight of the Non-Agency ABS and MBS held by the Fund will be limited to 20% of the total portfolio as required under Rule 14.11(i)(4)(C)(ii)(e). The Exchange also notes that the Fund's portfolio will meet all of the other generic listing standards applicable under Rule 14.11(i), which will further act to mitigate the manipulation concerns which the rules are intended to address. Further, the other fixed income instruments, excluding Non-Agency ABS and MBS, held by the Fund will satisfy the 90% requirement under Rule 14.11(i)(4)(C)(ii)(d). Consistent with Rule 14.11(i)(4)(C)(ii)(e), the Non-Agency ABS and MBS held by the Fund will not account, in the aggregate, for more than 20% of the weight of the total portfolio.

As noted above, the remainder of the Fund's portfolio, including fixed income securities, will meet all other applicable generic listing standards under Rule 14.11(i)(4)(C). Allowing the Fund full flexibility to implement its fixed income strategy and further diversify its holdings to provide exposure to a broader array of fixed income securities would allow the Fund to better achieve its investment objective and, as such, benefit investors in the Fund.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Rule 14.11(i)(7) provides that, if the investment adviser or sub-adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser or sub-adviser shall erect a ''fire wall'' between the investment adviser or sub-adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. The Adviser and Sub-Adviser are not a registered broker-dealer, but the Adviser and Sub-Adviser are affiliated with a broker-dealer and have implemented and will maintain ''fire walls'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, Adviser and Sub-Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio. Additionally, the Exchange or FINRA, on behalf of the Exchange, are able to access, as needed, trade information for certain fixed income instruments reported to TRACE. The Exchange may obtain information regarding trading in the Shares via the ISG from other exchanges who are a member of ISG or affiliated with a member of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Exchange further notes that, except as sort [sic] forth above, the Fund will meet and be subject to all requirements of the generic listing rules and applicable continued listing requirements for Managed Fund Shares under Rule 14.11(i), including those requirements regarding the dissemination of key information such as the Disclosed Portfolio, Net Asset Value, and the Intraday Indicative Value, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, the information circular, and firewalls as set forth in Exchange rules applicable to Managed Fund Shares.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value will be disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. On each business day, before commencement of trading in Shares during Regular Trading Hours, the Fund will disclose on its website the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. The Fund's website will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's NAV and the market closing price or mid-point of the Bid/Ask Price,[29] and a calculation of the premium or discount of the market closing price or Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily market closing price or Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Additionally, information regarding market price and trading of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available on the facilities of the Consolidated Tape Association. The website for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted under the

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] The Bid/Ask Price of the Fund will be determined using the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund or its service providers.

conditions specified in Rule 11.18. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Finally, trading in the Shares will be subject to Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which Shares may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

Intraday price quotations on fixed income securities and OTC derivative instruments are available from major broker-dealer firms and from third-parties, which may provide prices free with a time delay or in real-time for a paid fee. Additionally, the intraday, closing and settlement prices of futures contracts held by the Fund will be readily available from the exchanges on which such products are listed, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Price information for Cash Equivalents will be available from major market data vendors. The Exchange prohibits the distribution of material non-public information by its employees.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an actively-managed exchange traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG, from other exchanges that are members of ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange, or FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income instruments reported to TRACE. As noted above, investors will also have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written 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) of the Act [30] and Rule 19b–4(f)(6) thereunder.[31]

A proposed rule change filed under Rule 19b–4(f)(6) [32] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[33] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay to allow the Fund to list and trade on the Exchange as soon as practicable. The Exchange stated that the proposal would allow the Fund to hold Non-Agency ABS and MBS in a manner that is generally consistent with other series of Managed Fund Shares that the Commission has approved for listing and trading.[34] The Commission agrees that the proposal raises no novel or substantive issues. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[35]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2020–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2020–008. 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

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 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.

[32] 17 CFR 240.19b–4(f)(6).

[33] 17 CFR 240.19b–4(f)(6)(iii).

[34] *See supra* note 8. Nasdaq Rule 5735(b)(1)(B)(iv) is substantially the same as Exchange Rule 14.11(i)(4)(C)(ii)(d).

[35] For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2020–008 and should be submitted on or before February 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–02278 Filed 2–5–20; 8:45 am]

BILLING CODE 8011–01–P

[36] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 11026]

Overseas Security Advisory Council (OSAC) Meeting

ACTION: Notice of closed meeting.

SUMMARY: The Department of State announces meetings of the U.S. State Department's Overseas Security Advisory Council on February 28, June 3, and November 17, 2020. Pursuant to Section 10(d) of the Federal Advisory Committee Act, it has been determined that the meetings will be closed to the public. The meetings will focus on an examination of corporate security policies and procedures and will involve extensive discussion of trade secrets and proprietary commercial information that is privileged and confidential and will discuss law enforcement investigative techniques and procedures. The agendas will include updated committee reports, global threat overviews, and other matters relating to private sector security policies and protective programs and the protection of U.S. business information overseas.

FOR FURTHER INFORMATION CONTACT: Marsha Thurman, Overseas Security Advisory Council, U.S. Department of State, Washington, DC 20522–2008, phone: 571–345–2214.

Jason R. Kight,

Executive Director.

[FR Doc. 2020–02275 Filed 2–5–20; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2020–08]

Petition for Exemption; Summary of Petition Received; Delta Engineering

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 26, 2020.

ADDRESSES: Send comments identified by docket number FAA–2019–0917 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Forseth, AIR–673, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198, phone and fax 206–231–3179, email *mark.forseth@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Des Moines, Washington, on January 31, 2020.

Mary A. Schooley,

Acting Manager, Transport Standards Branch.

Petition for Exemption

Docket No.: FAA–2019–0917

Petitioner: Delta Engineering

Section(s) of 14 CFR Affected: § 25.853(a) and (d)

Description of Relief Sought: Allow the installation of large-panel cabin-interior materials, as they pertain to maximum heat release rates, in a Boeing 787–8 airplane.

[FR Doc. 2020–02314 Filed 2–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–4334; FMCSA–2001–10578; FMCSA–2002–12844; FMCSA–2003–16564; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2007–0017; FMCSA–2007–27897; FMCSA–2009–0291; FMCSA–2009–0303; FMCSA–2011–0140; FMCSA–2011–0298; FMCSA–2011–0325; FMCSA–2011–0365; FMCSA–2011–0366; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2013–0174; FMCSA–2015–0048; FMCSA–2015–0053; FMCSA–2015–0056; FMCSA–2015–0072; FMCSA–2015–0344; FMCSA–2015–0345; FMCSA–2015–0347; FMCSA–2015–0348; FMCSA–2017–0018; FMCSA–2017–0020; FMCSA–2017–0024; FMCSA–2017–0026; FMCSA–2017–0027; FMCSA–2017–0028; FMCSA–2018–0006]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 84 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirements in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before March 9, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–1998–4334, Docket No. FMCSA–2001–10578, Docket No. FMCSA–2002–12844, Docket No. FMCSA–2003–16564, Docket No. FMCSA–2005–21711, Docket No. FMCSA–2005–22194, Docket No. FMCSA–2007–0017, Docket No. FMCSA–2007–27897, Docket No. FMCSA–2009–0291, Docket No. FMCSA–2009–0303, Docket No. FMCSA–2011–0140, Docket No. FMCSA–2011–0298, Docket No. FMCSA–2011–0325, Docket No. FMCSA–2011–0365, Docket No. FMCSA–2011–0366, Docket No. FMCSA–2013–0168, Docket No. FMCSA–2013–0169, Docket No. FMCSA–2013–0170, Docket No. FMCSA–2013–0174, Docket No. FMCSA–2015–0048, Docket No. FMCSA–2015–0053, Docket No. FMCSA–2015–0056, Docket No. FMCSA–2015–0072, Docket No. FMCSA–2015–0344, Docket No. FMCSA–2015–0345, Docket No. FMCSA–2015–0347, Docket No. FMCSA–2015–0348, Docket No. FMCSA–2017–0018, Docket No. FMCSA–2017–0020, Docket No. FMCSA–2017–0024, Docket No. FMCSA–2017–0026, Docket No. FMCSA–2017–0027, Docket No. FMCSA–2017–0028, or Docket No. FMCSA–2018–0006 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–1998–4334; FMCSA–2001–10578; FMCSA–2002–12844; FMCSA–2003–16564; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2007–0017; FMCSA–2007–27897; FMCSA–2009–0291; FMCSA–2009–0303; FMCSA–2011–0140; FMCSA–2011–0298; FMCSA–2011–0325; FMCSA–2011–0365; FMCSA–2011–0366; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2013–0174; FMCSA–2015–0048; FMCSA–2015–0053; FMCSA–2015–0056; FMCSA–2015–0072; FMCSA–2015–0344; FMCSA–2015–0345; FMCSA–2015–0347; FMCSA–2015–0348; FMCSA–2017–0018; FMCSA–2017–0020; FMCSA–2017–0024; FMCSA–2017–0026; FMCSA–2017–0027; FMCSA–2017–0028; FMCSA–2018–0006), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–1998–4334; FMCSA–2001–10578; FMCSA–2002–12844; FMCSA–2003–16564; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2007–0017; FMCSA–2007–27897; FMCSA–2009–0291; FMCSA–2009–0303; FMCSA–2011–0140; FMCSA–2011–0298; FMCSA–2011–0325; FMCSA–2011–0365; FMCSA–2011–0366; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2013–0174; FMCSA–2015–0048; FMCSA–2015–0053; FMCSA–2015–0056; FMCSA–2015–0072; FMCSA–2015–0344; FMCSA–2015–0345; FMCSA–2015–0347; FMCSA–2015–0348; FMCSA–2017–0018; FMCSA–2017–0020; FMCSA–2017–0024; FMCSA–2017–0026; FMCSA–2017–0027; FMCSA–2017–0028; FMCSA–2018–0006, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–1998–4334; FMCSA–2001–10578; FMCSA–2002–12844; FMCSA–2003–16564; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2007–0017; FMCSA–2007–27897; FMCSA–2009–0291; FMCSA–2009–0303; FMCSA–2011–0140; FMCSA–2011–0298; FMCSA–2011–0325; FMCSA–2011–0365; FMCSA–2011–0366; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2013–0174; FMCSA–2015–0048; FMCSA–2015–0053; FMCSA–2015–0056; FMCSA–2015–0072; FMCSA–2015–0344; FMCSA–2015–0345; FMCSA–2015–0347; FMCSA–2015–0348; FMCSA–2017–0018; FMCSA–2017–0020; FMCSA–2017–0024; FMCSA–2017–0026; FMCSA–2017–0027; FMCSA–2017–0028; FMCSA–2018–0006, 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 Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

The 84 individuals listed in this notice have requested renewal of their exemptions from the vision standard in § 391.41(b)(10), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 84 applicants has satisfied the renewal conditions for obtaining an exemption from the vision standard (see 63 FR 66226; 64 FR 16517; 66 FR 41656; 66 FR 53826; 66 FR 66966; 67 FR 68719; 68 FR 2629; 68 FR 54775; 68 FR 69434; 68 FR 74699; 69 FR 10503; 70 FR 7545; 70 FR 48797; 70 FR 48798; 70 FR 48799; 70 FR 48800; 70 FR 53412; 70 FR 57353; 70 FR 72689; 70 FR 74102; 71 FR 6829; 72 FR 40362; 72 FR 46261; 72 FR 54972; 72 FR 62896; 72 FR 67340; 73 FR 1395; 73 FR 5259; 73 FR 8392; 74 FR 43221; 74 FR 53581; 74 FR 60021; 74 FR 60022; 74 FR 64124; 74 FR 65842; 74 FR 65845; 75 FR 1451; 75 FR 4623; 75 FR 8184; 75 FR 9482; 76 FR 37169; 76 FR 50318; 76 FR 53708; 76 FR 64171; 76 FR 70213; 76 FR 75942; 76 FR 78728; 77 FR 539; 77 FR 541; 77 FR 543; 77 FR 545; 77 FR 3552; 77 FR 5874; 77 FR 7233; 77 FR 10604; 77 FR 10606; 77 FR 10608; 77 FR 13691; 77 FR 17117; 78 FR 63302; 78 FR 64274; 78 FR 67452; 78 FR 67454; 78 FR 68137; 78 FR 74223; 78 FR 76704; 78 FR 76707; 78 FR 77778; 78 FR 77780; 78 FR 78475; 78 FR 78477; 79 FR 1908; 79 FR 4531; 79 FR 4803; 79 FR 6993; 79 FR 10602; 79 FR 10619; 79 FR 12565; 79 FR 13085; 79 FR 14328; 79 FR 14333; 80 FR 26139; 80 FR 40122; 80 FR 48409; 80 FR 59230; 80 FR 62163; 80 FR 67481; 80 FR 70060; 80 FR 76345; 80 FR 79414; 80 FR 80443; 81 FR 1284; 81 FR 1474; 81 FR 6573; 81 FR 15401; 81 FR 16265; 81 FR 20433; 81 FR 28136; 81 FR 44680; 81 FR 48493; 81 FR 60117; 82 FR 24430; 82 FR 33542; 82 FR 34564; 82 FR 35050; 82 FR 47296; 82 FR 58262; 83 FR 2292; 83 FR 2311; 83 FR 6681; 83 FR 6694; 83 FR 6919; 83 FR 6922; 83 FR 6925; 83 FR 15232; 83 FR 18648; 83 FR 24151; 83 FR 24571; 83 FR 24589). They have submitted evidence showing that the vision in the better eye continues to meet the requirement specified at § 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of March and are discussed below. As of March 2, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 47 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (63 FR 66226; 64 FR 16517; 66 FR 41656; 66 FR 53826; 66 FR 66966; 68 FR 54775; 68 FR 69434; 70 FR 48797; 70 FR 48798; 70 FR 48799; 70 FR 48800; 70 FR 53412; 70 FR 57353; 70 FR 72689; 70 FR 74102; 72 FR 46261; 72 FR 54972; 72 FR 62896; 72 FR 67340; 73 FR 1395; 73 FR 5259; 74 FR 43221; 74 FR 53581; 74 FR 60021; 74 FR 60022; 74 FR 65842; 74 FR 65845; 75 FR 1451; 75 FR 4623; 75 FR 9482; 76 FR 37169; 76 FR 50318; 76 FR 53708; 76 FR 64171; 76 FR 70213; 76 FR 75942; 76 FR 78728; 77 FR 539; 77 FR 541; 77 FR 543; 77 FR 545; 77 FR 10604; 77 FR 10608; 78 FR 63302; 78 FR 64274; 78 FR 67452; 78 FR 67454; 78 FR 68137; 78 FR 74223; 78 FR 76704; 78 FR 76707; 78 FR 77778; 78 FR 77780; 78 FR 78475; 78 FR 78477; 79 FR 4531; 79 FR 4803; 79 FR 6993; 79 FR 10619; 80 FR 26139; 80 FR 40122; 80 FR 48409; 80 FR 59230; 80 FR 62163; 80 FR 67481; 80 FR 70060; 80 FR 76345; 80 FR 79414; 80 FR 80443; 81 FR 1284; 81 FR 1474; 81 FR 15401; 81 FR 16265; 81 FR 20433; 81 FR 44680; 81 FR 48493; 81 FR 60117; 82 FR 24430; 82 FR 33542; 82 FR 34564; 82 FR 35050; 82 FR 47296; 82 FR 58262; 83 FR 2292; 83 FR 2311; 83 FR 6919; 83 FR 6922; 83 FR 6925; 83 FR 15232; 83 FR 18648; 83 FR 24589):

Garry A. Baker (OH)
Steven A. Blinco (MT)
James E. Bragg (WV)
Lee S. Brown (ME)
Cris D. Bush (TN)
Johnnie E. Byler (PA)
Stewart K. Clayton (TX)
David N. Cleveland (ME)
James J. Coffield (NM)
Stephen W. Deminie (TX)
Bruce J. Dowd (CT)
David E. Evans (NC)
Mark A. Farnsley (IN)
Lee J. Gaffney (OH)
Jason L. Hoovan (UT)
Amos W. Hulsey (AL)
Darryl H. Johnson (WV)
Freddie H. Johnson (ID)
David B. Jones (FL)
Alfred Keehn (AZ)
Karen L. Kelly (DE)
Raymundo Maldonado (TX)
Stephen E. McLaren (TN)

Kevin D. Mendoza (WA)
Ralph S. Miller (WV)
Thomas B. Miller (VA)
John M. Moore (PA)
Kenneth R. Murphy (WA)
William E. Norris (NC)
Anthony D. Ovitt (VT)
Daniel F. Perez (CA)
Hubert O. Pollard (NC)
Ronald F. Prezzia (IL)
Steven S. Reinsvold (WI)
Miguel A. Sanchez (NM)
James A. Shepard (NY)
Robert L. Simpson (NC)
John R. Snyder (WA)
David B. Stone (OK)
Dustin W. Tharp (IA)
Kirk A. Thelen (MI)
John T. Thor (MN)
Larry J. Waldner (SD)
Eric C. Weidley (PA)
William H. Wrice (OH)
Reginald J. Wuethrich (IL)
Chadwick L. Wyatt (NC)

The drivers were included in docket numbers FMCSA–1998–4334; FMCSA–2001–10578; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2007–0017; FMCSA–2007–27897; FMCSA–2009–0291; FMCSA–2009–0303; FMCSA–2011–0140; FMCSA–2011–0298; FMCSA–2011–0325; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2015–0048; FMCSA–2015–0053; FMCSA–2015–0056; FMCSA–2015–0072; FMCSA–2015–0344; FMCSA–2015–0345; FMCSA–2015–0347; FMCSA–2017–0018; FMCSA–2017–0020; FMCSA–2017–0024; FMCSA–2017–0026; and FMCSA–2017–0027. Their exemptions are applicable as of March 2, 2020, and will expire on March 2, 2022.

As of March 5, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (68 FR 74699; 69 FR 10503; 70 FR 57353; 70 FR 72689; 71 FR 6829; 73 FR 8392; 75 FR 8184; 77 FR 7233; 79 FR 10602; 81 FR 20433; 83 FR 6919):

Barton C. Caldara (WI)
Allan Darley (UT)
Richard Hailey, Jr. (DC)
James T. Wortham, Jr. (GA)

The drivers were included in docket numbers FMCSA–2003–16564; and FMCSA–2005–22194. Their exemptions are applicable as of March 5, 2020, and will expire on March 5, 2022.

As of March 7, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (77 FR 3552; 77 FR 13691; 79 FR 12565; 81 FR 20433; 83 FR 6919):

Samuel V. Holder (IL)

The driver was included in docket number FMCSA–2011–0365. The exemption is applicable as of March 7, 2020, and will expire on March 7, 2022.

As of March 10, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (81 FR 6573; 81 FR 28136; 83 FR 6919):

Thomas M. Bowman (OH)
Robert W. Fawcett (PA)
Harry J. Glynn (LA)
Dennis C. Rokes (IA)
Brian W. Roughton (MO)
Steven A. Van Raalte (IL)
Brian J. Yole (TX)

The drivers were included in docket number FMCSA–2015–0348. Their exemptions are applicable as of March 10, 2020, and will expire on March 10, 2022.

As of March 13, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (79 FR 1908; 79 FR 14333; 81 FR 20433; 83 FR 6919):

Jackie K. Curlin (KY)
Justin W. Demarchi (OH)
Jimmey C. Harris (TX)
David G. Henry (TX)
Rogelio C. Hernandez (CA)
Jason C. Sadler (KY)
Michael O. Thomas (NC)

The drivers were included in docket number FMCSA–2013–0174. Their exemptions are applicable as of March 13, 2020, and will expire on March 13, 2022.

As of March 15, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (67 FR 68719; 68 FR 2629; 70 FR 7545; 72 FR 40362; 74 FR 64124; 77 FR 10606; 79 FR 14328; 81 FR 20433; 83 FR 6919):

Wayne H. Holt (UT)

The driver was included in docket number FMCSA–2002–12844. The exemption is applicable as of March 15, 2020, and will expire on March 15, 2022.

As of March 17, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 16 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (83 FR 6681; 83 FR 6694; 83 FR 24151; 83 FR 24571):

Rodney P. Barfield (GA)
Michael W. Belknap (VT)
Kenneth W. Blake (KS)
Scott M. Cavanaugh (OK)
Justin D. Craft (AR)
James M. Ferry (OH)
Jacob A. Hehr (IL)
Mike B. Houston (OR)
Marvin R. Knecht (ND)
Randolph W. Lewis (CA)
Curvin L. Martin (PA)
Martin Munoz (TX)
Edwin Quiles (FL)
Robert L. Redding (NC)
Gerald A. Vaughn (OH)
Richard E. Wixom (MI)

The drivers were included in docket numbers FMCSA–2017–0028; and FMCSA–2018–0006. Their exemptions are applicable as of March 17, 2020, and will expire on March 17, 2022.

As of March 23, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (77 FR 5874; 77 FR 17117; 79 FR 13085; 81 FR 20433; 83 FR 6919):

Glenn R. Theis (MN)

The driver was included in docket number FMCSA–2011–0366. The exemption is applicable as of March 23, 2020, and will expire on March 23, 2022.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must undergo an annual physical examination (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a certified medical examiner (ME), as defined by § 390.5, who attests that the driver is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file or keep a copy of his/her driver's qualification if he/her is self-employed. The driver must also

have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the 84 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the vision requirement in § 391.41(b)(10), subject to the requirements cited above. In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Issued on: January 30, 2020.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–02333 Filed 2–5–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0005]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from eight individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions will enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Comments must be received on or before March 9, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2020–0005 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2020-0005.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2020–0005), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov/docket?D=FMCSA-2020-0005.* Click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2020-0005* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The eight individuals listed in this notice have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if

that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

On July 16, 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for participation would need to meet (57 FR 31458). The current Vision Exemption Program was established in 1998, following the enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 401 (June 9, 1998). Vision exemptions are considered under the procedures established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of § 391.41(b)(10).

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely in intrastate commerce with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at *https://www.regulations.gov/docket?D=FMCSA-1998-3637.*

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrated the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively.[1] The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

III. Qualifications of Applicants

Lance D. Duffie

Mr. Duffie, 44, has retinal scarring in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is light perception only, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''In my opinion, Lance's vision is as stable OU as ever, and should be perfectly adequate for commercial driving.'' Mr. Duffie reported that he has driven straight trucks for 4 years, accumulating 16,000 miles, and tractor-trailer combinations for 4 years, accumulating 450,000 miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Lester Johnson

Mr. Johnson, 42, has macular scarring in his right eye due to a traumatic incident in 1998. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''In my opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Johnson reported that he has driven straight trucks for 8 years, accumulating 260,000 miles. He holds a Class B CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James M. Kivett

Mr. Kivett, 65, has a macular scar in his right eye due to a traumatic incident in 2010. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''In my professional opinion, Mr. Kivett does have adequate vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Kivett reported that he has driven straight trucks for 20 years, accumulating 500,000 miles, and tractor-trailer combinations for 22 years, accumulating 3.3 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows one crash, which he was not cited for, and no convictions for moving violations in a CMV.

Charles E. Klock

Mr. Klock, 74, has had complete loss of vision in his left eye since 2016. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2019, his optometrist stated, ''Based on these clinical findings, Mr. Klock has the appropriate means to operate a commercial motor vehicle in interstate commerce without glasses or low vision aides, and with no restrictions.'' Mr. Klock reported that he has driven tractor-trailer combinations for 10 years, accumulating 1.2 million miles, and buses for 41 years, accumulating 4.1 million miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Clayton D. Lowther

Mr. Lowther, 35, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''It is my opinion that Clayton's vision is sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Lowther reported that he has driven straight trucks for 15 years, accumulating 600,000 miles, and tractor-trailer combinations for 15 years, accumulating 112,500 miles. He holds a Class B CDL from Wyoming. His driving record for

[1] A thorough discussion of this issue may be found in a FHWA final rule published in the **Federal Register** on March 26, 1996 and available on the internet at *https://www.govinfo.gov/content/pkg/FR-1996-03-26/pdf/96-7226.pdf.*

the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jared G. New

Mr. New, 24, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''Pt [sic] has sufficient vision both centrally and peripherally to operate a commercial vehicle.'' Mr. New reported that he has driven straight trucks for 5 years, accumulating 200,000 miles. He holds an operator's license from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David Perea

Mr. Perea, 57, has had central serous retinopathy in his left eye since 2007. The visual acuity in his right eye is 20/20, and in his left eye, 20/150. Following an examination in 2019, his optometrist stated, ''In my medical opinion, he has sufficient vision to operate a commercial vehicle.'' Mr. Perea reported that he has driven straight trucks for 31 years, accumulating 1.1 million miles, and tractor-trailer combinations for 31 years, accumulating 1.1 million miles. He holds an operator's license from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Juan Santay-Ajanel

Mr. Santay-Ajanel, 45, has retinal scarring in his right eye due to an infection in childhood. The visual acuity in his right eye is 20/80, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''Pt [sic] can distinguish between red, green and amber colors and in my opinion has sufficient vision to operate a commercial vehicle.'' Mr. Santay-Ajanel reported that he has driven straight trucks for 2 years, accumulating 40,000 miles, and tractor-trailer combinations for 16 years, accumulating 800,000 miles. He holds a Class CA CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments and material received before the close of business on the closing date indicated under the **DATES** section of the notice.

Issued on: January 30, 2020.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–02335 Filed 2–5–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0327; FMCSA–2016–0003; FMCSA–2017–0057]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 14 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below. Comments must be received on or before March 9, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2015–0327, Docket No. FMCSA–2016–0003, or Docket No. FMCSA–2017–0057 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2015-0327* or *http://www.regulations.gov/docket?D=FMCSA-2016-0003* or *http://www.regulations.gov/docket?D=FMCSA-2017-0057.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2015–0327, FMCSA–2016–0003, or FMCSA–2017–0057), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov/docket?D=FMCSA-2015-0327* or *http://www.regulations.gov/docket?D=FMCSA-2016-0003* or *http://www.regulations.gov/docket?D=FMCSA-2017-0057.* Click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2015-0327* or *http://www.regulations.gov/docket?D=FMCSA-2016-0003* or *http://www.regulations.gov/docket?D=FMCSA-2017-0057* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

The 14 individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 14 applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The 14 drivers in this notice remain in good standing with the Agency. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of February 24, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), Yoel Perez (FL) has satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers.

This driver was included in docket number FMCSA–2015–0327. The exemption is applicable as of February 24, 2020, and will expire on February 24, 2022.

As of February 19, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 13 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Wyatt Baldwin (NV)
Marion Bennett, Jr. (MD)
Richard Davis (OH)
Adam Hayes (CA)
Michael Lidster (IL)
Adrian Lopez (TX)
Michael Quinonez (NM)
Khon Saysanam (TX)
Jeffrey Schulkers (KY)
Jason Thomas (TX)
Roderick Thomas (GA)
Joshua Tinley (AZ)
Kerri Wright (OK)

The drivers were included in docket number FMCSA–2016–0003 or FMCSA–2017–0057. Their exemptions are applicable as of February 19, 2020, and will expire on February 19, 2022.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must report any crashes or accidents as defined in § 390.5; and (2) report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 14 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41(b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: January 30, 2020.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–02340 Filed 2–5–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–6156; FMCSA–1999–6480; FMCSA–2000–7006; FMCSA–2001–9258; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2003–15892; FMCSA–2005–21254; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2006–24015; FMCSA–2007–0017; FMCSA–2007–27897; FMCSA–2009–0121; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2009–0303; FMCSA–2010–0372; FMCSA–2011–0189; FMCSA–2011–0298; FMCSA–2011–0299; FMCSA–2011–26690; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2014–0297; FMCSA–2014–0303; FMCSA–2015–0049; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2015–0344; FMCSA–2015–0345; FMCSA–2017–0017; FMCSA–2017–0023; FMCSA–2017–0024]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 90 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–1999–6156; FMCSA–1999–6480; FMCSA–2000–7006; FMCSA–2001–9258; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2003–15892; FMCSA–2005–21254; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2006–24015; FMCSA–2007–0017; FMCSA–2007–27897; FMCSA–2009–0121; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2009–0303; FMCSA–2010–0372; FMCSA–2011–0189; FMCSA–2011–0298; FMCSA–2011–0299; FMCSA–2011–26690; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2014–0297; FMCSA–2014–0303; FMCSA–2015–0049; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2015–0344; FMCSA–2015–0345; FMCSA–2017–0017; FMCSA–2017–0023; or FMCSA–2017–0024, 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 Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

On December 13, 2020, FMCSA published a notice announcing its decision to renew exemptions for 90 individuals from the vision requirement in 49 CFR 391.41(b)(10) to operate a CMV in interstate commerce and requested comments from the public (84 FR 68288). The public comment period ended on January 13, 2020, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based on its evaluation of the 90 renewal exemption applications and comments received, FMCSA confirms its decision to exempt the following drivers from the vision requirement in § 391.41(b)(10).

As of January 3, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 51 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (57 FR 57266; 64 FR 54948; 64 FR 68195; 65 FR 159; 65 FR 20251; 65 FR 57230; 66 FR 17743; 66 FR 33990; 66 FR 53826; 66 FR 66966; 66 FR 66969; 67 FR 17102; 68 FR 35772; 68 FR 52811; 68 FR 61860; 68 FR 69432; 68 FR 69434; 69 FR 62741; 70 FR 30999; 70 FR 33937; 70 FR 46567; 70 FR 53412; 70 FR 57353; 70 FR 61165; 70 FR 72689; 70 FR 74102; 71 FR 644; 71 FR 14566; 71 FR 30227; 71 FR 62147; 72 FR 32705; 72 FR 39879; 72 FR 40359; 72 FR 52419; 72 FR 52421; 72 FR 62897; 72 FR 64273; 72 FR 71995; 73 FR 20245; 73 FR 27014; 73 FR 75806; 74 FR 26461; 74 FR 26464; 74 FR 34074; 74 FR 34630; 74 FR 37295; 74 FR 41971; 74 FR 43217; 74 FR 48343; 74 FR 49069; 74 FR 53581; 74 FR 57551; 74 FR 60021; 74 FR 62632; 74 FR 65847; 75 FR 50799; 76 FR 7894; 76 FR 8809; 76 FR 20078; 76 FR 34135; 76 FR 37168; 76 FR 44653; 76 FR 53708; 76 FR 54530; 76 FR 55465; 76 FR 62143; 76 FR 64169; 76 FR 64171; 76 FR 66123; 76 FR 67246; 76 FR 70210; 76 FR 70215; 76 FR 75942; 76 FR 75943; 76 FR 79760; 78 FR 16762; 78 FR 18667; 78 FR 51268; 78 FR 62935; 78 FR 63302; 78 FR 64274; 78 FR 64280;

78 FR 65032; 78 FR 66099; 78 FR 67452; 78 FR 68137; 78 FR 76395; 78 FR 76705; 78 FR 77778; 78 FR 77780; 78 FR 77782; 78 FR 78477; 79 FR 4531; 79 FR 63211; 80 FR 2471; 80 FR 14240; 80 FR 16500; 80 FR 31636; 80 FR 33324; 80 FR 37718; 80 FR 44188; 80 FR 48402; 80 FR 48413; 80 FR 49302; 80 FR 50917; 80 FR 59225; 80 FR 59230; 80 FR 62161; 80 FR 63869; 80 FR 67472; 80 FR 67476; 80 FR 67481; 80 FR 70060; 80 FR 80443; 81 FR 1284; 81 FR 11642; 81 FR 15401; 81 FR 15404; 81 FR 16265; 82 FR 18818; 82 FR 20962; 82 FR 32919; 82 FR 37499; 82 FR 43647; 82 FR 47312; 83 FR 2289; 83 FR 2306; 83 FR 3861; 83 FR 4537; 83 FR 6922):

Juan D. Adame (TX)
Michael J. Altobelli (CT)
Lawrence A. Angle (MO)
Stephen W. Barrows (OR)
Jason W. Bowers (OR)
Kenneth E. Bross (MO)
Stacey J. Buckingham (ID)
Benny J. Burke (AL)
Ryan J. Burnworth (MO)
Michael D. Champion (VT)
Ryan M. Coelho (RI)
David J. Comeaux (LA)
Duane C. Conway (NV)
William J. Corder (NC)
Jose C. Costa (WA)
Thomas R. Crocker (SC)
Kenneth D. Daniels (PA)
James D. Davis (OH)
Brad M. Donald (MI)
Dominic F. Giordano (CT)
Jeffrey A. Keefer (OH)
Martin D. Keough (NY)
Purvis W. Kills Enemy At Night (SD)
Richard L. Loeffelholz (WI)
Herman G. Lovell (OR)
Thomas P. Maio (MA)
Herman C. Mash (NC)
Christopher V. May (GA)
James F. McMahon, Jr. (NH)
Terry W. Moore (LA)
Steven D. O'Donnell (NJ)
Dennis R. Ohl (MO)
John R. Price (AR)
Francis D. Reginald (NJ)
Danilo A. Rivera (MD)
Michael J. Robinson (WV)
Ronald L. Roy (IL)
Ralph J. Schmitt (CO)
Jarrod R. Seirer (KS)
Eugene D. Self, Jr. (NC)
Levi A. Shetler (OH)
Roye T. Skelton (MS)
Paul D. Stoddard (NY)
Stanley W. Tyler, Jr. (NC)
Cesar Villa-Navarrete (NM)
James H. Wallace, Sr. (FL)
Stephen H. Ward (MO)
Dennis E. White (PA)
Lorenzo A. Williams (DE)
James J. Wyles (NC)
Walter M. Yohn, Jr. (AL)

The drivers were included in docket numbers FMCSA–1999–6156; FMCSA–1999–6480; FMCSA–2000–7006; FMCSA–2001–9258; FMCSA–2001–10578; FMCSA–2003–15892; FMCSA–2005–21254; FMCSA–2005–22194; FMCSA–2006–24015; FMCSA–2007–27897; FMCSA–2009–0121; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2010–0372; FMCSA–2011–0189; FMCSA–2011–26690; FMCSA–2013–0166; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2014–0297; FMCSA–2014–0303; FMCSA–2015–0049; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2017–0017; and FMCSA–2017–0023. Their exemptions are applicable as of January 3, 2020, and will expire on January 3, 2022.

As of January 5, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (76 FR 70213; 77 FR 541; 78 FR 74223; 80 FR 80443; 83 FR 6922):

George G. Ulferts, Jr. (IA)

The driver was included in docket number FMCSA–2011–0298. The exemption is applicable as of January 5, 2020, and will expire on January 5, 2022.

As of January 8, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (72 FR 67340; 73 FR 1395; 74 FR 65845; 76 FR 78728; 78 FR 76704; 80 FR 76345; 80 FR 80443; 81 FR 60117; 83 FR 6922):

Wayne A. Burnett (NC)
George R. Cornell (OH)
Thomas E. Gross (PA)
Steven G. Hall (NC)
Jason Huddleston (TX)
Martin Postma (IL)
Phillip D. Satterfield (GA)

The drivers were included in docket numbers FMCSA–2007–0017; and FMCSA–2015–0344. Their exemptions are applicable as of January 8, 2020, and will expire on January 8, 2022.

As of January 11, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (82 FR 58262; 83 FR 15232):

Eric J. Andersen (FL)
Darin P. Ball (NY)
Larry W. Buchanan (NM)
Christopher T. Peevyhouse (TN)

The drivers were included in docket number FMCSA–2017–0024. Their exemptions are applicable as of January 11, 2020, and will expire on January 11, 2022.

As of January 15, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following five individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 64271; 79 FR 2748; 80 FR 80443; 83 FR 6922):

Terry L. Cliffe (IL)
Adam S. Larson (CO)
Glenn H. Lewis (OH)
Leonardo Lopez (NE)
Roy A. Whitaker (TX)

The drivers were included in docket number FMCSA–2013–0167. Their exemptions are applicable as of January 15, 2020, and will expire on January 15, 2022.

As of January 21, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (80 FR 79414; 81 FR 44680; 83 FR 6922):

Therron K. Billings (VA)

The driver was included in docket number FMCSA–2015–0345. The exemption is applicable as of January 21, 2020, and will expire on January 21, 2022.

As of January 23, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 67454; 79 FR 4803; 81 FR 15401; 83 FR 6922):

Leonard A. Martin (NV)

The driver was included in docket number FMCSA–2013–0170. The exemption is applicable as of January 23, 2020, and will expire on January 23, 2022.

As of January 24, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (76 FR 73769; 77 FR 3547; 79 FR 2247; 80 FR 80443; 83 FR 6922):

Marion J. Coleman, Jr. (KY); Lex A. Fabrizio (UT); and Mark A. Ferris (IA)

The drivers were included in docket number FMCSA–2011–0299. Their

exemptions are applicable as of January 24, 2020, and will expire on January 24, 2022.

As of January 27, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (68 FR 52811; 68 FR 61860; 70 FR 48801; 70 FR 61165; 70 FR 71884; 71 FR 4632; 72 FR 58359; 73 FR 1395; 73 FR 5259; 74 FR 64124; 74 FR 65845; 75 FR 1451; 77 FR 545; 78 FR 78475; 80 FR 80443; 83 FR 6922):

John E. Kimmet, Jr. (WA)
Jason L. Light (ID)
Michael J. Richard (LA)
Robert E. Sanders (PA)

The drivers were included in docket numbers FMCSA–2003–15269; FMCSA–2003–15892; and FMCSA–2005–22727. Their exemptions are applicable as of January 27, 2020, and will expire on January 27, 2022.

As of January 28, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (74 FR 60022; 75 FR 4623; 77 FR 543; 78 FR 76707; 80 FR 80443; 83 FR 6922):

James A. DuBay (MI)
Donald E. Halvorson (NM)
Phillip J. Locke (CO)
Brian T. Nelson (MN)

The drivers were included in docket number FMCSA–2009–0303. Their exemptions are applicable as of January 28, 2020, and will expire on January 28, 2022.

As of January 29, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 67454; 79 FR 4803; 80 FR 80443; 83 FR 6922):

Calvin J. Barbour (NY)
Walter A. Breeze (OH)
Donald G. Carstensen (IA)
Jamie D. Daniels (IA)
Michael L. Fiamingo (PA)
Randy G. Kinney (IL)
Hector Marquez (TX)
Hershel D. Volentine (LA)
Gary D. Vollertsen (CO)

The drivers were included in docket number FMCSA–2013–0170. Their exemptions are applicable as of January 29, 2020, and will expire on January 29, 2022.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: January 30, 2020.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–02334 Filed 2–5–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0045]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from six individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to control a commercial motor vehicle (CMV) to drive in interstate commerce. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: Comments must be received on or before March 9, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Operations Docket No. FMCSA–2020–0045 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2020-0045.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2020–0045), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov/docket?D=FMCSA-2020-0045.* Click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2020-0045* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The six individuals listed in this notice have requested an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The criteria states that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the ME in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver has had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.,* drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

As a result of MEs misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified ME based on the physical qualification standards and medical best practices.

On January 15, 2013, FMCSA announced in a Notice of Final Disposition titled, ''Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders,'' (78 FR 3069), its decision to grant requests from 22 individuals for exemptions from the regulatory requirement that interstate CMV drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' Since that time, the Agency has published additional notices granting requests from individuals for exemptions from the regulatory requirement regarding epilepsy found in § 391.41(b)(8).

To be considered for an exemption from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), applicants must meet the criteria in the 2007 recommendations of the Agency's Medical Expert Panel (78 FR 3069).

III. Qualifications of Applicants

Randall J. Bernath

Mr. Bernath is a 55 year-old class CB CDL holder in Michigan. He has a history of seizure disorder and has been seizure free since 1993. He takes anti-seizure medication with the dosage and frequency remaining the same since 1995. His physician states that he is supportive of Mr. Bernath receiving an exemption.

Michael Day

Mr. Day is a 44 year-old class D driver in Arizona. He has a history of epilepsy and has been seizure free since 2002. He takes anti-seizure medication with the dosage and frequency remaining the same since 1988. His physician states that he is supportive of Mr. Day receiving an exemption.

Hermie Garrett

Ms. Garrett is a 34 year-old class D driver in New York. She has a history of seizure disorder and has been seizure free since 2008. She takes anti-seizure medication with the dosage and frequency remaining the same since 2014. Her physician states that he is supportive of Ms. Garrett receiving an exemption.

Jeb McCulla

Mr. McCulla is a 34 year-old class E driver in Louisiana. He has a history of epilepsy and has been seizure free since 2005. He takes anti-seizure medication with the dosage and frequency remaining the same since 2004. His physician states that he is supportive of Mr. McCulla receiving an exemption.

Gary D. Olsen

Mr. Olsen is a 57 year-old class A driver in Minnesota. He has a history of epilepsy and has been seizure free since 1986. He takes anti-seizure medication with the dosage and frequency remaining the same since 1986. His

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

physician states that he is supportive of Mr. Olsen receiving an exemption.

John Shainline IV

Mr. Shainline is a 40 year-old class C driver in Pennsylvania. He has a history of seizure disorder and has been seizure free since 2002. He takes anti-seizure medication with the dosage and frequency remaining the same since 2016. His physician states that he is supportive of Mr. Shainline receiving an exemption.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Issued on: January 30, 2020.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–02339 Filed 2–5–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0023]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel DAY DREAMER (Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 9, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0023 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0023 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0023, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DAY DREAMER is:

—*Intended Commercial Use of Vessel:* ''Boy Scouts of America—Sea Base program. Occasionally sunset cruise and day cruises.''

—*Geographic Region Including Base of Operations:* ''Florida'' (Base of Operations: Key West, FL)

—*Vessel Length and Type:* 39′ catamaran

The complete application is available for review identified in the DOT docket as MARAD–2020–0023 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0023 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

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, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide

comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

Dated: January 31, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–02291 Filed 2–5–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0024]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel COPPELIA (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 9, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0024 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0024 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0024, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel COPPELIA is:

—*Intended Commercial Use of Vessel:* ''Private Vessel Charters, Passengers Only''

—*Geographic Region Including Base of Operations:* ''California, Oregon, Washington, Alaska (excluding waters in Southeastern Alaska), and Hawaii.'' (Base of Operations: Honolulu, HI)

—*Vessel Length and Type:* 63′ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2020–0024 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0024 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

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, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

Dated: January 31, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–02289 Filed 2–5–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0025]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ARRIVEDERCI IV (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 9, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0025 by any one of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Search MARAD–2020–0025 and follow the instructions for submitting comments.
- Mail or Hand Delivery: Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0025, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ARRIVEDERCI IV is:

—*Intended Commercial Use of Vessel:* ''Private Vessel Charters, Passengers Only''

—*Geographic Region Including Base of Operations:* ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York (excluding waters in New York Harbor), New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, east coast of Florida, California, Oregon, Washington, and Alaska (excluding waters in Southeastern Alaska).'' (Base of Operations: Seattle, WA)

—*Vessel Length and Type:* 96′ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2020–0025 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0025 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

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, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

Dated: January 31, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–02288 Filed 2–5–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0022]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PROVIDENCE (Sailboat); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 9, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0022 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0022 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0022, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PROVIDENCE is:

—*Intended Commercial Use of Vessel:* ''Charter for 6 passengers for hire or less (Six Pack).''

—*Geographic Region Including Base of Operations:* ''Florida'' (Base of Operations: Punta Gorda, FL)

—*Vessel Length and Type:* 44′ sailboat

The complete application is available for review identified in the DOT docket as MARAD–2020–0022 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0022 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

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, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

Dated: January 31, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–02290 Filed 2–5–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Number NHTSA–2019–0146]

Agency Information Collection Activities; Notice and Request for Comment; Platform Lift Systems for Motor Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on a reinstatement of a previously-approved information collection.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This document describes an Information Collection Request (ICR) for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before April 6, 2020.

ADDRESSES: You may submit comments identified by the Docket No. DOT–NHTSA–2019–0146 through any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Pyne, 202–366–4171, Office of Rulemaking (NRM230), National Highway Traffic Safety Administration, U.S. Dept. of Transportation, 1200 New Jersey Avenue SE, Room W43–457, Washington, DC 20590. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

Title: 49 CFR 571.403, *Platform lift systems for motor vehicles,* and 49 CFR 571.404, *Platform lift installations in motor vehicles.*

OMB Control Number: 2127–0621.

Type of Request: Reinstatement without change of a previously approved information collection.

Type of Review: Regular.

Requested Expiration Date of Approval: 3 years from date of approval.

Abstract: Federal Motor Vehicle Safety Standard (FMVSS) No. 403, *Platform lift systems for motor vehicles,* establishes minimum performance standards for platform lifts intended for installation in motor vehicles to assist wheelchair users and other persons of limited mobility in entering and exiting a vehicle. The standard's purpose is to prevent injuries and fatalities to passengers and bystanders during the operation of platform lifts. The related standard FMVSS No. 404, *Platform lift installations in motor vehicles,* establishes specific requirements for vehicle manufacturers or alterers that install platform lifts in new vehicles. Lift manufacturers must certify that their lifts meet the requirements of FMVSS No. 403 and must declare in the owner's manual, in the installation instructions, and on the operating instruction label that the lift is certified. Certification of compliance with FMVSS No. 404 is included on the vehicle certification label required on all motor vehicles under 49 CFR part 567. Both FMVSS No. 403 and FMVSS No. 404 contain requirements related to information collections. FMVSS No. 403 requires lift manufacturers to produce an insert that is placed in the vehicle owner's manual and lift installation instructions. Additionally, lift manufacturers must affix either one or two labels to be placed near the controls for the lift. The latter illustrate and describe procedures for operating the lift. Our estimates of burden and cost to lift manufacturers to meet these requirements are described below. FMVSS No. 404 requires manufacturers or alterers that install platform lifts to insert the instructions provided by the lift manufacturer into the vehicle owners' manuals and ensure that labels with lift operating procedures are affixed to a location adjacent to the controls.

Affected Public: Platform lift manufacturers and vehicle manufacturers or alterers that install platform lifts in motor vehicles prior to first vehicle sale. There is no burden to the general public.

Estimated Number of Respondents: 10.

NHTSA estimates that there are 10 platform lift manufacturers doing business at a given time. Platform lift manufacturers typically have a design cycle of approximately 5 years. Therefore, there are aspects of the information collection that only require the manufacturers to incur burden every 5 years, such as changing the owner's manual inserts and labels. However, other aspects of the information collection, such as printing the inserts and labeling the lifts, require manufacturers to incur burden every year.

Estimated Total Annual Burden Hours: 1,562 hours.

NHTSA estimates that a total of 10 lift manufacturers will incur 1,562 hours of burden annually. This estimate is comprised of time to make changes to required language and the time to distribute that information by affixing labels or placards, placing inserts into owners' manuals, and providing installation instructions.

NHTSA estimates that every year approximately two lift manufacturers will need to change the language of the insert for the vehicle owners' manual stating the lift's platform operating volume, maintenance schedule, and operating procedures. NHTSA estimates that it will take manufacturers approximately 24 hours to make those changes. Therefore, NHTSA estimates that changes to the owners' manual inserts will take 48 hours annually (2 manufacturers × 24 hrs = 48 hours per year).

NHTSA estimates that every year approximately two manufacturers will need to change the installation instructions identifying the types of vehicles on which each lift is designed to be installed. NHTSA estimates that it will take manufacturers approximately 24 hours to make those changes. Therefore, NHTSA estimates that changes to the installation instructions will take 48 hours annually (2 manufacturers × 24 hrs = 48 hours per year).

NHTSA estimates that every year approximately two manufacturers will need to make changes to labels or placards which identify the operating functions of the lift. NHTSA estimates that it will take manufacturers approximately 24 hours to make those changes. Therefore, NHTSA estimates that changes to the labels or placards for lift functions will take 48 hours annually (2 manufacturers × 24 hrs = 48 hours per year).

NHTSA estimates that every year approximately two lift manufacturers will need to make changes to labels and placards detailing back-up operating procedures. NHTSA estimates that it will take manufacturers approximately 24 hours to make those changes. Therefore, NHTSA estimates that changes to the language of labels or placards for back-up operating procedures will take 48 hours annually (2 manufacturers × 24 hrs = 48 hours per year).

In addition to making periodic changes to the wording of the owners' manual inserts, installation instructions, label or placard for lift operating procedures, and the label or placard for lift back-up operation, lift

manufacturers also incur burden associated with distributing that information by affixing labels or placards, placing inserts into owners' manuals, and providing installation instructions.

NHTSA estimates that there will be 27,398 lifts manufactured in each of the next three years. NHTSA estimates that distributing the required information will take approximately 3 minutes per lift or approximately 1,370 hours for all lifts annually (27,398 lifts × 3 minutes per lift = 82,194 minutes, 82,194 minutes ÷ 60 = 1,370 hours).

	Lift manufacturers	Hours to make change	Annual hours
Per Year Insert Language	2	24	48
Per Year Install Instruct	2	24	48
Per Year Label Change/Operating	2	24	48
Per Year Label Change/Back-up	2	24	48
	Lifts-each year next 3 years	Mins. to distribute	Total hours
Distribution	27,398	3	1,370
Estimated Total Burden Hours			1,562

Estimated Cost for This Information Collection:

The cost of this collection of information will comprise printing costs and hourly labor costs. NHTSA's estimate of printing costs can be broken down as follows:

- Owner's manual insert—27,398 lifts × $0.04 per page × 1 page = $1,095.92
- Installation instructions—27,398 lifts × $0.04 per page × 1 page = $1,095.92
- Label/placard for lift operating procedures—27,398 lifts × $0.13 per label = $3,561.74
- Label/placard for lift backup operation—27,398 lifts × $0.13 per label = $3,561.74

Based on this breakdown, NHTSA estimates the total printing cost associated with this information collection is $9,315.32 annually.

	Lifts-each year next 3 years	Per unit	Total cost
Owner's Manual Insert	27,398	$0.04	$1,095.92
Install Instructions	27,398	0.04	1,095.92
Label Change/Operating Procedure	27,398	0.13	3,561.74
Label Change/Back-up Operation	27,398	0.13	3,561.74
Estimated Annual Printing Cost for This Information Collection			9,315.32

The labor cost is derived by applying appropriate hourly labor rates published by the Bureau of Labor Statistics [1] (BLS) to the hourly burden discussed previously in this notice. There are two categories of labor involved. First, for ''Assemblers and Fabricators'' (Occupation code 51–2000) with an average wage of $22.94/hour, the labor rate is $32.72/hour (based on BLS statistics showing wages for private industry workers are 70.1 percent of total compensation [2]). Multiplying that hourly labor rate by the estimated 1,370 labor hours needed annually to affix and distribute the required informational materials yields an annual labor cost of $44,832.81. Second, for ''Technical Writers'' (Occupation code 27–3042) with an average wage of $33.98/hour, the labor rate is $47.47/hour. Multiplying that hourly labor rate by the estimated 192 labor hours needed for revisions to labels and printed materials yields an annual labor cost of $9,306.93.

The total annual labor cost is thus estimated to be $54,139.74.

	Average wage	Percent of total compensation	Labor rate	Annual hours	Annual labor cost
Assemblers and Fabricators	$22.94	70.1	$32.72	1,370	$44,832.81
Technical Writers	33.98	70.1	48.47	192	9,306.93
Estimated Annual Labor Cost for This Information Collection					54,139.74

Combining the above estimated printing costs and estimated labor costs, NHTSA estimates that the total cost of this information collection is $63,455.06 per year.

[1] Available online at *https://www.bls.gov/oes/current/naics4_336100.htm.*

[2] See Table 1 at *https://www.bls.gov/news.release/pdf/ecec.pdf.*

Estimated Annual Printing Cost for This Information Collection	$9,315.32
Estimated Annual Labor Cost for This Information Collection	54,139.74
Combined Estimated Annual Printing Cost & Labor Cost for This Information Collection	63,455.06

Public Comments Invited: The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation at 5 CFR 1320.8(d), an agency must ask for public comment on the following: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) how to enhance the quality, utility, and clarity of the information to be collected; and (4) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35; and delegation of authority at 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2020–02297 Filed 2–5–20; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2019–0179]

Notice of Request for Comments: Ensuring American Leadership in Automated Vehicle Technologies: Automated Vehicles 4.0 (AV 4.0)

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (USDOT).

ACTION: Notice of request for comments.

SUMMARY: The USDOT and the White House Office of Science and Technology Policy (OSTP) invites public comment on the document, *Ensuring American Leadership in Automated Vehicle Technologies: Automated Vehicles 4.0* (AV 4.0). This document builds upon *Preparing for the Future of Transportation: Automated Vehicles 3.0 (AV 3.0)* and expands the scope to 38 relevant United States Government (USG) components which have direct or tangential equities in safe development and integration of AV technologies.

DATES: You should submit your comments prior to April 2nd, 2020.

Written Comments: Comments should refer to the docket number above and be submitted by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review USDOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or at *https://www.transportation.gov/privacy.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Please contact us at *automation@dot.gov* or Sujeesh Kurup (202–604–9102, *SujeeshKurup.SudarsanaKurup@ostp.eop.gov*).

SUPPLEMENTARY INFORMATION: AV 4.0 builds on AV 3.0 by expanding the scope to 38 Federal departments, independent agencies, commissions, and Executive Offices of the President. AV 4.0 is structured around three key areas: (1) USG AV technologies principles, (2) Administration Efforts Supporting AV Technology Growth and Leadership, and (3) USG Activities and Opportunities for Collaboration. The AV 4.0 document is available at: *www.transportation.gov/av/4.*

The USDOT and OSTP sees AV 4.0 as a method to ensure a consistent USG approach to AV technologies and to ensure that the United States continues to lead AV technologies' research, development, and integration. The USDOT and OSTP are seeking public comments on the document, *Ensuring American Leadership in Automated Vehicle Technologies: Automated Vehicles 4.0.*

Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the docket, please include the docket number of this document in your comments.

Please submit one copy (two copies if submitting by mail or hand delivery) of your comments, including the attachments, to the docket following the instructions given above under **ADDRESSES**. Please note, if you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using an Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.

How do I submit confidential business information?

Any submissions containing Confidential Information must be delivered to OST in the following manner:

- Submitted in a sealed envelope marked ''confidential treatment requested'';
- Accompanied by an index listing the document(s) or information that the submitter would like the Department to withhold. The index should include information such as numbers used to identify the relevant document(s) or information, document title and description, and relevant page numbers and/or section numbers within a document; and
- Submitted with a statement explaining the submitter's grounds for

objecting to disclosure of the information to the public.

OST also requests that submitters of Confidential Information include a non-confidential version (either redacted or summarized) of those confidential submissions in the public docket. In the event that the submitter cannot provide a non-confidential version of its submission, OST requests that the submitter post a notice in the docket stating that it has provided OST with Confidential Information. Should a submitter fail to docket either a non-confidential version of its submission or to post a notice that Confidential Information has been provided, we will note the receipt of the submission on the docket, with the submitter's organization or name (to the degree permitted by law) and the date of submission.

Will the agency consider late comments?

The USDOT will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, the agency will also consider comments received after that date. Given that we intend for the policy document to be a living document and to be developed in an iterative fashion, subsequent opportunities to comment will also be provided periodically.

How can I read the comments submitted by other people?

You may read the comments received at the address given above under COMMENTS. The hours of the docket are indicated above in the same location. You may also see the comments on the internet, identified by the docket number at the heading of this notice, at *http://www.regulations.gov.*

Issued in Washington, DC on January 30, 2020, under authority delegated at 49 U.S.C. 1.25a.

Finch Fulton,

Deputy Assistant Secretary for Transportation Policy.

[FR Doc. 2020–02332 Filed 2–5–20; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nominations for Appointment to the Veterans and Community Oversight and Engagement Board

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is seeking nominations of qualified candidates to be considered for appointment as a member of the Veterans and Community Oversight and Engagement Board (herein-after referred in this section to as ''the Board'') for the VA West Los Angeles Campus in Los Angeles, CA (''Campus''). The Board is established to coordinate locally with the Department of Veterans Affairs to identify the goals of the community and Veteran partnership; provide advice and recommendations to the Secretary to improve services and outcomes for Veterans, members of the Armed Forces, and the families of such Veterans and members; and provide advice and recommendations on the implementation of the Draft Master Plan approved by the Secretary on January 28, 2016, and on the creation andimplementation of any other successor master plans.

DATES: Nominations for membership on the Board must be received no later than 5:00 p.m. EST on March 2, 2020.

ADDRESSES: All nominations should be mailed to the Veterans Experience Office, Department of Veterans Affairs, 810 Vermont Avenue NW (30), Washington, DC 20420; or sent electronically to the Advisory Committee Management Office mailbox at *vaadvisorycmte@va.gov.*

FOR FURTHER INFORMATION CONTACT: Eugene W. Skinner Jr., Designated Federal Officer, Veterans Experience Office, Department of Veterans Affairs, 810 Vermont Avenue NW (30), Washington, DC 20420, telephone 202–631–7645 or via email at *Eugene.Skinner@va.gov.*

SUPPLEMENTARY INFORMATION: In carrying out the duties set forth in the West LA Leasing Act, the Board shall:

(1) Provide the community with opportunities to collaborate and communicate by conducting public forums; and

(2) Focus on local issues regarding the Department that are identified by the community with respect to health care, implementation of the Master Plan, and any subsequent plans, benefits, and memorial services at the Campus. Information on the Master Plan can be found at *https://www.losangeles.va.gov/masterplan/.*

Authority: The Board is a statutory committee established as required by Section 2(i) of the West Los Angeles Leasing Act of 2016, Public Law 114–226 (the West LA Leasing Act). The Board operates in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2.

Membership Criteria and Qualifications: VA is seeking nominations for Board membership.

The Board is composed of fifteen members and several non-voting members. The Board meets up to four times annually; and it is important that Board members attend meetings to achieve a quorum so that Board can effectively carry out its duties.

The members of the Board are appointed by the Secretary of Veterans Affairs from the general public, from various sectors and organizations, and shall meet the following qualifications, as set forth in the West LA Leasing Act:

(1) Not less than 50% of members shall be Veterans; and

(2) Non-Veteran members shall be:

a. Family members of Veterans,

b. Veteran advocates,

c. Service providers,

d. Real estate professionals familiar with housing development projects, or

e. Stakeholders.

In addition, the Board members may also serve as Subcommittee members.

In accordance with the Board Charter, the Secretary shall determine the number, terms of service, and pay and allowances of Board members, except that a term of service of any such member may not exceed two years. The Secretary may reappoint any Board member for additional terms of service.

To the extent possible, the Secretary seeks members who have diverse professional and personal qualifications including but not limited to subject matter experts in the areas described above. We ask that nominations include any relevant experience and information so that VA can ensure diverse Board membership.

Requirements for Nomination Submission: Nominations should be typed written (one nomination per nominator). Nomination package should include:

(1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.* specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating a willingness to serve as a member of the Board;

(2) The nominee's contact information, including name, mailing address, telephone numbers, and email address;

(3) The nominee's curriculum vitae, not to exceed three pages and a one-page cover letter; and

(4) A summary of the nominee's experience and qualifications relative to the membership criteria and professional qualifications criteria listed above.

The Department makes every effort to ensure that the membership of VA Federal advisory committees is diverse in terms of points of view represented and the committee's capabilities. Appointments to this Board shall be made without discrimination because of a person's race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, or genetic information. Nominations must state that the nominee is willing to serve as a member of the Board and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee.

Dated: February 3, 2020.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–02326 Filed 2–5–20; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 85 Thursday,

No. 25 February 6, 2020

Part II

Environmental Protection Agency

40 CFR Parts 79 and 80

Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021 and Other Changes; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 79 and 80

[EPA–HQ–OAR–2019–0136; FRL–10003–79–OAR]

RIN 2060–AU42

Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021 and Other Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under section 211 of the Clean Air Act, the Environmental Protection Agency (EPA) is required to set renewable fuel percentage standards every year. This action establishes the annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel that apply to gasoline and diesel transportation fuel produced or imported in the year 2020. Relying on statutory waiver authority that is available when the projected cellulosic biofuel production volume is less than the applicable volume specified in the statute, EPA is establishing volume requirements for cellulosic biofuel, advanced biofuel, and total renewable fuel that are below the statutory volume targets. We are also establishing the applicable volume of biomass-based diesel for 2021. In addition, we are finalizing changes to the percentage standard calculations to account for volumes of gasoline and diesel we project will be exempted from the renewable volume obligations. Finally, this action finalizes several regulatory changes to the Renewable Fuel Standard (RFS) program including new pathways, flexibilities for regulated parties, and clarifications of existing regulations.

DATES: This final rule is effective on April 6, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2019–0136. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material is not available on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4131; email address: *macallister.julia@epa.gov.*

SUPPLEMENTARY INFORMATION: Entities potentially affected by this final rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol, biodiesel, renewable diesel, and biogas. Potentially affected categories include:

Category	NAICS [1] codes	SIC [2] codes	Examples of potentially affected entities
Industry	324110	2911	Petroleum refineries.
Industry	325193	2869	Ethyl alcohol manufacturing.
Industry	325199	2869	Other basic organic chemical manufacturing.
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	221210	4925	Manufactured gas production and distribution.
Industry	454319	5989	Other fuel dealers.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this final action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your entity would be affected by this action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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I. Executive Summary

The Renewable Fuel Standard (RFS) program began in 2006 pursuant to the requirements in Clean Air Act (CAA) section 211(o) that were added through the Energy Policy Act of 2005 (EPAct). The statutory requirements for the RFS program were subsequently modified through the Energy Independence and Security Act of 2007 (EISA), leading to the publication of major revisions to the regulatory requirements on March 26, 2010.[1] EISA's stated goals include moving the United States (U.S.) toward ''greater energy independence and security [and] increas[ing] the production of clean renewable fuels.'' [2]

The statute includes annual volume targets and requires EPA to translate those volume targets (or alternative volume requirements established by EPA in accordance with statutory waiver authorities) into compliance obligations that obligated parties must meet every year. In this action we are establishing the applicable volumes for cellulosic biofuel, advanced biofuel, and total renewable fuel for 2020, and biomass-based diesel (BBD) for 2021.[3]

We are also finalizing changes to the percentage standard calculations to account for volumes of gasoline and diesel we project will be exempted from the renewable volume obligations, and establishing the annual percentage standards (also known as ''percent standards'') for cellulosic biofuel, BBD, advanced biofuel, and total renewable fuel that would apply to gasoline and diesel produced or imported in 2020.[4]

Finally, we are finalizing several regulatory changes to the RFS program to facilitate the implementation of this program going forward including new pathways, flexibilities for regulated parties, and clarifications of existing regulations.

Today, nearly all gasoline used for transportation purposes contains 10 percent ethanol (E10), and on average diesel fuel contains nearly 5 percent of biodiesel and renewable diesel.[5] However, the market has fallen well short of the statutory volumes for cellulosic biofuel, resulting in shortfalls in the advanced biofuel and total renewable fuel volumes. In this action, we are establishing a volume requirement for cellulosic biofuel at the level we project to be available for 2020, along with an associated applicable percentage standard. For advanced biofuel and total renewable fuel, we are finalizing volume requirements using the ''cellulosic waiver authority'' that result in advanced biofuel and total renewable fuel volume requirements that are lower than the statutory targets by the same magnitude as the reduction in the cellulosic biofuel reduction. This would effectively maintain the implied statutory volumes for non-cellulosic biofuel and conventional biofuel.[6]

The resulting volume requirements for 2020 are shown in Table I–1. Relative to the levels finalized for 2019, the 2020 volume requirements for cellulosic biofuel, advanced biofuel and total renewable fuel would be higher by approximately 170 million gallons. This entire increase for each category is attributable to the increased projection of cellulosic biofuel production in 2020 (see Section III for a further discussion of our cellulosic biofuel projection). We are also establishing the volume requirement for BBD for 2021 at 2.43 billion gallons. This volume is equal to the BBD volume finalized for 2020.

[1] 75 FR 14670, March 26, 2010.

[2] Public Law 110–140, 121 Stat. 1492 (2007) (''EISA'').

[3] The 2020 BBD volume requirement was established in the 2019 final rule. 83 FR 63704 (December 11, 2018).

[4] For a list of the statutory provisions related to the determination of applicable volumes, see the 2018 final rule (82 FR 58486, December 12, 2017; Table I.A–2).

[5] Average biodiesel and/or renewable diesel blend percentages based on EIA's October 2019 Short Term Energy Outlook (STEO) and EPA's Moderated Transaction System (EMTS).

[6] The statutory total renewable fuel, advanced biofuel and cellulosic biofuel requirements for 2020 are 30.0, 15.0 and 10.5 billion gallons respectively. This implies a conventional renewable fuel applicable volume (the difference between the total renewable fuel and advanced biofuel volumes) of 15.0 billion gallons, and a non-cellulosic advanced biofuel applicable volume (the difference between the advanced biofuel and cellulosic biofuel volumes) of 4.5 billion gallons.

TABLE I–1—FINAL VOLUME REQUIREMENTS [a]

	2019 [b]	2020 Statutory volumes	2020 Proposed volumes	2020 Final volumes	2021 Final volumes
Cellulosic biofuel (billion gallons)	0.42	10.50	0.54	0.59	n/a
Biomass-based diesel (billion gallons)	2.1	≥1.0	[c] N/A	[c] 2.43	2.43
Advanced biofuel (billion gallons)	4.92	15.00	5.04	5.09	n/a
Renewable fuel (billion gallons)	19.92	30.00	20.04	20.09	n/a

[a] All values are ethanol-equivalent on an energy content basis, except for BBD which is biodiesel-equivalent.
[b] The 2019 volume requirements for cellulosic biofuel, advanced biofuel, and renewable fuel were established in the 2019 final rule (83 FR 63704, December 11, 2018). The 2019 BBD volume requirement was established in the 2018 final rule (82 FR 58486, December 12, 2017).
[c] The 2020 BBD volume requirement of 2.43 billion gallons was established in the 2019 final rule (83 FR 63704, December 11, 2018).

A. Approach To Setting Volume Requirements

For advanced biofuel and total renewable fuel, we are reducing the statutory volumes based on the ''cellulosic waiver authority'' that result in advanced biofuel and total renewable fuel volume requirements that are lower than the statutory targets by the same magnitude as the reduction in the cellulosic biofuel applicable volume. Further discussion of our cellulosic waiver authority is found in Section II. This follows the same general approach as in the 2018 and 2019 final rules, as well as the 2020 proposed rule. The volumes for cellulosic biofuel, advanced biofuel, and total renewable fuel exceed the required volumes for these fuel types in 2019.

B. Cellulosic Biofuel

The CAA requires EPA to annually determine the projected volume of cellulosic biofuel production for the following year. If the projected volume of cellulosic biofuel production is less than the applicable volume specified in section 211(o)(2)(B)(i)(III) of the statute, EPA must lower the applicable volume used to set the annual cellulosic biofuel percentage standard to the projected volume available. In this rule we are establishing a cellulosic biofuel volume requirement of 0.59 billion ethanol-equivalent gallons for 2020 based on our projection. This volume is 0.17 billion ethanol-equivalent gallons higher than the cellulosic biofuel volume finalized for 2019. Our projection in Section III considers many factors, including the estimate of cellulosic biofuel production received from the Energy Information Administration (EIA); [7] RIN generation data for past years and 2019 to date that is available to EPA through the EPA Moderated Transaction System (EMTS); the information we have received regarding individual facilities' capacities, production start dates, and biofuel production plans; a review of cellulosic biofuel production relative to EPA's projections in previous annual rules; and EPA's own engineering judgment. To project cellulosic biofuel production for 2020 we used the same general methodology as in the 2018 and 2019 final rules, together with updated data.

C. Advanced Biofuel

If we reduce the applicable volume of cellulosic biofuel below the volume specified in CAA section 211(o)(2)(B)(i)(III), we also have the authority to reduce the applicable volumes of advanced biofuel and total renewable fuel by the same or a lesser amount. We refer to this as the ''cellulosic waiver authority.'' The conditions that caused us to reduce the 2019 volume requirement for advanced biofuel below the statutory target remain relevant in 2020.

As in the 2019 final rule, we investigated the projected availability of non-cellulosic advanced biofuels in 2020. In Section IV, we describe our consideration of many factors, including:

- The ability of the market to make advanced biofuels available,
- The ability of the standards we set to bring about market changes in the time available,
- The potential impacts associated with diverting biofuels and/or biofuel feedstocks from current uses to the production of advanced biofuel used in the U.S.,
- The fact that the biodiesel tax credit is currently not available for 2020,
- Current tariffs on imports of biodiesel from Argentina and Indonesia and the proposal to change those tariffs, and
- The cost of advanced biofuels

We also considered the size of the carryover RIN bank. Based on these considerations, we have determined that the statutory volume target for advanced biofuel should be reduced by the same amount as the reduction in the statutory volume target for cellulosic biofuel, consistent with our July 29, 2019, proposal (''the July 29 proposal''). Specifically, the statutory volume target for advanced biofuel should be reduced by 9.91 billion gallons. This maintains the implied statutory volume requirement for non-cellulosic advanced biofuel of 4.5 billion gallons, and results in a final advanced biofuel volume requirement for 2020 of 5.09 billion gallons, which is 0.17 billion gallons higher than the advanced biofuel volume requirement for 2019.

D. Total Renewable Fuel

As we have articulated in previous annual standard-setting rulemakings,[8] we believe that the cellulosic waiver authority is best interpreted to require equal reductions in advanced biofuel and total renewable fuel. Consistent with previous years, we are reducing total renewable fuel by the same amount as the reduction in advanced biofuel, such that the resulting implied volume requirement for conventional renewable fuel would be 15 billion gallons, the same as the implied volume requirement in the statute. The result is that the final 2020 volume requirement is 20.09 billion gallons.

E. 2021 Biomass-Based Diesel

In EISA, Congress specified increasing applicable volumes of BBD through 2012. Beyond 2012, Congress stipulated that EPA, in coordination with DOE and USDA, was to establish the BBD volume based on a review of the implementation of the program during calendar years specified in the tables in CAA 211(o)(B)(i) and other statutory factors, provided that the required volume for BBD could not be less than 1.0 billion gallons. Starting in 2013, EPA has set the BBD volume requirement above the statutory minimum, most recently resulting in 2.43 billion gallons for 2020. In this rule we are maintaining the BBD volume for 2021 at 2.43 billion gallons.

[7] Letter from Linda Capuano, EIA Administrator to Andrew Wheeler, EPA Administrator. October 9, 2019. Available in docket EPA–HQ–OAR–2019–0136.

[8] See, *e.g.,* 83 FR 63704 (December 11, 2018).

Given current and recent market conditions, the advanced biofuel requirement is driving the production and use of biodiesel and renewable diesel volumes over and above volumes required through the separate BBD standard, and we expect this to continue. While EPA continues to believe it is appropriate to maintain the opportunity for other advanced biofuels to compete for market share, the vast majority of the advanced biofuel obligations in recent years have been satisfied with BBD. Thus, after a review of implementation of the program to date and considering the statutory factors, we are establishing, in coordination with USDA and DOE, an applicable volume of BBD for 2020 of 2.43 billion gallons.

F. Annual Percentage Standards

The renewable fuel standards are expressed as a volume percentage and are used by each refiner and importer of fossil-based gasoline or diesel to determine their renewable fuel volume obligations.

Four separate percentage standards are required under the RFS program, corresponding to the four separate renewable fuel categories shown in Table I–1. The specific formulas we use in calculating the renewable fuel percentage standards are contained in the regulations at 40 CFR 80.1405. On October 28, 2019, we proposed changes to our percentage standard formulas in 40 CFR 80.1405. (''October 28 Proposal''). These changes were intended to project the exempted volume of gasoline and diesel due to small refinery exemptions, regardless of whether we grant those exemptions prior or after the annual rule. For 2020, we proposed to project exempt volumes are based on a three-year average of the relief recommended by the Department of Energy (DOE) for 2016–2018. In this action, we are finalizing these proposed changes. These changes result in increases to the percentage standards as compared to the percentage standards in the July 29 proposal.

Consistent with these changes, we are also announcing our general policy approach to small refinery exemptions going forward, including for now-pending 2019 petitions as well as for future 2019 and 2020 petitions. Although final decisions on any exemption petition must await EPA's receipt and adjudication of those petitions, EPA intends to grant relief consistent with DOE's recommendations where appropriate. This policy extends to DOE's recommendations of partial (50%) relief: Where appropriate, we intend to grant 50% relief where DOE recommends 50% relief.

The volume of transportation gasoline and diesel used to calculate the proposed percentage standards was based on Energy Information Administration's (EIA) October 2019 Short Term Energy Outlook (STEO), minus an estimate of fuel consumption in Alaska. The final applicable percentage standards for 2020 are shown in Table I.B.6–1. Details, including the projected gasoline and diesel volumes used, can be found in Section VII.

TABLE I.F–1—FINAL 2020 PERCENTAGE STANDARDS

	Percentage standards
Cellulosic biofuel	0.34%
Biomass-based diesel	2.10
Advanced biofuel	2.93
Renewable fuel	11.56

G. Amendments to the RFS and Fuels Programs Regulations

In implementing the RFS program EPA has identified several areas where regulatory changes would assist EPA in implementing the RFS program in future years. EPA requested comment on several of these regulatory changes in the July 29 proposal: Clarification of diesel RVO calculations, pathway petition conditions, a biodiesel esterification pathway, distillers corn oil and distillers sorghum oil pathways, and renewable fuel exporter provisions. Each of these regulatory changes is discussed in greater detail in Section IX.

Additionally, we proposed a number of changes to the RFS regulations as part of the proposed Renewables Enhancement and Growth Support (REGS) Rule.[9] EPA noted that it was considering finalizing several of those proposed changes along with the 2020 RVO final rule,[10] and are now finalizing the REGS Rule provisions listed below.

- Flexibilities for Renewable Fuel Blending for Military Use (REGS Section VIII.E)
- Heating Oil Used for Cooling (REGS Section VIII.F)
- Separated Food Waste Plans (REGS Section VIII.G)
- Additional Registration Deactivation Justifications (REGS Section VIII.J)
- New RIN Retirement Section (REGS Section VIII.L)
- New Pathway for Co-Processing Biomass With Petroleum To Produce Cellulosic Diesel, Jet Fuel, and Heating Oil (REGS Section VIII.M)
- Other Revisions to the Fuels Program (REGS Section IX)

The other provisions proposed in the REGS Rule remain under consideration but are not being finalized at this time.

H. Response to Remand of 2016 Standards Rulemaking

In 2015, EPA established the total renewable fuel standard for 2016, relying in part on the general waiver authority under a finding of inadequate domestic supply.[11] Several parties challenged that action, and the U.S. Court of Appeals for the D.C. Circuit, in *Americans for Clean Energy* v. *EPA,* 864 F.3d 691 (2017) (hereafter ''*ACE*''), vacated EPA's use of the general waiver authority under a finding of inadequate domestic supply, finding that such use exceeded EPA's authority under the Clean Air Act. Specifically, EPA had impermissibly considered demand-side factors in its assessment of inadequate domestic supply, rather than limiting that assessment to supply-side factors. The court remanded the rule back to EPA for further consideration in light of the court's ruling.

In the July 29 proposal, we proposed that the applicable 2016 volume requirement for total renewable fuel and the associated percentage standard should not be changed. In light of the many comments received, we are still actively considering this issue. We are therefore not taking final agency action on this issue in today's final rule. We are instead deferring action on this issue to a separate action, which we anticipate in early 2020.

II. Authority and Need for Waiver of Statutory Applicable Volumes

The CAA provides EPA with the authority to promulgate volume requirements below the applicable volume targets specified in the statute under specific circumstances. This section discusses those authorities. As described in the executive summary, we are setting the volume requirement for cellulosic biofuel at the level we project to be available for 2020, and an associated applicable percentage standard. For advanced biofuel and total renewable fuel, we are setting volume requirements and associated applicable percentage standards, based on use of the ''cellulosic waiver authority'' that would result in advanced biofuel and total renewable fuel volume requirements that are equivalent to the reduction in the cellulosic biofuel

[9] See 81 FR 80828 (November 16, 2016).

[10] See 84 FR 36765 (July 29, 2019).

[11] See 80 FR 77420 (December 14, 2015); CAA section 211(o)(7)(A)(ii).

reduction. This would effectively maintain the implied statutory volumes for non-cellulosic advanced and conventional renewable fuel.

A. Statutory Authorities for Reducing Volume Targets

In CAA section 211(o)(2), Congress specified increasing annual volume targets for total renewable fuel, advanced biofuel, and cellulosic biofuel for each year through 2022. However, Congress also recognized that under certain circumstances it would be appropriate for EPA to set volume requirements at a lower level than reflected in the statutory volume targets, and thus provided waiver provisions in CAA section 211(o)(7). Congress also specified increasing annual volume targets for BBD through 2012 and authorized EPA to set volume requirements for subsequent years (*i.e.,* after 2012) in coordination with USDA and DOE, and based upon consideration of specified factors.

1. Cellulosic Waiver Authority

Section 211(o)(7)(D)(i) of the CAA provides that if EPA determines that the projected volume of cellulosic biofuel production for a given year is less than the applicable volume specified in the statute, then EPA must reduce the applicable volume of cellulosic biofuel required to the projected volume available for that calendar year. In making this projection, EPA may not ''adopt a methodology in which the risk of overestimation is set deliberately to outweigh the risk of underestimation'' but must make a projection that ''takes neutral aim at accuracy.'' *API* v. *EPA,* 706 F.3d 474, 479, 476 (D.C. Cir. 2013). Pursuant to this provision, EPA has set the cellulosic biofuel requirement lower than the statutory volume for each year since 2010. As described in Section III.D, the projected volume of cellulosic biofuel production for 2020 is less than the 10.5 billion gallon volume target in the statute. Therefore, for 2020, we are finalizing a cellulosic biofuel volume lower than the statutory applicable volume, in accordance with this provision.

CAA section 211(o)(7)(D)(i) also provides EPA with the authority to reduce the applicable volume of total renewable fuel and advanced biofuel in years when it reduces the applicable volume of cellulosic biofuel under that provision. The reduction must be less than or equal to the reduction in cellulosic biofuel. For 2020, we are reducing the applicable volumes of advanced biofuel and total renewable fuel under this authority.

EPA has used the cellulosic waiver authority to lower the advanced biofuel and total renewable fuel volumes every year since 2014 as a result of waiving the cellulosic volumes. Further discussion of the cellulosic waiver authority, and EPA's interpretation of it, can be found in the preamble to the 2017 final rule.[12]

In this action we are using the cellulosic waiver authority to reduce the statutory volume targets for advanced biofuel and total renewable fuel by equal amounts, consistent with our long-held interpretation of this provision and our approach in setting the 2014–2019 standards. This approach considers the Congressional objectives reflected in the volume tables in the statute, and the environmental objectives that generally favor the use of advanced biofuels over non-advanced biofuels.[13] As described in Section IV, we are reducing the advanced biofuel volume under the cellulosic waiver authority by the amount of the reduction in cellulosic biofuel and providing an equal reduction under the cellulosic waiver authority in the applicable volume of total renewable fuel. We are taking this action both because we do not believe that the statutory volumes can be achieved, and because we believe that backfilling of the shortfall in cellulosic with advanced biofuel would not be appropriate in light of concerns about high costs of the advanced biofuels and the potential for feedstock switching. The volumes of advanced biofuel and total renewable fuel resulting from this exercise of the cellulosic waiver authority provide for an implied volume allowance for conventional renewable fuel of 15 billion gallons, and an implied volume allowance for non-cellulosic advanced biofuel of 4.5 billion gallons, equal to the implied statutory volumes for 2020. As discussed in Section IV, we also believe that the resulting volume of advanced biofuel is attainable, and that the resulting volume of total renewable fuel can be made available by the market.

2. General Waiver Authority

Section 211(o)(7)(A) of the CAA provides that EPA, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the applicable volumes specified in the Act in whole or in part based on a petition by one or more States, by any person subject to the requirements of the Act, or by the EPA Administrator on his own motion. Such a waiver must be based on a determination by the Administrator, after public notice and opportunity for comment that: (1) Implementation of the requirement would severely harm the economy or the environment of a State, a region, or the United States; or (2) there is an inadequate domestic supply.

EPA received comments requesting that EPA should use the general waiver authority to further reduce volumes under findings of inadequate domestic supply and/or severe harm to the economy or environment, as well as comments to the contrary. Based on our review of the comments and updated data, and consistent with EPA's rationale and decisions in setting the 2019 standards, we decline to exercise our discretion to reduce volumes under the general waiver authority. Further discussion of these issues is found in the Response To Comments (''RTC'') document.[14]

B. Severability

The various portions of this rule are severable. Specifically, the following portions are severable from each other: The percentage standards for 2020 (described in Section VII); the 2021 BBD volume requirement (Section VI); the administrative actions (Section VIII); and the regulatory amendments (Section IX). In addition, each of the regulatory amendments is severable from the other regulatory amendments. If any of the above portions is set aside by a reviewing court, we intend the remainder of this action to remain effective. For instance, if a reviewing court sets aside one of the regulatory amendments, we intend for the 2020 percentage standards to go into effect.

C. Treatment of Carryover RINs

Consistent with our approach in the rules establishing the RFS standards for

[12] See 81 FR 89752–89753 (December 12, 2016); see also *API* v. *EPA,* 706 F.3d 474 (D.C. Cir. 2013) (requiring that EPA's cellulosic biofuel projections reflect a neutral aim at accuracy); *Monroe Energy* v. *EPA,* 750 F.3d 909, 915–16 (D.C. Cir. 2014) (affirming EPA's broad discretion under the cellulosic waiver authority to reduce volumes of advanced biofuel and total renewable fuel); *Americans for Clean Energy* v. *EPA* (''*ACE*''), 864 F.3d 691, 730–735 (D.C. Cir. 2017) (same); *Alon Refining Krotz Spring, Inc.* v. *EPA,* 936 F.3d 628, 662–663 (D.C. Cir. 2019) (same); *American Fuel & Petrochemical Manufacturers* v. *EPA,* 937 F.3d 559, 577–78 (D.C. Cir. 2019) (same).

[13] See 81 FR 89752–89753 (December 12, 2016). See also 78 FR 49809–49810 (August 15, 2013); 80 FR 77434 (December 14, 2015). Advanced biofuels are required to have lifecycle GHG emissions that are at least 50% less than the baseline defined in EISA. Non-advanced biofuels are required to have lifecycle GHG emissions that are at least 20% less than the baseline defined in EISA unless the fuel producer meets the grandfathering provisions in 40 CFR 80.1403. Beginning in 2015, all growth in the volumes established by Congress come from advanced biofuels.

[14] See also ''Endangered Species Act No Effect Finding for the 2020 Final Rule.''

2013 through 2019, we have also considered the availability and role of carryover RINs in setting the cellulosic biofuel, advanced biofuel, and total renewable fuel volume requirements for 2020. Neither the statute nor EPA regulations specify how or whether EPA should consider the availability of carryover RINs in exercising our statutory authorities.[15] As noted in the context of the rules establishing the RFS standards for 2014 through 2019, we believe that a bank of carryover RINs is extremely important in providing obligated parties compliance flexibility in the face of substantial uncertainties in the transportation fuel marketplace, and in providing a liquid and well-functioning RIN market upon which success of the entire program depends.[16] Carryover RINs provide flexibility in the face of a variety of unforeseeable circumstances that could limit the availability of RINs and reduce spikes in compliance costs, including weather-related damage to renewable fuel feedstocks and other circumstances potentially affecting the production and distribution of renewable fuel. On the other hand, carryover RINs can be used for compliance purposes, and in the context of the 2013 RFS rulemaking we noted that an abundance of carryover RINs available in that year, together with possible increases in renewable fuel production and import, justified maintaining the advanced and total renewable fuel volume requirements for that year at the levels specified in the statute.[17] In general, we have authority to consider the size of the carryover RIN bank in deciding whether and to what extent to exercise any of our discretionary waiver authorities.[18] EPA's approach to the consideration of carryover RINs in exercising our cellulosic waiver authority was affirmed in *Monroe Energy* and *ACE.*[19]

The RIN system was established in accordance with CAA section 211(o)(5), which authorizes the generation of credits by any person who refines, blends, or imports renewable fuel in excess of the requirements of the statute.[20] In the RFS1 and RFS2 rulemakings, we also established a 20 percent rollover cap on the amount of an obligated party's RVO that can be met using previous-year RINs.[21] In implementing the RFS program, we have observed that an adequate carryover RIN bank serves to make the RIN market liquid wherein RINs are freely traded in an open market making them readily available and accessible to those obligated parties who need them for compliance at prices established by that open market. Just as the economy as a whole functions best when individuals and businesses prudently plan for unforeseen events by maintaining inventories and reserve money accounts, we believe that the RFS program functions best when sufficient carryover RINs are held in reserve for potential use by the RIN holders themselves, or for possible sale to others that may not have established their own carryover RIN reserves. Were there to be too few RINs in reserve, then even minor disruptions causing shortfalls in renewable fuel production or distribution, or higher than expected transportation fuel demand (requiring greater volumes of renewable fuel to comply with the percentage standards that apply to all volumes of transportation fuel, including the unexpected volumes) could lead to the need for a new waiver of the standards and higher compliance costs, undermining the market certainty so critical to the RFS program. Moreover, a significant drawdown of the carryover RIN bank leading to a scarcity of RINs may stop the market from functioning in an efficient manner (*i.e.,* one in which there are a sufficient number of reasonably available RINs for obligated parties seeking to purchase them), even where the market overall could satisfy the standards. For all of these reasons, the collective carryover RIN bank provides a necessary programmatic buffer that both facilitates individual compliance, provides for smooth overall functioning of the program, and is consistent with the statutory provision allowing for the generation and use of credits.[22]

1. Carryover RIN Bank Size

We estimate that there are currently approximately 3.48 billion total carryover RINs available, an increase of 1.29 billion RINs from the previous estimate of 2.19 billion total carryover RINs in the July 29 proposal.[23] We also estimate that there are currently approximately 680 million advanced carryover RINs available (which are a subset of the 3.48 billion total carryover RINs), an increase of 290 million RINs from the previous estimate in the July 29 proposal. This increase in the carryover RIN bank is primarily the result of the millions of RINs that were unretired by small refineries that were granted hardship exemptions after the July 29 proposal.[24] These volumes of carryover RINs are approximately 17 percent of the 2020 total renewable fuel volume requirement and 13 percent of the 2020 advanced biofuel volume requirement, which are less than the 20 percent maximum limit permitted by the RFS regulations to be carried over for use in complying with the 2020 standards.[25]

However, there remains considerable uncertainty surrounding the ultimate size of the carryover RIN bank available for compliance with the 2020 standards for several reasons, including the possibility of additional small refinery exemptions, higher or lower than expected transportation fuel demand (requiring greater or lower volumes of renewable fuel to comply with the percentage standards that apply to all

[15] CAA section 211(o)(5) requires that EPA establish a credit program as part of its RFS regulations, and that the credits be valid for obligated parties to show compliance for 12 months as of the date of generation. EPA implemented this requirement through the use of RINs, which can be used to demonstrate compliance for the year in which they are generated or the subsequent compliance year. Obligated parties can obtain more RINs than they need in a given compliance year, allowing them to ''carry over'' these excess RINs for use in the subsequent compliance year, although our regulations limit the use of these carryover RINs to 20 percent of the obligated party's RVO. For the bank of carryover RINs to be preserved from one year to the next, individual carryover RINs are used for compliance before they expire and are essentially replaced with newer vintage RINs that are then held for use in the next year. For example, vintage 2018 carryover RINs must be used for compliance in 2019, or they will expire. However, vintage 2019 RINs can then be ''banked'' for use in 2020.

[16] See 80 FR 77482–87 (December 14, 2015), 81 FR 89754–55 (December 12, 2016), 82 FR 58493–95 (December 12, 2017), and 83 FR 63708–10 (December 11, 2018).

[17] See 79 FR 49793–95 (August 15, 2013).

[18] These discretionary waiver authorities include the discretionary portion of the cellulosic waiver authority, CAA section 211(o)(7)(D)(i) (''the Administrator may also reduce the applicable volume of renewable fuel and advanced biofuels requirement''), the general waiver authority, CAA section 211(o)(7)(A) (''The Administrator . . . may waive the requirements''), and the BBD waiver authority with regard to the extent of the reduction in the BBD volume, CAA section 211(o)(7)(E)(ii) (''the Administrator . . . shall issue an order to reduce . . . the quantity of biomass-based diesel . . . by an appropriate quantity'').

[19] *Monroe Energy* v. *EPA,* 750 F.3d 909 (D.C. Cir. 2014); *ACE,* 864 F.3d at 713.

[20] See 75 FR 14670 (March 26, 2010) and 72 FR 23900 (May 1, 2007).

[21] See 75 FR 14734–35 (March 26, 2010) and 72 FR 23934–35 (May 1, 2007).

[22] Here we use the term ''buffer'' as shorthand reference to all of the benefits that are provided by a sufficient bank of carryover RINs.

[23] The calculations performed to estimate the number of carryover RINs currently available can be found in the memorandum, ''Carryover RIN Bank Calculations for 2020 Final Rule,'' available in the docket.

[24] Information about the number of small refinery exemptions (SREs) granted and the volume of RINs not required to be retired as a result of those exemptions can be found at: *https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rfs-small-refinery-exemptions.*

[25] See 40 CFR 80.1427(a)(5).

volumes of transportation fuel), and the impact of 2019 RFS compliance on the bank of carryover RINs. In addition, we note that there have been enforcement actions in past years that have resulted in the retirement of carryover RINs to make up for the generation and use of invalid RINs and/or the failure to retire RINs for exported renewable fuel. Future enforcement actions could have similar results and require that obligated parties and/or renewable fuel exporters settle past enforcement-related obligations in addition to complying with the annual standards, thereby potentially creating demand for RINs greater than can be accommodated through actual renewable fuel blending in 2020. In light of these uncertainties, the net result could be a bank of total carryover RINs larger or smaller than 17 percent of the 2020 total renewable fuel volume requirement, and a bank of advanced carryover RINs larger or smaller than 13 percent of the 2020 advanced biofuel volume requirement.

2. EPA's Decision Regarding the Treatment of Carryover RINs

We have evaluated the volume of carryover RINs currently available and considered whether it would justify an intentional drawdown of the carryover RIN bank in setting the 2020 volume requirements. We also carefully considered the comments received, including comments on the role of carryover RINs under our waiver authorities and the policy implications of our decision.[26] For the reasons described throughout Section II.C, we do not believe we should intentionally draw down the carryover RIN bank in setting the 2020 volumes. The current bank of carryover RINs provides an important and necessary programmatic and cost spike buffer that will both facilitate individual compliance and provide for smooth overall functioning of the program. We believe that a balanced consideration of the possible role of carryover RINs in achieving the statutory volumes for cellulosic biofuel, advanced biofuel, and total renewable fuel, versus maintaining an adequate bank of carryover RINs for important programmatic functions, is appropriate when EPA exercises its discretion under its statutory authorities, and that the statute does not specify the extent to which EPA should require a drawdown in the bank of carryover RINs when it exercises its waiver authorities. Therefore, for the reasons noted above and consistent with the approach we took in the rules establishing the RFS standards for 2014 through 2019, we have decided to maintain our proposed approach and are not setting the 2020 volume requirements at levels that would envision an intentional drawdown in the bank of carryover RINs. We note that we may or may not take a similar approach in future years; we will assess the situation on a case-by-case basis going forward and take into account the size of the carryover RIN bank in the future and any lessons learned from implementing past rules.

III. Cellulosic Biofuel Volume for 2020

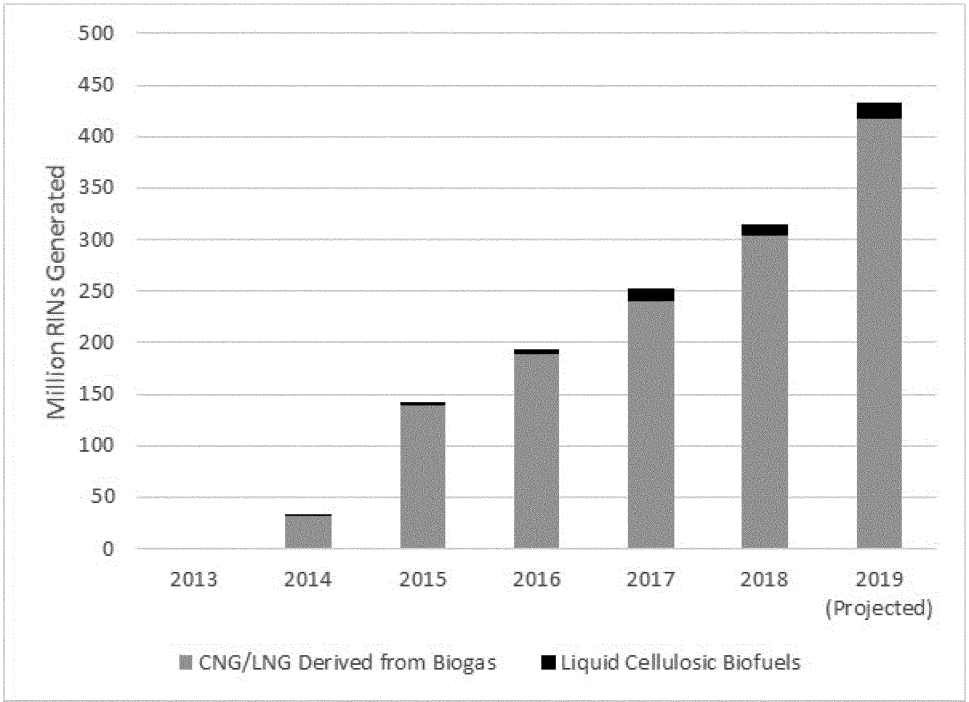
In the past several years, production of cellulosic biofuel has continued to increase. Cellulosic biofuel production reached record levels in 2018, driven largely by CNG and LNG derived from biogas.[27] The projected volume of cellulosic biofuel production in 2019 is even higher that the volume produced in 2018. Production of liquid cellulosic biofuel has also increased in recent years, even as the total production of liquid cellulosic biofuels remains much smaller than the production volumes of CNG and LNG derived from biogas (see Figure III–1). This section describes our assessment of the volume of qualifying cellulosic biofuel that we project will be produced or imported into the U.S. in 2020, and some of the uncertainties associated with those volumes.

[26] In their comments on the 2020 NPRM, parties generally expressed two opposing points of view. Commenters representing obligated parties supported EPA's proposed decision to not assume a drawdown in the bank of carryover RINs in determining the appropriate volume requirements, reiterating the importance of maintaining the carryover RIN bank in order to provide obligated parties with necessary compliance flexibilities, better market trading liquidity, and a cushion against future program uncertainty. Commenters representing renewable fuel producers, however, stated that not accounting for carryover RINs goes against Congressional intent of the RFS program to increase renewable fuel volumes every year and deters investment in cellulosic and advanced biofuels. A full description of comments received, and our detailed responses to them, is available in the RTC document in the docket.

[27] The majority of the cellulosic RINs generated for CNG/LNG are sourced from biogas from landfills; however, the biogas may come from a variety of sources including municipal wastewater treatment facility digesters, agricultural digesters, separated municipal solid waste (MSW) digesters, and the cellulosic components of biomass processed in other waste digesters.

Figure III-1

Cellulosic RINs Generated (2013-2019)



In order to project the volume of cellulosic biofuel production in 2020, we considered numerous factors, including EIA's projection of cellulosic biofuel production in 2020, the accuracy of the methodologies used to project cellulosic biofuel production in previous years, data reported to EPA through EMTS, and information we collected through meetings with representatives of facilities that have produced or have the potential to produce qualifying volumes of cellulosic biofuel in 2020.

There are two main elements to the cellulosic biofuel production projection: Liquid cellulosic biofuel and CNG/LNG derived from biogas. To project the range of potential production volumes of liquid cellulosic biofuel we used the same general methodology as the methodology used in the 2018 and 2019 final rules. We have adjusted the percentile values used to select a point estimate within a projected production range for each group of companies based on updated information (through September 2019) with the objective of improving the accuracy of the projections. To project the production of cellulosic biofuel RINs for CNG/LNG derived from biogas, we used the same general year-over-year growth rate methodology as in the 2018 and 2019 final rules, with updated RIN generation data through September 2019. This methodology reflects the mature status of this industry, the large number of facilities registered to generate cellulosic biofuel RINs from these fuels, and EPA's continued attempts to refine its methodology to yield estimates that are as accurate as possible. This methodology is an improvement on the methodology that EPA used to project cellulosic biofuel production for CNG/LNG derived from biogas in the 2017 and previous years (see Section III.B for a further discussion of the accuracy of EPA's methodology in previous years). The methodologies used to project the production of liquid cellulosic biofuels and cellulosic CNG/LNG derived from biogas are described in more detail in Sections III.D–1 and III.D–2.

The balance of this section is organized as follows. Section III.A provides a brief description of the statutory requirements. Section III.B reviews the accuracy of EPA's projections in prior years, and also discusses the companies EPA assessed in the process of projecting qualifying cellulosic biofuel production in the U.S. Section III.C discusses EIA's projection of cellulosic biofuel production in 2020. Section III.D discusses the methodologies used by EPA to project cellulosic biofuel production in 2020 and the resulting projection of 0.59 billion ethanol-equivalent gallons.

A. Statutory Requirements

CAA section 211(o)(2)(B)(i)(III) states the statutory volume targets for cellulosic biofuel. The volume of cellulosic biofuel specified in the statute for 2020 is 10.5 billion gallons. The statute provides that if EPA determines, based on a letter provided to the EPA by EIA, that the projected volume of cellulosic biofuel production in a given year is less than the statutory volume, then EPA shall reduce the applicable volume of cellulosic biofuel to the projected volume available during that calendar year.[28]

[28] CAA section 211(o)(7)(D)(i). The U.S. Court of Appeals for the District of Columbia Circuit evaluated this requirement in *API* v. *EPA,* 706 F.3d 474, 479–480 (D.C. Cir. 2013), in the context of a challenge to the 2012 cellulosic biofuel standard. The Court stated that in projecting potentially available volumes of cellulosic biofuel EPA must apply an ''outcome-neutral methodology'' aimed at providing a prediction of ''what will *actually* happen.'' *Id.* at 480, 479. The Court also determined that Congress did not require ''slavish adherence by EPA to the EIA estimate'' and that EPA could ''read the phrase 'based on' as requiring great respect but allowing deviation consistent with that respect.'' In addition, EPA has consistently interpreted the term ''projected volume of cellulosic biofuel production'' in CAA section 211(o)(7)(D)(i) to include volumes of cellulosic biofuel likely to be made available in the U.S., including from both domestic production

Continued

In addition, if EPA reduces the required volume of cellulosic biofuel below the level specified in the statute, we may reduce the applicable volumes of advanced biofuels and total renewable fuel by the same or a lesser volume,[29] and we are also required to make cellulosic waiver credits available.[30] Our consideration of the 2020 volume requirements for advanced biofuel and total renewable fuel is presented in Section IV.

B. Cellulosic Biofuel Industry Assessment

In this section, we first explain our general approach to assessing facilities or groups of facilities (which we collectively refer to as ''facilities'') that have the potential to produce cellulosic biofuel in 2020. We then review the accuracy of EPA's projections in prior years. Next, we discuss the criteria used to determine whether to include potential domestic and foreign sources of cellulosic biofuel in our projection for 2020. Finally, we provide a summary table of all facilities that we expect to produce cellulosic biofuel in 2020.

In order to project cellulosic biofuel production for 2020, we have tracked the progress of a number of potential cellulosic biofuel production facilities, located both in the U.S. and in foreign countries. We considered a number of factors, including EIA's projection of cellulosic biofuel production in 2020, information from EMTS, the registration status of potential biofuel production facilities as cellulosic biofuel producers in the RFS program, publicly available information (including press releases and news reports), and information provided by representatives of potential cellulosic biofuel producers. As discussed in greater detail in Section III.D.1, our projection of liquid cellulosic biofuel is based on a facility-by-facility assessment of each of the likely sources of cellulosic biofuel in 2020, while our projection of CNG/LNG derived from biogas is based on an industry-wide assessment. To make a determination of which facilities are most likely to produce liquid cellulosic biofuel and generate cellulosic biofuel RINs in 2020, each potential producer of liquid cellulosic biofuel was investigated further to determine the current status of its facilities and its likely cellulosic biofuel production and RIN generation volumes for 2020. Both in our discussions with representatives of individual companies and as part of our internal evaluation process, we gathered and analyzed information including, but not limited to, the funding status of these facilities, current status of the production technologies, anticipated construction and production ramp-up periods, facility registration status, and annual fuel production and RIN generation targets.

1. Review of EPA's Projection of Cellulosic Biofuel in Previous Years

As an initial matter, it is useful to review the accuracy of EPA's past cellulosic biofuel projections. The record of actual cellulosic biofuel production, including both cellulosic biofuel (which generate D3 RINs) and cellulosic diesel (which generate D7 RINs), and EPA's projected production volumes from 2015–2019 are shown in Table III.B–1. These data indicate that EPA's projection was lower than the actual number of cellulosic RINs made available in 2015,[31] higher than the actual number of RINs made available in 2016 and 2017, and lower than the actual number of RINs made available in 2018. Based on our current projection of cellulosic biofuel production for 2019 based on data through September 2019, EPA's projection of cellulosic biofuel in 2019 also appears likely to be lower than actual RIN generation in 2019. The fact that the projections made using this methodology have been somewhat inaccurate, under-estimating the actual number of RINs made available in 2015, 2018, and likely 2019, and over-estimating in 2016 and 2017, reflects the inherent difficulty with projecting cellulosic biofuel production. It also emphasizes the importance of continuing to make refinements to our projection methodology in order to make our projections more accurate.

TABLE III.B.1–1—PROJECTED AND ACTUAL CELLULOSIC BIOFUEL PRODUCTION (2015–2018)

[Million gallons] [a]

	Projected volume [b]			Actual production volume [c]		
	Liquid cellulosic biofuel	CNG/LNG derived from biogas	Total cellulosic biofuel [d]	Liquid cellulosic biofuel	CNG/LNG derived from biogas	Total cellulosic biofuel [d]
2015 [e]	2	33	35	0.5	52.8	53.3
2016	23	207	230	4.1	186.2	190.3
2017	13	298	311	11.8	239.5	251.3
2018	14	274	288	10.6	303.2	313.8
2019 [f]	20	399	418	15.5	418.2	433.7

[a] As noted in Section III.A. above, EPA has consistently interpreted the term ''projected volume of cellulosic biofuel production'' to include volumes of cellulosic biofuel likely to be made available in the U.S., including from both domestic production and imports. The volumes in this table therefore include both domestic production of cellulosic biofuel and imported cellulosic biofuel.

[b] Projected volumes for 2015 and 2016 can be found in the 2014–2016 Final Rule (80 FR 77506, 77508, December 14, 2015); projected volumes for 2017 can be found in the 2017 Final Rule (81 FR 89760, December 12, 2016); projected volumes for 2018 can be found in the 2018 Final Rule (82 FR 58503, December 12, 2017); projected volumes for 2019 can be found in the 2019 Final Rule (83 FR 63704, December 11, 2018).

[c] Actual production volumes are the total number of RINs generated minus the number of RINs retired for reasons other than compliance with the annual standards, based on EMTS data.

[d] Total cellulosic biofuel may not be precisely equal to the sum of liquid cellulosic biofuel and CNG/LNG derived from biogas due to rounding.

[e] Projected and actual volumes for 2015 represent only the final 3 months of 2015 (October–December) as EPA used actual RIN generation data for the first 9 months of the year.

and imports (*see, e.g.,* 80 FR 77420 (December 14, 2015) and 81 FR 89746 (December 12, 2016)). This interpretation is consistent with the statutory direction to establish the cellulosic volume at the ''projected volume available.'' We do not believe it would be reasonable to include in the projection all cellulosic biofuel produced throughout the world, regardless of likelihood of import to the U.S., since volumes that are not imported would not be available to obligated parties for compliance and including them in the projection would render the resulting volume requirement and percentage standards unachievable through the use of cellulosic biofuel RINs.

[29] CAA section 211(o)(7)(D)(i).

[30] See CAA section 211(o)(7)(D)(ii); 40 CFR 80.1456.

[31] EPA only projected cellulosic biofuel production for the final three months of 2015, since data on the availability of cellulosic biofuel RINs (D3+D7) for the first nine months of the year were available at the time the analyses were completed for the final rule.

[f] Actual production in 2019 is a projection based on actual data from January–September 2019 and a projection of likely production for October–December 2019.

EPA's projections of liquid cellulosic biofuel were higher than the actual volume of liquid cellulosic biofuel produced each year from 2015 to 2018.[32] Depending on liquid cellulosic biofuel production in the last 3 months or 2019, our projection for 2019 may ultimately be an over-projection or under-projection of actual production, however at this time it appears likely to result in an over-projection. As a result of the over-projections in 2015–2016 (and the anticipated over-projection in 2017), and in an effort to take into account the most recent data available and make the liquid cellulosic biofuel projections more accurate, EPA adjusted our methodology in the 2018 final rule.[33] The adjustments to our methodology adopted in the 2018 final rule resulted in a projection that is close to the volume of liquid cellulosic biofuel produced in 2018 and appear likely to result in a reasonably accurate projection in 2019. In this final rule we are again applying the approach we first used in the 2018 final rule: Using percentile values based on actual production in previous years, relative to the projected volume of liquid cellulosic biofuel in these years. We have adjusted the percentile values to project liquid cellulosic biofuel production based on actual liquid cellulosic biofuel production in 2016 to 2019. We believe that the use of the methodology (described in more detail in Section III.D.1), with the adjusted percentile values, results in a projection that reflects a neutral aim at accuracy since it accounts for expected growth in the near future by using historical data that is free of any subjective bias.

We next turn to the projection of CNG/LNG derived from biogas. For 2018 and 2019, EPA used an industry-wide approach, rather than an approach that projects volumes for individual companies or facilities, to project the production of CNG/LNG derived from biogas. EPA used a facility-by-facility approach to project the production of CNG/LNG derived from biogas from 2015–2017. Notably the facility-by-facility methodology resulted in significant over-estimates of CNG/LNG production in 2016 and 2017, leading EPA to develop the alternative industry wide projection methodology first used in 2018. This updated approach reflects the fact that this industry is far more mature than the liquid cellulosic biofuel industry, with a far greater number of potential producers of CNG/LNG derived from biogas. In such cases, industry-wide projection methods can be more accurate than a facility-by-facility approach, especially as macro market and economic factors become more influential on total production than the success or challenges at any single facility. The industry-wide projection methodology slightly under-projected the production of CNG/LNG derived from biogas in 2018 and appears likely to slightly under-project the production of these fuels in 2019. However, the difference between the projected and actual production volume of these fuels was smaller than in 2017.

As further described in Section III.D.2, EPA is again projecting production of CNG/LNG derived from biogas using the industry-wide approach. We calculate a year-over-year rate of growth in the renewable CNG/LNG industry and apply this year-over-year growth rate to the total number of cellulosic RINs generated and available to be used for compliance with the annual standards in 2018 to estimate the production of CNG/LNG derived from biogas in 2020.[34] We have applied the growth rate to the number of available 2018 RINs generated for CNG/LNG derived from biogas as data from this year allows us to adequately account for not only RIN generation, but also for RINs retired for reasons other than compliance with the annual standards. While more recent RIN generation data is available, the retirement of RINs for reasons other than compliance with the annual standards generally lags RIN generation, sometimes by up to a year or more.

The production volumes of cellulosic biofuel in previous years also highlight that the production of CNG/LNG derived from biogas has been significantly higher than the production of liquid cellulosic biofuel in previous years. This is likely the result of a combination of several factors, including the mature state of the technology used to produce CNG/LNG derived from biogas relative to the technologies used to produce liquid cellulosic biofuel and the relatively low production cost of CNG/LNG derived from biogas (discussed in further detail in Section V). These factors are unlikely to change in 2020. While we project production volumes of liquid cellulosic biofuel and CNG/LNG derived from biogas separately, the actual volume of each fuel type produced may be higher or lower than projected.

2. Potential Domestic Producers

There are several companies and facilities located in the U.S. that have either already begun producing cellulosic biofuel for use as transportation fuel, heating oil, or jet fuel at a commercial scale,[35] or are anticipated to be in a position to do so at some time during 2020. The RFS program provides a strong financial incentive for domestic cellulosic biofuel producers to sell any fuel they produce for domestic consumption.[36] To date nearly all cellulosic biofuel produced in the U.S. has been used domestically[37] and all the domestic facilities we have contacted in deriving our projections intend to produce fuel on a commercial scale for domestic consumption and plan to use approved pathways. These factors give us a high degree of confidence that cellulosic biofuel RINs will be generated for all cellulosic biofuel produced by domestic commercial scale facilities. To generate RINs, each of these facilities must be registered with EPA under the RFS program and comply with all the regulatory requirements. This includes using an approved RIN-generating pathway and verifying that their feedstocks meet the definition of renewable biomass. Most of the domestic companies and facilities considered in our assessment of potential cellulosic biofuel producers in 2019 have already successfully

[32] We note, however, that because the projected volume of liquid cellulosic biofuel in each year was very small relative to the total volume of cellulosic biofuel, these over-projections had a minimal impact on the accuracy of our projections of cellulosic biofuel for each of these years.

[33] 82 FR 58486 (December 12, 2017).

[34] To project the volume of CNG/LNG derived from biogas in 2020, we multiply the number of 2018 RINs generated for these fuels and available to be used for compliance with the annual standards by the calculated growth rate to project production of these fuels in 2019 and then multiply the resulting number by the growth rate again to project the production of these fuels in 2020.

[35] For a further discussion of EPA's decision to focus on commercial scale facilities, rather than R&D and pilot scale facilities, see the 2019 proposed rule (83 FR 32031, July 10, 2018).

[36] According to data from EMTS, the average price for a 2019 cellulosic biofuel RINs sold in 2019 (through September 2019) was $1.30. Alternatively, obligated parties can satisfy their cellulosic biofuel obligations by purchasing an advanced (or biomass-based diesel) RIN and a cellulosic waiver credit. The average price for a 2019 advanced biofuel RINs sold in 2019 (through September 2019) was $0.43 while the price for a 2019 cellulosic waiver credit is $1.77 (EPA–420–B–18–052).

[37] The only known exception was a small volume of fuel produced at a demonstration scale facility exported to be used for promotional purposes.

completed facility registration, and have successfully generated RINs.[38] A brief description of each of the domestic companies (or group of companies for cellulosic CNG/LNG producers and the facilities using Edeniq's technology) that EPA believes may produce commercial-scale volumes of RIN generating cellulosic biofuel by the end of 2020 can be found in a memorandum to the docket for this final rule.[39] General information on each of these companies or group of companies considered in our projection of the potentially available volume of cellulosic biofuel in 2020 is summarized in Table III.B.4–1.

3. Potential Foreign Sources of Cellulosic Biofuel

In addition to the potential sources of cellulosic biofuel located in the U.S., there are several foreign cellulosic biofuel companies that may produce cellulosic biofuel in 2020. These include facilities owned and operated by Beta Renewables, Enerkem, Ensyn, GranBio, and Raizen. All of these facilities use fuel production pathways that have been approved by EPA for cellulosic RIN generation provided eligible sources of renewable feedstock are used and other regulatory requirements are satisfied. These companies would therefore be eligible to register their facilities under the RFS program and generate RINs for any qualifying fuel imported into the U.S. While these facilities may be able to generate RINs for any volumes of cellulosic biofuel they import into the U.S., demand for the cellulosic biofuels they produce is expected to be high in their own local markets.

EPA's projection of cellulosic biofuel production in 2020 includes cellulosic biofuel that is projected to be imported into the U.S. in 2020, including potential imports from all the registered foreign facilities under the RFS program. We believe that due to the strong demand for cellulosic biofuel in local markets and the time necessary for potential foreign cellulosic biofuel producers to register under the RFS program and arrange for the importation of cellulosic biofuel to the U.S., cellulosic biofuel imports from foreign facilities not currently registered to generate cellulosic biofuel RINs are generally highly unlikely in 2020. For purposes of our 2020 cellulosic biofuel projection we have excluded potential volumes from foreign cellulosic biofuel production facilities that are not currently registered under the RFS program.

Cellulosic biofuel produced at three foreign facilities (Ensyn's Renfrew facility, GranBio's Brazilian facility, and Raizen's Brazilian facility) generated cellulosic biofuel RINs for fuel exported to the U.S. since 2017; projected volumes from each of these facilities are included in our projection of available volumes for 2020. EPA has also included projected volume from two additional foreign facilities. These two facilities (Enerkem's Canadian facility and Ensyn's Port-Cartier, Quebec facility) have both completed the registration process as cellulosic biofuel producers. We believe that it is appropriate to include volume from these facilities in light of their proximity to the U.S., the proven technology used by these facilities, the volumes of cellulosic biofuel exported to the U.S. by the company in previous years (in the case of Ensyn), and the company's stated intentions to market fuel produced at these facilities to qualifying markets in the U.S. All of the facilities included in EPA's cellulosic biofuel projection for 2020 are listed in Table III.B.4–1.

4. Summary of Volume Projections for Individual Companies

General information on each of the cellulosic biofuel producers (or group of producers, for producers of CNG/LNG derived from biogas and producers of liquid cellulosic biofuel using Edeniq's technology) that factored into our projection of cellulosic biofuel production for 2020 is shown in Table III.B.4–1. This table includes both facilities that have already generated cellulosic RINs, as well as those that have not yet generated cellulosic RINs, but are projected to do so by the end of 2020. As discussed above, we have focused on commercial-scale cellulosic biofuel production facilities. Each of these facilities (or group of facilities) is discussed further in a memorandum to the docket.[40]

TABLE III.B.4–1—PROJECTED PRODUCERS OF CELLULOSIC BIOFUEL FOR U.S. CONSUMPTION IN 2020[41]

Company name	Location	Feedstock	Fuel	Facility capacity (million gallons per year)[42]	Construction start date	First production[43]
CNG/LNG Producers[44].	Various	Biogas	CNG/LNG	Various	Various	Various.
Edeniq	Various	Corn Kernel Fiber	Ethanol	Various	Various	October 2016.
Enerkem	Edmonton, AL, Canada.	Separated MSW	Ethanol	[45] 10	2012	September 2017.[46]
Ensyn	Renfrew, ON, Canada.	Wood Waste	Heating Oil	3	2005	2014.
Ensyn	Port-Cartier, QC, Canada.	Wood Waste	Heating Oil	10.5	June 2016	January 2018.
GranBio	São Miguel dos Campos, Brazil.	Sugarcane bagasse.	Ethanol	21	Mid 2012	September 2014.
QCCP/Syngenta	Galva, IA	Corn Kernel Fiber	Ethanol	4	Late 2013	October 2014.
Red Rock Biofuels	Lakeview, OR	Wood Waste	Diesel, Jet Fuel, Naphtha.	15	July 2018	1Q 2020.
Raizen	Piracicaba City, Brazil.	Sugarcane bagasse.	Ethanol	11	January 2014	July 2015.

[38] Most of the facilities listed in Table III.B.3–1 are registered to produce cellulosic (D3 or D7) RINs with the exception of several of the producers of CNG/LNG derived from biogas and Red Rock Biofuels. EPA is unaware of any outstanding issues that would reasonably be expected to prevent these facilities from registering as cellulosic biofuel producers and producing qualifying cellulosic biofuel in 2020.

[39] ''Cellulosic Biofuel Producer Company Descriptions (May 2019),'' memorandum from Dallas Burkholder to EPA Docket EPA–HQ–OAR–2019–0136.

[40] ''Cellulosic Biofuel Producer Company Descriptions (May 2019),'' memorandum from Dallas Burkholder to EPA Docket EPA–HQ–OAR–2019–0136.

C. Projection From the Energy Information Administration

Section 211(o)(3)(A) of the CAA requires EIA to ''provide to the Administrator of the Environmental Protection Agency an estimate, with respect to the following calendar year, of the volumes of transportation fuel, biomass-based diesel, and cellulosic biofuel projected to be sold or introduced into commerce in the United States.'' EIA provided these estimates to EPA on October 9, 2019.[47] With regard to domestically produced cellulosic ethanol, the EIA estimated that the available volume in 2020 would be 7 million gallons. In its letter, EIA did not identify the facilities on which their estimate of liquid cellulosic biofuel production was based. EIA did, however, indicate in the letter that it only included domestic production of cellulosic ethanol in their projections. These EIA projections, therefore, do not include cellulosic biofuel produced by foreign entities and imported into the U.S., nor estimates of cellulosic diesel, cellulosic heating oil or CNG/LNG produced from biogas, which together represent approximately 99 percent of our projected cellulosic biofuel volume for 2020. When limiting the scope of our projection to the companies assessed by EIA, we note that our volume projections are similar. EPA projects approximately 5 million gallons of cellulosic ethanol will be produced domestically in 2020.

D. Cellulosic Biofuel Volume for 2020

1. Liquid Cellulosic Biofuel

For our 2020 liquid cellulosic biofuel projection, we use the same general approach as we have in projecting these volumes in previous years. We begin by first categorizing potential liquid cellulosic biofuel producers in 2020 according to whether or not they have achieved consistent commercial scale production of cellulosic biofuel to date. We refer to these facilities as consistent producers and new producers, respectively. Next, we define a range of likely production volumes for 2020 for each group of companies. Finally, we use a percentile value to project from the established range a single projected production volume for each group of companies in 2020. As in the 2018 and 2019 final rules, we calculated percentile values for each group of companies based on the past performance of each group relative to our projected production ranges. This methodology is briefly described in this section and is described in detail in memoranda to the docket.[48]

We first separate the list of potential producers of cellulosic biofuel (listed in Table III.B.4–1) into two groups according to whether the facilities have achieved consistent commercial-scale production and cellulosic biofuel RIN generation. We next defined a range of likely production volumes for each group of potential cellulosic biofuel producers. The low end of the range for each group of producers reflects actual RIN generation data over the last 12 months for which data were available at the time our technical assessment was completed (October 2018–September 2019).[49] For potential producers that have not yet generated any cellulosic RINs, the low end of the range is zero. For the high end of the range, we considered a variety of factors, including the expected start-up date and ramp-up period, facility capacity, and the number of RINs the producer expects to generate in 2020.[50] The projected range for each group of companies is shown in Tables III.D.1–1 and III.D.1–2.[51]

TABLE III.D.1–1—2020 PRODUCTION RANGES FOR NEW PRODUCERS OF LIQUID CELLULOSIC BIOFUEL

[Million ethanol-equivalent gallons]

Companies included	Low end of the range	High end of the range [a]
Enerkem, Ensyn (Port Cartier facility), BioEnergy, Red Rock Biofuels	0	30

[a] Rounded to the nearest million gallons.

[41] Despite generating cellulosic RINs in previous years Poet-DSM's facility has not been included in Table III.B.4–1 after announcing their plans to suspend commercial production at this facility.

[42] The Facility Capacity is generally equal to the nameplate capacity provided to EPA by company representatives or found in publicly available information. Capacities are listed in physical gallons (rather than ethanol-equivalent gallons). If the facility has completed registration and the total permitted capacity is lower than the nameplate capacity, then this lower volume is used as the facility capacity.

[43] Where a quarter is listed for the first production date EPA has assumed production begins in the middle month of the quarter (*i.e.,* August for the 3rd quarter) for the purposes of projecting volumes.

[44] For more information on these facilities see ''December 2019 Assessment of Cellulosic Biofuel Production from Biogas (2020),'' memorandum from Dallas Burkholder to EPA Docket EPA–HQ–OAR–2019–0136.

[45] The nameplate capacity of Enerkem's facility is 10 million gallons per year. However, we anticipate that a portion of their feedstock will be non-biogenic municipal solid waste (MSW). RINs cannot be generated for the portion of the fuel produced from non-biogenic feedstocks. We have taken this into account in our production projection for this facility (See ''May 2019 Liquid Cellulosic Biofuel Projections for 2020 CBI'').

[46] This date reflects the first production of ethanol from this facility. The facility began production of methanol in 2015.

[47] Letter from Linda Capuano, EIA Administrator to Andrew Wheeler, EPA Administrator. October 9, 2019. Available in docket EPA–HQ–OAR–2019–0136.

[48] ''December 2019 Liquid Cellulosic Biofuel Projections for 2020 CBI'' and ''Calculating the Percentile Values Used to Project Liquid Cellulosic Biofuel Production for the 2020 FRM,'' memorandums from Dallas Burkholder to EPA Docket EPA–HQ–OAR–2019–0136.

[49] Consistent with previous years, we have considered whether there is reason to believe any of the facilities considered as potential cellulosic biofuel producers for 2020 is likely to produce a smaller volume of cellulosic biofuel in 2020 than in the previous 12 months for which data are available. At this time, EPA is not aware of any information that would indicate lower production in 2020 from any facility considered than in the previous 12 months for which data are available. Despite generating cellulosic RINs in previous years Poet-DSM's facility has not been included in our projection of cellulosic biofuel production in 2020 after announcing their plans to suspend commercial production at this facility.

[50] As in our 2015–2019 projections, EPA calculated a high end of the range for each facility (or group of facilities) based on the expected start-up date and a six-month straight-line ramp-up period. The high end of the range for each facility (or group of facilities) is equal to the value calculated by EPA using this methodology, or the number of RINs the producer expects to generate in 2020, whichever is lower.

[51] More information on the data and methods EPA used to calculate each of the ranges in these tables in contained in ''December 2019 Liquid Cellulosic Biofuel Projections for 2020 CBI'' memorandum from Dallas Burkholder to EPA Docket EPA–HQ–OAR–2019–0136. We have not shown the projected ranges for each individual company. This is because the high end of the range for some of these companies are based on the company's production projections, which they consider confidential business information (CBI). Additionally, the low end of the range for facilities that have achieved consistent commercial scale production is based on actual RIN generation data in the most recent 12 months, which is also claimed as CBI.

TABLE III.D.1–2—2020 PRODUCTION RANGES FOR CONSISTENT PRODUCERS OF LIQUID CELLULOSIC BIOFUEL

[Million ethanol-equivalent gallons]

Companies included	Low end of the range [a]	High end of the range [b]
Facilities using Edeniq's technology (registered facilities), Ensyn (Renfrew facility), GranBio, QCCP/Syngenta, Raizen	10	36

[a] Rounded to the nearest million gallons.

After defining likely production ranges for each group of companies, we next determined the percentile values to use in projecting a production volume for each group of companies. We calculated the percentile values using actual production data from 2016 through 2019.[52] The first full year in which EPA used the current methodology for developing the range potential production volumes for each company was 2016, while 2019 is the most recent year for which we have data.

For each group of companies and for each year from 2016–2019, Table III.C.1–3 shows the projected ranges for liquid cellulosic biofuel production (from the 2014–16, 2017, 2018, and 2019 final rules), actual production, and the percentile values that would have resulted in a projection equal to the actual production volume.

TABLE III.D.1–3—PROJECTED AND ACTUAL LIQUID CELLULOSIC BIOFUEL PRODUCTION IN 2016–2019

[Million gallons]

	Low end of the range	High end of the range	Actual production [53]	Actual percentile
New Producers [54]				
2016	0	76	1.06	1st
2017	0	33	8.79	27th
2018	0	47	2.87	6th
2019	0	10	0.00	0th
Average [a]	N/A	N/A	N/A	9th
Consistent Producers [55]				
2016	2	5	3.28	43rd
2017	3.5	7	3.02	−14th
2018	7	24	7.74	4th
2019	14	44	15.51	5th
Average [a]	N/A	N/A	N/A	10th

[a] We have not averaged the low and high ends of the ranges, or actual production, as we believe it is more appropriate to average the actual percentiles from 2016–2019 rather than calculating a percentile value for 2016–2019 in aggregate. This approach gives equal weight to the accuracy of our projections for each year from 2016–2019, rather than allowing the average percentiles calculated to be dominated by years with greater projected volumes.

Based upon this analysis, EPA has projected cellulosic biofuel production from new producers at the 9th percentile of the calculated range and from consistent producers at the 10th percentile.[56] These percentiles are calculated by averaging the percentiles that would have produced cellulosic biofuel projections equal to the volumes produced by each group of companies in 2016–2019. Prior to 2016, EPA used different methodologies to project available volumes of cellulosic biofuel and thus believes it inappropriate to calculate percentile values based on projections from those years.[57]

We then used these percentile values, together with the ranges determined for each group of companies discussed above, to project a volume for each group of companies in 2020. These calculations are summarized in Table III.D.1–4.

[52] To calculate the percentile value that would have resulted in a projection equal to actual production for 2019 we projected actual liquid cellulosic biofuel production for 2019 using data through September 2019 and an updated projection of liquid cellulosic biofuel production for October–December 2019.

[53] Actual production is calculated by subtracting RINs retired for any reason other than compliance with the RFS standards from the total number of cellulosic RINs generated.

[54] Companies characterized as new producers in the 2014–2016, 2017, 2018, and 2019 final rules were as follows: Abengoa (2016), CoolPlanet (2016), DuPont (2016, 2017), Edeniq (2016, 2017), Enerkem (2018, 2019), Ensyn Port Cartier (2018, 2019), GranBio (2016, 2017), IneosBio (2016), and Poet (2016, 2017).

[55] Companies characterized as consistent producers in the 2014–2016, 2017, 2018, and 2019 final rules were as follows: Edeniq Active Facilities (2018, 2019), Ensyn Renfrew (2016–2019), GranBio (2018, 2019), Poet (2018, 2019), Quad County Corn Processors/Syngenta (2016–2019), and Raizen (2019).

[56] For more detail on the calculation of the percentile values used in this final rule see ''Calculating the Percentile Values Used to Project Liquid Cellulosic Biofuel Production for 2020 FRM,'' available in EPA docket EPA–HQ–OAR–2019–0136.

[57] EPA used a similar projection methodology for 2015 as in 2016–2018, however we only projected cellulosic biofuel production volume for the final 3 months of the year, as actual production data were available for the first 9 months. We do not believe it is appropriate to consider data from a year for which 9 months of the data were known at the time the projection was made in determining the percentile values used to project volume over a full year.

TABLE III.D.1–4—PROJECTED VOLUME OF LIQUID CELLULOSIC BIOFUEL IN 2020

[Million ethanol-equivalent gallons]

	Low end of the range [a]	High end of the range [a]	Percentile	Projected volume [a]
Liquid Cellulosic Biofuel Producers; Producers without Consistent Commercial Scale Production	0	30	9th	3
Liquid Cellulosic Biofuel Producers; Producers with Consistent Commercial Scale Production	10	36	10th	13
Total	N/A	N/A	N/A	[b] 15

[a] Volumes rounded to the nearest million gallons.
[b] Volumes do not add due to rounding.

2. CNG/LNG Derived From Biogas

For 2020, EPA is using the same industry wide projection approach as used for 2018 and 2019 based on a year-over-year growth rate to project production of CNG/LNG derived from biogas used as transportation fuel.[58] EPA calculated the year-over-year growth rate in CNG/LNG derived from biogas by comparing RIN generation from October 2018 to September 2019 (the most recent 12 months for which data are available) to RIN generation in the 12 months that immediately precede this time period (October 2017 to September 2018). The growth rate calculated using this data is 37.9 percent.[59] These RIN generation volumes are shown in Table III.D.2–1.

TABLE III.D.2–1—GENERATION OF CELLULOSIC BIOFUEL RINS FOR CNG/LNG DERIVED FROM BIOGAS

[Million gallons] [60]

RIN generation (October 2017–September 2018)	RIN generation (October 2018–September 2019)	Year-over-year increase
278,134,565	383,605,247	37.9%

EPA then applied this 37.9 percent year-over-year growth rate to the total number of 2018 cellulosic RINs generated and available for compliance for CNG/LNG. This methodology results in a projection of 576.8 million gallons of CNG/LNG derived from biogas in 2020. In this rule, as in the 2018 and 2019 final rules, we are again applying the calculated year-over-year rate of growth to the volume of CNG/LNG actually supplied in 2018 (taking into account actual RIN generation as well as RINs retired for reasons other than compliance with the annual volume obligations) to provide an updated projection of the production of these fuels in 2019, and then applying the rate of growth to this updated 2019 projection to project the production of these fuels in 2020.[61]

We believe that projecting the production of CNG/LNG derived from biogas in this manner appropriately takes into consideration the actual recent rate of growth of this industry, and that this growth rate accounts for both the potential for future growth and the challenges associated with increasing RIN generation from these fuels in future years. This methodology may not be appropriate to use as the projected volume of CNG/LNG derived from biogas approaches the total volume of CNG/LNG that is used as transportation fuel, as RINs can be generated only for CNG/LNG used as transportation fuel. We do not believe that this is yet a constraint as our projection for 2020 is below the total volume of CNG/LNG that is currently used as transportation fuel.[62]

3. Total Cellulosic Biofuel in 2020

After projecting production of cellulosic biofuel from liquid cellulosic biofuel production facilities and producers of CNG/LNG derived from biogas, EPA combined these projections to project total cellulosic biofuel production for 2020. These projections are shown in Table III.D.3–1. Using the methodologies described in this section, we project that 0.59 billion ethanol-equivalent gallons of qualifying cellulosic biofuel will be produced in 2020. We believe that projecting overall production in 2020 in the manner described above results in a neutral estimate (neither biased to produce a projection that is too high nor too low) of likely cellulosic biofuel production in 2020.

[58] Historically RIN generation for CNG/LNG derived from biogas has increased each year. It is possible, however, that RIN generation for these fuels in the most recent 12 months for which data are available could be lower than the preceding 12 months. We believe our methodology accounts for this possibility. In such a case, the calculated rate of growth would be negative.

[59] This growth rate is higher than the growth rates used to project CNG/LNG volumes in the 2019 final rule (29.0%, see 83 FR 63717, December 11, 2018) and the 2018 final rule (21.6%, see 82 FR 58502, December 12, 2017).

[60] Further detail on the data used to calculate each of these numbers in this table, as well as the projected volume of CNG/LNG derived from biogas used as transportation fuel in 2020 can be found in ''December 2019 Assessment of Cellulosic Biofuel Production from Biogas (2020)'' memorandum from Dallas Burkholder to EPA Docket PA–HQ–OAR–2019–0136.

[61] To calculate this value, EPA multiplied the number of 2018 RINs generated and available for compliance for CNG/LNG derived from biogas (303.2 million), by 1.379 (representing a 37.9 percent year-over-year increase) to project production of CNG/LNG in 2019, and multiplied this number (418.2 million RINs) by 1.379 again to project production of CNG/LNG in 2020.

[62] EPA is aware of several estimates for the quantity of CNG/LNG that will be used as transportation fuel in 2020. As discussed in a paper prepared by Bates White for the Coalition for Renewable Gas (''Renewable Natural Gas Supply and Demand for Transportation.'' Bates White Economic Consulting, April 5, 2019) these estimates range from nearly 600 million ethanol-equivalent gallons in 2020 (February 2019 STEO) to over 1.5 billion gallons (Fuels Institute—US Share). As discussed in further detail in a memorandum to the docket (''December 2019 Assessment of Cellulosic Biofuel Production from Biogas (2020)'' memorandum from Dallas Burkholder to EPA Docket EPA–HQ–OAR–2019–0136) we believe the higher projections are likely to be more accurate. Thus, the volume of CNG/LNG used as transportation fuel would not appear to constrain the number of RINs generated for this fuel in 2020.

TABLE III.D.3–1—PROJECTED VOLUME OF CELLULOSIC BIOFUEL IN 2020

	Projected volume [a]
Liquid Cellulosic Biofuel Producers; Producers without Consistent Commercial Scale Production (million gallons)	3
Liquid Cellulosic Biofuel Producers; Producers with Consistent Commercial Scale Production (million gallons)	13
CNG/LNG Derived from Biogas (million gallons)	577
Total (billion gallons)	0.59

[a] Rounded to the nearest million gallons.

Unlike in previous years, we have rounded the final projected volume of cellulosic biofuel to the nearest 10 million gallons as proposed. This is consistent with the volumes in the tables containing the statutory volume targets for cellulosic biofuel through 2022, which also specify volumes to no more than the nearest 10 million gallons (and in many cases only to the nearest 100 million gallons). While in previous years we have rounded the required cellulosic biofuel volume to the nearest million gallon, the projected volume of cellulosic biofuel has grown such that this level of precision is unnecessary, and likely unfounded. By rounding to the nearest 10 million gallons the total projected volume of cellulosic biofuel is affected in the most extreme case by only 5 million gallons, or approximately 1 percent of the total projected volume. The uncertainty in the projected volume of cellulosic biofuel is significantly higher than any error introduced by rounding the projected volume to the nearest 10 million gallons.

IV. Advanced Biofuel and Total Renewable Fuel Volumes for 2020

The national volume targets for advanced biofuel and total renewable fuel to be used under the RFS program each year through 2022 are specified in CAA section 211(o)(2)(B)(i)(I) and (II). Congress set annual renewable fuel volume targets that envisioned growth at a pace that far exceeded historical growth and, for years after 2011, prioritized that growth as occurring principally in advanced biofuels (contrary to previous growth patterns where most growth was in conventional renewable fuel). Congressional intent is evident in the fact that the implied statutory volume requirement for conventional renewable fuel is 15 billion gallons for all years after 2014, while the advanced biofuel volume requirements, driven largely by growth in cellulosic biofuel, continue to grow each year through 2022 to a total of 21 billion gallons. Early growth in conventional renewable fuels was expected to provide a bridge to the new, more beneficial cellulosic biofuels in the later years.[63]

Due to a projected shortfall in the availability of cellulosic biofuel, and consistent with our long-held interpretation that the cellulosic waiver authority is best interpreted to provide equal reductions to advanced biofuel and total renewable fuel volumes, we are reducing the statutory volume targets for both advanced biofuel and total renewable fuel for 2020 by the maximum amount permitted under the cellulosic waiver authority, 9.91 billion gallons. Section IV.A explains the volumetric limitation on our use of the cellulosic waiver authority to reduce advanced biofuel and total renewable fuel volumes. Section IV.B presents our technical analysis of the reasonably attainable and attainable volumes of advanced biofuel. Sections IV.C and IV.D further explain our decision to exercise the maximum discretion available under the cellulosic waiver authority to reduce advanced biofuel and total renewable fuel, respectively.

To begin, we have evaluated the capabilities of the market and are making a finding that the 15.0 billion gallons specified in the statute for advanced biofuel cannot be reached in 2020. This is primarily due to the expected continued shortfall in cellulosic biofuel; production of this fuel type has consistently fallen short of the statutory targets by 90 percent or more, and as described in Section III, we project that it will fall far short of the statutory target of 10.5 billion gallons in 2020. For this and other reasons described in this section we are reducing the advanced biofuel statutory target by 9.91 billion gallons for 2020.

In previous years when we have used the cellulosic waiver authority, we have determined the extent to which we should reduce advanced biofuel volumes by considering a number of different factors under the broad discretion which that authority provides, including:

- The availability of advanced biofuels (*e.g.,* historic data on domestic supply, expiration of the biodiesel blenders' tax credit, potential imports of biodiesel in light of the Commerce Department's determination on tariffs on biodiesel imports from Argentina and Indonesia, potential imports of sugarcane ethanol, and anticipated changes in the production of feedstocks for advanced biodiesel and renewable diesel)
- The energy security and greenhouse gas (GHG) impacts of advanced biofuels
- The availability of carryover RINs
- The intent of Congress as reflected in the statutory volumes tables to substantially increase the use of advanced biofuels over time
- Increased costs associated with the use of advanced biofuels, and
- The increasing likelihood of adverse unintended impacts associated with use of advanced biofuel volumes achieved through diversion of foreign fuels or substitution of advanced feedstocks from other uses to biofuel production.

Before the 2018 standards were set, the consideration of these factors led us to conclude that it was appropriate to set the advanced biofuel standard in a manner that would allow the partial backfilling of missing cellulosic volumes with non-cellulosic advanced biofuels.[64] In the 2018 and 2019 standards final rules, we concluded that partial backfilling of missing cellulosic biofuel volumes with advanced biofuel was not warranted, primarily due to a shortfall in reasonably attainable volumes of advanced biofuels, high costs, the potential for feedstock switching and/or foreign fuel diversion which could compromise GHG benefits and disrupt markets, and an interest in preserving the existing carryover RIN bank.[65] [66]

[63] See, for instance, comments from Growth Energy where they note that '' . . . producers of starch ethanol . . . are leading investors in cellulosic biofuels, which may be derived from corn.'' Page 31 of ''Comments from Growth Energy on proposed 2018 standards,'' available in docket EPA–HQ–OAR–2019–0136.

[64] For instance, see 81 FR 89750 (December 12, 2016).

[65] See 82 FR 58504 (December 12, 2017).

[66] See 83 FR 63719 (December 11, 2018).

For 2020, we have determined that the concerns surrounding partial backfilling of missing cellulosic biofuel with advanced biofuel remain valid. As a result, we are reducing the statutory volume target for advanced biofuel by the same amount as the reduction in cellulosic biofuel. This results in the non-cellulosic component of the advanced biofuel volume requirement being equal to 4.50 billion gallons in 2020, which is the same as the implied statutory volume requirement for non-cellulosic advanced biofuel for 2020.

The impact of our exercise of the cellulosic waiver authority is that after waiving the statutory volume target for cellulosic biofuel down to the projected available level, and then reducing the statutory volume target for advanced biofuel by the same amount, the resulting volume requirement for advanced biofuel for 2020 is 5.09 billion gallons. This volume requirement is 170 million gallons more than the applicable volume used to derive the 2019 percentage standard. Furthermore, after applying the same reduction to the statutory volume target for total renewable fuel, the volume requirement for total renewable fuel is also 170 million gallons more than the applicable volume used to derive the 2019 percentage standard. These increases are entirely attributable to a 170 million gallon increase in the cellulosic biofuel volume requirement. The implied volumes of non-cellulosic advanced biofuel and conventional renewable fuel will remain the same as in 2019 at 4.5 and 15 billion gallons respectively.

A. Volumetric Limitation on Use of the Cellulosic Waiver Authority

As described in Section II.A, when making reductions in advanced biofuel and total renewable fuel under the cellulosic waiver authority, the statute limits those reductions to no more than the reduction in cellulosic biofuel. As described in Section III.C, we are establishing a 2020 applicable volume for cellulosic biofuel of 590 million gallons, representing a reduction of 9,910 million gallons from the statutory target of 10,500 million gallons. As a result, 9,910 million gallons is the maximum volume reduction for advanced biofuel and total renewable fuel that is permissible using the cellulosic waiver authority. Use of the cellulosic waiver authority to this maximum extent would result in volumes of 5.09 and 20.09 billion gallons for advanced biofuel and total renewable fuel, respectively.

TABLE IV.A–1—LOWEST PERMISSIBLE VOLUMES USING ONLY THE CELLULOSIC WAIVER AUTHORITY

[Million gallons]

	Advanced biofuel	Total renewable fuel
Statutory target	15,000	30,000
Maximum reduction permitted under the cellulosic waiver authority	9,910	9,910
Lowest 2020 volume requirement permitted using only the cellulosic waiver authority	5,090	20,090

We are authorized under the cellulosic waiver authority to reduce the advanced biofuel and total renewable fuel volumes ''by the same or a lesser'' amount as the reduction in the cellulosic biofuel volume.[67] As discussed in Section II.A, EPA has broad discretion in using the cellulosic waiver authority in instances where its use is authorized under the statute, since Congress did not specify factors that EPA must consider in determining whether to use the authority to reduce advanced biofuel or total renewable fuel, nor what the appropriate volume reductions (within the range permitted by statute) should be. Thus, we have the authority to set the 2020 advanced biofuel volume requirement at a level that is designed to partially backfill for the shortfall in cellulosic biofuel. However, as discussed below, we do not believe this would be appropriate for 2020.

B. Attainable Volumes of Advanced Biofuel

We have evaluated whether it would be appropriate to require 5.09 billion ethanol-equivalent gallons of advanced biofuel for 2020. In doing so, we have considered both attainable and reasonably attainable volumes of advanced biofuel to inform our exercise of the cellulosic[68] waiver authority. As we explained in the 2019 final rule, both ''reasonably attainable'' and ''attainable'' are terms of art defined by EPA.[69] Volumes described as ''reasonably attainable'' are those that can be reached with minimal market disruptions, increased costs, reduced GHG benefits, and diversion of advanced biofuels or advanced biofuel feedstocks from existing uses. Volumes described as ''attainable,'' in contrast, are those we believe can be reached but would likely result in market disruption, higher costs, and/or reduced GHG benefits. Neither ''reasonably attainable'' nor ''attainable'' are meant to convey the ''maximum achievable'' level, which, as we explained in the 2017 final rule, we do not consider to be an appropriate target under the cellulosic waiver authority.[70] Finally, we note that our assessments of the ''reasonably attainable'' and ''attainable'' volumes of non-cellulosic advanced biofuels are not intended to be as exacting as our projection of cellulosic biofuel production, described in Section III of this rule.[71]

[67] CAA section 211(o)(7)(D)(i).

[68] 83 FR 63704, 63721 (December 11, 2019).

[69] Our consideration of ''reasonably attainable'' volumes is not intended to imply that ''attainable'' volumes are unreasonable or otherwise inappropriate. As we explain in this section, we believe that an advanced biofuel volume of 5.09 billion gallons, although not reasonably attainable, is attainable, and that establishing such volume is an appropriate exercise of our cellulosic waiver authority.

[70] 81 FR 89762 (December 12, 2016). The maximum achievable volume may be relevant to our consideration of whether to exercise the general waiver authority on the basis of inadequate domestic supply. However, for 2020, we have determined that after exercising our cellulosic waiver authority to the full extent permitted, the resulting advanced biofuel volume is attainable. Therefore, further reductions using the general waiver authority on the basis of inadequate domestic supply are not necessary.

[71] The statute directs EPA to lower the cellulosic biofuel volume to the projected production level where that level falls short of the statutory volume. Under *API* v. *EPA,* 706 F.3d 474, 479–80 (D.C. Cir. 2013), we must project this production level with neutral aim at accuracy, that is, make a technical determination about the market's ability to produce cellulosic biofuels. By contrast, the discretionary portion of the cellulosic waiver authority does not explicitly require EPA to project the availability of advanced biofuels, but instead confers broad discretion on EPA. Moreover, while we have chosen to estimate reasonably attainable and attainable volumes of advanced biofuel, these volumes do not equate to projected production alone. Rather, in exercising the discretionary portion of the cellulosic waiver authority, we also consider a range of policy factors—such as costs, greenhouse gas emissions,

Continued

As in prior rulemakings, we begin by considering what volumes of advanced biofuels are reasonably attainable. In *ACE,* the Court noted that in assessing what volumes are ''reasonably attainable,'' EPA had considered the availability of feedstocks, domestic production capacity, imports, and market capacity to produce, distribute, and consume renewable fuel.[72] These considerations include both demand-side and supply-side factors.[73] We are taking a similar approach for 2020. We are establishing the advanced biofuel volume requirement at a level that takes into consideration both the benefits and drawbacks of an increase in the implied non-cellulosic advanced biofuel volume requirement, as well as the ability of the market to make such increased volumes available.

Our individual assessments of reasonably attainable volumes of each type of advanced biofuel reflect this approach. As discussed in further detail in this section, we find that 70 million gallons of imported advanced ethanol, 50 million gallons of other advanced biofuels, and 2.77 billion gallons of advanced biodiesel and renewable diesel are reasonably attainable. Together with our projected volume of 590 million gallons of cellulosic biofuel, the sum of these volumes is 5.00 billion gallons.[74] This is the volume of advanced biofuel that we believe is reasonably attainable.

As described in Section IV.A above, 5.09 billion gallons is the lowest level that we could set under the cellulosic waiver authority. Since the volume that we have determined to be reasonably attainable—5.00 billion gallons—is less than the lowest volume we can set under the cellulosic waiver authority, we also have considered whether the market can make more than 5.00 billion gallons of advanced biofuel, notwithstanding the potential for feedstock/fuel diversions. That is, we assess whether 5.09 billion gallons is merely ''attainable,'' as opposed to ''reasonably attainable.'' In particular, we assess whether additional volumes of advanced biodiesel and renewable diesel are attainable. We conclude that 2.83 billion gallons of advanced biodiesel and renewable diesel are attainable, notwithstanding potential feedstock/fuel diversions. This quantity of advanced biodiesel and renewable diesel, together with the cellulosic biofuel, sugarcane ethanol, and other advanced biofuels described above, will enable the market to make available 5.09 billion gallons of advanced biofuels.

1. Imported Sugarcane Ethanol

The predominant available source of advanced biofuel other than cellulosic biofuel and BBD has historically been imported sugarcane ethanol. Imported sugarcane ethanol from Brazil is the predominant form of imported ethanol and the only significant source of imported advanced ethanol. In setting the 2019 standards, we estimated that 100 million gallons of imported sugarcane ethanol would be reasonably attainable.[75] This was based on a combination of data from recent years demonstrating relatively low import volumes and older data indicating that higher volumes were possible. We also noted the high variability in ethanol import volumes in the past (including of Brazilian sugarcane ethanol), increasing gasoline consumption in Brazil, and variability in Brazilian production of sugar as reasons that it would be inappropriate to assume that sugarcane ethanol imports would reach the much higher levels suggested by some stakeholders.

At the time of the 2019 standards final rule, we used available data from a portion of 2018 to estimate that import volumes of sugarcane ethanol were likely to fall significantly below the 200 million gallons we had assumed when we set the 2018 standards. Since the 2019 final rule, new data reveals a continued trend of low imports. Specifically, import data for all of 2018 is now available and indicates that imports of sugarcane ethanol reached just 54 million gallons.

energy security, market disruptions, etc., as described throughout this section.

[72] See *ACE,* 864 F.3d at 735–36.

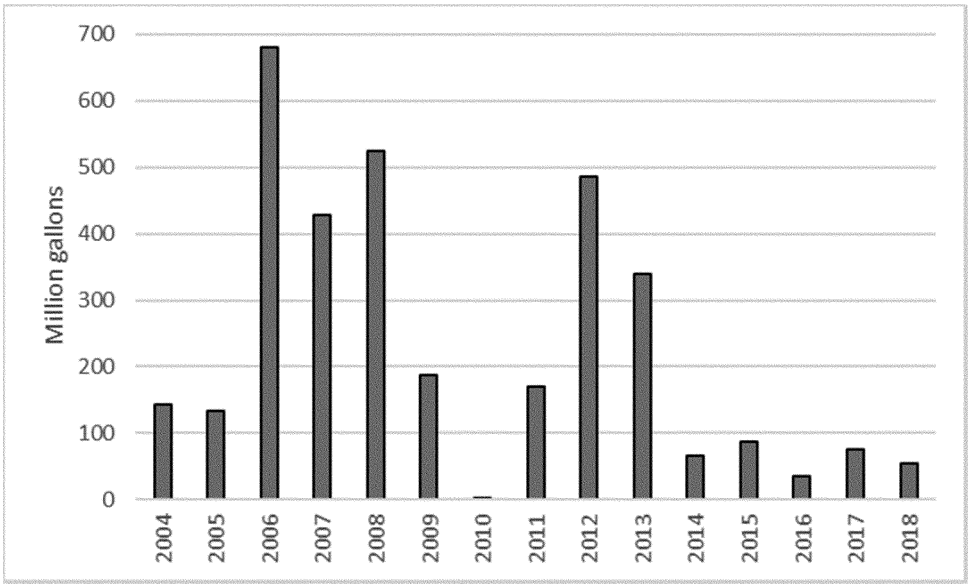
[73] See id. at 730–35.

[74] $0.07 + 0.05 + 2.77 \times 1.55 + 0.59 = 5.00$.

[75] 83 FR 63704 (December 11, 2018).

Figure IV.B.1-1

Historical Sugarcane Ethanol Imports



Source: "US Imports of Brazilian Fuel Ethanol from EIA - Oct 2019," docket EPA-HQ-OAR-2019-0136. Includes imports directly from Brazil and those that are transmitted through the Caribbean Basin Initiative and Central America Free Trade Agreement (CAFTA).

Data for 2019 through August indicate that advanced ethanol imports reached 95 million gallons. While we cannot project precisely what total import volumes will be by the end of 2019, as a first approximation is may be reasonable to assume that the monthly rate of import is consistent throughout the year. If so, then total 2019 imports could be 143 million gallons.

However, there is little evidence that the increase potentially exhibited in 2019 would continue into 2020 as there is no consistent upward or downward trend after 2013. Moreover, several factors create disincentives for increasing imports above the levels in recent years, including the E10 blendwall, the potential existence of a recurring tax credit for biodiesel and renewable diesel with which sugarcane ethanol competes within the advanced biofuel category, and the fact that imported sugarcane ethanol typically costs more than corn ethanol.[76] As a result of these factors and the lower levels that have occurred in recent years, we believe it would be appropriate to reduce the expected volume of imported sugarcane ethanol below 100 million gallons.

Imports of sugarcane ethanol appear to have stabilized in the 2014 to 2018 timeframe in comparison to previous years. The average for these years is 67 million gallons. Due to the difficulty in precisely projecting future import volumes as described further below, we believe that a rounded value of 70 million gallons would be more appropriate and thus we use 70 million gallons of imported sugarcane ethanol for the purposes of projecting reasonably attainable volumes of advanced biofuel for 2020. We believe the volume of fuel imported in previous years is a reasonable way to project the reasonably attainable volume of sugarcane ethanol in 2020.

In the July 29 proposal, we projected that 60 million gallons of imported sugarcane ethanol would be available in 2020. Our revised estimate of 70 million gallons reflects updated data on 2018 imports as well as a more robust quantitative approach to calculating recent actual imports.

We note that the future projection of imports of sugarcane ethanol is inherently imprecise and that actual imports in 2020 could be lower or higher than 70 million gallons. Factors that could affect import volumes include uncertainty in the Brazilian political climate, weather and harvests in Brazil, world ethanol demand and prices, constraints associated with the E10 blendwall in the U.S., the status of the biodiesel tax credit which affects the economic attractiveness of sugarcane ethanol's primary competitor, world demand for and prices of sugar, and the cost of sugarcane ethanol relative to that of corn ethanol. After considering these factors, and in light of the high degree of variability in historical imports of sugarcane ethanol, we believe that 70

[76] The difference between D5 and D6 RIN prices can also influence the relative attractiveness to consumers of advanced ethanol compared to conventional ethanol. However, there has been considerable variability in this particular RIN price difference over the last few years.

million gallons is reasonably attainable for 2020.[77]

2. Other Advanced Biofuel

In addition to cellulosic biofuel, imported sugarcane ethanol, and advanced biodiesel and renewable diesel, there are other advanced biofuels that can be counted in the determination of reasonably attainable volumes of advanced biofuel for 2020. These other advanced biofuels include non-cellulosic CNG, naphtha, heating oil, and domestically produced advanced ethanol. However, the supply of these fuels has been relatively low in the last several years.

TABLE IV.B.2–1—HISTORICAL SUPPLY OF OTHER ADVANCED BIOFUELS

[Million ethanol-equivalent gallons]

	CNG/LNG	Heating oil	Naphtha	Domestic ethanol	Total [a]
2013	26	0	3	23	52
2014	20	0	18	26	64
2015	0	1	24	25	50
2016	0	2	27	27	56
2017	2	2	32	26	62
2018	0	1	18	27	46

[a] Excludes consideration of D5 renewable diesel, as this category of renewable fuel is considered as part of biodiesel and renewable diesel as discussed in Section IV.B.3.

The significant decrease after 2014 in CNG/LNG from biogas as advanced biofuel with a D code of 5 is due to the re-categorization in 2014 of landfill biogas from advanced (D code 5) to cellulosic (D code 3).[78] Subsequently, total supply of these other advanced biofuels has exhibited no consistent trend during 2015 to 2018. The average during those four years was 54 million gallons. However, due to the high variability, and consistent with the approach we are taking for estimating volumes of imported sugarcane ethanol, we believe that this average should be rounded to the nearest 10 million gallons. As a result, we have used 50 million gallons to represent other advanced biofuels in the context of estimating attainable volumes of advanced biofuel.[79] As with sugarcane ethanol, we have not conducted an in-depth assessment of the volume of other advanced biofuels that could be made available to the U.S. without diverting this fuel from other markets. We believe the volume of fuel supplied in previous years is a reasonable way to project the reasonably attainable volume of other advanced biofuels in 2020.

We acknowledge that, in the July 29 proposal, we proposed using 60 million gallons of other advanced biofuel in estimating attainable volumes of advanced biofuel. This value was based on the same data shown in Table IV.B.2–1, but using a more qualitative approach wherein 60 million gallons was deemed representative of both historical volumes and those that could be attained in 2020. For this final rule we have chosen to use a mathematical approach that is consistent with the approach we have taken for imported sugarcane ethanol, and which we believe represents a more robust methodology for making future projections. As the change in the projected 2020 volume of other advanced biofuel is very small, we do not believe this change in approach meaningfully affects the broader assessment of advanced biofuel volumes. Moreover, we note that this final action uses a volume of imported sugarcane ethanol that is 10 million gallons higher than that proposed, while simultaneously using a volume of other advanced that is 10 million gallons lower than that proposed. The net effect on projections of advanced biofuel for both of these changes combined is zero.

We recognize that the potential exists for additional volumes of advanced biofuel from sources such as jet fuel, liquefied petroleum gas (LPG), butanol, and liquefied natural gas (as distinct from CNG), as well as non-cellulosic CNG from biogas produced in digesters. However, since they have been produced, if at all, in only de minimis and sporadic amounts in the past, we do not have a reasonable basis for projecting substantial volumes from these sources in 2020.[80]

3. Biodiesel and Renewable Diesel

Having projected the available volume of cellulosic biofuel, and the reasonably attainable volumes of imported sugarcane ethanol and ''other'' advanced biofuels, we next assess the availability of advanced biodiesel and renewable diesel by considering a wide range of factors. First, we calculate the amount of advanced biodiesel and renewable diesel that would be needed to meet the 5.09 billion ethanol-equivalent gallon advanced requirement were we to exercise our maximum discretion under the cellulosic waiver authority discussed in Section IV.A. This calculation, shown in Table IV.B.3–1, helps inform the exercise of our waiver authorities. Second, we consider the historical availability of these fuels, including the impacts of biodiesel tax policy and tariffs. Third, we consider other factors that could potentially limit the availability of these fuels including the production capacity of advanced biodiesel and renewable diesel production facilities, and the ability for the market to distribute and use these fuels. Fourth, we assess the availability of advanced feedstocks. As part of this analysis, we consider the volume of advanced biodiesel and renewable diesel that can be made available with minimal diversions of advanced feedstocks and biofuels from existing uses, *i.e.,* the reasonably attainable volume of advanced biodiesel and renewable diesel. We calculate this volume based on our projection of growth in qualifying feedstocks and on the reasonably attainable volume calculated in the 2019 final rule. Fifth, we consider how changes to the import and export of advanced biodiesel and

[77] Given the relatively small volumes of sugarcane ethanol we are projecting (approximately 1 percent of the advanced biofuel standard), even a significant deviation in its actual availability would likely have negligible impact on the market's ability to meet the advanced biofuel volumes.

[78] 79 FR 42128 (July 18, 2014).

[79] As with sugarcane ethanol, given the relatively small volumes of other advanced biofuels we are projecting (approximately 1% of the advanced biofuel standard), even a significant deviation in its actual availability would likely have negligible impact on the market's ability to meet the advanced biofuel volumes.

[80] No RIN-generating volumes of these other advanced biofuels were produced in 2018, and less than 1 million gallons total in prior years.

renewable diesel could impact the available volume of these fuels.

These analyses support three key findings. First, were EPA to exercise the cellulosic waiver authority to the maximum extent, we would require an advanced biofuel volume of 5.09 billion ethanol-equivalent gallons, of which we estimate 4.37 billion ethanol-equivalent gallons (2.83 billion actual gallons of biodiesel and renewable diesel) would be met by advanced biodiesel and renewable diesel. Second, the reasonably attainable volume of advanced biodiesel and renewable diesel, which can be achieved with minimal diversions of advanced feedstocks and biofuels (2.77 billion gallons) is slightly lower than this volume. This finding, together with the high cost of advanced biofuels, supports our decision to exercise the cellulosic waiver authority to the maximum extent and not to permit backfilling of missing cellulosic volumes with additional advanced biofuels. Third, 2.83 billion gallons of advanced biodiesel and renewable diesel are attainable by the market. These findings, together with additional discussions in the RTC document and docket memoranda, supports our decisions to neither require the use of additional volumes of advanced biofuel to backfill for the shortfall in cellulosic biofuel nor to further waive volumes under the general waiver authority.[81]

a. Volume of Advanced Biodiesel and Renewable Diesel To Achieve Advanced Biofuel Volume

We begin by calculating the volume of advanced biodiesel and renewable diesel that would be needed to meet the 2020 advanced biofuel volume were EPA to exercise the cellulosic waiver authority to the maximum extent. This important benchmark informs EPA's consideration of our waiver authorities, albeit as only one factor among many. Specifically, in past annual rules where the reasonably attainable volume of biodiesel and renewable diesel has exceeded this benchmark, as was the case in 2017 and 2018, EPA has considered whether or not to allow additional volumes of these fuels to backfill for missing cellulosic biofuel volumes. By contrast, where the reasonably attainable volume of advanced biodiesel and renewable diesel has been less than this benchmark, as was the case in 2019, this weighs in favor of exercising the cellulosic waiver authority to the maximum extent so as to minimize diversions of advanced biofuels and feedstocks and the associated harms and the need for additional volumes of high cost advanced biofuel. Relatedly, were EPA to find that volume of advanced biodiesel and renewable diesel needed to meet this benchmark is not attainable, that would weigh in favor of EPA exercising its discretion under additional waiver authorities, to the extent available, to make further reductions to the advanced biofuel volume.

As shown in Table IV.B.3–1, were EPA to exercise the cellulosic waiver authority to the maximum extent, the required volume of advanced biofuel would be 5.09 billion ethanol-equivalent gallons. After subtracting from this volume the available volume of cellulosic biofuel and reasonably attainable volumes of imported sugarcane ethanol and ''other'' advanced biofuels, we estimate that approximately 2.83 billion gallons of advanced biodiesel and renewable diesel would be needed to meet the 2020 advanced biofuel volume.

TABLE IV.B.3–1—DETERMINATION OF VOLUME OF BIODIESEL AND RENEWABLE DIESEL NEEDED IN 2020 TO ACHIEVE 5.09 BILLION GALLONS OF ADVANCED BIOFUEL

[Million ethanol-equivalent gallons except as noted]

Target 2020 advanced biofuel volume requirement absent any backfilling of missing cellulosic biofuel	5,090
Cellulosic biofuel	590
Imported sugarcane ethanol	70
Other advanced	50
Calculated advanced biodiesel and renewable diesel needed (ethanol-equivalent gallons/physical gallons)[82]	4,380\2,826

b. Historical Supply of Biodiesel and Renewable Diesel

We next consider the volumes of advanced biodiesel and renewable diesel supplied in previous years, as well as the impacts of biodiesel tax policy and tariffs on these volumes. A review of the volumes of advanced biodiesel and renewable diesel used in previous years is especially useful in projecting the potential availability of these fuels, since there are a number of complex and inter-related factors beyond simply total production capacity (including the availability of advanced biodiesel and renewable diesel feedstocks,[83] the expiration of the biodiesel tax credit, changes to tariffs on biodiesel from Argentina and Indonesia, import and distribution infrastructure, and other market-based factors) that could affect the supply of advanced biodiesel and renewable diesel. While historic data and trends alone are insufficient to project the volumes of biodiesel and renewable diesel that could be provided in future years, historic data can serve as a useful reference in considering future volumes.

Past experience suggests that a high percentage of the biodiesel and renewable diesel used in the U.S. (from both domestic production and imports) qualifies as advanced biofuel.[84] In

[81] We note that we have not attempted to determine the maximum achievable volume of these fuels. While the maximum achievable volume of advanced biodiesel and renewable diesel in 2020 is likely greater than 2.83 billion gallons we do not believe it would be appropriate to require a greater volume of these fuels due to the high cost and increased likelihood of adverse unintended impacts associated with these fuels.

[82] To calculate the volume of advanced biodiesel and renewable diesel that would generate the 4.37 billion RINs needed to meet the advanced biofuel volume EPA divided the 4.37 billion RINs by 1.55, which is the approximate average (weighted by the volume of these fuels expected to be produced in 2020) of the equivalence values for biodiesel (generally 1.5) and renewable diesel (generally 1.7).

[83] Throughout this section we refer to advanced biodiesel and renewable diesel as well as advanced biodiesel and renewable diesel feedstocks. In this context, advanced biodiesel and renewable diesel refer to any biodiesel or renewable diesel for which RINs can be generated that satisfy an obligated party's advanced biofuel obligation (*i.e.,* D4 or D5 RINs). While cellulosic diesel (D7) can also contribute towards an obligated party's advanced biofuel obligation, these fuels are discussed in Section III rather than in this section. An advanced biodiesel or renewable feedstock refers to any of the biodiesel, renewable diesel, jet fuel, and heating oil feedstocks listed in Table 1 to 40 CFR 80.1426 or in petition approvals issued pursuant to section 80.1416, that can be used to produce fuel that qualifies for D4 or D5 RINs. These feedstocks include, for example, soy bean oil; oil from annual cover crops; oil from algae grown photosynthetically; biogenic waste oils/fats/greases; non-food grade corn oil; camelina sativa oil; and canola/rapeseed oil (See pathways F, G, and H of Table 1 to section 80.1426).

[84] From 2011 through 2018 approximately 96 percent of all biodiesel and renewable diesel

Continued

previous years, biodiesel and renewable diesel produced in the U.S. have been almost exclusively advanced biofuel.[85] Volumes of imported biodiesel and renewable diesel, which include both advanced and conventional biodiesel and renewable diesel, have varied significantly from year to year, as they are impacted both by domestic and foreign policies, as well as many economic factors. Production, import, export, and total volumes of advanced biodiesel and renewable diesel are shown in Table IV.B.3–2, while volumes of conventional biodiesel and renewable diesel are shown in the following Table IV.B.3–3.

TABLE IV.B.3–2 [86]—ADVANCED (D4 AND D5) BIODIESEL AND RENEWABLE DIESEL FROM 2011 TO 2019

[Million gallons] [a]

	2011	2012	2013	2014 [b]	2015 [b]	2016	2017	2018	2019 [c]
Domestic Biodiesel	969	984	1,364	1,296	1,245	1,581	1,530	1,843	1825
(Annual Change)	(N/A)	(+15)	(+380)	(−68)	(−51)	(+336)	(−51)	(+313)	(−18)
Domestic Renewable Diesel	59	50	112	158	174	236	251	306	531
(Annual Change)	(N/A)	(−9)	(+62)	(+46)	(+16)	(+62)	(+15)	(+55)	(+225)
Imported Biodiesel	43	39	153	130	261	562	462	175	246
(Annual Change)	(N/A)	(−4)	(+114)	(−23)	(+131)	(+301)	(−100)	(−287)	(+71)
Imported Renewable Diesel	0	28	145	130	120	165	191	178	256
(Annual Change)	(N/A)	(+28)	(+117)	(−15)	(−10)	(+45)	(+26)	(−13)	(+78)
Exported Biodiesel and Renewable Diesel	32	68	84	87	94	129	166	154	122
(Annual Change)	(N/A)	(+36)	(+16)	(+3)	(+7)	(+35)	(+37)	(−12)	(−32)
Total [d]	1,039	1,033	1,690	1,627	1,706	2,415	2,268	2,348	2,736
(Annual Change)	(N/A)	(−6)	(+657)	(−63)	(+79)	(+709)	(−147)	(+80)	(+388)

[a] All data from EMTS. EPA reviewed all advanced biodiesel and renewable diesel RINs retired for reasons other than demonstrating compliance with the RFS standards and subtracted these RINs from the RIN generation totals for each category in the table above to calculate the volume in each year.

[b] RFS required volumes for these years were not established until December 2015.

[c] Data for 2019 is based on actual production and import data through September 2019, and a projection for October–December 2019. For more information on how the volumes for 2019 were determined see ''Projecting Advanced Biofuel Production and Imports for 2019 (November 2019),'' Memorandum from Dallas Burkholder to EPA Docket EPA–HQ–OAR–2019–0136.

[d] Total is equal to domestic production of biodiesel and renewable plus imported biodiesel and renewable diesel minus exports.

TABLE IV.B.3–3—CONVENTIONAL (D6) BIODIESEL AND RENEWABLE DIESEL FROM 2011 TO 2019

[Million gallons] [a]

	2011	2012	2013	2014 [b]	2015 [b]	2016	2017	2018	2019 [c]
Domestic Biodiesel	2	0	1	1	0	0	0	0	0
(Annual Change)	(N/A)	(−2)	(+1)	(+0)	(−1)	(+0)	(+0)	(+0)	(+0)
Domestic Renewable Diesel	0	0	0	0	0	0	0	0	0
(Annual Change)	(N/A)	(+0)	(+0)	(+0)	(+0)	(+0)	(+0)	(+0)	(+0)
Imported Biodiesel	0	0	31	52	74	113	0	0	0
(Annual Change)	(N/A)	(+0)	(+31)	(+21)	(+22)	(+39)	(-113)	(+0)	(+0)
Imported Renewable Diesel	0	0	70	2	87	45	2	1	0
(Annual Change)	(N/A)	(+0)	(+70)	(−68)	(+85)	(−42)	(−43)	(−1)	(−1)
Exported Biodiesel and Renewable Diesel	0	0	0	0	1	1	0	0	0
(Annual Change)	(N/A)	(+0)	(+0)	(+0)	(+1)	(+0)	(−1)	(+0)	(+0)
Total [d]	2	0	102	55	160	157	2	1	0
(Annual Change)	(N/A)	(−2)	(+102)	(−47)	(+105)	(−3)	(−155)	(−1)	(−1)

[a] All data from EMTS. EPA reviewed all conventional biodiesel and renewable diesel RINs retired for reasons other than demonstrating compliance with the RFS standards and subtracted these RINs from the RIN generation totals for each category in the table above to calculate the volume in each year.

[b] RFS required volumes for these years were not established until December 2015.

[c] While a significant number of D6 RINs have been generated for biodiesel and renewable diesel in 2019 in recent years nearly all of these RINs have later been retired for reasons other than compliance with the volume obligations. Since D6 RIN prices have been relatively low in 2019 and the biodiesel tax credit is currently not available we are not projecting any production or import of D6 biodiesel or renewable diesel in 2019.

[d] Total is equal to domestic production of biodiesel and renewable plus imported biodiesel and renewable diesel minus exports.

supplied to the U.S. (including domestically produced and imported biodiesel and renewable diesel) qualified as advanced biodiesel and renewable diesel (14,214 million gallons of the 14,869 million gallons) according to EMTS data. This section focuses on the availability of advanced biodiesel and renewable diesel to meet the advanced biofuel volume. For a discussion of the availability of all biodiesel and renewable diesel that could be used to meet the total renewable fuel volume see ''Updated market impacts of biofuels in 2020,'' memorandum from David Korotney to docket EPA–HQ–OAR–2019–0136.

[85] From 2011 through 2018 over 99.9 percent of all the domestically produced biodiesel and renewable diesel supplied to the U.S. qualified as advanced biodiesel and renewable diesel (12,268 million gallons of the 12,275 million gallons) according to EMTS data.

[86] For this final rule EPA reviewed the data available in EMTS and updated historical renewable fuel production and RIN generation data. This updated data can be found in ''Historical RIN supply as of 8–12–19,'' memorandum from David Korotney to EPA docket EPA–HQ–OAR–2019–0136. Tables in this final rule that contain historical data (such as Tables IV.B.3–2, IV.B.3–3, VI.B.1–1 and VI.B.1–2) have been updated accordingly.

As we explained above, to meet an advanced biofuel volume of 5.09 billion ethanol-equivalent gallons we project that the market would supply 2.83 billion gallons of advanced biodiesel and renewable diesel. This volume (2.83 billion gallons) is approximately 90 million gallons greater than the volume of these fuels projected to be supplied in 2019 based on data through September 2019. Since 2011, the year-over-year changes in the volume of advanced biodiesel and renewable diesel used in the U.S. have varied greatly, from a low of 147 million fewer gallons from 2016 to 2017 to a high of 709 million additional gallons from 2015 to 2016. These changes were likely influenced by multiple factors such as the cost of biodiesel feedstocks and petroleum diesel, the status of the biodiesel blenders tax credit, growth in marketing of biodiesel at high volume truck stops and centrally fueled fleet locations, demand for biodiesel and renewable diesel in other countries, biofuel policies in both the U.S. and foreign countries, and the volumes of renewable fuels (particularly advanced biofuels) required by the RFS. This historical information does not indicate that the maximum previously observed increase of 709 million gallons of advanced biodiesel and renewable diesel would be reasonable to expect in 2020, nor does it indicate that the low (or negative) growth rates observed in other years would recur. Rather, these data illustrate both the magnitude of the changes in advanced biodiesel and renewable diesel in previous years and the significant variability in these changes.

The historic data indicates that the biodiesel tax policy in the U.S. can have a significant impact on the volume of biodiesel and renewable diesel used in the U.S. in any given year.[87] While the biodiesel blenders tax credit has applied in each year from 2010 to 2017, it has only been prospectively in effect during the calendar year in 2011, 2013, and 2016, while other years it has been applied retroactively. Each of the years in which the biodiesel blenders tax credit was in effect during the calendar year (2013 and 2016) resulted in significant increases in the volume of advanced biodiesel and renewable diesel used in the U.S. over the previous year (656 million gallons and 742 million gallons respectively). However, following these large increases in 2013 and 2016, there was little to no growth in the use of advanced biodiesel and renewable diesel in the following years. More recent data from 2019 suggests that while the availability of the tax credit certainly incentivizes an increasing supply of biodiesel and renewable diesel, supply increases can also occur in the absence of the tax credit, likely as the result of the incentives provided by the RFS program and other economic factors. The availability of this tax credit also provides biodiesel and renewable diesel with a competitive advantage relative to other advanced biofuels that do not qualify for the tax credit.[88]

Another important factor highlighted by the historic data is the tariffs imposed by the U.S. on biodiesel imported from Argentina and Indonesia. In December 2017 the U.S. International Trade Commission adopted tariffs on biodiesel imported from Argentina and Indonesia.[89] According to data from EIA,[90] no biodiesel was imported from Argentina or Indonesia since September 2017, after a preliminary decision to impose tariffs on biodiesel imported from these countries was announced in August 2017. As a result of these tariffs, total imports of biodiesel into the U.S. were significantly lower in 2018 than they had been in 2016 and 2017. The decrease in imported biodiesel did not, however, result in a decrease in the volume of advanced biodiesel and renewable diesel supplied to the U.S. in 2018. Instead, higher domestic production of advanced biodiesel and renewable diesel, in combination with lower exported volumes of domestically produced biodiesel, resulted in an overall increase in the volume of advanced biodiesel and renewable diesel supplied in 2018. On July 9, 2019, the Department of Commerce published a preliminary determination to reduce the countervailing duty on biodiesel imported from Argentina.[91] If finalized this could result in increasing volumes of biodiesel imports from Argentina in future years.

The historical data suggests that the 2.83 billion gallons of advanced biodiesel and renewable diesel projected to be used to meet an advanced biofuel volume of 5.09 billion ethanol-equivalent gallons is attainable. This would represent a projected increase of approximately 90 million gallons from 2019 to 2020. This increase is less than the average increase in the volume of advanced biodiesel and renewable diesel used in the U.S. from 2011 through 2019 (212 million gallons per year) and significantly less than the highest annual increase during this time (742 million gallons from 2015 to 2016). We note, however, that this assessment does not consider the sources of feedstock that would be used to meet this increase, or the potential impacts of supplying 2.83 billion gallons of advanced biodiesel and renewable diesel, which are discussed in greater detail in the following sections.

c. Consideration of Production Capacity and Distribution Infrastructure

After reviewing the historical volume of advanced biodiesel and renewable diesel used in the U.S., EPA next considers other factors that may impact the production, import, and use of advanced biodiesel and renewable diesel in 2020. The production capacity of registered advanced biodiesel and renewable diesel production facilities is highly unlikely to limit the production of these fuels, as the total production capacity for biodiesel and renewable diesel at registered facilities in the U.S. (4.1 billion gallons) exceeds the volume of these fuels that are projected to be needed to meet the advanced biofuel volume for 2020 after exercising the cellulosic waiver authority (2.83 billion gallons).[92] Significant registered production also exists internationally. Similarly, the ability for the market to distribute and use advanced biodiesel and renewable diesel appears unlikely constrain the growth of these fuels to a volume lower than 2.83 billion gallons. The investments required to distribute and use this volume of biodiesel and renewable diesel are expected to be manageable by the marketplace given the RIN value incentive, as this volume is approximately 90 million gallons greater than the volume of biodiesel and renewable diesel produced, imported, and used in the U.S. in 2019. The magnitude of the increase projected

[87] We note that the status of the tax credit does not impact our assessment of the reasonably attainable volume of advanced biodiesel and renewable diesel in 2020 as that assessment is primarily based on feedstock availability. The status of the tax credit could potentially affect the maximum achievable volume of these fuels, but our assessment demonstrates that 2.83 billion gallons of advanced biodiesel and renewable diesel is attainable whether or not the tax credit is renewed prospectively (or retrospectively) for 2020.

[88] For a further discussion of the impact of the tax credit on the supply of biodiesel and renewable diesel, see the discussion from the proposed rule (84 FR 36783, July 29, 2019).

[89] ''Biodiesel from Argentina and Indonesia Injures U.S. Industry, says USITC,'' Available online at: *https://www.usitc.gov/press_room/news_release/2017/er1205ll876.htm.*

[90] See ''EIA Biomass-Based Diesel Import Data'' available in docket EPA–HQ–OAR–2019–0136.

[91] 84 FR 32714 (July 9, 2019).

[92] The production capacity of the sub-set of biodiesel and renewable diesel producers that generated RINs in 2018 is approximately 2.9 billion gallons. See ''Biodiesel and Renewable Diesel Registered Capacity (March 2019)'' Memorandum from Dallas Burkholder to EPA Docket EPA–HQ–OAR–2019–0136.

from 2019 to 2020 (90 million gallons) is much smaller than the increases observed in previous years. These factors further support our finding that 2.83 billion gallons of advanced biodiesel and renewable diesel is attainable.

d. Consideration of the Availability of Advanced Feedstocks

We next consider the availability of advanced feedstocks that can be used to produce advanced biodiesel and renewable diesel. This assessment has two parts. First, we assess whether there are sufficient advanced feedstocks to produce 2.83 billion gallons of advanced biodiesel and renewable diesel. We find that the quantity of feedstocks exceeds the amount needed to do so, further supporting our conclusion that 2.83 billion gallons of advanced biodiesel and renewable diesel is attainable. Second, we assess whether the growth in advanced feedstocks suffices to produce 2.83 billion gallons of advanced biodiesel and renewable diesel without diverting advanced feedstocks or biofuels from existing uses, *i.e.,* the reasonably attainable volume. We find that the reasonably attainable volume falls slightly short at 2.77 billion gallons.

We believe the most reliable source for projecting the expected increase in virgin vegetable oils in the U.S. is USDA's World Agricultural Supply and Demand Estimates (WASDE). At the time of our assessment for this rule, the October 2019 version was the most current version of the WASDE report. The October 2019 WASDE projects that production of vegetable oil in the U.S. in the 2019/2020 market year will be sufficient to produce approximately 3.6 billion gallons of biodiesel and renewable diesel (including both advanced and conventional biofuels) if the entire volume of vegetable oil was used to produce these fuels. Additional advanced biodiesel and renewable diesel could also be produced from waste fats, oils, and greases as they have been in past years.[93] Thus, the availability of domestic vegetable oils, in combination the potential to source additional feedstocks from waste fats, oils, and greases, supports our conclusion that 2.83 billion gallons of advanced biodiesel and renewable diesel is attainable.

In addition, the global production of vegetable oil projected in the 2019/2020 marketing year in the October 2019 WASDE would be sufficient to produce approximately 59.3 billion gallons of biodiesel and renewable diesel (including both advanced and conventional biofuels).[94] While it would not be reasonable to assume that all, or even a significant portion, of global vegetable oil production globally or domestically could be available to produce biodiesel or renewable diesel supplied to the U.S. for a number of reasons,[95] the large global supply of vegetable oil further indicates that 2.83 billion gallons of advanced biodiesel and renewable diesel is attainable in 2020.

We now turn to the reasonably attainable volume of advanced biodiesel and renewable diesel, which we find to be 2.77 billion gallons. This volume represents the amount of advanced biodiesel and renewable diesel that can be supplied without relying on the diversion of advanced biofuels and feedstocks from existing uses and the associated harms of such diversions. We calculate this volume by summing the reasonable attainable volume from last year's final rule (2.61 billion gallons) with the volume that can be produced from the projected increase in advanced feedstocks from 2019 to 2020 (159 million gallons).[96]

We acknowledge that an increase in the required use of advanced biodiesel and renewable diesel could be realized through the production or collection of additional advanced feedstocks, a diversion of advanced feedstocks from other uses, or a diversion of advanced biodiesel and renewable diesel from existing markets in other countries. As already explained, the volume of advanced biodiesel and renewable diesel and their corresponding feedstocks projected to be produced globally exceeds the volume projected to be required in 2020 (2.83 billion gallons of advanced biodiesel and renewable diesel and the corresponding volume of advanced feedstocks) by a significant margin. However, we expect that increases in advanced biofuel and renewable fuel volumes beyond those that can be produced from the projected growth in advanced feedstock production and/or consumption (*e.g.,* by diverting advanced feedstocks or advanced biodiesel and renewable diesel from existing markets and uses) would be increasingly likely to incur adverse unintended impacts.[97]

This is because of several factors, notably the potential disruption of the current biogenic fats, oils, and greases market, the associated cost impacts to other industries resulting from feedstock diversion, and the potential adverse effect on lifecycle GHG emissions and energy security associated with feedstocks for biofuel production that would have been used for other purposes and which must then be backfilled with other feedstocks.[98] Similarly, increasing the supply of biodiesel and renewable diesel to the U.S. by diverting fuel that would otherwise have been used in other countries results in higher lifecycle GHG emissions than if the supply of these fuels was increased by an increased collection of waste fats and oils or increased production of feedstocks that are byproducts of other industries, especially if this diversion results in increased consumption of petroleum fuels in the countries that would have otherwise consumed the biodiesel or renewable diesel. By assessing the expected growth in the production of advanced feedstocks, we are attempting to minimize the incentives for the RFS program to increase the supply of advanced

[93] See ''Projections of FOG biodiesel and renewable diesel 2015–2018,'' memorandum from David Korotney to EPA Docket, EPA–HQ–OAR–2019–0136.

[94] The October 2019 WASDE projects production of vegetable oils in 2019/2020 in the U.S. and the World to be 12.58 and 207.50 million metric tons respectively. To convert projected vegetable oil production to potential biodiesel and renewable diesel production we have used a conversion of 7.7 pounds of feedstock per gallon of biodiesel or renewable diesel (World Agricultural Supply and Demand Estimates. United States Department of Agriculture, Office of the Chief Economist. October 10, 2019. ISSN 1554–9089). In addition, global production of biodiesel is projected to be 44.2 billion liters (11.7 billion gallons) in 2020 according to the July 2019 OECD–FAO Agricultural Outlook. Based on the projected production of biodiesel by country we estimate that over 80% of this biodiesel (all biodiesel except that produced in Columbia, Indonesia, Malaysia, and Thailand) could qualify as advanced biofuel if the feedstocks meet the definition of renewable biomass.

[95] These reasons include the demand for vegetable oil in the food, feed, and industrial markets both domestically and globally; constraints related to the production, import, distribution, and use of significantly higher volumes of biodiesel and renewable diesel; and the fact that biodiesel and renewable diesel produced from much of the vegetable oil available globally would not qualify as an advanced biofuel under the RFS program.

[96] As discussed in more detail in this section, this 159 million gallons increase is projected to be comprised of 94 million gallons from increased vegetable oil production, 17 million gallons from distillers corn oil, and 48 million gallons from waste fats, oils, and greases.

[97] The volume of advanced biodiesel and renewable diesel projected to be used to meet the advanced biofuel volume (2.83 billion gallons) is approximately 1 billion gallons greater than the volume of these fuels we projected would be used to meet the advanced biofuel volume for 2022 in the 2010 RFS final rule analyses (1.82 billion gallons). For a further discussion of this issue see Section 4.2.2.4 of the RTC.

[98] For instance, see the draft GHG assessment of palm oil biodiesel and renewable diesel at 77 FR 4300 (January 27, 2012). We believe palm or petroleum-derived products would likely be used to replace advanced biodiesel and renewable diesel diverted to the U.S. as these products are currently the lowest cost substitutes.

biodiesel and renewable diesel through feedstock switching or diverting biodiesel and renewable diesel from foreign markets to the U.S.

Advanced biodiesel and renewable diesel feedstocks include both waste oils, fats, and greases; and oils from planted crops. The projected growth in these feedstocks is expected to be modest relative to the volume of these feedstocks that is currently being used to produce biodiesel and renewable diesel. Most of the waste oils, fats, and greases that can be recovered economically are already being recovered and used in biodiesel and renewable diesel production or for other purposes. The availability of animal fats will likely increase with beef, pork, and poultry production. Most of the vegetable oil used to produce advanced biodiesel and renewable diesel that is sourced from planted crops comes from crops primarily grown for purposes other than providing feedstocks for biodiesel and renewable diesel, such as for livestock feed, with the oil that is used as feedstock for renewable fuel production a co-product.[99] This is true for soybeans and corn, which are the two largest sources of feedstock from planted crops used for biodiesel production in the U.S.[100] We do not believe that the increased demand for soybean oil or corn oil caused by a higher 2020 advanced biofuel standard would result in an increase in soybean or corn prices large enough to induce significant changes in agricultural activity.[101] However, production of these feedstocks is likely to increase over time as crop yields, oil extraction rates, and demand for the primary products increase.

Based on the October 2019 WASDE report the projected increase in vegetable oil production in the U.S. from the 2018/2019 marketing year to the 2019/2020 marketing year is 0.33 million metric tons per year.[102] This additional quantity of vegetable oils could be used to produce approximately 94 million additional gallons of advanced biodiesel or renewable diesel in 2020 relative to 2019.[103]

In the 2019 final rule we also noted that the WASDE projected a decrease in trade of both oilseeds and vegetable oils. The projected decrease in oilseed trade was likely due to tariffs enacted by China on soybean exports from the U.S. While the projected trade in oilseeds is expected to increase slightly from 2018/2019 to 2019/2020, trade in vegetable oils is projected to decrease by 0.12 million metric tons from 2018/2019 to 2019/2020. If converted to biodiesel, this volume of vegetable oils could be used to produce approximately 34 million additional gallons of advanced biodiesel or renewable diesel in 2020 relative to 2019. As in the 2019 final rule, we did not include in our projection of the reasonably attainable volumes the potential biodiesel or renewable diesel that could theoretically be produced from the oilseeds and vegetable oil projected to remain in the U.S. due to changes in trade of these products. This is because any biodiesel and renewable diesel produced from soybeans previously exported are necessarily diverted from other uses (even if the reason for this diversion is the tariffs, rather than the RFS program), and biodiesel produced from these diverted feedstocks is therefore more likely to have the adverse unintended effects as previously discussed.

In addition to virgin vegetable oils, we also expect increasing volumes of distillers corn oil[104] to be available for use in 2020. The WASDE report does not project distillers corn oil production, so EPA must use an alternative source to project the growth in the production of this feedstock. For this final rule we use results from the World Agricultural Economic and Environmental Services (WAEES) model to project the growth in the production of distillers corn oil.[105] In assessing the likely increase in the availability of distillers corn oil from 2019 to 2020, the authors of the WAEES model considered the effects of an increasing adoption rate of distillers corn oil extraction technologies at domestic ethanol production facilities, as well as increased corn oil extraction rates enabled by advances in this technology. The WAEES model projects that production of distillers corn oil will increase by approximately 130 million pounds from the 2018/2019 to the 2019/2020 agricultural marketing year. This quantity of feedstock could be used to produce approximately 17 million gallons of advanced biodiesel or renewable diesel. We believe it is reasonable to use these estimates from the WAEES model for these purposes based on the projected increase in the use of corn oil extraction and corn oil yield increases.

While much of the increase in advanced biodiesel and renewable diesel feedstocks produced in the U.S. from 2019 to 2020 is expected to come from virgin vegetable oils and distillers corn oil, increases in the supply of other sources of advanced biodiesel and renewable diesel feedstocks, such as biogenic waste fats, oils, and greases (FOG), could also occur. In scenarios with increases to the advanced biofuel and biomass-based diesel volume requirements in 2020 and 2021 the WAEES model projects minimal increases in the volume of biodiesel produced from total other fats and oils in the 2018/2019 and 2019/2020 marketing years.[106] Conversely, an assessment conducted by LMC International in 2017 and submitted in comments on our 2018 proposed rule projected that the waste oil supply in the U.S. could increase by approximately 2.4 million metric tons from 2016 to 2022.[107] This estimate represents a growth rate of approximately 0.4 billion tons per year, or enough feedstock to produce approximately 115 million gallons of biodiesel and renewable diesel per year. This estimate, however, only accounts for potential sources of feedstock and

[99] For example, corn oil is a co-product of corn grown primarily for animal feed or ethanol production, while soy and canola are primarily grown as livestock feed.

[100] According to EIA data 7,542 million pounds of soy bean oil and 2,085 million pounds of corn oil were used to produce biodiesel in the U.S. in 2018. Other significant sources of feedstock were yellow grease (1,668 million pounds), canola oil (total volume withheld, but monthly data suggests greater than 700 million pounds), and white grease (618 million pounds).''Monthly Biodiesel Production Report with Data for February 2019,'' U.S. Energy Information Administration. April 2019.

[101] This position is supported by several commenters, including the American Soybean Association (EPA–HQ–OAR–2019–0136–0177) and the Nebraska Soybean Association (EPA–HQ–OAR–2019–0136–0117).

[102] U.S. vegetable oil production is projected to be 12.25 million metric tons in the 2018/2019 agricultural marketing year and 12.58 million metric tons in the 2019/2020 agricultural marketing year.

[103] To calculate this volume, we have used a conversion of 7.7 pounds of feedstock per gallon of biodiesel or renewable diesel. This is based on the expected conversion of soybean oil (*http://extension.missouri.edu/p/G1990*), which is the largest source of feedstock used to produce advanced biodiesel and renewable diesel. Conversion rates for other types of vegetable oils used to produce biodiesel and renewable diesel are similar to those for soybean oil.

[104] Distillers corn oil is non-food grade corn oil produced by ethanol production facilities.

[105] For the purposes of this rule, EPA relied on WAEES modeling results submitted as comments by the National Biodiesel Board on the 2020 proposed rule (Kruse, J., ''Implications of an Alternative 2021 Biomass Based Diesel Volume Obligation for Global Agriculture and Biofuels,'' August 26, 2019, World Agricultural Economic and Environmental Services (WAEES)).

[106] The WAEES model projects a 7 million gallon increase in 2019/2020 and a 16 million gallon increase in 2020/2021. See Kruse, J., ''Implications of an Alternative Biomass Based Diesel Volume Obligation for Global Agriculture and Biofuels,'' August 26, 2019, World Agricultural Economic and Environmental Services.

[107] LMC International. *Global Waste Grease Supply.* August 2017 (EPA–HQ–OAR–2017–0091–3880).

not for the economic viability of recovering waste oils.

To project the increase in the use of biogenic FOG we used historical data to determine the increase in the use of these feedstocks to produce biodiesel and renewable diesel. From 2015–2018, advanced biodiesel and renewable diesel produced from biogenic FOG increased by an average of 48 million gallons per year.[108] This annual increase is higher than the increase in the use of these feedstocks projected by the WAEES model, but lower than the potential increase projected by LMC. We have included an additional 48 million gallons of advanced biodiesel and renewable diesel from FOG in our assessment of the reasonably attainable volume for 2020, consistent with the observed annual increase in advanced biodiesel and renewable diesel produced from these feedstocks in recent years.

In total, we project that increases in feedstocks produced in the U.S. are sufficient to produce approximately 159 million more gallons of advanced biodiesel and renewable diesel in 2020 relative to 2019. This number includes 94 million gallons from increased vegetable oil production, 17 million gallons from increased corn oil production, and 48 million gallons from increased waste oil collection. This increase does not include the projected 34 million gallons of biodiesel that could be produced from the projected reduction in vegetable oil trade since decreases in exported volumes of vegetable oils represent feedstocks diverted from use in other countries. Our projection also does not consider factors that could potentially affect the availability of advanced biofuel feedstocks that could be used to produce biodiesel or renewable diesel, such as changes in the volume of vegetable oils used in food markets or other non-biofuel industries. In our 2019 final rule, we determined that 2.61 billion gallons of advanced biodiesel and renewable diesel were reasonably attainable in 2019,[109] therefore our projection of the reasonably attainable volume of advanced biodiesel and renewable diesel in 2020 is 2.77 billion gallons.[110]

e. Biodiesel and Renewable Diesel Imports and Exports

EPA next considered potential changes in the imports of advanced biodiesel and renewable diesel produced in other countries. In previous years, significant volumes of foreign produced advanced biodiesel and renewable diesel have been supplied to markets in the U.S. (see Table IV.B.2–1). These significant imports were likely the result of a strong U.S. demand for advanced biodiesel and renewable diesel, supported by the RFS standards, the low carbon fuel standard (LCFS) in California, the biodiesel blenders tax credit, and the opportunity for imported biodiesel and renewable diesel to realize these incentives. We have not included the potential for increased (or decreased) volumes of imported advanced biodiesel and renewable diesel in our projection of the reasonably attainable volume for 2020. As discussed previously, any increases in the import of advanced biodiesel and renewable diesel is necessarily diverted from other markets. There is also a far higher degree of uncertainty related to the availability and production of advanced biodiesel and renewable diesel in foreign countries, as this supply can be affected by a number of unpredictable factors such as the imposition of tariffs and increased incentives for the use of these fuels in other countries (such as tax incentives or blend mandates). EPA also lacks the data necessary to determine the quantity of these fuels that would otherwise be produced and used in other countries, and thus the degree to which the RFS standards are simply diverting this fuel from use in other countries as opposed to incentivizing additional production.

While we do not consider changes in imports or exports of advanced biodiesel and renewable diesel in our projection of the reasonably attainable volume, changes to the volume of these fuels that is imported and exported could potentially impact the attainable volume. Imports of advanced biodiesel and renewable diesel are projected to increase by 150 million gallons from 2018 to 2019 (from approximately 350 million gallons in 2018 to approximately 500 million gallons in 2019, see Table IV.B.3–2). At the same time, data through July 2019 suggests that the U.S. will export approximately 122 million gallons of domestically produced biodiesel in 2019.[111] Increased imports and/or decreased exports of these fuels in 2020 could contribute to the market supplying 2.83 billion gallons of advanced biodiesel and renewable diesel. The higher volumes of imported advanced biodiesel and renewable diesel in previous years (shown in Table IV.B.3–2) suggest that these changes are possible, especially if the tariffs on biodiesel imported from Argentina are reduced. Thus the potential for increased imports and decreased exports further supports our determination that 2.83 billion gallons of advanced biodiesel and renewable diesel is attainable.

While changes to the volumes of imports/exports of advanced biodiesel and renewable could supply the approximately 60 million gallon difference between the reasonably attainable volume of these fuels (2.77 billion gallons) and the volume needed to meet an advanced biofuel volume of 5.09 billion ethanol-equivalent gallons (2.83 billion gallons), these changes are not without impacts. Diverting this fuel to markets in the U.S. may be complicated as doing so would likely require higher prices for these fuels in the U.S. to divert the fuels from foreign markets that are presumably more profitable currently. It may also be more difficult and costly to distribute this additional volume of biodiesel and renewable diesel to domestic markets than the current foreign markets. Finally, reducing advanced biodiesel and renewable diesel exports may indirectly result in the decreased availability of imported volumes of these fuels, as other countries seek to replace volumes previously imported from the U.S.

f. Attainable and Reasonably Attainable Volumes of Advanced Biodiesel and Renewable Diesel

In sum, the 2.83 billion gallons of advanced biodiesel and renewable

[108] ''Projections of FOG biodiesel and renewable diesel 2015–2018,'' memorandum from David Korotney to EPA Docket, EPA–HQ–OAR–2019–0136.

[109] 83 FR 63704 (December 11, 2018).

[110] We calculated the reasonably attainable volume for 2020 by adding the projected increase in advanced feedstocks (159 million gallons) to the reasonably attainable volume of these fuels we projected for 2019 (2.61 billion gallons). Another possible approach would be to add the 159-million-gallon increment in the reasonably attainable volume to the volume we now project to be used in 2019, 2.74 billion gallons (rather than the reasonably attainable volume we projected for 2019). This would result in a reasonably attainable volume of 2.90 billion gallons. While this approach uses more recent data on the availability of advanced biodiesel and renewable diesel in 2019, it does not account for whether or not the additional use of these fuels in 2019, beyond the reasonably attainable volume calculated in the 2019 final rule, resulted in diversions of advanced biofuels or feedstocks. In any event, even were we to adopt this approach, it would make no difference to our final decision on the volumes as (1) the difference in the calculated reasonably attainable volume is slight, (2) the high costs of advanced biodiesel and renewable diesel would justify exercising the maximum cellulosic waiver in any event, and (3) the volume we are finalizing is attainable under either approach.

[111] Projection is based on EIA data on exports of biomass-based diesel (biodiesel) through July 2019. For more detail on this projection see ''Projecting Advanced Biofuel Production and Imports for 2019 (November 2019),'' memorandum from Dallas Burkholder to EPA docket EPA–HQ–OAR–2019–0136.

diesel projected to be needed to achieve an advanced biofuel volume of 5.09 billion ethanol-equivalent gallons are attainable. We have reached this conclusion based on our analysis of the above factors, including historical supply of biodiesel and renewable diesel, the impacts of tax policy and tariffs, production capacity and distribution infrastructure, availability of advanced feedstocks, and imports and exports. By contrast, we find that only 2.77 billion gallons of advanced biodiesel and renewable diesel are reasonably attainable. This estimate is based on our analysis of growth in qualifying feedstocks, and represents the volume that can be supplied with minimal diversions of advanced biofuels and feedstocks from existing uses, and the associated harms of such diversions. These assessments support EPA's decision to establish the advanced biofuel volume for 2020 at 5.09 billion gallons, a volume which neither requires the use of EPA's general waiver authority nor the use of additional volumes of advanced biofuel in place of cellulosic biofuel.

C. Volume Requirement for Advanced Biofuel

In exercising the cellulosic waiver authority for 2017 and earlier, we determined it was appropriate to require a partial backfilling of missing cellulosic volumes with volumes of non-cellulosic advanced biofuel we determined to be reasonably attainable, notwithstanding the increase in costs associated with those decisions.[112] For the 2018 and 2019 standards, in contrast, we placed a greater emphasis on costs in the context of balancing the various considerations, ultimately concluding that the applicable volume requirement should be based on the maximum reduction permitted under the cellulosic waiver authority, effectively preventing any backfilling of missing cellulosic biofuel with advanced biofuel. In setting the 2019 standards, we also found that greater volumes of advanced biofuel would be attainable but did not believe that requiring higher volumes would be appropriate as such volumes were not reasonably attainable and would lead to diversion of advanced feedstocks or biofuels and the associated harms.

For 2020, we are following the same approach as in 2018 and 2019 and exercising the cellulosic waiver authority to reduce the advanced biofuel requirement by the maximum extent permitted. This results in an advanced biofuel volume of 5.09 billion gallons. This also preserves the implied statutory volume target for non-cellulosic advanced biofuel at 4.5 billion gallons, identical to that for 2019. As in the 2019 standards, we are taking this approach for two reasons, each of which is an independent and sufficient justification. First, as in 2019, the reasonably attainable volume of advanced biofuel for 2020 falls short of the volume resulting from the maximum exercise of the cellulosic authority. It is thus appropriate to exercise the cellulosic waiver authority to the maximum extent to minimize the harms associated with advanced biofuel and feedstock diversions.

Second, even if greater volumes of advanced biofuel are reasonably attainable, the high cost of these fuels independently justifies reducing the advanced biofuel volume for 2020 by the maximum amount permitted under the cellulosic waiver authority. In the 2019 final rule we presented illustrative cost projections for sugarcane ethanol and soybean biodiesel in 2019, the two advanced biofuels that would be most likely to provide the marginal increase in volumes of advanced biofuel in 2019 in comparison to 2018. Sugarcane ethanol results in a cost increase compared to gasoline that ranges from $0.39–$1.04 per ethanol-equivalent gallon. Soybean biodiesel results in a cost increase compared to diesel fuel that ranges from $0.74–$1.23 per ethanol-equivalent gallon. Thus, the cost of these renewable fuels is high as compared to the petroleum fuels they displace.

In conclusion, we believe that a 2020 advanced biofuel volume requirement of 5.09 billion ethanol-equivalent gallons is appropriate following our assessment of volumes that are attainable and in consideration of carryover RINs, potential feedstock/fuel diversions, and costs. Comments requesting higher or lower volumes are addressed in the separate Response to Comments document.

D. Volume Requirement for Total Renewable Fuel

As discussed in Section II.A.1, we believe that the cellulosic waiver provision is best interpreted as requiring that the advanced biofuel and total renewable fuel volumes be reduced by equal amounts. For the reasons we have previously articulated, we believe this interpretation is consistent with the statutory language and best effectuates the objectives of the statute, including the environmental objectives that generally favor the use of advanced biofuels over non-advanced biofuels and the legislative intent reflected in the statutory volume tables.[113] If we were to reduce the total renewable fuel volume requirement by a lesser amount than the advanced biofuel volume requirement, we would effectively increase the opportunity for conventional biofuels to participate in the RFS program beyond the implied statutory volume of 15 billion gallons. Applying an equal reduction of 9.91 billion gallons to both the statutory target for advanced biofuel and the statutory target for total renewable fuel results in a total renewable fuel volume of 20.09 billion gallons as shown in Table IV.A–1. This volume of total renewable fuel results in an implied volume of 15 billion gallons of conventional renewable fuel, which is the same as in the 2019 final rule. We have investigated the different ways that the market could respond to a total renewable fuel volume requirement of 20.09 billion gallons in a memorandum to the docket.[114] [115]

We note that the statute provides other authorities for EPA to reduce the required volumes beyond that permitted

[112] See, *e.g.,* Renewable Fuel Standards for 2014, 2015 and 2016, and the Biomass-Based Volume for 2017: Response to Comments (EPA–420–R–15–024, November 2015), pages 628–631, available in docket EPA–HQ–OAR–2015–0111–3671.

[113] See 81 FR 89752–89753 (December 12, 2016). See also 78 FR 49809–49810 (August 15, 2013); 80 FR 77434 (December 14, 2015).

[114] ''Updated market impacts of biofuels in 2020,'' memorandum from David Korotney to docket EPA–HQ–OAR–2019–0136. In prior actions, similar analyses to those described in this memorandum indicated that the market was capable of both producing and consuming the required volume of renewable fuels, and that as a result there was no basis for finding an inadequate domestic supply of total renewable fuel. See 82 FR 34229 & n.82 (July 21, 2017). Given the D.C. Circuit's decision in ACE, however, assessment of demand-side constraints is no longer relevant for determining inadequate domestic supply. Even so, we believe consideration of the ways that the market could make this volume available may still be generally relevant to whether and how EPA exercises its waiver authorities, such as our consideration of whether the volumes will cause severe economic harm.

[115] We note that the previously cited memorandum discusses the potential for total ethanol consumption in 2020, but does not make specific projections for E0, E15 and E85. Volumes of these ethanol blends are highly dependent upon consumer demand and retail distribution infrastructure. In prior annual rules, we assessed volumes of these blends in determining whether and to what extent to exercise the inadequate domestic supply waiver prong of the general waiver authority. The D.C. Circuit's decision *ACE* precludes assessment of demand-side constraints in determining inadequate domestic supply. While we could still assess such blend volumes in deciding whether and to what extent to exercise our other discretionary waiver authorities, and in evaluating the market's ability to meet the total renewable fuel requirement, doing so is not necessary. In terms of the market's ability to satisfy the total renewable fuel requirement, the more relevant consideration is whether the pool-wide ethanol volume, together with volumes of other biofuels, suffices. We note that EPA does not establish separate standards for E0, E15, or E85. Moreover, there has historically been a lack of reliable data on volumes of these blends, making reliance on the pool-wide ethanol volume a more technically robust approach.

by the cellulosic waiver. As explained in Section II of this rule and in Section 2 of the Response to Comments document, we do not believe it is appropriate to further reduce volumes under the general waiver authority.

We acknowledge that there is some uncertainty regarding whether the market will actually make available 5.09 billion ethanol-equivalent gallons of advanced biofuel or 20.09 billion ethanol-equivalent gallons of total renewable fuel in 2020. In the event that the market is not able to meet these volume requirements with biofuels produced and used in 2020, the carryover RIN bank represents a source of RINs that could help obligated parties meet them if the market fails to supply sufficient advanced biofuels. As discussed in greater detail in Section II.B.1, carryover RINs provide obligated parties compliance flexibility in the face of substantial uncertainties in the transportation fuel marketplace and provide a liquid and well-functioning RIN market upon which success of the entire program depends. We currently estimate that there are approximately 680 million advanced biofuel carryover RINs and 2.80 billion non-advanced (D6) carryover RINs available.

V. Impacts of 2020 Volumes on Costs

In this section, EPA presents its assessment of the illustrative costs of this final RFS annual rulemaking. It is important to note that these illustrative costs do not attempt to capture the full impacts of this final rule. We frame the analyses we have performed for this rule as ''illustrative'' so as not to give the impression of comprehensive estimates. These estimates are provided for the purpose of showing how the cost to produce a gallon of a ''representative'' renewable fuel compares to the cost of fossil fuels (*e.g.,* petroleum-derived fuels). There are a significant number of caveats that must be considered when interpreting these illustrative cost estimates. For example, there are many different feedstocks that could be used to produce biofuels, and there is a significant amount of heterogeneity in the costs associated with these different feedstocks and fuels. Some renewable fuels may be cost competitive with the fossil fuels they replace; however, we do not have cost data on every type of feedstock and every type of fuel. Therefore, we do not attempt to capture this range of potential costs in our illustrative estimates.

The renewable fuel volumes for which we provide cost estimates are described in Section III. In this section, we estimate illustrative costs for two different cases. In the first case, we provide illustrative cost estimates by comparing the final 2020 RFS renewable fuel volumes to 2020 RFS statutory renewable fuel volumes. In the second case, we examine the final 2020 RFS renewable fuel volumes to the final 2019 RFS renewable fuel volumes to estimate changes in the annual costs of the final 2020 RFS annual rule in comparison to the final 2019 RFS annual rule.[116]

A. Illustrative Costs Analysis of 2020 Final Volumes Compared to the 2020 Statutory Volumes Baseline

In this section, EPA provides illustrative cost estimates that compare the final 2020 RFS cellulosic renewable volume requirement to the 2020 RFS cellulosic statutory renewable fuel volume that would be required absent the exercise of our cellulosic waiver authority under CAA section 211(o)(7)(D)(i). As described in Section III, we are finalizing a cellulosic volume of 0.59 billion gallons for 2020, using our cellulosic waiver authority to waive the statutory cellulosic volume of 10.5 billion gallons by 9.91 billion gallons. Estimating the cost savings from renewable fuel volumes that are not projected to be produced is inherently challenging. EPA has taken the relatively straightforward methodology of multiplying the waived cellulosic volume by the wholesale per-gallon costs of cellulosic biofuel production relative to the fossil fuels they displace.

While there may be growth in other cellulosic renewable fuel sources, we believe it is appropriate to use cellulosic ethanol produced from corn kernel fiber at an existing corn starch ethanol production facility as representative of cellulosic renewable fuel. As explained in Section III, we believe that production of the major alternative cellulosic biofuel—compressed natural gas/liquefied natural gas (CNG/LNG)-derived from biogas—is constrained in 2020 due to a limitation in the number of vehicles capable of using this form of fuel.[117]

EPA uses a ''bottom-up'' engineering cost analysis to quantify the costs of producing a gallon of cellulosic ethanol derived from corn kernel fiber. There are multiple processes that could yield cellulosic ethanol from corn kernel fiber. EPA assumes a cellulosic ethanol production process that generates biofuel using distiller's grains, a co-product of generating corn starch ethanol that is commonly dried and sold into the feed market as distillers dried grains with solubles (DDGS), as the renewable biomass feedstock. We assume an enzymatic hydrolysis process with cellulosic enzymes to break down the cellulosic components of the distiller's grains. This process for generating cellulosic ethanol is similar to approaches currently used by industry to generate cellulosic ethanol at a commercial scale, and we believe these cost estimates are likely representative of the range of different technology options being developed to produce ethanol from corn kernel fiber. We then compare the per-gallon costs of the cellulosic ethanol to the fossil fuel that would be replaced at the wholesale stage, since that is when the two are blended together.

These cost estimates do not consider taxes, retail margins, or other costs or transfers that occur at or after the point of blending. Transfers are payments within society and are not additional costs (*e.g.,* RIN payments are one example of a transfer payment). We do not attempt to estimate potential cost savings related to avoided infrastructure costs (*e.g.,* the cost savings of not having to provide pumps and storage tanks associated with higher-level ethanol blends). When estimating per-gallon costs, we consider the costs of gasoline on an energy-equivalent basis as compared to ethanol, since more ethanol gallons must be consumed to travel the same distance as on gasoline due to the ethanol's lower energy content.

Table V.A–1 below presents the cellulosic fuel cost savings associated with this final rule that are estimated using this approach.[118] The per-gallon cost differences for cellulosic ethanol range from $0.46–$3.30 per ethanol-equivalent gallon ($/EEG).[119] Given that commercial cellulosic ethanol production is still at an early stage in its deployment, these cost estimates have a significant range. Multiplying the per-

[116] This action imposes renewable fuel standards only for 2020. However, solely for E.O. 13771 purposes in this section, we estimate the costs of the relevant volumes as though they applied in future years as well. Therefore, we use the term ''annual costs'' in this section.

[117] See Section III.D.2 for a further discussion of the quantity of CNG/LNG projected to be used as transportation fuel in 2020.

[118] Details of the data and assumptions used can be found in a Memorandum available in the docket entitled ''Cost Impacts of the Final 2020 Annual Renewable Fuel Standards'', Memorandum from Michael Shelby, Dallas Burkholder, and Aaron Sobel available in docket EPA–HQ–OAR–2019–0136.

[119] For the purposes of the cost estimates in this section, EPA has not attempted to adjust the price of the petroleum fuels to account for the impact of the RFS program, since the changes in the renewable fuel volume are relatively modest in comparison to the quantity of fuel associated with the petroleum market. Rather, we have used the wholesale price projections for gasoline and diesel as reported in EIA's October 2019 STEO.

gallon cost differences by the amount of cellulosic biofuel waived in this final rule results in approximately $4.6–$33 billion in cost savings.

TABLE V.A–1—ILLUSTRATIVE COSTS ANALYSIS OF 2020 FINAL CELLULOSIC VOLUMES COMPARED TO THE 2020 STATUTORY VOLUMES

Cellulosic Volume Required (Million Ethanol-Equivalent Gallons)	590
Change in Required Cellulosic Biofuel from 2020 Statutory Volume (Million Ethanol-Equivalent Gallons)	(9,910)
Cost Difference Between Cellulosic Corn Kernel Fiber Ethanol and Gasoline Per-Gallon ($/Ethanol-Equivalent Gallons) [120] ($/EEG) [121]	$0.46–$3.30
Annual Change in Overall Costs (Million $) [122]	$(4,600)–$(33,000)

B. Illustrative Cost Analysis of the 2020 Final Volumes Compared to the 2019 Final Volumes

In this section, we provide illustrative cost estimates for the final 2020 RFS volumes compared to the final 2019 RFS volumes. In comparison to the final 2019 RFS volumes, the final 2020 RFS volumes result in an overall increase of 172 million ethanol-equivalent gallons of cellulosic biofuel derived from CNG/LNG from landfill biogas. To estimate the cost of production of CNG/LNG derived from landfill gas (LFG), EPA uses Version 3.2 of the Landfill Gas Energy Cost Model, or LFGcost-Web.[123] LFGcost-Web is a software tool developed by EPA's Landfill Methane Outreach Program (LMOP) to conduct initial economic feasibility analysis of developing LFG energy recovery projects in the United States. The default inputs and cost estimates by LFGcost-Web are based on typical project designs and for typical landfill situations. The Model attempts to include all equipment, site work, permits, operating activities, and maintenance that would normally be required for constructing and operating a typical project.

Table V.B–1 presents estimates of per energy-equivalent gallon costs for producing CNG/LNG derived from landfill biogas relative to natural gas at the wholesale level. These per-gallon costs are then multiplied by the increase in the final 2020 RFS cellulosic biofuel volume relative to the 2019 final RFS cellulosic biofuel volume to obtain an estimate of costs of using increased qualities of CNG/LNG from landfill biogas. An estimate of overall costs associated with the increase in the cellulosic biofuel volume is calculated as the range of $(1.1)–$17 million.

TABLE V.B–1—ILLUSTRATIVE COSTS ANALYSIS OF THE 2020 FINAL CELLULOSIC VOLUME COMPARED TO THE 2019 CELLULOSIC VOLUME [124]

Cellulosic Volume	
Change in Volume (Million Ethanol-Equivalent Gallons)	172
CNG/LNG Derived from Biogas Costs	
Cost Difference Between CNG/LNG Derived from Landfill Biogas and Natural Gas Per Gallon ($/Ethanol-Equivalent Gallons) ($/EEG)	$(0.01)–$0.10
Annual Increase in Overall Costs (Million $)	$(1.1)–$17

The annual volume-setting process encourages consideration of the RFS program on a piecemeal (*i.e.,* year-to-year) basis, which may not reflect the full, long-term costs and benefits of the program. For the purposes of this final rule, other than the estimates of costs of producing a ''representative'' renewable fuel compared to cost of fossil fuel, EPA did not quantitatively assess other direct and indirect costs or benefits of changes in renewable fuel volumes. These direct and indirect costs and benefits may include infrastructure costs, investment, climate change impacts, air quality impacts, and energy security benefits, which all to some degree may be affected by the annual volumes. For example, we do not have a quantified estimate of the lifecycle GHG or energy security benefits for a single year (*e.g.,* 2020). Also, there are impacts that are difficult to quantify, such as rural economic development and employment changes from more diversified fuel sources, that are not quantified in this rulemaking. While some of these impacts were analyzed in the 2010 final rulemaking that established the current RFS program, we have not analyzed these impacts for the 2020 volume requirements.[125]

VI. Biomass-Based Diesel Volume for 2021

In this section we discuss the BBD applicable volume for 2021. We are setting this volume in advance of those for other renewable fuel categories in light of the statutory requirement in CAA section 211(o)(2)(B)(ii) to establish the applicable volume of BBD for years after 2012 no later than 14 months before the applicable volume will apply. We are not at this time setting the BBD

[120] For this table and all subsequent tables in this section, approximate costs in per-gallon cost difference estimates are rounded to the cents place.

[121] Since the proposed rule, we have updated these per-gallon and total annual cost differences based on EIA's updated projections for petroleum gasoline costs in 2020 from the October Short-Term Energy Outlook.

[122] For this table and all subsequent tables in this section, approximate resulting costs (other than in per-gallon cost difference estimates) are rounded to two significant figures.

[123] The current version of this model and user's manual are downloadable from the LMOP website. *https://www.epa.gov/lmop/download-lfgcost-web/.*

[124] For the proposed 2020 annual RFS rule, we estimated that there would be an increase of cellulosic biofuel derived from CNG/LNG from landfill biogas of 126 million gallons (ethanol-equivalent) compared to the 2019 final annual RFS volumes. The total costs of the proposed 2020 cellulosic volume compared to 2019 RFS cellulosic volume range from $(3.2)–$10 million. In this final rule, both the projected volume increase of CNG/LNG derived from biogas and the cost of natural gas to which this fuel is compared have been updated.

[125] RFS2 Regulatory Impact Analysis (RIA). U.S. EPA 2010, Renewable Fuel Standard Program (RFS2) Regulatory Impact Analysis. EPA–420–R–10–006. February 2010. Docket EPA–HQ–OAR–2009–0472–11332.

percentage standards that would apply to obligated parties in 2021 but intend to do so in late 2020, after receiving EIA's estimate of gasoline and diesel consumption for 2021. At that time, we will also set the percentage standards for the other renewable fuel types for 2021. Although the BBD applicable volume sets a floor for required BBD use, because the BBD volume requirement is nested within both the advanced biofuel and the total renewable fuel volume requirements, any BBD produced can be used to satisfy both of these other applicable volume requirements, even beyond the mandated BBD volume.

A. Statutory Requirements

The statute establishes applicable volume targets for years through 2022 for cellulosic biofuel, advanced biofuel, and total renewable fuel. For BBD, applicable volume targets are specified in the statute only through 2012. For years after those for which volumes are specified in the statute, EPA is required under CAA section 211(o)(2)(B)(ii) to determine the applicable volume of BBD, in coordination with the Secretary of Energy and the Secretary of Agriculture, based on a review of the implementation of the program during calendar years for which the statute specifies the volumes and an analysis of the following factors:

1. The impact of the production and use of renewable fuels on the environment, including on air quality, climate change, conversion of wetlands, ecosystems, wildlife habitat, water quality, and water supply;
2. The impact of renewable fuels on the energy security of the United States;
3. The expected annual rate of future commercial production of renewable fuels, including advanced biofuels in each category (cellulosic biofuel and BBD);
4. The impact of renewable fuels on the infrastructure of the United States, including deliverability of materials, goods, and products other than renewable fuel, and the sufficiency of infrastructure to deliver and use renewable fuel;
5. The impact of the use of renewable fuels on the cost to consumers of transportation fuel and on the cost to transport goods; and
6. The impact of the use of renewable fuels on other factors, including job creation, the price and supply of agricultural commodities, rural economic development, and food prices.

The statute also specifies that the volume requirement for BBD cannot be less than the applicable volume specified in the statute for calendar year 2012, which is 1.0 billion gallons.[126] The statute does not, however, establish any other numeric criteria, and provides EPA discretion over how to weigh the importance of the often competing factors and the overarching goals of the statute when the EPA sets the applicable volumes of BBD in years after those for which the statute specifies such volumes. In the period 2013–2022, the statute specifies increasing applicable volumes of cellulosic biofuel, advanced biofuel, and total renewable fuel, but provides no numeric criteria, beyond the 1.0 billion gallon minimum, on the level at which BBD volumes should be set.

In establishing the BBD and cellulosic standards as nested within the advanced biofuel standard, Congress clearly intended to support development of BBD and especially cellulosic biofuels, while also providing an incentive for the growth of other non-specified types of advanced biofuels. In general, the advanced biofuel standard provides an opportunity for other advanced biofuels (advanced biofuels that do not qualify as cellulosic biofuel or BBD) to compete with cellulosic biofuel and BBD to satisfy the advanced biofuel standard after the cellulosic biofuel and BBD standards have been met.

In *Alon Refining Krotz Spring, Inc.* v. *EPA,* the D.C. Circuit affirmed EPA's approach to setting the 2017 BBD volume as ''consistent with the structure and purposes of the statute.'' [127] In today's rule, we have applied the same general methodology upheld in *Alon* with updated information. Similar to the rule reviewed in *Alon,* today's rule finds that it is the advanced biofuel standard, when set in 2021, that will drive the use of BBD in 2021. Furthermore, in light of the benefits of incentivizing other advanced biofuels, we choose to preserve the existing gap for other advanced biofuels, and accordingly establish the BBD volume at the same level as for 2020: 2.43 billion gallons.

B. Review of Implementation of the Program and the 2021 Applicable Volume of Biomass-Based Diesel

One of the considerations in determining the BBD volume for 2021 is a review of the implementation of the program to date, as it affects BBD. This review is required by the CAA, and also provides insight into the capabilities of the industry to produce, import, export, distribute, and use BBD. It also helps us to understand what factors, beyond the BBD standard, may incentivize the availability of BBD. In reviewing the program, we assess numerous regulatory, economic, and technical factors, including the availability of BBD in past years relative to the BBD and advanced standards; the prices of BBD, advanced, and conventional RINs; the competition between BBD and other advanced biofuels in meeting the portion of the advanced standard not required to be met by BBD or cellulosic RINs; the maturation of the BBD industry over the course of the RFS program; and the effects of the BBD standard on the production and development of both BBD and other advanced biofuels.

Table VI.B.1–1 shows, for 2011–2019, the number of BBD RINs generated, the number of RINs retired due to export, the number of RINs retired for reasons other than compliance with the annual BBD standards, and the consequent number of available BBD RINs; for 2011–2019, the BBD and advanced biofuel standards; and for 2020, the BBD and advanced biofuel standards.

[126] See CAA section 211(o)(2)(B)(v).

[127] *Alon Refining Krotz Springs, Inc.* v. *EPA,* 936 F.3d 628, 666 (D.C. Cir 2019).

TABLE VI.B.1–1—BIOMASS-BASED DIESEL (D4) RIN GENERATION AND ADVANCED BIOFUEL AND BIOMASS-BASED DIESEL STANDARDS IN 2011–2020

[Million RINs or gallons] [128]

	BBD RINs generated	Exported BBD (RINs)	BBD RINs retired, non-compliance reasons	Available BBD RINs [a]	BBD standard (gallons) [b]	BBD standard (RINs) [b]	Advanced biofuel standard (RINs) [b]
2011	1,692	48	102	1,542	800	1,200	1,350
2012	1,738	102	91	1,545	1,000	1,500	2,000
2013	2,740	125	101	2,514	1,280	1,920	2,750
2014	2,710	134	99	2,477	1,630	[c] 2,490	2,670
2015	2,796	145	45	2,606	1,730	[c] 2,655	2,880
2016	4,009	203	121	3,685	1,900	2,850	3,610
2017	3,849	257	115	3,477	2,000	3,000	4,280
2018	3,871	247	59	3,565	2,100	3,150	4,290
[d] 2019	4,381	183	0	4,198	2,100	3,150	4,920
2020	N/A	N/A	N/A	N/A	2,430	3,645	5,100

[a] Available BBD RINs may not be exactly equal to BBD RINs Generated minus Exported RINs and BBD RINs Retired, Non-Compliance Reasons, due to rounding.

[b] The volumes for each year are those used as the basis for calculating the percentage standards in the final rule. They have not been retroactively adjusted for subsequent events, such as differences between projected and actual gasoline and diesel use and exempted small refinery volumes.

[c] Each gallon of biodiesel qualifies for 1.5 RINs due to its higher energy content per gallon than ethanol. Renewable diesel qualifies for between 1.5 and 1.7 RINs per gallon, but generally has an equivalence value of 1.7. While some fuels that qualify as BBD generate more than 1.5 RINs per gallon, EPA multiplies the required volume of BBD by 1.5 in calculating the percent standard per 80.1405(c). In 2014 and 2015 however, the number of RINs in the BBD Standard column is not exactly equal to 1.5 times the BBD volume standard as these standards were established based on actual RIN generation data for 2014 and a combination of actual data and a projection of RIN generation for the last three months of the year for 2015, rather than by multiplying the required volume of BBD by 1.5. Some of the volume used to meet the BBD standard in these years was renewable diesel, with an equivalence value higher than 1.5.

[d] 2019 "BBD RINs generated," "Exported BBD," and "BBD RINs retired, Non-compliance reason" are projected based on data through September 2019.

In reviewing historical BBD RIN generation and use, we see that the number of RINs available for compliance purposes exceeded the volume required to meet the BBD standard in 2011–13 and 2016–19.[129] Additional production and use of biodiesel was likely driven by a number of factors, including demand to satisfy the advanced biofuel and total renewable fuels standards, the biodiesel tax credit,[130] and various other State and local incentives and mandates allowing for favorable blending economics. Moreover, additional production of BBD, beyond the volumes shown in the above table, was exported.

The prices paid for advanced biofuel and BBD RINs beginning in early 2013 through September 2019 (the last month for which data is available) also support the conclusion that the advanced biofuel, and in some periods the total renewable fuel standards, provide a sufficient incentive for additional biodiesel volume beyond what is required by the BBD standard. Because the BBD standard is nested within the advanced biofuel and total renewable fuel standards, and therefore can help to satisfy three RVOs, we would expect the price of BBD RINs to exceed that of advanced and conventional renewable RINs.[131] If, however, BBD RINs are being used (or are expected to be used) by obligated parties to satisfy their advanced biofuel obligations, above and beyond the BBD standard, we would expect the prices of advanced biofuel and BBD RINs to converge.[132] Further, if BBD RINs are being used (or are expected to be used) to satisfy obligated parties' total renewable fuel obligation, above and beyond their BBD and advanced biofuel requirements, we would expect the price for all three RIN types to converge.

When examining RIN price data from 2011 through September 2019, shown in Figure VI.B.2–1, we see that beginning in early 2013 and through September 2019 the advanced RIN (D5) price and BBD (D4) RIN prices were approximately equal. Similarly, from early 2013 through late 2016 the conventional renewable fuel (D6) RIN and BBD RIN prices were approximately equal. This demonstrates that the advanced biofuel standard, and in some periods the total renewable fuel standard, are capable of incentivizing increased BBD volumes beyond the BBD standard. The advanced biofuel standard has incentivized additional volumes of BBD since 2013, while the total standard had incentivized additional volumes of BBD from 2013 through 2016.[133] We do note, however,

[128] Available BBD RINs Generated, Exported BBD RINs, and BBD RINs Retired for Non-Compliance Reasons information from EMTs.

[129] The number of RINs available in 2014 and 2015 was approximately equal to the number required for compliance in those years, as the standards for these years were finalized at the end of November 2015 and EPA's intent at that time was to set the standards for 2014 and 2015 to reflect actual BBD use. See 80 FR 77490–92, 77495 (December 14, 2015).

[130] The biodiesel tax credit was reauthorized in January 2013. It applied retroactively for 2012 and for the remainder of 2013. It was once again extended in December 2014 and applied retroactively to all of 2014 as well as to the remaining weeks of 2014. In December 2015 the biodiesel tax credit was authorized and applied retroactively for all of 2015 as well as through the end of 2016. In February 2018 the biodiesel tax credit was authorized and applied retroactively for all of 2017. The biodiesel tax credit is not currently in place for 2018, 2019, or 2020.

[131] This is because when an obligated party retires a BBD RIN (D4) to help satisfy their BBD obligation, the nested nature of the BBD standard means that this RIN also counts towards satisfying their advanced and total renewable fuel obligations. Advanced RINs (D5) count towards both the advanced and total renewable fuel obligations, while conventional RINs (D6) count towards only the total renewable fuel obligation.

[132] We would still expect D4 RINs to be valued at a slight premium to D5 and D6 RINs in this case (and D5 RINs at a slight premium to D6 RINs) to reflect the greater flexibility of the D4 RINs to be used towards the BBD, advanced biofuel, and total renewable fuel standard. This pricing has been observed over the past several years.

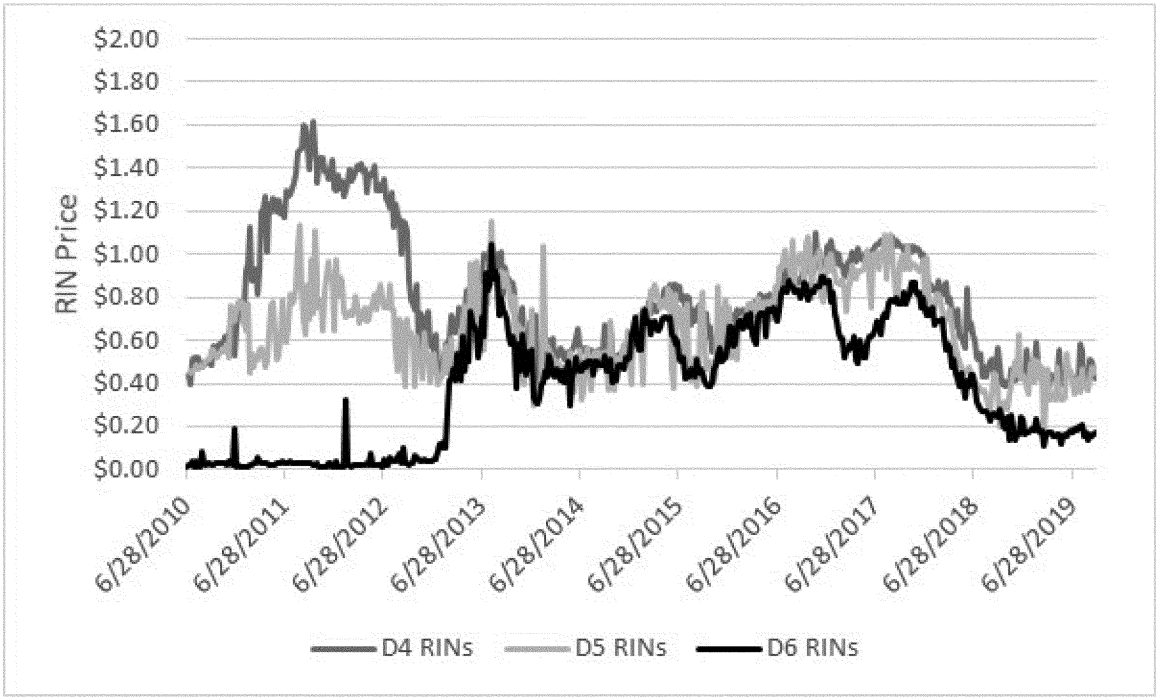
[133] Although we did not issue a rule establishing the final 2013 standards until August of 2013, we believe that the market anticipated the final standards, based on EPA's July 2011 proposal and the volume targets for advanced and total renewable fuel established in the statute. (76 FR 38844, 38843 July 1, 2011). Similarly, for 2014 and 2015, although we issued the final standards in late 2015, the proposed rule incentivized the market to use

Continued

that in 2011–2012 the BBD RIN price was significantly higher than both the advanced biofuel and conventional renewable fuel RIN prices. At this time, the E10 blendwall had not yet been reached, and it was likely more cost effective for most obligated parties to satisfy the portion of the advanced biofuel requirement that exceeded the BBD and cellulosic biofuel requirements with advanced ethanol.

Figure VI.B.2-1

D4, D5, and D6 RIN Prices (July 2010 – September 2019)



RIN Price Source: EMTS Data

We also examined the opportunity for advanced biofuels other than BBD and cellulosic biofuels, as shown in Table VI.B.1–2. We believe it is important to preserve this opportunity for other advanced biofuels, and we are conscious of public comments claiming that BBD volume requirements that are a significant portion of the advanced volume requirements effectively disincentivize the future development of other promising advanced biofuel pathways.[134] A variety of different types of advanced biofuels, rather than a single type such as BBD, would increase energy security (*e.g.,* by increasing the diversity of feedstock sources used to make biofuels, thereby reducing the impacts associated with a shortfall in a particular type of feedstock) and increase the likelihood of the development of lower cost advanced biofuels that meet the same GHG reduction threshold as BBD.[135]

TABLE VI.B.1–2—OPPORTUNITY FOR AND RIN GENERATION OF "OTHER" ADVANCED BIOFUELS

[Million RINs]

	Opportunity for "other" advanced biofuels [a]	Available advanced (D5) RINs	Available BBD (D4) RINs in excess of the BBD equirement [b]
2011	150	223	342
2012	500	597	45
2013	829	548	594
2014 [c]	147	143	−13
2015 [c]	102	147	−49
2016	530	98	835

BBD volumes exceeding the proposed BBD standard to help satisfy the proposed advanced and total standards. See 80 FR 33100 (2014–16 standards proposed June 10, 2015); 78 FR 71732 (2014 standards proposed Nov. 29, 2013).

[134] See, *e.g.,* Comments from Advanced Biofuel Association, available in EPA docket EPA–HQ–OAR–2018–0167–1277.

[135] All types of advanced biofuel, including BBD, must achieve lifecycle GHG reductions of at least 50 percent. See CAA section 211(o)(1)(B)(i), (D).

TABLE VI.B.1–2—OPPORTUNITY FOR AND RIN GENERATION OF ''OTHER'' ADVANCED BIOFUELS—Continued

[Million RINs]

	Opportunity for ''other'' advanced biofuels [a]	Available advanced (D5) RINs	Available BBD (D4) RINs in excess of the BBD equirement [b]
2017	969	144	477
2018	852	178	415
2019 [d]	1,352	310	1,048

[a] The opportunity for ''other'' advanced biofuel is calculated by subtracting the number of cellulosic biofuel and BBD RINs required each year from the number of advanced biofuel RINs required. This portion of the advanced standard can be satisfied by advanced (D5) RINs, BBD RINs in excess of those required by the BBD standard, or cellulosic RINs in excess of those required by the cellulosic standard.

[b] The available BBD (D4) RINs in excess of the BBD requirement is calculated by subtracting the required BBD volume (multiplied by 1.5 to account for the equivalence value of biodiesel) required each year from the number of BBD RINs available for compliance in that year. This number does not include carryover RINs, nor do we account for factors that may impact the number of BBD RINs that must be retired for compliance, such as differences between the projected and actual volume of obligated gasoline and diesel. The required BBD volume has not been retroactively adjusted for subsequent events, such as differences between projected and actual gasoline and diesel use and exempted small refinery volumes.

[c] The 2014 and 2015 volume requirements were established in November 2015 and were set equal to the number of RINs projected to be available for each year.

[d] Available advanced RINs and available D4 RINs in excess of the BBD requirement are projected based on data through September 2019.

In each year since 2016, there has been a significant gap for other advanced biofuels, but this gap has nonetheless been dominated by BBD. While the RFS volumes created the opportunity for up to 530 million, 969 million, 852 million, and 1,352 million gallons of ''other'' advanced for 2016, 2017, 2018, and 2019 respectively to be used to satisfy the advanced biofuel obligation, only 98 million, 144 million, 178 million, and 310 million gallons of ''other'' advanced biofuels were generated. This is significantly less than the volumes of ''other'' advanced available in 2012–2013. Despite creating space within the advanced biofuel standard for ''other'' advanced, in recent years, only a small fraction of that space has been filled with ''other'' advanced, and BBD continues to fill most of the gap between the BBD standard and the advanced standard. Thus, there does not appear to be a compelling reason to increase the ''space'' maintained for ''other'' advanced biofuel volumes.

This conclusion is consistent with our approach in the 2019 final rule, when we established the 2019 advanced biofuel volume and the 2020 BBD volume. The overall volume of non-cellulosic advanced biofuel increased by 500 million gallons for 2019. For the 2020 BBD volume, we determined that it was appropriate to also increase the BBD volume by the same energy-equivalent amount (330 million physical gallons) as it would preserve the space already available for other advanced biofuels to compete in 2018 (850 million RINs). This space is many times the amount of other advanced biofuels used in each year starting from 2016.

In this action, we are maintaining the implied non-cellulosic advanced biofuel standard for 2021 that is presented in the statute, and that is equivalent to the implied non-cellulosic advanced biofuel standard for 2020. For the 2021 BBD volume, we thus find that it is appropriate to maintain the BBD volume for 2021 at 2.43 billion gallons. Even in an optimistic scenario, we do not believe that the use of other advanced biofuels will approach 850 million gallons by 2021. We recognize, however, the dynamic nature of the fuels marketplace, and the impact that the BBD blender's tax credit can have on the relative economics of BBD versus other advanced biofuels, so going forward we intend to assess the appropriate space for other advanced biofuels in subsequent rules setting BBD volumes.

At the same time, the rationale for preserving the ''space'' for ''other'' advanced biofuels remains. We note that the BBD industry in the U.S. and abroad has matured since EPA first increased the required volume of BBD beyond the statutory minimum in 2013.[136] To assess the maturity of the biodiesel industry, EPA compared information on BBD RIN generation by company in 2012 and 2018 (the most recent year for which complete RIN generation by company is available). In 2012, the annual average RIN generation per company producing BBD was about 11 million RINs (about 7.3 million gallons) with approximately 50 percent of companies producing less than 1 million gallons of BBD a year.[137] Since that time, the BBD industry has matured in a number of critical areas, including growth in the size of companies, the consolidation of the industry, and more stable funding and access to capital. By 2018, the average BBD RIN generation per company had climbed to over 36 million RINs (23.7 million gallons) annually, more than a 3-fold increase. Only 20 percent of the companies produced less than 1 million gallons of BBD in 2017.[138]

We recognize that the space for other advanced biofuels in 2021 will ultimately depend on the 2021 advanced biofuel volume. While EPA is not establishing the advanced biofuel volume for 2021 in this action, we anticipate that the non-cellulosic advanced biofuel volume for 2021, when established, will be greater than 3.65 billion gallons (equivalent to 2.43 billion gallons of BBD, after applying the 1.5 equivalence ratio). This expectation is consistent with our actions in previous years. Accordingly, we expect that the 2021 advanced biofuel volume, together with the 2021 BBD volume established today, will continue to preserve a considerable portion of the advanced biofuel volume that could be satisfied by either additional gallons of BBD or by other unspecified and potentially less costly types of qualifying advanced biofuels.

C. Consideration of Statutory Factors in CAA Section 211(o)(2)(B)(ii)(I)–(VI) for 2021 and Determination of the 2021 Biomass-Based Diesel Volume

As in past annual standard-setting rulemakings, we find that additional volumes of BBD would displace other advanced biofuel, due to the nested

[136] See also generally 84 FR 36794–95 (further explaining our approach in establishing the 2013 BBD volume and our experience since that time).

[137] ''BBD RIN Generation by Company in 2012 and 2018,'' available in EPA docket EPA–HQ–OAR–2019–0136.

[138] Id.

nature of the standards,[139] as opposed to petroleum fuels. More specifically, for a given advanced biofuel standard, greater or lesser BBD volume requirements generally do not change the amount of advanced biofuel used to displace petroleum fuels; the total volume of advanced biofuels is unchanged regardless of the BBD volume requirement. Thus increasing the BBD volume requirement would result in the displacement of other types of advanced biofuels that could have been used to meet the advanced biofuels volume requirement.

As a result, as in past assessments of the factors articulated in CAA 211(o)(2)(B)(ii)(I)–(VI), we consider BBD in comparison to other advanced biofuels, and not in comparison to petroleum diesel. Our primary assessment of the statutory factors is that because the BBD requirement is nested within the advanced biofuel volume requirement, we expect that the 2021 advanced volume requirement will determine the level of BBD use, production, and imports that occur in 2021. Therefore, we continue to believe that approximately the same overall volume of BBD would likely be supplied in 2021 regardless of the 2021 BBD volume requirement. In the long-term, however, leaving adequate room for growth of other advanced biofuels could have a beneficial impact on certain statutory factors. Notably, this incentivizes the development of other advanced biofuels with potentially superior cost, climate, environmental, and other characteristics, relative to BBD. We present a detailed analysis of the statutory factors for the BBD volume requirement in a memorandum to the docket.[140]

D. BBD Volume Requirement for 2021

Based on the above analysis, we are setting the applicable volume of BBD at 2.43 billion gallons for 2021. We believe this volume sets the appropriate floor for BBD, and that the volume of BBD actually used in 2021 will be driven by the level of the advanced biofuel and potentially the total renewable fuel standards that the Agency will establish for 2021. In addition, despite providing a significant degree of space for ''other'' advanced biofuels in recent years, far smaller volumes of ''other'' advanced have been utilized to meet the advanced standard. The BBD volume we are finalizing today continues to preserve the existing gap between the advanced biofuel volume and the sum of the cellulosic biofuel and BBD volumes. We believe this provides sufficient incentive to producers of ''other'' advanced biofuels, while also acknowledging that the advanced standard has been met predominantly with biomass-based diesel. Namely, this would allow other advanced biofuels to continue to compete with excess volumes of BBD for market share under the advanced biofuel standard. This would provide significant long term certainty for investments in other advanced biofuels that over time could compete with BBD to fill the advanced biofuel standard. In sum, our assessment of the statutory factors and the implementation of the program supports a volume of 2.43 billion gallons.

VII. Percentage Standards for 2020

The renewable fuel standards are expressed as volume percentages and are used by each obligated party to determine their Renewable Volume Obligations (RVOs). Since there are four separate standards under the RFS program, there are likewise four separate RVOs applicable to each obligated party. Each standard applies to the sum of all non-renewable gasoline and diesel produced or imported.

Sections II through IV provide our rationale and basis for the final volume requirements for 2020.[141] The volumes used to determine the final percentage standards are shown in Table VII–1.

TABLE VII–1—VOLUMES FOR USE IN DETERMINING THE FINAL 2020 APPLICABLE PERCENTAGE STANDARDS

[Billion gallons]

Cellulosic biofuel	0.59
Biomass-based diesel	2.43
Advanced biofuel	5.09
Renewable fuel	20.09

For the purposes of converting these volumes into percentage standards, we generally use two decimal places to be consistent with the volume targets as given in the statute, and similarly two decimal places in the percentage standards. In past years we have used three decimal places for cellulosic biofuel in both the volume requirement and percentage standards to more precisely capture the smaller volume projections and the unique methodology that in some cases results in estimates of only a few million gallons for a group of cellulosic biofuel producers (see Section III for a further discussion of the methodology for projecting cellulosic biofuel production and our decision to round the projected volume of cellulosic biofuel to the nearest 10 million gallons). However, the volume requirements for cellulosic biofuel have increased over time. We have therefore determined that volume requirements and percentage standards for cellulosic biofuel will now use two decimal places.

In this section, we also discuss our regulatory change to the percent standard formulas to account for a projection of the aggregate volume for SREs that we expect to grant for the 2020 compliance year. This section also provides our rationale for that projection of exempt gasoline and diesel volume. Additionally, we also provide our approach for evaluating SREs going forward, including for the currently pending 2019 petitions and for 2020 petitions we receive in the future.

A. Calculation of Percentage Standards

The formulas used to calculate the percentage standards applicable to producers and importers of gasoline and diesel are provided in 40 CFR 80.1405. The formulas rely on estimates of the volumes of gasoline and diesel fuel, for both highway and nonroad uses, which are projected to be used in the year in which the standards will apply. The projected gasoline and diesel volumes are provided by EIA and include projections of ethanol and biomass-based diesel used in transportation fuel.[142] Since the percentage standards apply only to the non-renewable gasoline and diesel produced or imported, the volumes of renewable fuel are subtracted out of the EIA projections of gasoline and diesel.

Transportation fuels other than gasoline or diesel, such as natural gas, propane, and electricity from fossil fuels, are not currently subject to the standards, and volumes of such fuels are not used in calculating the annual percentage standards. Since under the regulations the standards apply only to producers and importers of gasoline and diesel, these are the transportation fuels

[139] The BBD volume requirement is nested within the advanced biofuel requirement, and the advanced biofuel requirement is, in turn, nested within the total renewable fuel volume requirement. See CAA section 211(o)(2)(B)(i)(IV), (II). This means that any BBD produced can be used to satisfy both these other applicable volume requirements even beyond the BBD volume requirement.

[140] ''Memorandum to docket: Statutory Factors Assessment for the 2021 Biomass-Based Diesel (BBD) Applicable Volumes.'' See Docket EPA–HQ–OAR–2019–0136.

[141] The 2020 volume requirement for BBD was established in the 2019 standards final rule (83 FR 63704, December 11, 2018)

[142] Letter from Linda Capuano, EIA Administrator to Andrew Wheeler, EPA Administrator. October 9, 2019. Available in docket EPA–HQ–OAR–2019–0136.

used to set the percentage standards, as well as to determine the annual volume obligations of an individual gasoline or diesel producer or importer under 40 CFR 80.1407.

As specified in the RFS2 final rule,[143] the percentage standards are based on energy-equivalent gallons of renewable fuel, with the cellulosic biofuel, advanced biofuel, and total renewable fuel standards based on ethanol equivalence and the BBD standard based on biodiesel equivalence. However, all RIN generation is based on ethanol-equivalence. For example, the RFS regulations provide that production or import of a gallon of qualifying biodiesel will lead to the generation of 1.5 RINs. The formula specified in the regulations for calculation of the BBD percentage standard is based on biodiesel-equivalence, and thus assumes that all BBD used to satisfy the BBD standard is biodiesel and requires that the applicable volume requirement be multiplied by 1.5 in order to calculate a percentage standard that is on the same basis (*i.e.,* ethanol-equivalent) as the other three standards. However, BBD often contains some renewable diesel, and a gallon of renewable diesel typically generates 1.7 RINs.[144] In addition, there is often some renewable diesel in the conventional renewable fuel pool. As a result, the actual number of RINs generated by biodiesel and renewable diesel is used in the context of our assessment of the applicable volume requirements and associated percentage standards for advanced biofuel and total renewable fuel, and likewise in obligated parties' determination of compliance with any of the applicable standards. While there is a difference in the treatment of biodiesel and renewable diesel in the context of determining the percentage standard for BBD versus determining the percentage standard for advanced biofuel and total renewable fuel, it is not a significant one given our approach to determining the BBD volume requirement. Our intent in setting the BBD applicable volume is to provide a level of guaranteed volume for BBD, but as described in Section VII.B of the 2019 standards final rule, we do not expect the BBD standard to be binding in 2020.[145] That is, we expect that actual supply of BBD, as well as supply of conventional biodiesel and renewable diesel, will be driven by the advanced biofuel and total renewable fuel standards and will exceed the BBD standard.

B. Small Refineries and Small Refiners

In CAA section 211(o)(9), enacted as part of the EPAct, and amended by EISA, Congress provided a temporary exemption to small refineries[146] through December 31, 2010. Congress provided that small refineries could receive a temporary extension of the exemption beyond 2010 based either on the results of a required DOE study, or for the reason of ''disproportionate economic hardship'' in response to small refinery petitions submitted ''at any time.'' CAA section 211(o)(9)(B)(i).

Pursuant to this petition process, EPA often granted SREs for a given compliance year after the applicable percentage standards for that compliance year had been established. Under our prior approach to calculating the percentage standards, we did not account for these exemptions in establishing the percentage standards.[147] We only accounted for exemptions already granted at the time of the final annual rule.[148]

In the October 28 proposal, we proposed to modify the regulations at 40 CFR 80.1405(c) to account for a projection of the total exempted volume of gasoline and diesel produced at small refineries, including for those exemptions granted after the final annual rule.[149] We are finalizing the change as proposed. The result is that our calculation of the applicable percentage standards for 2020 takes into account a projection of the total exempted volume of gasoline and diesel produced by small refineries in 2020.

1. Changes to the Projected Volume of Gasoline and Diesel for Exempt Small Refineries

The formulas used to calculate the percentage standards applicable to producers and importers of gasoline and diesel are provided in 40 CFR 80.1405(c). The formula for the percentage standard calculation for total renewable fuel, including the definitions of the terms prior to this action, is shown below. The formulas for the other three percentage standards follow the same format, with the numerator of the fraction replaced with the annual volume of cellulosic biofuel, biomass-based diesel, and advanced biofuel, respectively. In this action we are only modifying the definitions of the terms GE_i and DE_i, which previously referred to the amount of gasoline and diesel projected to be produced by exempt small refineries, to now refer to the amount of gasoline and diesel projected to be exempt. All other terms remain in the same and were not reexamined in this rulemaking.

$$Std_{RF,i} = 100 \times \frac{RFV_{RF,i}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

Where:

$Std_{RF,i}$ = The renewable fuel standard for year i, in percent.

$RFV_{RF,i}$ = Annual volume of renewable fuel required by 42 U.S.C. 7545(o)(2)(B) for year i, in gallons.

G_i = Amount of gasoline projected to be used in the 48 contiguous states and Hawaii, in year i, in gallons.

D_i = Amount of diesel projected to be used in the 48 contiguous states and Hawaii, in year i, in gallons.

RG_i = Amount of renewable fuel blended into gasoline that is projected to be consumed in the 48 contiguous states and Hawaii, in year i, in gallons.

RD_i = Amount of renewable fuel blended into diesel that is projected to be consumed in the 48 contiguous states and Hawaii, in year i, in gallons.

GS_i = Amount of gasoline projected to be used in Alaska or a U.S. territory, in year i, if the state or territory has opted-in or opts-in, in gallons.

RGS_i = Amount of renewable fuel blended into gasoline that is projected to be consumed in Alaska or a U.S. territory,

[143] See 75 FR 14670 (March 26, 2010).

[144] Under 40 CFR 80.1415(b)(4), renewable diesel with a lower heating value of at least 123,500 Btu/gallon is assigned an equivalence value of 1.7. A minority of renewable diesel has a lower heating value below 123,500 BTU/gallon and is therefore assigned an equivalence value of 1.5 or 1.6 based on applications submitted under 40 CFR 80.1415(c)(2).

[145] 83 FR 63704 (December 11, 2018).

[146] A small refiner that meets the requirements of 40 CFR 80.1442 may also be eligible for an exemption.

[147] We adopted this interpretation of our regulations in the 2011 final rule. 75 FR 76804. We reaffirmed it in annual rulemakings since then, including most recently in the 2019 final rule. 83 FR 63740; see also, *e.g.,* 77 FR 1320, 1340; 78 FR 49794, 49825–49826; 80 FR 77420, 77511. We also proposed to follow this interpretation in the July 29 proposal for this final rule. 84 FR 36797 (July 29, 2019).

[148] See, *e.g.,* 80 FR 77420, 77511 (December 14, 2015).

[149] 84 FR 57677.

in year i, if the state or territory opts-in, in gallons.

DS_i = Amount of diesel projected to be used in Alaska or a U.S. territory, in year i, if the state or territory has opted-in or opts-in, in gallons.

RDS_i = Amount of renewable fuel blended into diesel that is projected to be consumed in Alaska or a U.S. territory, in year i, if the state or territory opts-in, in gallons.

GE_i = The amount of gasoline projected to be produced by exempt small refineries and small refiners, in year i, in gallons in any year they are exempt per §§ 80.1441 and 80.1442.

DE_i = The amount of diesel fuel projected to be produced by exempt small refineries and small refiners in year i, in gallons, in any year they are exempt per §§ 80.1441 and 80.1442.

Historically, EPA has interpreted the terms GE_i and DE_i to refer to the amount of gasoline and diesel projected to be produced by small refineries that have already been granted exemptions from their RFS obligations prior to our issuing the final rule for the relevant compliance year.[150] As a result of this interpretation, any SREs granted after we issued the annual rule containing the percentage standards for that year effectively reduced the required volume of renewable fuel for that year. For example, in August 2019 we granted 31 SREs for the 2018 compliance year after the percentage standards for 2018 had been established.[151] These SREs reduced the obligated volume of gasoline and diesel for 2018 by 13.42 billion gallons, effectively reducing the required volume of total renewable fuel for 2018 by 1.43 billion RINs.

In comments on the July 29 proposal, many commenters requested that EPA adopt a different interpretation of the terms for the amount of gasoline and diesel projected to be produced by exempt small refineries in the existing percentage standard formula.[152] Many commenters requested that these terms refer to a projection of the exempted volume of gasoline and diesel produced by small refineries, regardless of whether EPA had already adjudicated such exemption petitions by the time of the final rule. These commenters argued that this interpretation of the regulations is reasonable and better implements the statutory requirement that EPA must ''ensure'' the renewable fuel volumes are met. Some commenters suggested that adjusting the percentage standards formula is more important now than in earlier years of the program as we have recently granted exemptions for more significant volumes of gasoline and diesel, potentially resulting in more significant volumes that are not being met at the time of compliance.[153] A petition for administrative reconsideration raised similar issues, asking EPA to reconsider our approach for accounting for exempted volumes through the formula at 40 CFR 80.1405(c).[154] In the October 28 proposal, EPA undertook a process to revisit this issue, albeit under our inherent authority to revise or amend a rulemaking, rather than as an exercise of our reconsideration authority under CAA section 307(d)(7)(B).[155]

In the October 28 proposal we proposed to change the definitions of the two relevant terms in the percentage standard formula at 40 CFR 80.1405(c), GE_i and DE_i. We proposed that these terms represent a projection of the exempted volume of gasoline and diesel, regardless of whether we had adjudicated exemptions for that year by the time of the final rule establishing the percentage standards. We are finalizing these changes, and in turn, also completing the process of revisiting this issue that we undertook as described above in response to the above-noted administrative petition. The term ''GE_i'', representing the volume of exempt gasoline, is now defined as ''the total amount of gasoline projected to be exempt in year i, in gallons, per §§ 80.1441 and 80.1442.'' Similarly, the term ''DE_i'', representing the volume of exempt diesel, is now defined as ''the total amount of diesel projected to be exempt in year i, in gallons, per §§ 80.1441 and 80.1442.''

We begin by explaining our legal authority to adopt the new definitions, as well as our rationale for the change in our policy. While the statute does not specifically require EPA to redistribute exempted volumes in this manner, we believe that this is a reasonable interpretation of our authority under *Chevron* v. *NRDC.*[156] Indeed, making this projection harmonizes various statutory provisions. The statute authorizes small refineries to petition for and EPA to grant an exemption based on disproportionate economic hardship ''at any time,''[157] while also directing EPA to promulgate standards by November 30 of the prior year to ''ensure[]'' that the renewable fuel volumes are met.[158] In other words, small refineries may seek and EPA may grant hardship exemptions at any time, including after the percentage standards are established. Meanwhile, EPA may account for a projection of these exemptions in the annual rule to ''ensure'' the renewable fuel volumes.[159]

In more concrete terms, should EPA grant SREs without accounting for them in the percentage formula, those exemptions would effectively reduce the volumes of renewable fuel required by the RFS program, potentially impacting renewable fuel use in the U.S.[160] By contrast, under our new approach, the percentage standard for each category of renewable fuel would increase to account for a projection of the exempted volume. These higher percentage standards would have the effect of ensuring that the required volumes of renewable fuel are met when small refineries are granted exemptions from their 2020 obligations after the issuance of the final rule, provided EPA's projection of the exempted volume is accurate.

This new approach entails a change in policy.[161] We previously did not account for exemptions granted after the annual rule, and at times we even suggested that doing so was improper.[162] We believe our changed approach is appropriate and largely avoids the problems we previously identified. First, we had previously stated that ''the Act is best interpreted to require issuance of a single annual standard in November that is applicable in the following calendar year, thereby providing advance notice and certainty to obligated parties regarding their

[150] *See, e.g.,* 84 FR 36797 (July 29, 2019).

[151] The percentage standards for 2018 were established in December 2017 (82 FR 58486, December 12, 2017).

[152] See, *e.g.,* comments from the Renewable Fuels Association (Docket Item No. EPA–HQ–OAR–2019–0136–0281).

[153] See, *e.g.,* comments from Growth Energy (Docket Item No. EPA–HQ–OAR–2019–0136–0312).

[154] ''Petition for Reconsideration of 40 CFR 80.1405(c), EPA Docket No. EPA–HQ–OAR–2005–0161, promulgated in 75 FR 14670 (Mar. 26, 2010); Petition for Reconsideration of Periodic Reviews for the Renewable Fuel Standard Program, 82 FR 58364 (Dec. 12, 2017)'' (June 4, 2018).

[155] See 84 FR 57680 & n.13 (explaining in greater detail the basis for EPA's reconsideration of this issue).

[156] *Chevron, U.S.A., Inc.* v. *Nat. Res. Def. Council, Inc.,* 467 U.S. 837, 842–44 (1984).

[157] CAA section 211(o)(9)(B)(i).

[158] CAA section 211(o)(3)(B)(i); see also CAA section 211(o)(2)(A)(i), (2)(A)(iii)(I), CAA section 301(a). This projection, moreover, is hardly unique in the RFS program as Congress required numerous projections in the implementation of the program. *See, e.g.,* CAA section 211(o)(7)(D) (projection of the volume of cellulosic biofuel production); (o)(3)(A) (projection of the volumes of transportation fuel, biomass-based diesel, and cellulosic biofuel).

[159] See CAA section 211(o)(2)(A)(i), (2)(A)(iii)(I), (3)(B)(i); see also CAA section 301(a).

[160] We note that there are other factors, besides the RFS program, that affect renewable fuel use. See, *e.g.,* ''Endangered Species Act No Effect Finding for the 2020 Final Rule,'' available in the docket for this action.

[161] *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009).

[162] See 78 FR 49825–49826; 77 FR 1340; EPA's Br., Doc No. 1757157, D.C. Cir. No. 17–1258, *AFPM* v. *EPA* (Oct. 25, 2018) (''EPA Br. in *AFPM*'').

regulatory requirements. Periodic revisions to the standards to reflect waivers issued to small refineries or refiners would be inconsistent with the statutory text, and would introduce an undesirable level of uncertainty for obligated parties.'' [163] Today's changes are consistent with these views. By projecting exempted volumes in advance of issuing annual standards, we can issue a single set of standards for each year without the need for periodic revisions and the associated uncertainty for obligated parties.

Second, we also had previously noted that ''Congress allowed for some imprecision to exist in the actual volumes of renewable fuel that are consumed as a result of the percentage standards that we set each November. . . .'' [164] Relatedly, we had noted the inherent difficulties of projecting exempted small refinery volumes.[165] We still agree that Congress allowed for some imprecision to exist in the actual required volumes of renewable fuel, and that projecting future exempted volumes involves some uncertainty.

But several recent developments persuade us to reach a different conclusion in accounting for a projection of exempted small refinery volumes. For one, we are projecting the *aggregate* exempted volume in 2020. We thus need not wrestle with the difficulties of predicting precisely which refineries will apply or the economic circumstances of specific refineries in 2020. We only need to estimate the total exempted volume. Moreover, we have the benefit of additional experience administering the RFS program and knowledge of the relatively high levels of exempted volumes in recent years, where exempted volumes associated with SREs granted after the annual percentage standards were established have constituted a significant portion of the total volume of obligated fuel, resulting in fewer RINs being used to comply with the RFS standards.

Finally, in recent annual rulemakings, EPA has not articulated its prospective policy to adjudicating SRE petitions for those compliance years. For instance, in the 2018 final rule, we did not state our policy to adjudicating 2018 SRE petitions. Instead we articulated that policy in a separate memorandum issued after the annual rule.[166] Since EPA's policy to adjudicating SRE petitions affects the exempted volume, not having established this policy at the time of the annual rule made it very challenging to project the exempted volume. In today's rule, by contrast, we are articulating our prospective policy to adjudicating SRE petitions (beginning with the 2019 SRE petitions and including the 2020 SRE petitions) concurrently with issuing this final rule. Doing so augments our ability to reasonably project the exempted volume for 2020. We explain this policy further below.

2. Projecting the Exempted Volume of Gasoline and Diesel in 2020

As already noted, we acknowledge the inherent uncertainty in projecting the exempted volume. More concretely, an imprecise projection has consequences on the actual required volume of renewable fuel. If we over-project the volume of gasoline and diesel produced by exempt small refineries in 2020, the actual required volumes of renewable fuel will be higher than the volumes used in calculating the percentage standards. By contrast, if we under-project the volume of exempted gasoline and diesel, the actual required volumes of renewable fuel will be lower than the volumes used in calculating the percentage standards. If we project the volume correctly, we will ensure that, as far as exempted small refinery volumes are concerned, the actual required volume is equal to the volume established in this final rule.[167]

In selecting the methodology for projecting the exempted volume, we thus aim to make a neutral projection of exemptions based on the information now before us. As proposed, we are finalizing a projection methodology based on a 2016–18 annual average of exempted volumes had EPA strictly followed DOE recommendations in those years, including by granting 50 percent relief where DOE recommended 50 percent relief. We explain why we do so below, beginning with our decision to base the projection on DOE recommendations and then our decision to use a 2016–18 annual average. Finally, we state the projected exempt volumes of gasoline and diesel based on this approach and the corresponding number of RINs.

First, we choose to base the projection of exempted volumes on DOE's recommendations for two reasons, one prospective and one retrospective. Prospectively, this is our general approach to adjudicating SRE petitions going forward, beginning with 2019 SRE petitions and including 2020 SRE petitions. Our approach to evaluating SREs going forward is to follow DOE's recommendations, including granting partial (*i.e.,* 50 percent) exemptions, where appropriate. The statute authorizes EPA to evaluate petitions for SREs considering DOE's study, recommendation, and other economic factors. While final decisions on 2020 SREs must await EPA's receipt and adjudication of those petitions, we generally have the statutory authority to issue a final decision consistent with DOE's recommendation.[168] This reading of the statute is consistent with congressional guidance to DOE [169] and EPA.[170]

We acknowledge that on August 9, 2019, we took final agency action on 36 then-pending small refinery petitions for the 2018 compliance year (''August 9 Memorandum Decision''),[171] and stated that the ''best interpretation'' of the statute was that EPA should either grant or deny petitions in full, and ''not

[163] 77 FR 1340.

[164] 77 FR 1340 (January 9, 2012).

[165] EPA Br. in *AFPM* 72–77.

[166] ''Decision on 2018 Small Refinery Exemption Petitions,'' Memorandum from Anne Idsal, Acting Assistant Administrator, Office of Air and Radiation to Sarah Dunham, Director, Office of Transportation and Air Quality. August 9, 2019.

[167] The actual required volume is subject to other uncertainties besides small refinery exemptions, such as unexpected changes in gasoline and diesel use.

[168] Other factors, such as judicial resolution of pending decisions or subsequent Congressional direction, could potentially affect EPA's SRE policy going forward.

[169] *See* Consolidated Appropriations Act, 2016, Public Law 114–113 (2015), Explanatory Statement to Senate amendment to H.R. 2029 Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2016, Division D—Energy and Water Development and Related Agencies Appropriations Act, 2016, *available at https://docs.house.gov/meetings/RU/RU00/20151216/104298/HMTG-114-RU00-20151216-SD005.pdf.* Congress in this Statement directed DOE, under certain circumstances, ''to recommend to the EPA Administrator a 50 percent waiver of RFS requirements for the [small refinery] petitioner.'' *Id.* at 35. Consistent with that guidance and since 2014, DOE has recommended 50 percent exemptions as it deemed appropriate.

[170] S. Rep. 114–281. Congress in this Report provided that ''[w]hen making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations.'' See also Consolidated Appropriations Act, 2019, Public Law No. 116–6 (2019), H. Rep. 116–9 at 741, continuing the directive contained in Senate Report 114–281. See also Sen. Rep. 116–123, Department of the Interior, Environment, and Related Agencies Appropriations Bill, 2020, Report Accompanying Sen. 2580, at 87–88 (Sept. 26, 2019) (again ''continu[ing] the directive contained in Senate Report 114–281 related to small refinery relief''), *available at https://www.congress.gov/116/crpt/srpt123/CRPT-116srpt123.pdf.* This guidance, read together with that discussed in the previous footnote, supports the interpretation that DOE has authority to recommend partial exemptions for particular small refineries, and that EPA has discretion to follow that recommendation and grant a partial exemption.

[171] ''Decision on 2018 Small Refinery Exemption Petitions,'' Memorandum from Anne Idsal, Acting Assistant Administrator, Office of Air and Radiation to Sarah Dunham, Director, Office of Transportation and Air Quality. August 9, 2019 (''August 9 Memorandum Decision'').

grant partial relief.'' Specifically, we observed that the statute provided for exemptions as an ''extension of the exemption under subparagraph (A)'', where subparagraph (A) stated that the RFS program requirements ''shall not apply to small refineries under calendar year 2011.'' [172] We had implemented the ''subparagraph (A)'' pre-2011 exemption as a full exemption for all qualifying small refineries. Consistent with this interpretation, we concluded that ''when Congress authorized the Administrator to provide an 'extension' of that exemption for the reason of [disproportionate economic hardship], Congress intended that extension to be a full, and not partial, exemption.'' [173]

We believe, however, that this is not the only reasonable way to adjudicate exemption petitions. Had Congress spoken directly to the issue of the amount of relief EPA could provide to small refineries, EPA would be bound by that directive. However, the statute is silent with respect to EPA's authority to issue partial exemptions. Nothing in the statute directly addresses this issue. No statutory language exists characterizing the scope of an exemption; there are no terms employed such as ''partial'' or ''full,'' or ''50%'' or ''100%.'' Moreover, nothing in the statute obligates EPA to provide full relief where we find that only partial relief is warranted.

We think there is another reasonable reading of this provision of the statute: EPA may issue partial exemptions. Notably, EPA may determine that only partial relief is warranted based on a particular small refinery's circumstances. In that case, it is reasonable for the level of relief that EPA grants to reflect that determination. For purposes of making the projection of the aggregate exempted volume of gasoline and diesel in 2020, and going forward, we are adopting this interpretation of the statute,[174] and thereby depart from the interpretation taken in the August 9 Memorandum Decision, under which EPA ''shall either grant or deny petitions for small refinery hardship in full, and not grant partial relief.'' [175] We adopt this new approach for several reasons, consistent with *FCC* v. *Fox Television Stations, Inc.*[176]

As already noted, this new policy would allow EPA to ensure that the level of relief that it grants appropriately reflects the particular small refinery's disproportionate economic hardship. This allows EPA to more precisely calibrate its RFS policy, and to strike an appropriate balance between furthering the production and use of renewable fuels while granting relief to small refineries that meet the statutory criteria. This balance, moreover, is also appropriate in light of the above-cited recent Congressional direction.[177]

Even independent of our prospective SRE policy, we believe this approach is a reasonable estimate of the aggregate exempted volume based on a retrospective review of EPA's past SRE policies. In prior years, EPA has taken different approaches in evaluating small refinery petitions. As noted above, in the August 9 Memorandum Decision, we granted full exemptions to petitioners where DOE either recommended full or 50 percent relief. That is, in cases where DOE found a small refinery experienced either disproportionate impacts or viability impairment, EPA found the small refinery experienced disproportionate economic hardship and granted a full exemption. By contrast, in earlier years of the program, we denied petitions and provided no exemption in certain cases where DOE recommended a 50 percent exemption, finding that disproportionate economic hardship existed only where the small refinery experienced both disproportionate impacts and viability impairment.[178] Our approach to projection, then, takes a middle ground between these prior approaches, and is a reasonable estimate of the aggregate exempted volume in 2020.

We now turn to our decision to use the 2016–18 annual average under this methodology. As we have not yet received SRE petitions for 2020, we must estimate the aggregate amount of DOE recommended relief for that year. To do so, it is instructive to look back at what the exempted volumes of gasoline and diesel in previous years would have been had EPA followed DOE's recommendations, including granting partial exemptions. These volumes, along with the Renewable Volume Obligation (RVO) that would have been exempted, are shown in Table VII.B–1.

TABLE VII.B–1—ESTIMATED EXEMPTED VOLUME OF GASOLINE AND DIESEL AND ESTIMATED RVO EXEMPTED BY COMPLIANCE YEAR FOLLOWING DOE'S RECOMMENDATIONS

Compliance year	Estimated exempted volume of gasoline (million gallons)	Estimated exempted volume of diesel (million gallons)	Estimated RVO exempted (million RINs)
2016	2,450	1,930	440
2017	5,650	3,870	1020
2018	4,620	3,270	840

As demonstrated in Table VII.B–1, the volume of gasoline and diesel that would have been exempted if EPA had followed DOE's recommendations has varied significantly in previous years.[179] This is because there are many factors that affect the number of SREs that are granted in a given year and the aggregate exempted volume. We believe that it is appropriate to use an average volume of the gasoline and diesel that would have been exempted over a three-year period as our projection of gasoline and diesel that will be exempted in 2020, rather than the volume of gasoline and diesel that would have been exempted in any single year. This approach averages out the effects of unique events or market circumstances that occurred in individual past years that may or may not occur in 2020. Given that the last year for which we have data on small refinery exemptions is 2018,[180] we take the average exempted volume from 2016–18.

The average volume of these fuels that would have been exempted in 2016–18

[172] CAA section 211(o)(9)(B), (o)(9)(A).

[173] August 9 Memorandum Decision at 2.

[174] *See Chevron,* 467 U.S. at 842–44.

[175] August 9 Memorandum Decision at 2.

[176] See generally *FCC,* 556 U.S. at 515.

[177] *See supra* notes 20 and 21.

[178] *See, e.g., Hermes Consol., LLC* v. *EPA,* 787 F.3d 568, 575 (D.C. Cir. 2015).

[179] Information about the number of SREs granted and the volume of RINs not required to be retired as a result of those exemptions can be found at: *https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rfs-small-refinery-exemptions.*

[180] To date, we have adjudicated all 2018 small refinery exemption petitions submitted to us. EPA has not yet adjudicated any small refinery exemptions for the 2019 or 2020 compliance years.

if EPA had followed DOE's recommendations is 4,240 and 3,020 million gallons, for gasoline and diesel fuel, respectively. We use these values for GE_i and DE_i, respectively, in calculating the percentage standards for each of the renewable fuel types. We also note that these exempted volumes would have resulted in an average reduction to the RVO of approximately 770 million RINs.

C. Final Standards

The formulas in 40 CFR 80.1405 for the calculation of the percentage standards require the specification of a total of 14 variables covering factors such as the renewable fuel volume requirements, projected gasoline and diesel demand for all states and territories where the RFS program applies, renewable fuels projected by EIA to be included in the gasoline and diesel demand, and projected gasoline and diesel volumes from exempt small refineries. The values of all the variables used for this final rule are shown in Table VII.C–1 for the applicable 2020 standards.[181]

TABLE VII.C–1—VALUES FOR TERMS IN CALCULATION OF THE FINAL 2020 STANDARDS[182]

(billion gallons)

Term	Description	Value for 2020 standards
RFV_{CB}	Required volume of cellulosic biofuel	0.59
RFV_{BBD}	Required volume of biomass-based diesel[a]	2.43
RFV_{AB}	Required volume of advanced biofuel	5.09
RFV_{RF}	Required volume of renewable fuel	20.09
G	Projected volume of gasoline	142.68
D	Projected volume of diesel	55.30
RG	Projected volume of renewables in gasoline	14.42
RD	Projected volume of renewables in diesel	2.48
GS	Projected volume of gasoline for opt-in areas	0
RGS	Projected volume of renewables in gasoline for opt-in areas	0
DS	Projected volume of diesel for opt-in areas	0
RDS	Projected volume of renewables in diesel for opt-in areas	0
GE	Projected volume of gasoline for exempt small refineries	4.24
DE	Projected volume of diesel for exempt small refineries	3.02

[a] The BBD volume used in the formula represents physical gallons. The formula contains a 1.5 multiplier to convert this physical volume to ethanol-equivalent volume.

Projected volumes of gasoline and diesel, and the renewable fuels contained within them, were provided by EIA in a letter to EPA that is required under the statute, and represent consumption values from the October 2019 version of EIA's Short-Term Energy Outlook.[183] An estimate of fuel consumed in Alaska, derived from the June 28, 2019 release of EIA's State Energy Data System (SEDS) and based on the 2017 volumes contained therein, was subtracted from the nationwide volumes.

Using the volumes shown in Table VII.C–1, we have calculated the final percentage standards for 2020 as shown in Table VII.C–2.

TABLE VII.C–2—FINAL PERCENTAGE STANDARDS FOR 2020

Cellulosic biofuel	0.34%
Biomass-based diesel	[a] 2.10%
Advanced biofuel	2.93
Renewable fuel	11.56%

[a] Based on the ethanol-equivalent volume of BBD.

VIII. Administrative Actions

A. Assessment of the Domestic Aggregate Compliance Approach

The RFS regulations specify an ''aggregate compliance'' approach for demonstrating that planted crops and crop residue from the U.S. complies with the ''renewable biomass'' requirements that address lands from which qualifying feedstocks may be harvested.[184] In the 2010 RFS2 rulemaking, EPA established a baseline number of acres for U.S. agricultural land in 2007 (the year of EISA enactment) and determined that as long as this baseline number of acres was not exceeded, it was unlikely that new land outside of the 2007 baseline would be devoted to crop production based on historical trends and economic considerations. The regulations specify, therefore, that renewable fuel producers using planted crops or crop residue from the U.S. as feedstock in renewable fuel production need not undertake individual recordkeeping and reporting related to documenting that their feedstocks come from qualifying lands, unless EPA determines through one of its annual evaluations that the 2007 baseline acreage of 402 million acres agricultural land has been exceeded.

In the 2010 RFS2 rulemaking, EPA committed to make an annual finding concerning whether the 2007 baseline amount of U.S. agricultural land has been exceeded in a given year. If the baseline is found to have been exceeded, then producers using U.S. planted crops and crop residue as feedstocks for renewable fuel production would be required to comply with individual recordkeeping and reporting requirements to verify

[181] To determine the 49-state values for gasoline and diesel, the amount of these fuels used in Alaska is subtracted from the totals provided by EIA because petroleum based fuels used in Alaska do not incur RFS obligations. The Alaska fractions are determined from the June 28, 2019 EIA State Energy Data System (SEDS), Energy Consumption Estimates.

[182] See ''Calculation of final % standards for 2020'' in docket EPA–HQ–OAR–2019–0136.

[183] ''EIA letter to EPA with 2020 volume projections 10–9–2019,'' available in docket EPA–HQ–OAR–2019–0136.

[184] 40 CFR 80.1454(g). EPA has applied this ''aggregate compliance'' approach for the United States in annual RFS rulemakings since establishing it in the 2010 RFS2 rule. See 75 FR 14701–04. In this annual rulemaking, we have not reexamined or reopened this policy, including the regulations at 80.1454(g) and 80.1457. Similarly, as further explained below, we have applied this approach for Canada since our approval of Canada's petition to use aggregate compliance in 2011. In this rulemaking, we have also not reexamined or reopened our decision on that petition. Any comments on these issues are beyond the scope of this rulemaking.

that their feedstocks are renewable biomass.

Based on data provided by the USDA Farm Service Agency (FSA) and Natural Resources Conservation Service (NRCS), we have estimated that U.S. agricultural land reached approximately 379.8 million acres in 2019 and thus did not exceed the 2007 baseline acreage of 402 million acres. The USDA data used to make this derivation can be found in the docket to this rule.[185]

B. Assessment of the Canadian Aggregate Compliance Approach

The RFS regulations specify a petition process through which EPA may approve the use of an aggregate compliance approach for planted crops and crop residue from foreign countries.[186] On September 29, 2011, EPA approved such a petition from the Government of Canada.[187]

The total agricultural land in Canada in 2019 is estimated at 118.1 million acres. This total agricultural land area includes 95.9 million acres of cropland and summer fallow, 12.4 million acres of pastureland and 9.8 million acres of agricultural land under conservation practices. This acreage estimate is based on the same methodology used to set the 2007 baseline acreage for Canadian agricultural land in EPA's response to Canada's petition. The data used to make this calculation can be found in the docket to this rule. This acreage does not exceed the 2007 baseline acreage of 122.1 million acres.

IX. Amendments to the RFS and Fuels Program Regulations

In implementing the RFS program, we have identified several changes to the program that will assist with implementation in future years. These regulatory changes include both revisions we proposed in the July 29 proposal—clarification of diesel RVO calculations, pathway petition conditions, a biodiesel esterification pretreatment pathway, distillers corn oil and distillers sorghum oil pathways, and renewable fuel exporter provisions—and certain provisions of the 2016 REGS rule proposal that we are finalizing here.[188] These regulatory changes are described in this section. Comments on these regulatory revisions from both the 2016 REGS and 2020 RVO proposals, as well as EPA's responses, are contained in the response to comments (RTC) document in the docket for this action.[189]

A. Clarification of Diesel RVO Calculations

1. Overview

We are finalizing certain provisions regarding clarification of diesel RVO calculations. Specifically, we are finalizing the ''primary approach'' proposed in the July 29 proposal, with some modifications based on comments received. We are not finalizing either of the two alternative approaches presented in the July 29 proposal, after consideration of negative comments on these two approaches.

Historically, home heating oil (HO) and diesel fuel were virtually indistinguishable because both contained the same distillation range of hydrocarbons and high level of sulfur. EPA's diesel fuel sulfur regulations resulted in a distinction in the marketplace beginning in the 1990s and concluding in 2010 with the phase-in of the ultra-low sulfur diesel regulations for diesel fuel used in motor vehicles and motor vehicle engines (MV diesel fuel). Similarly, beginning in 2004, EPA promulgated requirements for diesel fuel used in nonroad, locomotive, and marine vehicles and engines (NRLM diesel fuel) that concluded phasing in at the end of 2014. Thus, all diesel fuel for use in motor vehicles and motor vehicle engines, and nonroad, locomotive, and marine vehicles and engines, is currently required to meet a 15 ppm sulfur per-gallon standard, under regulations set out in 40 CFR part 80, subpart I[190] (For purposes of subpart I, such diesel fuel is also now collectively known as MVNRLM diesel fuel). We did not set standards for HO under subpart I, with the result that it remained high in sulfur content and cost less to produce than MVNRLM diesel fuel. As such, subpart I also requires all parties in the distribution system to ensure that diesel fuel containing 15 ppm sulfur or less (referred to as 15 ppm diesel fuel, ultra-low sulfur diesel fuel, or ULSD) remains segregated from higher sulfur fuels and to take measures to prevent sulfur contamination of ULSD.[191]

The RFS regulations, which place an RVO on the production and importation of diesel transportation fuel, but not on the production or importation of HO, were promulgated in 2010 and, similar to subpart I regulations, made the same presumption that HO and MVNRLM diesel fuel would be segregated. The RFS regulations did not anticipate that these fuels would become indistinguishable, have the same value in the marketplace (apart from their RFS compliance cost), and be commingled in the fuel distribution system. For example, 40 CFR 80.1407 set forth requirements for obligated parties to include all products meeting the definition of MVNRLM diesel fuel, collectively called ''diesel fuel,'' at 40 CFR 80.2(qqq) that are produced or imported during a compliance period in the volume used to calculate their RVOs unless the diesel fuel is not transportation fuel.[192] Under definitions of MV and NRLM diesel fuel, these products include diesel fuel that is ''made available'' for use in motor vehicles and motor vehicle engines, and nonroad, locomotive, or marine vehicles and engines.[193]

When the RFS regulations were promulgated in 2010, the lower production cost of HO relative to diesel fuel provided economic incentive for refiners, pipelines, and terminals to produce and distribute HO separately from diesel fuel. After we promulgated the RFS regulations, however, many states began implementing programs designed to reduce the sulfur content of HO to 15 ppm or less (15 ppm HO). Currently, the majority of HO is required to meet a 15 ppm sulfur standard under numerous state and city programs in the Northeast and Mid-Atlantic,[194] making HO once again indistinguishable from ULSD and of the same economic value as MVNRLM

[185] USDA also provided EPA with 2019 data from the discontinued Grassland Reserve Program (GRP) and Wetlands Reserve Program (WRP). Given this data, EPA estimated the total U.S. agricultural land both including and omitting the GRP and WRP acreage. In 2019, combined land under GRP and WRP totaled 2,974,573 acres. Subtracting the GRP, WRP, and Agriculture Conservation Easement Program acreage yields an estimate of 376,853,632 acres or approximately 376.9 million total acres of U.S. agricultural land in 2019. Omitting the GRP and WRP data yields approximately 379.8 million acres of U.S. agricultural land in 2019.

[186] 40 CFR 80.1457.

[187] See ''EPA Decision on Canadian Aggregate Compliance Approach Petition'' available in docket EPA–HQ–OAR–2019–0136.

[188] See 81 FR 80828 (November 16, 2016).

[189] All comments submitted on the REGS proposal can be found in Docket No. EPA–HQ–OAR–2016–0041. Specific comments relevant to the provisions that were under consideration for finalization in this action have also been added to the docket for this action (Docket Item No. EPA–HQ–OAR–2019–0136–0002). We are only responding to comments from the REGS proposal on the provisions that are being finalized in this action. Comments on the remaining provisions in the REGS proposal, as well as those on provisions listed in the July 29 proposal but that are not being finalized here, remain under consideration. We are not responding to them in this action.

[190] Subpart I includes an exception to this requirement that allows diesel fuel used in locomotive or marine engines to meet a 500 ppm sulfur standard if the fuel is produced from transmix processors and distributed under an approved compliance plan.

[191] See, *e.g.,* 40 CFR 80.610(g).

[192] See 40 CFR 80.1407(e) and (f).

[193] See 40 CFR 80.2(y) and (nnn).

[194] Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, the District of Columbia, and the city of Philadelphia.

diesel fuel.[195] Further, in 2015, additional regulations became effective that required marine diesel fuel used in Emissions Control Areas (ECA marine fuel) to contain 1,000 ppm sulfur or less.[196] In response, many companies have opted to produce and distribute ECA marine fuel containing 15 ppm sulfur or less (15 ppm ECA marine fuel) fungibly with 15 ppm diesel fuel, rather than invest in infrastructure to distribute and segregate higher-sulfur ECA marine fuel. Since HO, ECA marine fuel, and other non-transportation fuels that meet a 15 ppm sulfur standard are essentially identical in the marketplace, we believe that some parties in the fuel distribution system are distributing them together—*i.e.,* commingling MVNRLM diesel fuel with 15 ppm HO and 15 ppm ECA marine fuel.

The regulations in 40 CFR part 80, subpart I, do not prohibit parties from commingling MVNRLM diesel fuel with other 15 ppm distillate fuel (*i.e.,* distillate fuel that contains 15 ppm sulfur or less) that is designated for non-transportation purposes. However, commingled fuel must meet all of the applicable requirements in subpart I because the resulting fuel is ''made available'' for use in motor vehicles, or nonroad, locomotive, or marine vehicles and engines.[197] This means that any refiner or importer that produces or imports 15 ppm distillate fuel that is designated for non-transportation purposes and is commingled with MVNRLM diesel fuel must also certify the fuel as meeting the sampling, testing, reporting, and recordkeeping requirements in subpart I.[198]

Although this approach does not create compliance issues relating to subpart I requirements, at proposal we explained that we were concerned that some obligated parties (*e.g.,* refiners and importers) under the RFS program may be calculating RVOs without accounting for all of their 15 ppm distillate fuel that is ultimately sold for use as MVNRLM diesel fuel. Specifically, obligated parties may be excluding 15 ppm HO or 15 ppm ECA marine fuel from their RVO calculations, and downstream parties may be re-designating this fuel as MVNRLM diesel fuel and not incurring an RVO.[199]

We also explained that with the convergence of the MVNRLM diesel fuel, HO, and ECA marine fuel sulfur standards, some stakeholders had expressed confusion to EPA on accounting for 15 ppm distillate fuel that leaves the obligated party's gate designated as HO, ECA marine fuel, or other non-transportation fuels, but is subsequently re-designated as either MVNRLM diesel fuel or ultimately used as MVNRLM diesel fuel by a downstream entity. Specifically, some obligated parties had asked whether they are required to add re-designated MVNRLM diesel fuel back to their RVO calculations while some downstream entities had asked whether they are required to incur an RVO for MVNRLM diesel fuel they re-designate from non-transportation fuel to transportation fuel.

We further explained in the July 29 proposal that we intended for any diesel fuel not used as transportation fuel, such as HO or ECA marine fuel, to be excluded from RVO calculations in keeping with statutory requirements.[200] We also intended for all diesel fuel ultimately used as transportation fuel to incur an RVO, even 15 ppm distillate fuel that is initially designated as non-transportation fuel and subsequently re-designated as transportation fuel by downstream parties.[201] Thus, existing regulations allow downstream parties who are registered as refiners and who comply with all sampling, testing, recordkeeping, and other refiner requirements to ''produce'' MVNRLM diesel fuel from HO, ECA marine fuel, and other non-transportation fuels. These refiners incur RVOs for all MVNRLM diesel fuel that they ''produce'' from the non-transportation fuel. However, we believe that stakeholder confusion over who should account for re-designated fuel in their RVO may be causing the omission of some re-designated MVNRLM diesel fuel from RVO calculations altogether. Therefore, we are revising the RFS regulations to more clearly specify how volumes of re-designated MVNRLM diesel fuel are accounted for in obligated parties' RVO calculations in order to ensure that the RFS mandates continue to be met.

Consistent with our proposal, we are clarifying the requirement for refiners and importers to include distillate fuel in their RVO compliance calculations and providing exceptions for the following three additional categories of fuel:

- Distillate fuel, such as HO or ECA marine fuel, with a sulfur content greater than 15 ppm that is clearly designated for a use other than transportation fuel.
- Distillate fuel that meets the 15 ppm sulfur standard, that is designated for non-transportation use, and that remains completely segregated from MVNRLM diesel fuel from the point of production through to the point of use for a non-transportation purpose.
- Distillate fuel that meets the 15 ppm diesel sulfur standard, that is ultimately used for non-transportation purposes, and that does not remain completely segregated from MVNRLM diesel fuel.

As also explained in the July 29 proposal, since the first two categories of distillate fuel above are completely segregated from MVNRLM diesel fuel, we do not believe that they would be used as transportation fuel and are therefore not finalizing any additional requirements for these fuels to be excluded from a refiner or importer's RVO compliance calculations. However, consistent with the July 29 proposal, and as described below, because the third category of distillate fuel is not completely segregated and is indistinguishable from MVNRLM diesel fuel, we are finalizing additional requirements for this type of distillate fuel to be excluded from a refiner or importer's RVO compliance calculations.

2. Downstream Re-Designation of Certified Non-Transportation 15 ppm Distillate Fuel to MVNRLM Diesel Fuel

Consistent with the July 29 proposal, and in order to allow refiners and importers to exclude distillate fuel that that meets the 15 ppm diesel sulfur standard, is ultimately used for non-transportation purposes, and does not remain completely segregated from MVNRLM diesel fuel from their RVO calculations, we are establishing a new category of distillate fuel: Certified non-transportation 15 ppm distillate fuel (''certified NTDF''). We are defining certified NTDF as distillate fuel that meets all of the following requirements:

- Fuel that is certified as complying with the 15 ppm sulfur standard, cetane/aromatics standard, and all applicable sampling, testing, and

[195] See the New England Fuel Institute's (NEFI) ''State Sulfur & Bioheat Requirements for No. 2 Heating Oil in the Northeast & Mid-Atlantic States,'' available in the docket for this action.

[196] See 40 CFR 80.610(e)(6). ECA marine fuel is not transportation fuel under the RFS regulations. Therefore, refiners and importers do not incur an RVO for ECA marine fuel that they produce or import.

[197] See 40 CFR 80.2(y) and (nnn).

[198] We have received requests from a number of regulated parties asking the agency to amend the fuels regulations to allow parties to more easily mix and fungibly ship HO, ECA marine fuel, and MVNRLM fuel that meet the 15 ppm sulfur standard. In a separate action, we intend to propose additional amendments that would significantly streamline these regulations (see RIN 2060–AT31 in EPA's Regulatory Agenda).

[199] A similar situation exists with respect to #1 diesel fuel, which is used/blended in the winter due to cold temperature constraints and its often-identical counterparts of kerosene and jet fuel.

[200] See 40 CFR 80.1407(f)(8).

[201] With the other exceptions listed in 40 CFR 80.1407(f).

recordkeeping requirements of 40 CFR part 80, subpart I.

• Fuel that is designated on the product transfer document as 15 ppm HO, 15 ppm ECA marine fuel, or other non-transportation fuel (*e.g.,* jet fuel, kerosene, No. 4 fuel, or distillate fuel for export only) with a notation that the fuel is ''15 ppm sulfur (maximum) certified NTDF—This fuel is designated for non-transportation use.'' with no designation as MVNRLM diesel fuel.

Some commenters noted that our proposed PTD language stating, ''This fuel meets all MVNRLM diesel fuel standards'' could potentially cause confusion as to whether the fuel qualified as MVNRLM diesel fuel or not. We are therefore finalizing PTD language similar to that suggested by commenters, which avoids any reference to MVNRLM diesel fuel.

In order to prevent refiners and importers from circumventing the requirement to incur an RVO for all transportation fuel by simply designating transportation fuel as non-transportation fuel, we had proposed that refiners or importers must have a reasonable expectation that their NTDF will be used as HO, ECA marine fuel, or another non-transportation purpose in order to exclude it from their RVO calculations. We proposed that refiners or importers would need to meet the following three criteria to demonstrate they have a reasonable expectation that NTDF will not be used as transportation fuel:

• The refiner or importer supplies areas that use HO, ECA marine fuel, or 15 ppm distillate fuel for non-transportation purposes in the quantities being supplied by the refiner or importer.

• The refiner or importer has entered into a contractual arrangement that prohibits the buyer from selling the fuel as MVNRLM diesel fuel.

• The volume of fuel designated as HO, ECA marine fuel, or other non-transportation purposes is consistent with the refiner's or importer's past practices or reflect changed market conditions.

We also noted that EPA may consider any other relevant information in assessing whether a refiner or importer has a reasonable expectation that the fuel was used for non-transportation purposes.

We received comments indicating that it would be complex and disruptive to require refiners and importers to enter into contractual arrangements that prohibit the buyers from selling NTDF as MVNRLM diesel fuel. We agree with these comments and have eliminated this criterion. In light of these comments and in order to simplify the proposed regulations, we have also consolidated the first and third criterion into one sentence that states ''[t]o establish a reasonable expectation that the fuel will be used for non-transportation purposes, a refiner or importer must, at a minimum, be able to demonstrate that they supply areas that use heating oil, ECA marine fuel, or 15 ppm distillate fuel for non-transportation purposes in quantities that are consistent with past practices or changed circumstances.'' With these changes, we are finalizing the requirement that refiners or importers may only exclude NTDF from their compliance calculations if they have a reasonable expectation that the fuel will be used for non-transportation purposes.

Some commenters also noted that there is normally a noticeable price difference between fuel sold for transportation fuel and non-transportation fuel, and that this price difference is a relevant consideration for determining if the fuel was intended to be sold as transportation fuel or non-transportation fuel. We agree with this comment and the final rule explicitly identifies price as relevant information that EPA may consider in evaluating whether a refiner or importer had a reasonable expectation that the fuel will be sold for non-transportation purposes.

As previously noted, our intent is to ensure that all fuel ultimately used as MVNRLM diesel fuel incurs an RVO. In order to achieve this goal, we are also finalizing requirements that will allow parties in the fuel distribution system (*e.g.,* downstream of the original refinery or import facility) to sell certified NTDF as MVNRLM diesel fuel without incurring an RVO if the total volume of MVNRLM diesel fuel delivered during each compliance period does not exceed the amount of MVNRLM diesel fuel received during that compliance period. Any party who re-designates certified NTDF as MVNRLM diesel fuel is a refiner for purposes of the RFS program and is therefore required to register as a refiner. They will also be required to calculate whether the volume of MVNRLM diesel fuel that they deliver exceeds the volume of MVNRLM diesel fuel that they receive, during an annual compliance period. If a downstream party delivers a volume of MVNRLM diesel fuel that exceeds the volume of MVNRLM diesel fuel they received during a compliance period, they are required to treat the difference as diesel fuel that they ''produced'' and incur an RVO on this volume. This will enable proper accounting for the aggregate volume of non-transportation fuel that is re-designated as MVNRLM diesel fuel under the RFS program. This one-sided test allows MVNRLM diesel fuel to be sold as HO or ECA marine fuel but prevents the erosion of the renewable fuel mandate. These parties will also be subject to recordkeeping requirements to ensure the enforceability of this program.

We received several comments recommending modifications and clarifications to the proposed volume balance provisions, and are finalizing the following changes in response to these comments:

• We are adding an equation to the regulations that provides specific guidance on how to calculate the volume balance. This is in response to a comment suggesting that EPA should include a balance equation for diesel fuel, similar to the heating oil balance in 40 CFR 80.599(c)(3) and (4). The new balance equation accounts for changes in diesel inventory, in addition to diesel volumes in and out.

• We are clarifying that the volume balance requirement applies to each facility that is registered as a diesel refinery. This is in response to comments suggesting that EPA clarify whether the volume balances were applicable on a facility basis or an aggregated basis. Our intent was that the balances apply on a facility basis and have clarified this in the final regulations.

One commenter also recommended that the new provisions for redesignation of certified NTDF to MVNRLM diesel fuel should apply to the owner of the certified NTDF at the time of redesignation and not the custody holder of the certified NTDF, or the original refiner of the NTDF. We agree with this recommendation and have included final rule requirements that reflect this recommendation. Since the owner of certified NTDF would be responsible for making any decisions regarding redesignation of NTDF to MVNRLM diesel fuel, we intend for the owner of the certified NTDF to meet the regulatory requirements associated with redesignation, such as registration, reporting, and incurring an RVO.

We are also finalizing corresponding reporting requirements, including requiring refiners and importers to report the volume of MVNRLM diesel fuel they produce or import, the volume of distillate fuel they produce or import that is not transportation fuel, and the volume of distillate fuel they produce or import that is certified NTDF. We are also requiring some downstream parties who redesignate NTDF as MVNRLM diesel fuel to submit reports to EPA identifying the volume of MVNRLM

diesel fuel received, the volume of MVNRLM diesel fuel delivered, the volume of fuel re-designated from certified NTDF to MVNRLM diesel fuel, and the volume of MVNRLM diesel fuel redesignated to non-transportation use. Further, for purposes of evaluating compliance, we are also:

- Requiring parties who re-designate certified NTDF to MVNRLM diesel fuel to keep all records relating to these transactions.
- Prohibiting a party from exceeding its balance requirements without incurring an RVO.
- Ensuring that the attest auditors review relevant information to ensure compliance with applicable RFS program requirements.

Some commenters stated that it was not necessary to require that volume balance reports and attest engagements be submitted by all parties who redesignate certified NTDF to MVNRLM diesel fuel, and that EPA should only require reports from those parties who redesignated a net positive volume of certified NTDF to MVNRLM diesel fuel (*i.e.,* incurred an RVO). We agree with these comments and are finalizing provisions to require parties that only incur an RVO through redesignation of certified NTDF to MVNRLM diesel fuel to submit volume balance reports and meet the required attest engagements. Obligated parties that would otherwise have an attest engagement performed (*e.g.,* because they produced gasoline or diesel fuel, exported renewable fuels, etc.) would now have the attest auditor perform the additional attest engagement procedures for the obligated party. We believe that the types of reports and records attest auditors review for obligated parties annual attest engagements would already include much of the information we are requiring and would therefore represent a minimal increase in burden for these obligated parties. Parties that redesignate certified NTDF to MVNRLM diesel fuel during a compliance period but did not incur an RVO (because they redesignated an equivalent or greater volume of MVNRLM diesel fuel to non-transportation fuel during the compliance period) are required to submit a short report stating that they redesignated certified NTDF to MVNRLM diesel fuel, but did not incur an RVO. We are also not finalizing the proposed requirement for quarterly reports, since compliance will be on an annual basis and can be demonstrated through annual reports.

Lastly, implementation of these new provisions will be delayed until January 1, 2021, to allow time for updates to product codes and tracking software used by distillate distributors. Some commenters suggested that this would be helpful for them to avoid implementing the new regulations in the middle of a compliance period, and we agree with these commenters.

B. Pathway Petition Conditions

We are clarifying our authority to enforce conditions created by requirements included in an approval document for a facility-specific pathway petition submitted under 40 CFR 80.1416. Since December 2010, we have approved over 100 facility-specific pathway petitions. To qualify for the generation of RINs under an approved pathway petition, the fuel produced under that pathway must also meet the conditions and applicable regulatory provisions specified in EPA's petition approval document and the other definitional and regulatory requirements for renewable fuel specified in the CAA and EPA implementing regulations, including for RIN generation, registration, reporting, and recordkeeping. Common conditions include, but are not limited to, compliance monitoring plans detailing how parties will accurately and reliably measure and record the energy and material inputs and outputs required to ensure fuels are produced consistent with the specifications evaluated in the lifecycle analysis, process flow diagrams showing the energy used for feedstock, fuel, and co-product operations, and certifications signed by responsible corporate officers (RCOs).

We have authority to bring an enforcement action of these conditions under 40 CFR 80.1460(a), which prohibits producing or importing a renewable fuel without complying with the RIN generation and assignment requirements. The RFS regulations provide that RINs may only be generated if the fuel qualifies for a D code pursuant to 40 CFR 80.1426(f) or an approved petition submitted under 40 CFR 80.1416.[202] If any of the conditions required by an approval document for a pathway petition are not met, then the fuel does not qualify for a D code per the terms of the approval, and RINs may not be generated. These conditions are also enforceable under 40 CFR 80.1460(b)(2), which prohibits creating a RIN that is invalid; a RIN is invalid if it was improperly generated.[203] As stated above, a RIN is improperly generated if the fuel representing the RIN does not qualify for a D code, which is the case if a fuel producer does not follow all of the required conditions in the pathway petition approval document.

We are adding a provision at 40 CFR 80.1426(a)(1)(iii) to clarify that renewable fuel that qualifies for a D code pursuant to an approved petition submitted under 40 CFR 80.1416 must be produced in compliance with all conditions set forth in the petition approval document (in addition to the applicable statutory requirements and requirements of subpart M). We are also adding a prohibited act at 40 CFR 80.1460(b)(7) for generating a RIN for fuel that fails to meet all the conditions set forth in a petition approval document for a pathway petition submitted under 40 CFR 80.1416 in order to provide more clarity regarding our ability to bring enforcement actions for failure to meet such conditions.

C. Esterification Pretreatment Pathway

We are revising rows F and H of Table 1 to 40 CFR 80.1426 by changing the existing approved production process ''Trans-Esterification'' to be ''Transesterification with or without esterification pretreatment.'' We are finalizing these revisions to rows F and H without modifying the feedstocks listed in those rows, as these changes do not make any additional feedstocks eligible beyond those already listed in rows F and H. Table 1 to 40 CFR 80.1426 includes pathways for the production of biodiesel using specified feedstocks and the production process transesterification.[204]

Transesterification is the most commonly used method to produce biodiesel and involves reacting triglycerides with methanol, typically under the presence of a base catalyst.[205] While the main component of oils, fats, and grease feedstocks are typically triglycerides, other components, such as free fatty acids (FFAs), can also exist. Removal or conversion of the FFAs is important where the traditional base-catalyzed transesterification production process is used; if they are not removed or converted prior to this process, FFAs will react with base catalysts to produce soaps that inhibit the transesterification reaction.

One of the most widely used methods for treating biodiesel feedstocks with a higher FFA content is acid catalysis. Acid catalysis typically uses a strong

[202] See 40 CFR 80.1426(a)(1)(i).

[203] See 40 CFR 80.1431(a)(ix).

[204] While we expect these pathways to be used predominately for biodiesel, they may also be used for heating oil and jet fuel. Renewable diesel is excluded because it is by definition ''not a mono-alkyl ester'' (40 CFR 80.1401) and that is what transesterification produces.

[205] Commonly used base catalysts include sodium hydroxide (NaOH), potassium hydroxide (KOH) and sodium methoxide ($NaOCH_3$).

acid, such as sulfuric acid, to catalyze the esterification of the FFAs prior to the transesterification of the triglycerides as a pre-treatment step. Acid esterification can be applied to feedstocks with FFA contents above 5 percent to produce biodiesel. Because the transesterification of triglycerides is slow under acid catalysis, a technique commonly used to overcome the reaction rate issue is to first convert the FFAs through an acid esterification (also known as an acid ''pretreatment'' step), and then follow-up with the traditional base-catalyzed transesterification of triglycerides.

Under the RFS2 final rule, biodiesel from biogenic waste oils/fats/greases qualifies for D-codes 4 or 5 using a transesterification process. This conclusion was based on the analysis of yellow grease as a feedstock, where there was an acid pretreatment of the FFAs contained in the feedstock. In fact, one of the material inputs assumed in the modeling for the final RFS2 rule yellow grease pathway was sulfuric acid, which is the catalyst commonly used for acid esterification.[206] As we had not stipulated transesterification with esterification pretreatment as a qualified production process in rows F and H to Table 1 to 40 CFR 80.1426, we are revising these entries to include ''transesterification with or without esterification pre-treatment'' as a production process requirement so that RINs may be generated for biodiesel produced by the esterification pretreatment, as well as for the biodiesel produced through transesterification.[207]

In the July 29 proposal, we also proposed to add a standalone esterification pathway to rows F and H to Table 1 to 40 CFR 80.1426, which would allow parties who have processing units that can take feedstocks listed in rows F and H of Table 1 to 40 CFR 80.1426 that have high-FFA content and separate the FFAs and triglycerides for chemical processing in separate standalone esterification and transesterification units to generate RINs for the biodiesel produced. However, we are not at this time finalizing the proposed standalone esterification pathway. It remains under consideration and may be finalized in a future action.

D. Distillers Corn Oil and Distillers Sorghum Oil Pathways

We are adding distillers corn oil and commingled distillers corn oil and sorghum oil as feedstocks to row I of Table 1 to 40 CFR 80.1426. While the lifecycle GHG emissions associated with using a very similar feedstock—distillers sorghum oil—as part of this pathway were evaluated in the grain sorghum oil pathway final rule (''sorghum oil rule''),[208] these two feedstocks were not added to row I as part of that rulemaking. This section discusses the addition of distillers corn oil and commingled distillers corn oil and sorghum oil as feedstocks to row I and presents the lifecycle GHG emissions associated with these pathways. We also explain why the most likely effect of adding these pathways will be to reduce the number of petitions submitted pursuant to 40 CFR 80.1416.

The March 2010 RFS2 rule included pathways for biodiesel and renewable diesel produced from non-food grade corn oil. The March 2013 Pathways I rule added pathways for heating oil and jet fuel from non-food grade corn oil in rows F and H of Table 1 to 40 CFR 80.1426, and added pathways for naphtha and LPG from *Camelina sativa* oil in row I.[209] The sorghum oil rule amended the RFS regulations to add a new definition of distillers sorghum oil and to replace existing references to non-food grade corn oil with the newly defined term ''distillers corn oil.'' That rule also added a number of pathways to rows F and H of Table 1 to 40 CFR 80.1426 for biodiesel, renewable diesel, jet fuel, and heating oil produced from distillers sorghum oil and commingled distillers sorghum and corn oil. Pathways for naphtha and LPG produced from distillers sorghum oil via a hydrotreating process were also added to row I of Table 1 to 40 CFR 80.1426.

Commingled distillers corn oil and sorghum oil was added as a feedstock to rows F and H of Table 1 to 40 CFR 80.1426 because distillers sorghum oil is often co-produced with distillers corn oil at ethanol plants using a combination of grain sorghum and corn as feedstocks for ethanol production. Due to the recovery process of the oils from the distillers grains and solubles (DGS), where the ethanol plant is using a feedstock that combines grain sorghum and corn, it is not possible to physically separate the distillers sorghum and corn oils into two streams, nor is it possible to account for the volume of sorghum oil or corn oil in this mixture. For these and other reasons,[210] after concluding that distillers sorghum oil satisfies the 50 percent GHG reduction threshold required for the advanced biofuel and biomass-based diesel, we added both distillers sorghum oil and ''commingled distillers corn oil and sorghum oil'' to rows F and H of Table 1 to 40 CFR 80.1426 in the sorghum oil rule. However, unlike rows F and H, row I did not include a pathway using ''non-food grade corn oil'' prior to that final rule, nor did we propose to add ''distillers corn oil'' to that row in the December 2017 sorghum oil proposed rule.[211] Thus, in the absence of an assessment of lifecycle emissions showing that distillers corn oil also meets the GHG reduction threshold required for the pathways therein, in the sorghum oil rule we decided ''it would be premature for EPA to add either distillers corn oil or commingled distillers corn and sorghum oil as feedstocks in row I.'' [212] Currently, in order to generate D-code 5 RINs for naphtha and/or LPG produced from distillers corn oil and/or commingled distillers corn and sorghum oil, a fuel producer would first need to petition EPA pursuant to 40 CFR 80.1416, have EPA review and approve their requested pathway, and then submit and have EPA accept the registration for the new pathway. Adding these feedstocks to row I eliminates the need for these petitions.

Table IX.D–1 shows the lifecycle GHG emissions associated with renewable diesel, jet fuel, naphtha, and LPG produced from distillers sorghum oil. These results are based on the analysis completed for the sorghum oil rule.[213] The lifecycle GHG emissions associated with the statutory baseline fuels, 2005 average diesel and gasoline, are shown for comparison. Based on the distillers sorghum oil results, as explained below we have concluded that naphtha and LPG produced from distillers corn oil and commingled distillers corn and sorghum oil also satisfy the 50 percent lifecycle GHG reduction requirement at CAA section 211(o)(1)(B), relative to the

[206] Section 2.4.7.3.3 of the Regulatory Impact Analysis for the March 2010 final rule describes the material inputs evaluated for biodiesel production. For conversion of yellow grease to biodiesel, sulfuric acid accounted for 4.7 percent of the material inputs on a mass basis (0.02 kg per gallon of biodiesel).

[207] In 2012, we issued a direct final rule and a parallel proposed rule (see 77 FR 700 and 77 FR 462, respectively; January 5, 2012) that would have determined that, among other regulatory changes, biodiesel produced from esterification met the GHG reduction requirements. Because we received adverse comment, we withdrew the direct final rule in its entirety (see 77 FR 13009, March 5, 2012). In the 2013 final rule based on the parallel proposal (78 FR 14190, March 5, 2013), we decided not to finalize a determination at that time on biodiesel produced from esterification and noted that we would instead make a final determination at a later time.

[208] See 83 FR 37735 (August 2, 2018).

[209] See 78 FR 14190 (March 5, 2013).

[210] For the other reasons discussed in the sorghum oil rule preamble, see 83 FR 37737–39 (August 2, 2018).

[211] See 82 FR 61205 (December 27, 2017).

[212] See 83 FR 37738 (August 2, 2018).

[213] See Table III.4 of the sorghum oil rule preamble (83 FR 37743, August 2, 2018).

statutory petroleum baseline, to be eligible for advanced biofuel RINs.

TABLE IX.D-1—LIFECYCLE GHG EMISSIONS ASSOCIATED WITH BIOFUELS PRODUCED FROM DISTILLERS SORGHUM OIL

[$kgCO_2$-eq/mmBtu]

Fuel	Renewable diesel, jet fuel	Naphtha	LPG	2005 Diesel baseline	2005 Gasoline baseline
Production Process	Hydrotreating			Refining	
Livestock Sector Impacts	19.4	19.4	19.4		
Feedstock Production	6.2	6.2	6.2	18.0	19.2
Feedstock Transport	0.3	0.3	0.3		
Feedstock Pretreatment	0.0	0.0	0.0		
Fuel Production	8.0	8.0	8.0		
Fuel Distribution	0.8	0.8	0.8		
Fuel Use	0.7	1.7	1.5	79.0	79.0
Total	35.4	36.4	36.2	97.0	98.2
Percent Reduction	64%	63%	63%		

Although the lifecycle GHG analysis for the sorghum oil rule focused on distillers sorghum oil, we believe it is also applicable to distillers corn oil and commingled distillers corn oil and sorghum oil for purposes of determining whether these satisfy the 50 percent GHG reduction requirement. For the sorghum oil rule, we estimated the livestock sector impacts associated with distillers sorghum oil based on a set of assumptions about the type of feed that would need to backfill for the reduction in mass of de-oiled DGS as compared to full-oil DGS. For that analysis we calculated a substitution rate for how much corn would be needed to backfill in livestock feed for every pound of grain sorghum oil diverted to biofuel production, by livestock type. The amounts of corn needed to replace each pound of extracted sorghum oil were largely based on studies that evaluated the nutritional values of regular and reduced-oil distillers grains produced as a co-product of corn starch ethanol.[214] Given that the underlying data for our distillers sorghum oil assessment was largely based on studies conducted on corn ethanol co-products, we believe it is appropriate to apply the same results to similar pathways using distillers corn oil feedstock. Based on the similarities between the two products and how they are produced (*i.e.,* co-produced at ethanol plants), we are also assuming that the lifecycle GHG emission for distillers corn oil and distillers sorghum oil are the same for the other lifecycle stages evaluated (*e.g.,* feedstock production, fuel production).

One difference between distillers corn oil and sorghum oil is the rate of oil recovered per pound of corn versus grain sorghum processed. The distillers sorghum oil petition submitted by the National Sorghum Producers reported that 0.67 pounds of distillers sorghum oil are recovered per bushel of grain sorghum processed to ethanol, whereas 0.84 pounds of distillers corn oil is extracted per bushel of corn.[215] Adjusting for this difference results in slightly lower livestock sector GHG emissions associated with naphtha and LPG produced from distillers corn oil.[216] Based on this adjustment the results in Table IX.D–1 change from a 63 percent GHG reduction for naphtha and LPG produced from distillers sorghum oil to a 64 percent reduction for naphtha and LPG production from distillers corn oil. We have therefore concluded that these pathways satisfy the 50 percent GHG reduction requirement to qualify as advanced biofuel under the RFS program and are adding ''distillers corn oil'' and ''commingled distillers corn oil and sorghum oil'' as feedstocks in row I to Table 1 to 40 CFR 80.1426.

E. Clarification of the Definition of Renewable Fuel Exporter and Associated Provisions

We are finalizing our proposed clarification of the definition of ''exporter of renewable fuel.'' These changes are meant to ensure appropriate flexibility for market participants to meet export obligations and to ensure RINs are properly retired, as well to as to clarify exporter obligations for parties who transfer renewable fuel between the 48 states or Hawaii and an approved opt-in area (*i.e.,* Alaska or the U.S. territories were any of them to opt-in).

The RFS regulations require an exporter of renewable fuel to acquire sufficient RINs to comply with all applicable RVOs incurred from the volumes of the renewable fuel exported.[217] We previously defined ''exporter of renewable fuel'' in 40 CFR 80.1401 as: ''(1) A person that transfers any renewable fuel from a location within the contiguous 48 states or Hawaii to a location outside the contiguous 48 states and Hawaii; and (2) A person that transfers any renewable fuel from a location in the contiguous 48 states or Hawaii to Alaska or a United

[214] See Table III.2 (Full-Oil and Reduced-Oil Sorghum Distillers Grains with Solubles Displacement Ratios) of the sorghum oil rule (83 FR 37741, August 2, 2018) and accompanying footnote number 36, which lists the sources for the data in that table.

[215] See Table 4 of ''Grain Sorghum Oil Pathway Petition,'' Docket Item No. EPA–HQ–OAR–2017–0655–0005.

[216] The source of the difference is the amount of corn needed to replace one pound of full-oil versus reduced-oiled DDGS in beef cattle diets. In our analysis for the sorghum oil rule, we assumed, based on the best available data provided by NSP, USDA, and commenters, that reduced-oil DDGS are replaced at a lower rate (1.173 lbs corn per lbs DDGS) than full-oil DDGS (1.196 lbs corn per lbs DDGS). Increasing the rate of oil extraction produces less de-oiled DDGS and requires corn replacement at the lower rate of 1.173. Thus, all else equal, higher rates of oil extraction result in lower GHG emissions per pound of oil extracted. It is possible this effect would disappear if we had higher resolution data on corn displacement ratios for DDGS with different oil contents, but such data are currently not available.

[217] In this rulemaking, we did not reexamine our well-settled policy of exporter RVOs, which generally require exporters to retire RINs for biofuels they export. We established this policy when we promulgated the regulations implementing the RFS1 and RFS2 programs in 2007 and 2010. See 72 FR 23936 (May 1, 2007); 75 FR 14724 (March 26, 2010). We did not reexamine this issue in this rulemaking, and comments on it are beyond the scope of the rulemaking. We are not making any substantive changes to the relevant provisions, particularly those at 40 CFR 80.1430(a) or (b). Consistent with our long-standing policy, exporters of renewable fuel must continue to acquire sufficient RINs to comply with all applicable RVOs.

States territory, unless that state or territory has received an approval from the Administrator to opt in to the renewable fuel program pursuant to § 80.1443.'' [218]

We are revising these regulations for two key reasons. First, during implementation of the RFS program, we have observed contract structuring practices that may have eroded compliance assurance. Notably, we have observed instances of export transactions in which parties have sold renewable fuel for export to entities purporting to accept RIN retirement obligations that were then not fulfilled by the buyer. These instances demonstrate that the RFS program could benefit from regulatory changes designed to ensure that exporter obligations are fulfilled. Therefore, we are revising the definition to resolve any potential ambiguity and clarify which parties may and may not be liable for exporter obligations in order to ensure exporter obligations are fulfilled.

Second, the previous definition could have been construed to include parties who transfer renewable fuel from the contiguous 48 states and Hawaii, to an area (either Alaska or a U.S. territory) that has received an approval to opt-in to the RFS program. We did not intend to impose a RIN retirement obligation on these parties. We are therefore clarifying how exporter obligations apply to renewable fuel transferred between the 48 states and Hawaii, and opt-in areas.

To achieve these goals when we developed the proposal, we initially considered whether to amend the RFS program regulations consistent with the Foreign Trade Regulations (FTR) and other federal export-related regulations, such as United States Principal Party in Interest (USPPI) and Foreign Principal Party in Interest (FPPI).[219] While there were some commenters that suggested adopting those terms, we chose not to do so for the following reasons. The FTR and other export-related obligations in other federal programs use a traditional definition of ''export'' where exported goods leave the U.S. The RFS program addresses obligations incurred through the transfer of renewable fuel from areas covered by the program to both domestic and foreign areas not covered by the program. For instance, the transport of goods from Oregon to Alaska would not qualify as export under most federal export regulations, but the transport of biofuel from Oregon, a covered area, to Alaska, a non-covered area (unless Alaska chooses to opt in), would qualify as export under the RFS program. In addition, if we merely adopted the FTR approach to allow allocation of exporter obligations among parties to an export transaction, we have concerns that a party that is insolvent or lacking assets in the U.S. could undertake those obligations, and enforcement efforts could become overly resource intensive where the fuel has left the country. For these reasons, we do not believe it would be appropriate to amend the RFS program regulations to define an exporter as the USPPI or the FPPI.

In reviewing the FTR, we also considered the concept of routed export transactions and the associated flexibility for parties to an export transaction to structure that transaction to place some responsibilities with an FPPI.[220] We believe that this framework is reflective of market custom, practice, and capability to contractually allocate liabilities and indemnities among parties to a commercial transaction. We prefer regulations that accommodate these flexibilities, while also balancing the need to protect RFS program integrity. Specifically, we want to allow parties to an export transaction to allocate RFS program exporter obligations as they see fit among themselves, but we also want to protect against contract structuring that may erode compliance assurance.

Therefore, we are revising the definition of ''exporter of renewable fuel'' to mean ''all buyers, sellers, and owners of the renewable fuel in any transaction that results in renewable fuel being transferred from a covered location to a destination outside of the covered locations.'' In conjunction with this revision, we are creating a definition of ''covered location'' as ''the contiguous 48 states, Hawaii, and any state or territory that has received an approval from the Administrator to opt-in to the RFS program under § 80.1443.'' As described above, this revised definition permits contract flexibilities frequently employed in export transactions with respect to export obligations under other regulatory programs, such as the FTR. All buyers, sellers, and owners of the renewable fuel in a transaction that results in renewable fuel being transferred from a covered location to a destination outside of any covered location may contractually allocate RFS program obligations, indemnities, and pricing as they see fit in light of the regulatory requirements. At the same time, the revised definition provides enhanced compliance assurance so as to maintain a level playing field among would-be exporters and ensures RIN retirement so as to maintain the integrity of that market in accordance with the regulatory requirements. Ultimately, the revised definition contributes to satisfying Congress's mandate that EPA promulgate regulations that ''ensure'' the nationally-applicable renewable fuel volumes are met.[221] We note, moreover, that the existing RFS regulations provide that ''[n]o person shall cause another person to commit an act in violation of any prohibited act under this section.'' [222] We believe that this prohibition coupled with the revised definitions will deter parties from engaging in sham transactions to evade RIN retirement obligations by transferring ownership of renewable fuels to undercapitalized entities that do not meet their RIN retirement obligations. This includes the specific earlier-described practices we have already observed. The revised definition also clarifies how exporter obligations apply to transfers to and from the contiguous 48 states and Hawaii, and opt-in areas (*i.e.,* Alaska and U.S. territories were they to opt-in). Notably, it avoids imposing exporter obligations on biofuels transferred from the 48 states and Hawaii to an opt-in area.

Under the revised definition, multiple parties may meet the definition of an exporter of renewable fuel for the same volume of renewable fuel. In addition, although the definition uses the term ''transaction,'' in many cases there may be more than one discrete exchange or interaction that results in a volume of renewable fuel being exported. We intend the regulatory term ''transaction'' to cover all those exchanges and interactions in which the buyers, sellers, and owners know or have reason to know will result in renewable fuel being transferred from a covered location to a destination outside of any covered location.[223] For instance, a person holding title to renewable fuel in the U.S. may sell renewable fuel to another person (either inside or outside of the

[218] 75 FR 14865 (March 26, 2010).

[219] See, *e.g.,* 15 CFR 772.1 (defining exporter as ''[t]he person in the United States who has the authority of a principal party in interest to determine and control the sending of items out of the United States''). We also considered and rejected other alternatives, which we discuss further in the RTC document in the docket for this action.

[220] Routed export transaction is the term used to describe an export transaction in which an FPPI directs the movement of goods out of the U.S. and authorizes a U.S. agent to file certain information required by the FTR.

[221] CAA section 211(o)(2)(A)(i); see also CAA section 301(a).

[222] See 40 CFR 80.1460(c).

[223] To clarify this point, we have revised the regulatory text from the proposed ''a transaction'' to ''any transaction'' in this final rulemaking.

covered areas) and cause the renewable fuel to leave the covered areas. Further, that buyer and seller may have a third party hold title to the renewable fuel during transit out of the covered areas. In this case, the buyer and the seller, both of whom are also owners of the renewable fuel, and the third-party holding company, as another owner of the renewable fuel in the transaction, would be jointly-and-severally liable for complying with the exporter provisions.[224]

However, our revised regulations create broad flexibility for parties to assign responsibilities as they see fit among themselves in structuring an export transaction. These parties may contractually allocate RIN retirement, and associated registration, reporting, and attest engagement obligations, to any one of the parties that meets the definition of an exporter of renewable fuel. The party undertaking these requirements would then register as an exporter of renewable fuel as set forth in 40 CFR 80.1450(a). This approach is also consistent with our approach to the term ''refiner,'' under which multiple parties could be considered the refiner of a batch of fuel. In such instances, we have stated that each party meeting the definition of refiner will be held jointly-and-severally liable for refiner requirements, and we are adopting a consistent approach for exporters of renewable fuel.[225] However, our revised regulations create broad flexibility for parties to assign responsibilities as they see fit among themselves in structuring an export transaction. These parties may contractually allocate RIN retirement, and associated registration, reporting, and attest engagement obligations, to any one of the parties that meets the definition of an exporter of renewable fuel. The party undertaking these requirements would then register as an exporter of renewable fuel as set forth in 40 CFR 80.1450(a). This approach is also consistent with our approach to the term ''refiner,'' under which multiple parties could be considered the refiner of a batch of fuel. In such instances, we have stated that each party meeting the definition of refiner will be held jointly-and-severally liable for refiner requirements, and we are adopting a consistent approach for exporters of renewable fuel.[226]

EPA does not consider a person to be an exporter of renewable fuel if that person does not know and does not have reason to know that the renewable fuel will be exported. For instance, a renewable fuel producer who produces a batch of fuel, generates RINs, and sells the renewable fuel with attached RINs into the fungible fuel distribution system would not be considered an exporter of renewable fuel under the revised definition unless they know or have reason to know that the batch of fuel would be exported. More specifically, the mere fact that a producer introduces renewable fuels into the stream of commerce, coupled with the fact that a significant portion of domestically produced biofuel is exported, does not make the producer an exporter of renewable fuel.

We are also finalizing minor, non-substantive changes throughout the RFS regulations to more consistently use the term ''exporter of renewable fuel'' rather than the term ''exporter.'' These clarifying edits reflect that the ''exporter of renewable fuel'' may be different than the ''exporter'' under other state and federal regulatory programs.

F. REGS Rule Provisions

We are finalizing a number of changes to the RFS and fuels programs that were previously proposed in the REGS rule,[227] and that we listed in the preamble to July 29 proposal as candidates for finalization in this action.[228] In reaching our final decisions on these provisions we considered relevant comments on both the 2016 REGS proposal and the July 29 proposal. As noted in the July 29 proposal, we believe these provisions to be relatively straightforward and would reduce the burden of RFS program implementation. Commenters were generally supportive of these provisions and we are largely finalizing them as proposed; changes to the final provisions relative to the 2016 REGS proposal are discussed in detail in the following sections.

1. Flexibilities for Renewable Fuel Blending for Military Use

We are amending 40 CFR 80.1440 to provide new flexibilities for parties that blend renewable fuel to produce fuels for use as transportation fuel, heating oil, or jet fuel under a national security exemption or that sell neat renewable fuel for use in vehicles, engines, and equipment that have a national security exemption for emissions certification. Specifically, these parties will be able to delegate to an upstream party the RIN-related responsibilities (*i.e.,* RIN separation, reporting, recordkeeping, and attest engagement requirements) associated with the renewable fuel. These parties could include the U.S. Military itself, or contractors working for the U.S. Military. The RFS program has a provision that allows blenders that handle and blend small volumes of renewable fuel per year (less than 250,000 gallons per year) to delegate RIN-related responsibilities to an upstream party. We have received a number of inquiries from parties that have wished to provide renewable fuel, either neat or blended into transportation fuel, for use by the U.S. Military as part of Department of Defense (DOD) renewable military initiatives. One obstacle to this use of renewable fuel by the DOD is that, unlike other EPA fuels programs, there were no exemptions related to national security uses in the RFS regulatory program.

We believe that it is appropriate to allow DOD or its contractors to delegate RFS RIN responsibilities to upstream parties; doing so removes a potential obstacle to the use of renewable fuels by DOD and will promote use of renewable fuel by the military. Therefore, we are finalizing similar upstream delegation provisions for neat and blended renewable fuels supplied to DOD under a national security exemption as those already in place for small renewable fuel blenders.

2. Heating Oil Used for Cooling

We are expanding the definition of heating oil in 40 CFR 80.1401 to include fuels that differ from those meeting the current definition only because they are used to cool, rather than heat, interior spaces of homes or buildings. The first

[224] This example is meant to be a stylized illustration of how our regulations could apply. It is not meant to exhaustively detail the entities that could meet the definition of exporter of renewable fuel in this type of transaction. To the extent that other parties meet the definition of exporter of renewable fuel, they would also be subject to the exporter provisions.

[225] See ''Consolidated List of Reformulated Gasoline and Anti-Dumping Questions and Answers: July 1, 1994 through November 10, 1997,'' EPA420–R–03–009, at 256 (July 2003) (discussing a scenario in which two parties would be considered refiners and would be independently responsible for all refinery requirements, which would only need to be met once).

[226] See ''Consolidated List of Reformulated Gasoline and Anti-Dumping Questions and Answers: July 1, 1994 through November 10, 1997,'' EPA420–R–03–009, at 256 (July 2003) (discussing a scenario in which two parties would be considered refiners and would be independently responsible for all refinery requirements, which would only need to be met once).

[227] See 81 FR 80828 (November 16, 2016).

[228] We are not taking final action at this time on several changes from the REGS proposal that were listed in the July 29 proposal (Allowing Production of Biomass-Based Diesel From Separated Food Waste (REGS Section VIII.C), RFS Facility Ownership Changes (REGS Section VIII.H), Public Access to Information (REGS Section VIII.O), and Redesignation of Renewable Fuel on a PTD for Non-Qualifying Uses (REGS Section VIII.R), and certain portions of Other Revisions to the Fuels Program (REGS Section IX), primarily related to test methods). These provisions, along with the other provisions in the REGS proposal that are not being finalized here, remain under consideration and may be finalized in a future action.

sentence of the definition of heating oil thus now reads: ''A fuel oil that is used to heat or cool interior spaces of homes or buildings to control ambient climate for human comfort.'' We are also making minor modifications to the registration, reporting, PTD, and recordkeeping requirements for renewable heating oil to correspond with this change. We had received questions related to the use of renewable heating oil in equipment that cools interior spaces and believe that displacing the use of petroleum based fuel oil with renewable heating oil for cooling is consistent with CAA section 211(o)'s provision for home heating oil to be treated as additional renewable fuel and should be allowed.

3. Separated Food Waste Plans

We are amending the RFS registration procedures for separated food waste plans at 40 CFR 80.1450(b)(1)(vii)(B) and the recordkeeping requirements for separated food waste at 40 CFR 80.1454(j). We are also adding requirements for renewable fuel produced from biogenic waste oils/fats/greases at 40 CFR 80.1450(b)(1)(vii)(B) and 80.1454(d)(4) and (j).

The RFS regulations promulgated in the RFS2 rulemaking required that separated food waste plans include: ''(1) The location of any municipal waste facility or other facility from which the waste stream consisting solely of separated food waste is collected; and (2) A plan documenting how the waste will be collected, how the cellulosic and non-cellulosic portions of the waste will be quantified, and for ongoing verification that such waste consists only of food waste (and incidental other components such as paper and plastics) that is kept separate since generation from other waste materials.'' [229] In addition to the initial submission of separated food waste plans during RFS registration, we also required that renewable fuel producers using separated food waste feedstock update the registration information whenever there was a change to the plan, including to the location(s) of establishments from which the separated food waste is collected, and in some cases the newly updated plan must have been reviewed by a third-party engineer in accordance with EPA registration procedures. We have received numerous company updates for production facilities with separated food waste plans, and some parties noted that the requirement to identify and update suppliers of feedstocks through a plan was overly burdensome.

Recognizing that business relationships for recovery of food wastes evolve and that a renewable fuel producer may elect over time to purchase feedstocks from different or multiple parties, we are removing the requirement to provide the location of every facility from which separated food waste feedstock is collected as part of the information required for registration. Removing this registration requirement alleviates the need for numerous company registration updates as a facility's feedstock supplier list evolves, as well as makes it easier for EPA to review renewable fuel producers' separated food waste plans in a timely manner. However, the recordkeeping section of the regulations requires renewable fuel producers to keep documents associated with feedstock purchases and transfers that identify where the feedstocks were produced; these documents must be sufficient to verify that the feedstocks meet the definition of renewable biomass.[230] Thus, renewable fuel producers will still be required to maintain records that demonstrate that they used a qualifying feedstock to produce renewable fuels for the generation of RINs pursuant to the recordkeeping requirements at 40 CFR 80.1454(d)(4) and (j). We are also adding a provision at 40 CFR 80.1454(j)(1)(ii) that will require renewable fuel producers to maintain records demonstrating the location of any establishment from which the waste stream is collected. Since many renewable fuel producers receive wastes used as feedstocks from an aggregator, we interpret the term ''location'' to mean the physical address that the aggregator obtained the wastes used as feedstocks from, not the physical or company address of the aggregator.

In addition to removing the registration requirement to provide the locations of establishments from which separated food waste is collected, we are also modifying the registration regulations to require that separated food waste plans identify the type(s) of separated food waste(s) to be used and the type(s) of establishment(s) the waste will be collected from. For instance, CAA section 211(o) identifies ''recycled cooking and trap grease'' as a type of separated food waste. Examples of types of establishments could be restaurants, slaughterhouses, or specific food production plants (the kind of food production should be provided). We believe this information is necessary for EPA to determine at registration whether a renewable fuel producer can make fuel from its proposed feedstock under currently approved separated food waste pathways. Without this information, we would not know what the specific feedstock is (*e.g.,* tallow, yellow grease, etc.) or whether it qualifies as a separated food waste.

We are also requiring under 40 CFR 80.1450(b)(1)(vii)(B) that producers of renewable fuels made from biogenic waste oils/fats/greases that are not separated food waste submit a plan at registration with the same requirements as the plan for producers of renewable fuels made from separated food waste. We are henceforth referring to such plans as ''waste oils/fats/greases feedstock plans.'' There is significant overlap between the two categories of feedstock, with a considerable quantity of biogenic waste oils/fats/greases qualifying as renewable biomass as a result of its additional qualification as separated food waste. For these reasons, as a matter of practice we have required parties intending to use biogenic waste oils/fats/greases as a renewable fuel feedstock to submit separated food waste plans at registration. In addition to helping EPA determine if the feedstock in question meets renewable biomass requirements, we have found that the plans help us assess whether the feedstocks specified by a prospective producer qualify as biogenic waste oils/fats/greases. This assessment is made on a case-by-case basis. This amendment conforms the regulations to EPA's current practice. A party fully describing its feedstock in a separated food waste plan will not be required to submit an additional waste oils/fats/greases plan. Since most, if not all, producers of renewable fuel from biogenic waste oils/fats/greases have submitted a separated food waste plan at registration, we do not believe that this revision will add much, if any, burden to existing registered facilities. Those few registered producers using biogenic waste oils/fats/greases that have not previously submitted a separated food waste plan at registration or in a subsequent registration update will be required to do so as part of their next periodic registration update.

In addition to adding the registration requirement for a waste oils/fats/greases feedstock plan to 40 CFR 80.1540(b)(1)(vii)(B), we are also adding the same recordkeeping requirements for biogenic oils/fats/greases as for separated food waste at 40 CFR 80.1454(d)(4) and (j), and providing further clarity that the locations from which separated food waste or biogenic oils/fats/greases was sourced is a recordkeeping requirement.

[229] See 40 CFR 80.1450(b)(1)(vii)(B).

[230] See 40 CFR 80.1454(d)(4) and (j).

4. Additional Registration Deactivation Justifications

We are adding additional circumstances in which EPA may deactivate the registration of any party required to register under 40 CFR 80.1450. These amendments will help parties better understand when EPA intends to restrict a party's participation in the RFS program as well as the procedures that will be used in such circumstances.

In July 2014, we finalized requirements that described circumstances under which EPA may deactivate a company registration and an administrative process to initiate deactivation that provides companies an opportunity to respond to and/or submit the required information in a timely manner.[231] Since finalizing these requirements, we have identified a number of other cases in which it is appropriate to deactivate the registration of a company. In addition, we believe the provisions should be extended to cover deactivation of registrations for any party required to register with EPA under 40 CFR 80.1450 (*e.g.,* third-party auditors).[232] Specifically, we are amending 40 CFR 80.1450(h)(1) to provide that EPA may deactivate registrations of a party for the following reasons in addition to those previously listed:

- The party fails to comply with the registration requirements of 40 CFR 80.1450.
- The party fails to submit any required report within thirty days of the required submission date.
- The party fails to pay a penalty or to perform any requirements under the terms of a court order, administrative order, consent decree, or administrative settlement agreement between the party and EPA.
- The party submits false or incomplete information.
- The party denies EPA access or prevents EPA from completing authorized activities under CAA section 114 despite our presenting a warrant or court order. This includes a failure to provide reasonable assistance.
- The party fails to keep or provide EPA with the records required in 40 CFR part 80, subpart M.
- The party otherwise circumvents the intent of the CAA or 40 CFR part 80, subpart M.

These deactivation circumstances are consistent with cases where EPA may deny or revoke a certificate of conformity under 40 CFR 1051.255(c) and 86.442–78 for engines and vehicles manufactured in or imported into the U.S. In addition, we are finalizing requirements that state that in instances of willful violation of an applicable requirement or those in which public health, interest, or safety requires otherwise, EPA may also deactivate the registration of a party without providing notice to the party prior to deactivation and will send written notification to the RCO describing the reasons for the deactivation. Parties can still submit new registrations after appropriate actions are taken by the party to remedy the deficiency.

5. New RIN Retirement Section

We are creating a new section in the RFS regulations for RIN retirements. The regulations have specific sections that address when and how parties may generate and separate RINs. However, the cases where parties must retire RINs were identified in various sections throughout the regulations. The new section of the RFS regulations for RIN retirements, 40 CFR 80.1434, simply organizes these current sections into one place and will provide beneficial clarification by enumerating the specific instances in which a party must retire RINs in a new section of the regulations and by making those retirements consistent with how parties administratively retire RINs in EMTS. We are aware of some confusion for some parties causing those parties to improperly retire RINs or fail to retire RINs when they have a responsibility to do so under the regulations. Improper retirements can lead to a time-consuming remediation process, both for EPA and responsible parties. This new section organizes these requirements into one location in the regulations to make the circumstances under which RINs must be retired simpler to locate and understand. The section also includes new regulatory language for cases requiring RIN retirement that are identified in EMTS, but may not be clear in the regulations, given their current organization (*e.g.,* in the case of contaminated or spoiled fuel). Our intent is not to add additional burden on parties that must retire RINs under the RFS program, but rather to make the regulations consistent with how parties already retire RINs in EMTS and help reduce potential confusion regarding the situations in which parties must retire RINs.

We are finalizing the elements of the new RIN retirement section at 40 CFR 80.1434 as proposed, with the exception of the provisions for expired RINs and redesignated renewable fuel, which we are not finalizing because we have determined they are not necessary for program implementation at this time.

6. New Pathway for Co-Processing Biomass With Petroleum To Produce Co-Processed Cellulosic Diesel, Jet Fuel, and Heating Oil

We are creating a new definition of ''co-processed cellulosic diesel'' to refer to biodiesel or non-ester renewable diesel fuels that meet the definition for cellulosic biofuel but not the definition of biomass-based diesel. We are also finalizing new pathways that allow co-processed cellulosic diesel, jet fuel, and heating oil that are derived from co-processing biomass with petroleum to qualify as cellulosic biofuel and generate cellulosic (D-code 3) RINs, provided certain production process requirements are satisfied. Fuels that meet the cellulosic diesel definition will continue to be able to generate D7 RINs, while fuels that meet the co-processed cellulosic diesel definition but not the cellulosic diesel definition due to co-processing with petroleum will be able to generate D3 RINs. Fuels produced through co-processing with petroleum will also be required to meet, among other requirements, the requirements of 40 CFR 80.1426(f)(4) to determine the number of RINs that can be generated.

While pathways existed for renewable gasoline and gasoline blendstock (row M in Table 1 to 40 CFR 80.1426) and naphtha (row N in Table 1 to 40 CFR 80.1426) produced from cellulosic biomass that is co-processed with petroleum, there was no pathway for diesel, jet fuel, or heating oil produced in this manner. The pathway for cellulosic diesel, jet fuel, and heating oil (Pathway L in Table 1 to 40 CFR 80.1426) excludes processes that co-process renewable biomass and petroleum. To qualify as cellulosic diesel, a fuel must meet the requirements for both cellulosic biofuel and biomass-based diesel. The definition of biomass-based diesel explicitly excludes renewable fuels that are derived from co-processing biomass with petroleum, and therefore a process that produced diesel, jet fuel, or heating oil by co-processing renewable biomass with petroleum could not qualify as biomass-based diesel or cellulosic diesel under Pathway L in Table 1 to 40 CFR 80.1426. However, cellulosic biofuels other than cellulosic diesel are not

[231] Under this administrative process, the party has 14 calendar days from the date of the notification to correct the deficiencies identified or explain why there is no need for corrective action. See 40 CFR 80.1450(h)(2)(i).

[232] In the REGS proposal, we proposed to use the term ''company, third-party auditor, or third-party engineer'' in the registration deactivation provisions; however, we are now using the term ''party'' to refer more generally to any person that may be required to register with EPA.

prohibited from being derived from biomass co-processed with petroleum.

In the 2016 REGS proposed rule, we proposed to add a new row U to Table 1 to 40 CFR 80.1426 that would have allowed for cellulosic diesel, jet fuel and heating oil produced from any of the feedstocks listed in row L via any process that co-processes renewable biomass with petroleum and converts cellulosic biomass to fuel to qualify for cellulosic biofuel (D-code 3) RINs.[233] While most commenters supported this proposed addition, several commenters disagreed. The dissenting commenters stated that EPA had not conducted a sufficient lifecycle GHG analysis to support the pathways proposed for row U. After reviewing these comments, we have decided to finalize a narrower set of pathways for co-processed cellulosic diesel. Instead of adding a new row U to Table 1 to 40 CFR 80.1426, we are instead adding ''Co-Processed Cellulosic Diesel, Jet Fuel, and Heating Oil'' as fuel types in row M. Thus, as we had proposed, we are finalizing new pathways for co-processed cellulosic diesel, jet fuel, and heating oil, but for a narrower set of feedstocks and production process requirements. Compared to the proposed row U, row M contains the same feedstocks except that it does not include any energy grasses (*i.e.,* switchgrass, miscanthus, energy cane, Arundo donax, Pennisetum purpureum), and row M contains a more narrowly defined set of production process requirements. Note that the energy grass feedstocks are the only ones in the proposed row U that include significant indirect land use change emissions based on EPA's lifecycle GHG analysis of switchgrass for the March 2010 RFS2 rule. Finalizing this narrower set of pathways addresses the commenters concerns about insufficient analysis because approval of these pathways is supported by the extensive analyses that we conducted for a previous rule.

The pathways in row M were approved in the March 2013 Pathways I rule and may include fuels produced through the co-processing renewable biomass and petroleum.[234] The analysis supporting that rulemaking found that the pathways evaluated for corn stover feedstock reduced lifecycle GHG emissions by at least 65 to 129 percent compared to the statutory petroleum baseline, and the results for corn stover were extended to the other feedstocks listed in row M. We are now extending those results to cover co-processed cellulosic diesel, jet fuel, and heating oil produced from the same feedstocks and processes listed in row M. The analysis for the March 2013 Pathways I rule did not explicitly evaluate co-processing but the upgrading processes were modeled as using the same types of equipment and processes as petroleum refining.[235] Indeed, the analysis was largely based on a report that evaluated processes that co-produce gasoline and diesel products.[236] The most likely processes in row M to include co-processing are the ones that have upgrading as the final step, as upgrading is a common part of petroleum refining. Our analysis for the March 2013 Pathways I rule estimated a 67 percent GHG reduction compared to conventional gasoline for renewable gasoline and renewable gasoline blendstock produced from corn stover through catalytic pyrolysis and upgrading. Producing cellulosic diesel instead of renewable gasoline through this same pathway would produce similar results satisfying the 60 percent GHG reduction threshold. When energy allocation is used for GHG accounting, which is the approach we have used for co-produced RIN generating fuels,[237] co-produced gasoline and diesel products will have the same, or nearly the same GHG emissions per unit of energy. Studies looking at petroleum refining have also found that upgrading to diesel fuel is less GHG-intensive than upgrading to gasoline.[238] Based on these assessments we conclude that the lifecycle GHG emissions associated with the new pathways being added to row M satisfy the statutory 60 percent GHG reduction requirement to qualify as cellulosic biofuel. In summary, the analyses conducted for the March 2013 Pathways I rule support the addition of ''co-processed cellulosic diesel, jet fuel and heating oil'' as feedstocks to row M of Table 1 to 40 CFR 80.1426, and commenters did not provide sufficient data or information to support a different conclusion.

The 2016 REGS proposal also included a revised definition for ''cellulosic diesel'' and a new term, ''cellulosic biomass-based diesel.''[239] These proposed revisions would have, among other things, removed the requirement for ''cellulosic diesel'' to meet the definitions of both cellulosic biofuel and biomass-based diesel. The new term, ''cellulosic biomass-based diesel,'' would have effectively replaced ''cellulosic diesel'' and would have required that the renewable fuel meet both definitions. However, after considering the implementation issues associated with revising an existing definition within EPA's IT systems (*e.g.,* changing existing registrations), we have decided not to finalize either of the definitional changes proposed in the 2016 REGS rule. Instead, we are accomplishing the same result by leaving the definition of ''cellulosic diesel'' as-is and are adding a new term, ''co-processed cellulosic diesel,'' which is, among other things, a renewable fuel that meets the definitions of cellulosic biofuel and either biodiesel or non-ester renewable diesel.[240] Importantly, co-processed cellulosic diesel can be produced as a result of co-processing cellulosic feedstocks with petroleum and is eligible for D-code 3 RINs, but not D-code 7 RINs. It is thus ''co-processed cellulosic diesel, jet fuel, and heating oil'' that we are adding to row M of Table 1 to 40 CFR 80.14626.

7. Other Revisions to the Fuels Program

a. Testing Revisions

We are removing the requirement for periodic resubmitting of non-voluntary consensus standard body (non-VCSB) test methods that have not been approved by VCSBs in 40 CFR 80.585(d)(4). Currently, non-VCSB test methods are required to resubmit accuracy and precision qualification information every 5 years if the non-VCSB test method has not been approved by a VCSB organization. At this time, VCSBs, such as ASTM, have yet to qualify any non-VCSB test methods for measuring the sulfur content in diesel, gasoline, or butane. Moreover, we require minimal statistical quality control requirements on every

[233] Another part of the 2016 REGS proposal, which we are not finalizing here, would have amended the definition of ''cellulosic diesel'' so that it no longer required that such fuel meet the definition of biomass-based diesel.

[234] See 78 FR 14190 (March 5, 2013).

[235] Kinchin, Christopher. Catalytic Fast Pyrolysis with Upgrading to Gasoline and Diesel Blendstocks. National Renewable Energy Laboratory (NREL). 2011. EPA–HQ–OAR–2011–0542–0007

[236] Id.

[237] See for example discussion of hydrotreated camelina oil in that March 2013 Pathways I rule at 78 FR 14198.

[238] For example, for the 2010 RFS2 rule EPA estimated slightly lower refining emissions (9.2 gCO2e/MJ) for 2005 average U.S. gasoline than for 2005 U.S. average diesel (9.0 gCO2e/MJ). Other studies have found an even larger reduction for refining diesel as compared to gasoline. See for example: Cooney, G., et al. (2017). ''Updating the U.S. Life Cycle GHG Petroleum Baseline to 2014 with Projections to 2040 Using Open-Source Engineering-Based Models.'' Environmental Science & Technology 51(2): 977–987. While this may be different when biogenic feedstocks are used, it is reasonable to conclude that any differences would not be large enough to disqualify the fuel from satisfying the 60 percent GHG reduction threshold.

[239] 81 FR 80927 (November 16, 2016).

[240] This new definition for ''co-processed cellulosic diesel'' is essentially the same as the revised definition of ''cellulosic diesel'' that we proposed in the 2016 REGS proposal; creating a new term rather than revising an existing definition allows us to avoid legacy issues within our IT system.

type test method approved under the diesel sulfur accuracy and precision requirements [241] to ensure proper test method instrumentation use is as intended in practice. We are, therefore, amending the regulatory requirement by eliminating the provision for non-VCSB test methods to re-submit accuracy and precision qualification information every 5 years.

We are also removing the sunset date for designated primary test methods in 40 CFR 80.47. EPA fuels regulations exempted those designated primary test methods that were in use prior to October 28, 2013, from meeting the accuracy and precision qualification requirements.[242] We provided this sunset exemption date in the Tier 3 final rule because we were confident that test facilities were utilizing designated primary test methods prior to this date. However, since the statistical quality control (SQC) requirements at 40 CFR 80.47 are intended to ensure proper utilization of designated primary test methods in practice, we are removing this sunset exemption date. This action exempts all designated primary test methods from the accuracy and precision requirements of 40 CFR 80.47.

b. Oxygenate Added Downstream in Tier 3

After the Tier 3 final rule was published,[243] we received several questions concerning the language at 40 CFR 80.1603(d) about accounting for downstream oxygenate blending in refiners' and importers' average annual sulfur calculations. Specifically, some refiners asked whether 40 CFR 80.1603(d) is consistent with the related reformulated gasoline (RFG) provisions for downstream oxygenate blending in 40 CFR 80.69. Currently, refiners may certify RFG after the addition of oxygenate to the reformulated blendstock for oxygenate blending (RBOB) sample at the refinery lab (creating a so-called ''hand blend''), as allowed in 40 CFR 80.69(a). The Tier 3 regulations at 40 CFR 80.1603(d) require that refiners and importers account for downstream oxygenate blending to any gasoline or blendstock for oxygenate blending (BOB) by volume weighting the sulfur content of the gasoline or BOB with the sulfur content of the added oxygenate. Under the Tier 3 regulations, refiners and importers may either rely upon test results of batches of oxygenate supplied by the producer of the oxygenate or use an assumed value of 5.00 ppm added at 10 volume percent ethanol concentration if actual sulfur results are not available. These refiners and importers suggested that the regulatory language at 40 CFR 80.1603(d) may be interpreted to continue to allow the use of hand-blended RBOB samples for determining oxygenate sulfur content added downstream by arguing that the language at 40 CFR 80.1603(d) only applied to conventional gasoline and conventional blendstock for oxygenate blending (CBOB).

We intended for the downstream oxygenate blending regulations at 40 CFR 80.1603(d) to apply to all gasoline and BOBs, not just conventional gasoline and CBOB. In the preamble to the Tier 3 final rule, we explained that the ''final rule requires that in determining their compliance with today's sulfur standards, refiners and importers must either use the actual sulfur content of the denatured fuel ethanol (DFE) established through testing of the DFE actually blended or assume a 5 ppm sulfur content for the DFE added downstream. To prevent potential bias, a refiner or importer must choose to use only one method during each annual compliance period.'' [244] The regulations at 40 CFR 80.101(d)(4) set forth the criteria that a refiner must meet to include downstream ethanol in their conventional gasoline compliance calculations, and 40 CFR 80.69 sets forth the criteria a refiner must meet to include downstream ethanol in their RFG or RBOB compliance calculations. If a refiner satisfies these criteria, 40 CFR 80.1603(d) sets forth the mechanism for accounting for downstream ethanol in annual compliance calculations for all gasoline and BOBs. This section of the regulations was designed to ensure that all refiners calculate their annual average sulfur levels by including the ethanol that is actually added to their gasoline or BOBs, or to use the default value of 5 ppm sulfur content. This would alleviate the need for refiners to use hand blends prepared with ethanol that has less sulfur than is actually blended with the refiner's gasoline or BOB for their compliance calculations.

Although we believe that 40 CFR 80.1603(d) clearly applies to all gasoline and BOBs, not just RFG or RBOB, we are making minor amendments to ensure that these requirements are as clear as possible to the regulated community. We are also making minor amendments to the Tier 3 sulfur reporting requirements at 40 CFR 80.1652 to better accommodate the inclusion of downstream oxygenate blending in annual average sulfur compliance demonstrations. These added requirements will help align the reported batch information with the annual average compliance report and is necessary to ensure that refiners met both the per-gallon and annual average sulfur standards.

c. Technical Corrections and Clarifications

We are making numerous technical corrections to EPA's fuels programs. These amendments are being made to correct inaccuracies and oversights in the current regulations. These changes are described in Table IX.F.7–2 below.

TABLE IX.F.7–2—MISCELLANEOUS TECHNICAL CORRECTIONS AND CLARIFICATIONS TO TITLE 40

Part and section of Title 40	Description of revision
79.51(f)(6)(iii), 79.59(a)(1), 80.27(e)(1)(i), 80.69(a)(11)(viii)(C), 80.93(d)(4), 80.174(b), 80.174(c), 80.235(b), 80.290(b), 80.533(b), 80.574(b), 80.595(b), 80.607(a), 80.855(c)(2), 80.1285(b), 80.1340(b), 80.1415(c)(4), 80.1441(h), 80.1442(i), 80.1443(d)(2), 80.1449(d), 80.1454(h)(6)(iii), 80.1501(b)(5)(i), 80.1501(b)(5)(ii), 80.1622(g), 80.1625(c)(2), and 80.1656(h).	Redirecting the mailing addresses to the new address section in 80.10.
80.10	Adding a new address section that reflects the address change.
80.27(b)	Clarifying the Performance-Based Analytical Test Method Approach (PBATMA) implementation for Reid vapor pressure (RVP) compliance assurance measurements.

[241] See 40 CFR 80.584.

[242] See, *e.g.,* 40 CFR 80.47(j)(2).

[243] See 79 FR 23414 (April 28, 2014).

[244] See 79 FR 23544 (April 28, 2014).

TABLE IX.F.7–2—MISCELLANEOUS TECHNICAL CORRECTIONS AND CLARIFICATIONS TO TITLE 40—Continued

Part and section of Title 40	Description of revision
80.46	Clarifying that the PBATMA requirements in 80.47 are now effective, removing the VCSB alternative analytical test methods from 80.46, as the VCSB analytical test methods in 80.46 must now meet the requirements in 80.47.
80.47(b)(2)(i) and 80.47(b)(2)(ii)	Clarifying accuracy criterion for sulfur in gasoline by adding examples with accuracy criterion.
80.47(b)(3), 80.47(c)(3), 80.47(d)(2), 80.47(e)(2), 80.47(f)(2), 80.47(g)(2), 80.47(h)(2), 80.47(i)(2), 80.47(j)(2), and 80.47(l)(4).	Removing the reference to the October 28, 2013, date and making the designated primary test methods exempt from the applicable accuracy and precision requirements of 40 CFR 80.47, given that there are SQC requirements for these methods that will verify if they are being carried out properly.
80.47(c)(2)(i) and 80.47(c)(2)(ii)	Clarifying accuracy criterion for sulfur in butane by adding examples with accuracy criterion.
80.47(l)(2)(i)	Clarifying that test facilities meet applicable precision requirements for VCSB method defined and non-VCSB absolute fuel parameters.
80.47(n)(1)(i), 80.47(o)(1)(i), 80.47(p)(1)(i), and 80.47(p)(2)(i)	Removing the accuracy SQC requirement for pre-treatment and assessment of results from the check standard testing after at least 15 testing occasions as described in section 8.2 of ASTM D6299.
80.47(n)(1)(ii), 80.47(o)(1)(ii), and 80.47(p)(1)(ii)	Clarifying the expanded uncertainty of the accepted reference value of consensus named fuels shall be included in the accuracy SQC qualification criterion.
80.47(o)(1)(i)	Clarifying participation in a commercially available Inter Laboratory Crosscheck Program (ILCP) at least three times a year meeting the ASTM D6299 requirements for ILCP check standards that meet the requirements for absolute differences between test results and the accepted reference value of the check standard based on the designated primary test method obtained through participation in the ILCP satisfies the accuracy SQC requirement as well as appropriate calculation for adherence to SQC criteria. Also clarifying the accuracy SQC criteria is 0.75 times the published reproducibility of the applicable designated primary test method for each method defined fuel parameter to be consistent with non-VCSB method defined fuel parameter accuracy SQC requirements.
80.47(n)(2)(i), 80.47(o)(2)(i), and 80.47(p)(3)(i)	Clarification in Precision SQC requirements that the test facility's long term precision standard deviation, as demonstrated by control charts, is expected to meet applicable precision criterion for the test method.
80.585(d)(1) and (2)	Removing reference to expired provisions related to approval of test methods approved by VCSBs.
80.1240(a)(1)(i) and 80.1603(f)(1)	Clarifying that gasoline benzene and sulfur credits must be used for compliance purposes (*i.e.,* retired) instead of simply being obtained.
80.1401	Adding definition of foreign renewable fuel producer, non-renewable feedstock, non-RIN-generating foreign producer, and RIN-generating foreign producer; amended by revising the definition of foreign ethanol producer and renewable fuel.
80.1426(a)(2), 80.1426(c)(4)-(5), 80.1450(b), 80.1450(d)(1), 80.1451(b), 80.1451(b)(1)(ii)(D), 80.1451(g)(1)(ii)(D), 80.1454(q), 80.1466, 80.1472(b)(3)(i), 80.1472(b)(3)(ii)(B), and 80.1472(b)(3)(iii).	Applying the new and revised definitions in 80.1401.
80.1440	Adding a new paragraph related to RIN responsibilities for renewable fuel used for purposes subject to national security exemptions.
80.1450(b)(1)(ix)(A), 80.1451(b)(1)(ii)(I), 80.1451(g)(1)(ii)(I), 80.1452(b)(11), and 80.1464(b)(1)(ii).	Clarifying the term ''denaturant'' to mean ''ethanol denaturant.''
80.1450(g)(9)	Clarifying the third-party auditor registration updates language to make QAP updates consistent with registration updates.
80.1466(d)(3)(ii)	Revising erroneous reference for third-party independence requirements from 80.65(e)(2)(iii) to 80.65(f)(2)(iii).
80.1469(f)(1)	Clarifying to clearly link updates to quality assurance plans with updates to a third-party auditor's registration under 80.1450(g)(9).
80.1501(b)(3)(i)	Clarifying that the word ''ATTENTION'' should be in black font, not orange.
80.1600	Removing the duplicative definition of ''Ethanol denaturant,'' which is already defined in 80.2(iiii).
80.1609(a)	Revising cross-reference to 80.1603(d)(3).
80.1616(c)(3)	Clarifying that Tier 2 credits generated from January 1, 2017 through December 31, 2019, must be used between January 1, 2017 and December 31, 2019.
80.1650(b)(3)	Clarifying that the oxygenate blender registration dates also apply to persons who blend oxygenate into CBOB and conventional gasoline.
80.1650(e)(1)(iii)(A) and 80.1650(g)(1)(iii)(A)	Clarifying that records are kept at the oxygenate production ''facility'' (instead of the oxygenate production ''refinery'').

X. Public Participation

Many interested parties participated in the rulemaking process that culminates with this final rule. This process provided opportunity for submitting written public comments following the proposal that we published on July 29, 2019 (84 FR 36762) and the supplemental notice of proposed rulemaking published on October 28, 2019. We also held public hearings on July 31, 2019 and October 30, 2019, at which many parties provided both verbal and written testimony. All comments received, both verbal and written, are available in Docket ID No. EPA–HQ–OAR–2019–0136 and we considered these comments in developing the final rule. Public comments and EPA responses are discussed throughout this preamble and in the accompanying RTC document, which is available in the docket for this action.

XI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. EPA prepared an analysis of illustrative costs associated with the 2020 percentage standards. This analysis is presented in Section V.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is considered an Executive Order 13771 regulatory action. Details on the estimated costs of the 2020 percentage standards can be found in EPA's analysis of the illustrative costs. This analysis is presented in Section V.

C. Paperwork Reduction Act (PRA)

The existing Information Collection Request (ICR) covering the RFS program is entitled ''Recordkeeping and Reporting for the Renewable Fuel Standard Program,'' EPA ICR No. 2546.01, OMB Control Number 2060–0725; expires August 31, 2022. The existing RFS ICR covers registration, recordkeeping, and reporting requirements currently in 40 CFR part 80, subpart M. The changes affecting RVO calculations will not change the recordkeeping and reporting burdens vis-à-vis the existing collection. However, certain of the amendments in this action will result in an additional burden. The information collection activities related to the amendments to the RFS regulations in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. You can find a copy of the ICR in the docket for this rule, identified by EPA ICR Number 2595.02, OMB Control Number 2060–NEW, and it is briefly summarized here. The parties for whom we anticipate an increase in burden are generally described as RIN generators (specifically, those who are producers of renewable fuel) due the amendments related to pathways, and those who are generally described as obligated parties (specifically, those who are refiners and importers) due to the provisions for certified NTDF. The supporting statement clearly indicates the amendments and includes detailed tables with regulatory burden laid out by type of party, regulatory citation, description of information to be collected, estimated burden in hours and dollars, and reporting form or format. Certain amendments in this action are related to non-RFS fuels programs, but these amendments are mostly technical corrections (*e.g.,* address corrections) and do not impose any additional recordkeeping and reporting burden.

The Following Summarizes the Burden

Respondents/affected entities: The respondents to this information collection are RIN generators and obligated parties under the RFS program, and fall into the following general industry categories: Petroleum refineries, ethyl alcohol manufacturers, other basic organic chemical manufacturing, chemical and allied products merchant wholesalers, petroleum bulk stations and terminals, petroleum and petroleum products merchant wholesalers, gasoline service stations, and marine service stations.

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: 6,042.

Total number of responses: 357,512.

Frequency of response: Annually and occasionally.

Total estimated burden: 32,548 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $3,511,813 (per year).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, EPA will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule.

With respect to the amendments to the RFS regulations and other fuels programs, this action makes relatively minor corrections and modifications to those regulations, and we do not anticipate that there will be any significant adverse economic impact on directly regulated small entities.

The small entities directly regulated by the annual percentage standards associated with the RFS volumes are small refiners, which are defined at 13 CFR 121.201. With respect to the 2020 percentage standards, we have evaluated the impacts on small entities from two perspectives: As if the standards were a standalone action or if they are a part of the overall impacts of the RFS program as a whole.

When evaluating the standards as if they were a standalone action separate and apart from the original rulemaking that established the RFS2 program, the standards could be viewed as increasing the cellulosic biofuel, advanced biofuel, and total renewable fuel volume requirements by 170 million gallons between 2019 and 2020. To evaluate the impacts of the volume requirements on small entities relative to 2019, we have conducted a screening analysis [245] to assess whether we should make a finding that this action will not have a significant economic impact on a substantial number of small entities. Currently available information shows that the impact on small entities from implementation of this rule will not be significant. We have reviewed and

[245] ''Screening Analysis for the Final Renewable Fuel Standards for 2020,'' memorandum from Dallas Burkholder and Nick Parsons to EPA Air Docket EPA–HQ–OAR–2018–0205.

assessed the available information, which shows that obligated parties, including small entities, are generally able to recover the cost of acquiring the RINs necessary for compliance with the RFS standards through higher sales prices of the petroleum products they sell than would be expected in the absence of the RFS program.[246] This is true whether they acquire RINs by purchasing renewable fuels with attached RINs or purchase separated RINs. The costs of the RFS program are thus generally being passed on to consumers in the highly competitive marketplace. Even if we were to assume that the cost of acquiring RINs was not recovered by obligated parties, and we used the maximum values of the costs discussed in Section V and the gasoline and diesel fuel volume projections and wholesale prices from the October 2019 version of EIA's Short Term Energy Outlook, along with current wholesale biofuel prices, a cost-to-sales ratio test shows that the costs to small entities of the RFS standards are far less than 1 percent of the value of their sales.

While the screening analysis described above supports a certification that this rule will not have a significant economic impact on small refiners, we continue to believe that it is more appropriate to consider the standards as a part of our ongoing implementation of the overall RFS program. When considered this way, the impacts of the RFS program as a whole on small entities were addressed in the RFS2 final rule, which was the rule that implemented the entire program as required by EISA 2007.[247] As such, the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel process that took place prior to the 2010 rule was also for the entire RFS program and looked at impacts on small refiners through 2022.

For the SBREFA process for the RFS2 final rule, we conducted outreach, fact-finding, and analysis of the potential impacts of the program on small refiners, which are all described in the Final Regulatory Flexibility Analysis, located in the rulemaking docket (EPA–HQ–OAR–2005–0161). This analysis looked at impacts to all refiners, including small refiners, through the year 2022 and found that the program would not have a significant economic impact on a substantial number of small entities, and that this impact was expected to decrease over time, even as the standards increased. For gasoline and/or diesel small refiners subject to the standards, the analysis included a cost-to-sales ratio test, a ratio of the estimated annualized compliance costs to the value of sales per company. From this test, we estimated that all directly regulated small entities would have compliance costs that are less than one percent of their sales over the life of the program (75 FR 14862, March 26, 2010).

We have determined that this final rule will not impose any additional requirements on small entities beyond those already analyzed, since the impacts of this rule are not greater or fundamentally different than those already considered in the analysis for the RFS2 final rule assuming full implementation of the RFS program. This rule increases the 2020 cellulosic biofuel, advanced biofuel, and total renewable fuel volume requirements by 170 million gallons relative to the 2019 volume requirements, but those volumes remain significantly below the statutory volume targets analyzed in the RFS2 final rule. Compared to the burden that would be imposed under the volumes that we assessed in the screening analysis for the RFS2 final rule (*i.e.,* the volumes specified in the Clean Air Act), the volume requirements in this rule reduce burden on small entities. Regarding the BBD standard, we are maintaining the volume requirement for 2021 at the same level as the 2020 volume requirement we finalized in the 2019 final rule.[248] While this volume is an increase over the statutory minimum value of 1 billion gallons, the BBD standard is a nested standard within the advanced biofuel category, which we are significantly reducing from the statutory volume targets. As discussed in Section VI, the BBD volume requirement is below what is anticipated to be produced and used to satisfy the advanced biofuel requirement. The net result of the standards being finalized in this action is a reduction in burden as compared to implementation of the statutory volume targets assumed in the RFS2 final rule analysis.

While the rule will not have a significant economic impact on a substantial number of small entities, there are compliance flexibilities in the program that can help to reduce impacts on small entities. These flexibilities include being able to comply through RIN trading rather than renewable fuel blending, 20 percent RIN rollover allowance (up to 20 percent of an obligated party's RVO can be met using previous-year RINs), and deficit carry-forward (the ability to carry over a deficit from a given year into the following year, provided that the deficit is satisfied together with the next year's RVO). In the RFS2 final rule, we discussed other potential small entity flexibilities that had been suggested by the SBREFA panel or through comments, but we did not adopt them, in part because we had serious concerns regarding our authority to do so.

Additionally, we realize that there may be cases in which a small entity may be in a difficult financial situation and the level of assistance afforded by the program flexibilities is insufficient. For such circumstances, the program provides hardship relief provisions for small entities (small refiners), as well as for small refineries.[249] As required by the statute, the RFS regulations include a hardship relief provision (at 40 CFR 80.1441(e)(2)) that allows for a small refinery to petition for an extension of its small refinery exemption at any time based on a showing that the refinery is experiencing a ''disproportionate economic hardship.'' EPA regulations provide similar relief to small refiners that are not eligible for small refinery relief (see 40 CFR 80.1442(h)). We have currently identified a total of 9 small refiners that own 11 refineries subject to the RFS program, all of which are also small refineries.

We evaluate these petitions on a case-by-case basis and may approve such petitions if it finds that a disproportionate economic hardship exists. In evaluating such petitions, we consult with the U.S. Department of Energy and consider the findings of DOE's 2011 Small Refinery Study and other economic factors. To date, EPA has adjudicated petitions for exemption from 37 small refineries for the 2018 RFS standards (10 of which are owned by a small refiner).[250] We have not yet

[246] For a further discussion of the ability of obligated parties to recover the cost of RINs see ''Denial of Petitions for Rulemaking to Change the RFS Point of Obligation,'' EPA–420–R–17–008, November 2017.

[247] 75 FR 14670 (March 26, 2010).

[248] Moreover, we note that the 2021 BBD volume only establishes the maximum BBD volume for that year and may be adjusted in subsequent actions. This volume does not directly regulate any entity. We intend to translate this volume, subject to any appropriate adjustments, into a percentage standard in the 2021 annual rulemaking. We also acknowledge that today's action does impose the 2020 BBD percentage standard. As we explain in Section VI and in the preamble to the 2019 final rule, this percentage standard is not practically binding, as we expect obligated parties to rely on BBD RINs, in excess of this standard, to satisfy the 2020 advanced biofuel standard. Thus, any impact on directly regulated entities from the 2020 BBD percentage standard is subsumed into the impact of the 2020 advanced biofuel standard. As we explain in this section and the screening memo, we find that the 2020 advanced biofuel standard will not have a significant economic impact on a substantial number of small entities under the RFA.

[249] See CAA section 211(o)(9)(B).

[250] Information about the number of SREs granted can be found at: *https://www.epa.gov/fuels-*

adjudicated any small refinery exemption petitions for the 2019 or 2020 RFS standards.

In sum, this final rule will not change the compliance flexibilities currently offered to small entities under the RFS program (including the small refinery hardship provisions we continue to implement) and available information shows that the impact on small entities from implementation of this rule will not be significant viewed either from the perspective of it being a standalone action or a part of the overall RFS program. We have therefore concluded that this action will not have any significant adverse economic impact on directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action implements mandates specifically and explicitly set forth in CAA section 211(o) and we believe that this action represents the least costly, most cost-effective approach to achieve the statutory requirements.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action will be implemented at the Federal level and affects transportation fuel refiners, blenders, marketers, distributors, importers, exporters, and renewable fuel producers and importers. Tribal governments will be affected only to the extent they produce, purchase, or use regulated fuels. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it implements specific standards established by Congress in statutes (CAA section 211(o)) and does not concern an environmental health risk or safety risk.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action establishes the required renewable fuel content of the transportation fuel supply for 2020, consistent with the CAA and waiver authorities provided therein. The RFS program and this rule are designed to achieve positive effects on the nation's transportation fuel supply, by increasing energy independence and security and lowering lifecycle GHG emissions of transportation fuel.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This regulatory action does not affect the level of protection provided to human health or the environment by applicable air quality standards. This action does not relax the control measures on sources regulated by the RFS and other fuels regulations.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is a ''major rule'' as defined by 5 U.S.C. 804(2).

XII. Statutory Authority

Statutory authority for this action comes from sections 114, 203–05, 208, 211, and 301 of the Clean Air Act, 42 U.S.C. 7414, 7522–24, 7542, 7545, and 7601.

List of Subjects

40 CFR Part 79

Environmental protection, Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel fuel, Fuel additives, Gasoline, Imports, Oil imports, Petroleum, Renewable fuel.

Dated: December 19, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR parts 79 and 80 as follows:

PART 79—REGISTRATION OF FUEL AND FUEL ADDITIVES

■ 1. The authority citation for part 79 continues to read as follows:

Authority: 42 U.S.C. 7414, 7524, 7545 and 7601.

Subpart F—Testing Requirements for Registration

■ 2. Section 79.51 is amended by revising the last sentence of paragraph (f)(6)(iii) to read as follows:

§ 79.51 General requirements and provisions.

* * * * *

(f) * * *

(6) * * *

(iii) * * * The registrants' communications should be sent to the following address: Attn: Fuel/Additives Registration, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Mail Code 6405A, Washington, DC 20460.

* * * * *

■ 3. Section 79.59 is amended by revising the last sentence of paragraph (a)(1) introductory text to read as follows:

§ 79.59 Reporting requirements.

(a) * * *

(1) * * * Forms for submitting this data may be obtained from EPA at the following address: Attn: Fuel/Additives Registration, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Mail Code 6405A, Washington, DC 20460.

* * * * *

registration-reporting-and-compliance-help/rfs-small-refinery-exemptions.

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 4. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

Subpart A—General Provisions

■ 5. Section 80.10 is added to read as follows:

§ 80.10 Addresses.

(a) For submitting notifications, applications, petitions, or other communications with EPA, use one of the following addresses for mailing:

(1) For U.S. Mail: Attn: [TITLE AS DIRECTED], U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Mail Code 6405A, Washington, DC 20460.

(2) For commercial service: Attn: [TITLE AS DIRECTED], U.S. Environmental Protection Agency, William Jefferson Clinton Building North, Mail Code 6405A, Room 6520V, 1200 Pennsylvania Ave. NW, Washington, DC 20004; Phone: 1–800–385–6164.

(b) [Reserved]

Subpart B—Controls and Prohibitions

■ 6. Section 80.27 is amended by revising paragraphs (b) and (e)(1)(i) to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

* * * * *

(b) *Determination of compliance.* Compliance with the standards listed in paragraph (a) of this section shall be determined by the use of the sampling methodologies specified in § 80.8 and the testing methodology specified in § 80.46(c) until December 31, 2015, and § 80.47 beginning January 1, 2016.

* * * * *

(e) * * *

(1) * * *

(i) Any person may request a testing exemption by submitting an application that includes all the information listed in paragraphs (e)(3) through (6) of this section to the attention of ''Test Exemptions'' to the address in § 80.10(a).

* * * * *

Subpart D—Reformulated Gasoline

■ 7. Section 80.46 is amended by:

■ a. Revising paragraphs (a), (b), (d), (e), (f), and (g); and

■ b. Removing and reserving paragraphs (h)(1)(iv), (v), (vii), (viii), (x), (xiii), (xv), and (xvi).

The revisions read as follows:

§ 80.46 Measurement of reformulated gasoline and conventional gasoline fuel parameters.

(a) *Sulfur.* Sulfur content of gasoline and butane must be determined by use of the following methods:

(1)(i) Through December 31, 2015, the sulfur content of gasoline must be determined by ASTM D2622.

(ii) Beginning January 1, 2016, the sulfur content of gasoline must be determined by a test method approved under § 80.47.

(2)(i) Through December 31, 2015, the sulfur content of butane must be determined by ASTM D6667.

(ii) Beginning January 1, 2016, the sulfur content of butane must be determined by a test method approved under § 80.47.

(b) *Olefins.* Olefin content must be determined by use of the following methods:

(1) Through December 31, 2015, olefin content must be determined using ASTM D1319.

(2) Beginning January 1, 2016, olefin content must be determined by a test method approved under § 80.47.

* * * * *

(d) *Distillation.* Distillation parameters must be determined by use of the following test methods:

(1) Through December 31, 2015, distillation parameters must be determined using ASTM D86.

(2) Beginning January 1, 2016, distillation parameters must be determined by a test method approved under § 80.47. (Note: The precision estimates for reproducibility in ASTM D86–12 do not apply; see § 80.47(h).)

(e) *Benzene.* Benzene content must be determined by use of the following test methods:

(1) Through December 31, 2015, benzene content must be determined using ASTM D3606, except that instrument parameters shall be adjusted to ensure complete resolution of the benzene, ethanol, and methanol peaks because ethanol and methanol may cause interference with ASTM D3606 when present.

(2) Beginning January 1, 2016, benzene content must be determined by a test method approved under § 80.47.

(f) *Aromatic content.* Aromatic content must be determined by use of the following methods:

(1) Through December 31, 2015, aromatic content must be determined using ASTM D5769, except the sample chilling requirements in section 8 of this standard method are optional.

(2) Beginning January 1, 2016, aromatic content must be determined by a test method approved under § 80.47.

(g) *Oxygen and oxygenate content analysis.* Oxygen and oxygenate content must be determined by use of the following methods:

(1) Through December 31, 2015, oxygen and oxygenate content must be determined using ASTM D5599.

(2) Beginning January 1, 2016, oxygen and oxygenate content must be determined by a test method approved under § 80.47.

* * * * *

■ 8. Section 80.47 is amended by revising paragraphs (b), (c)(2)(i) and (ii), (c)(3), (d)(2), (e)(2), (f)(2), (g)(2), (h)(2), (i)(2), (j)(2), (l)(2)(i), (l)(4), (n)(1), (n)(2)(i), (o)(1), (o)(2)(i), (p)(1), (p)(2)(i), and (p)(3)(i) to read as follows:

§ 80.47 Performance-based Analytical Test Method Approach.

* * * * *

(b) *Precision and accuracy criteria for approval for the absolute fuel parameter of gasoline sulfur*—(1) *Precision.* Beginning January 1, 2016, for motor vehicle gasoline, gasoline blendstock, and gasoline fuel additives subject to the gasoline sulfur standard at §§ 80.195 and 80.1603, the maximum allowable standard deviation computed from the results of a minimum of 20 tests made over 20 days (tests may be arranged into no fewer than five batches of four or fewer tests each, with only one such batch allowed per day over the minimum of 20 days) on samples using good laboratory practices taken from a single homogeneous commercially available gasoline must be less than or equal to 1.5 times the repeatability ''r'' divided by 2.77, where ''r'' equals the ASTM repeatability of ASTM D7039 (Example: A 10 ppm sulfur gasoline sample: Maximum allowable standard deviation of 20 tests≤1.5*(1.73ppm/2.77) = 0.94 ppm). The 20 results must be a series of tests with a sequential record of analysis and no omissions. A laboratory facility may exclude a given sample or test result only if the exclusion is for a valid reason under good laboratory practices and it maintains records regarding the sample and test results and the reason for excluding them.

(2) *Accuracy.* Beginning January 1, 2016, for motor vehicle gasoline, gasoline blendstock, and gasoline fuel additives subject to the gasoline sulfur standard at §§ 80.195 and 80.1603:

(i) The arithmetic average of a continuous series of at least 10 tests performed using good laboratory practices on a commercially available gravimetric sulfur standard in the range of 1–10 ppm shall not differ from the accepted reference value (ARV) of the standard by more than 0.47 ppm sulfur,

where the accuracy criteria is 0.75*(1.5*r/2.77), where ''r'' is the repeatability for ARV of the commercially available gravimetric sulfur standard (Example: 0.75*(1.5*1.15ppm/2.77) = 0.47 ppm);

(ii) The arithmetic average of a continuous series of at least 10 tests performed using good laboratory practices on a commercially available gravimetric sulfur standard in the range of 10–20 ppm shall not differ from the ARV of the standard by more than 0.94 ppm sulfur, where the accuracy criteria is 0.75*(1.5*r/2.77), where ''r'' is the repeatability for ARV of the commercially available gravimetric sulfur standard (Example: 0.75*(1.5*2.30ppm/2.77) = 0.94 ppm); and

(iii) In applying the tests of paragraphs (b)(2)(i) and (ii) of this section, individual test results shall be compensated for any known chemical interferences using good laboratory practices.

(3) The test method specified at § 80.46(a)(1) is exempt from the requirements of paragraphs (b)(1) and (2) of this section.

(c) * * *

(2) * * *

(i) The arithmetic average of a continuous series of at least 10 tests performed using good laboratory practices on a commercially available gravimetric sulfur standard in the range of 1–10 ppm, say 10 ppm, shall not differ from the ARV of the standard by more than 0.47 ppm sulfur, where the accuracy criteria is 0.75*(1.5*r/2.77), where ''r'' is the repeatability for ARV of the commercially available gravimetric sulfur standard (Example: 0.75*(1.5*1.15ppm/2.77) = 0.47 ppm);

(ii) The arithmetic average of a continuous series of at least 10 tests performed using good laboratory practices on a commercially available gravimetric sulfur standard in the range of 10–20 ppm, say 20 ppm, shall not differ from the ARV of the standard by more than 0.94 ppm sulfur, where the accuracy criteria is 0.75*(1.5*r/2.77), where ''r'' is the repeatability for ARV of the commercially available gravimetric sulfur standard (Example: 0.75*(1.5*2.30ppm/2.77) = 0.94 ppm); and

* * * * *

(3) The test method specified at § 80.46(a)(2) is exempt from the requirements of paragraphs (c)(1) and (2) of this section.

(d) * * *

(2) The test method specified at § 80.46(b)(1) is exempt from the requirements of paragraph (d)(1) of this section.

(e) * * *

(2) The test method specified at § 80.46(f)(1) is exempt from the requirements of paragraph (e)(1) of this section.

(f) * * *

(2) The test method specified at § 80.46(g)(1) is exempt from the requirements of paragraph (f)(1) of this section.

(g) * * *

(2) The test method specified at § 80.46(c)(1) is exempt from the requirements of paragraph (g)(1) of this section.

(h) * * *

(2) The test method specified at § 80.46(d)(1) is exempt from the requirements of paragraph (h)(1) of this section.

(i) * * *

(2) The test methods specified at § 80.46(e)(1) are exempt from the requirements of paragraph (i)(1) of this section.

(j) * * *

(2) The test method specified at § 80.2(z) is exempt from the requirements of paragraph (j)(1) of this section.

* * * * *

(l) * * *

(2)(i) The test facility demonstrates that the test method meets the applicable precision information for the method-defined or non-VCSB absolute fuel parameter as described in this section.

* * * * *

(4) The test methods specified at §§ 80.2(z) and 80.46(a)(1), (a)(2), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), and (g)(1) are exempt from the requirements of paragraphs (l)(1) through (3) of this section.

* * * * *

(n) * * *

(1)(i) *Accuracy SQC.* Every facility shall conduct tests on every instrument with a commercially available gravimetric reference material, or check standard as defined in ASTM D6299 at least three times a year using good laboratory practices. The facility must construct ''MR'' and ''I'' charts with control lines as described in section 8.4 and appropriate Annex sections of this standard practice. In circumstances where the absolute difference between the mean of multiple back-to-back tests of the standard reference material and the ARV of the standard reference material is greater than 0.75 times the published reproducibility of the test method, the cause of such difference must be investigated by the facility. Records of the standard reference materials measurements as well as any investigations into any exceedance of these criteria must be kept for a period of five years.

(ii) The expanded uncertainty of the ARV of consensus named fuels shall be included in the following accuracy qualification criterion: Accuracy qualification criterion = square root [(0.75R)^2 + (0.75R)^2/L], where L = the number of single results obtained from different labs used to calculate the consensus ARV.

(2)(i) *Precision SQC.* Every facility shall conduct tests of every instrument with a quality control material as defined in paragraph 3.2.8 in ASTM D6299 either once per week or once per every 20 production tests, whichever is more frequent. The facility must construct and maintain an ''I'' chart as described in section 8 and section A1.5.1 and a ''MR'' chart as described in section A1.5.4. Any violations of control limit(s) shall be investigated by personnel of the facility and records kept for a period of five years. The test facility's long term site precision standard deviation, as demonstrated by the ''I'' chart and ''M'' chart, must meet the applicable precision criterion as described in paragraph (b)(1) or (c)(1) of this section.

* * * * *

(o) * * *

(1)(i) *Accuracy SQC.* Every facility shall conduct tests of every instrument with a commercially available check standard as defined in ASTM D6299 at least three times a year using good laboratory practices. The check standard must be an ordinary fuel with levels of the fuel parameter of interest close to either the applicable regulatory standard or the average level of use for the facility. For facilities using a VCSB designated method defined test method, the ARV of the check standard must be determined by the respective designated test method for the fuel parameter following the guidelines of ASTM D6299. Facilities using a VCSB alternative method defined test method must use the ARV of the check standard as determined in a VCSB Inter Laboratory Crosscheck Program (ILCP) or a commercially available ILCP following the guidelines of ASTM D6299. If the ARV is not provided in the ILCP, accuracy must be assessed based upon the respective EPA-designated test method using appropriate production samples. The facility must construct ''MR'' and ''I'' charts with control lines as described in section 8.4 and appropriate Annex sections of this standard practice. In circumstances where the absolute difference between test results and the ARV of the check

standard based on the designated primary test method is greater than 0.75 times the published reproducibility of the designated primary test method, the cause of such difference must be investigated by the facility. Participation in a VCSB ILCP or a commercially available ILCP meeting the ASTM D6299 requirements for ILCP check standards, based on the designated primary test method, at least three times a year, and, meeting the requirements in this section for absolute differences between the test results and the ARV of the check standard based on the designated primary test method of less than 0.75 times the published reproducibility of the designated primary test method obtained through participation in the ILCP satisfies this Accuracy SQC requirement (Examples of VCSB ILCPs: ASTM Reformulated Gasoline ILCP or ASTM motor gasoline ILCP). Records of the standard reference materials measurements as well as any investigations into any exceedance of these criteria must be kept for a period of five years.

(ii) The expanded uncertainty of the ARV of consensus named fuels shall be included in the following accuracy qualification criterion: Accuracy qualification criterion = square root [(0.75R)^2 + (0.75R)^2/L], where L = the number of single results obtained from different labs used to calculate the consensus ARV.

(2)(i) *Precision SQC.* Every facility shall conduct tests of every instrument with a quality control material as defined in paragraph 3.2.8 in ASTM D6299 either once per week or once per every 20 production tests, whichever is more frequent. The facility must construct and maintain an ''I'' chart as described in section 8 and section A1.5.1 and a ''MR'' chart as described in section A1.5.4. Any violations of control limit(s) shall be investigated by personnel of the facility and records kept for a period of five years. The test facility's long term site precision standard deviation, as demonstrated by the ''I'' chart and ''M'' chart, must meet the applicable precision criterion as described in paragraph (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1), or (j)(1) of this section.

* * * * *

(p) * * *

(1)(i) *Accuracy SQC for Non-VCSB Method-Defined test methods with minimal matrix effects.* Every facility shall conduct tests on every instrument with a commercially available check standard as defined in the ASTM D6299 at least three times a year using good laboratory practices. The check standard must be an ordinary fuel with levels of the fuel parameter of interest close to either the applicable regulatory standard or the average level of use for the facility. Facilities using a Non-VCSB alternative method defined test method must use the ARV of the check standard as determined in either a VCSB Inter Laboratory Crosscheck Program (ILCP) or a commercially available ILCP following the guidelines of ASTM D6299. If the ARV is not provided in the ILCP, accuracy must be assessed based upon the respective EPA designated test method using appropriate production samples. The facility must construct ''MR'' and ''I'' charts with control lines as described in section 8.4 and appropriate Annex sections of this standard practice. In circumstances where the absolute difference between the mean of multiple back-to-back tests of the standard reference material and the ARV of the standard reference material is greater than 0.75 times the published reproducibility of the fuel parameter's respective designated test method, the cause of such difference must be investigated by the facility. Records of the standard reference materials measurements as well as any investigations into any exceedance of these criteria must be kept for a period of five years.

(ii) The expanded uncertainty of the ARV of consensus named fuels shall be included in the following accuracy qualification criterion: Accuracy qualification criterion = square root [(0.75R)^2 + (0.75R)^2/L], where L = the number of single results obtained from different labs used to calculate the consensus ARV.

(2)(i) *Accuracy SQC for Non-VCSB Method-Defined test methods with high sensitivity to matrix effects.* Every facility shall conduct tests on every instrument with a production fuel on at least a quarterly basis using good laboratory practices. The production fuel must be representative of the production fuels that are routinely analyzed by the facility. The ARV of the production fuel must be determined by the respective reference installation of the designated test method for the fuel parameter following the guidelines of ASTM D6299. The facility must construct ''MR'' and ''I'' charts with control lines as described in section 8.4 and appropriate Annex sections of this standard practice. In circumstances where the absolute difference between the mean of multiple back-to-back tests of the standard reference material and the ARV of the standard reference material is greater than 0.75 times the published reproducibility of the test method must be investigated by the facility. Documentation on the identity of the reference installation and its control status must be maintained on the premises of the method-defined alternative test method. Records of the standard reference materials measurements as well as any investigations into any exceedances of this criterion must be kept for a period of five years.

* * * * *

(3)(i) *Precision SQC.* Every facility shall conduct tests of every instrument with a quality control material as defined in paragraph 3.2.8 in ASTM D6299 either once per week or once per every 20 production tests, whichever is more frequent. The facility must construct and maintain an ''I'' chart as described in section 8 and section A1.5.1 and a ''MR'' chart as described in section A1.5.4. Any violations of control limit(s) shall be investigated by personnel of the facility and records kept for a period of five years. The test facility's long term site precision standard deviation, as demonstrated by the ''I'' chart and ''M'' chart, must meet the applicable precision criterion as described in paragraph (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1), or (j)(1) of this section.

* * * * *

■ 9. Section 80.69 is amended by revising paragraph (a)(11)(viii)(C) to read as follows:

§ 80.69 Requirements for downstream oxygenate blending.

(a) * * *

(11) * * *

(viii) * * *

(C) The survey plan must be sent to the attention of ''RFG Program (Survey Plan)'' to the address in § 80.10(a);

* * * * *

Subpart E—Anti-Dumping

■ 10. Section 80.93 is amended by revising paragraph (d)(4) to read as follows:

§ 80.93 Individual baseline submission and approval.

* * * * *

(d) * * *

(4) For U.S. Postal delivery, the petition shall be sent to the attention of ''RFG Program (Baseline Petition)'' to the address in § 80.10(a).

* * * * *

Subpart G—Detergent Gasoline

■ 11. Section 80.174 is amended by revising paragraphs (b) and (c) to read as follows:

§ 80.174 Addresses.

* * * * *

(b) Other detergent registration and certification data, and certain other information which may be specified in this subpart, shall be sent to the attention of ''Detergent Additive Certification'' to the address in § 80.10(a).

(c) Notifications to EPA regarding program exemptions, detergent dilution and commingling, and certain other information which may be specified in this subpart, shall be sent to the attention of ''Detergent Enforcement Program'' to the address in § 80.10(a).

Subpart H—Gasoline Sulfur

■ 12. Section 80.235 is amended by revising paragraph (b) to read as follows:

§ 80.235 How does a refiner obtain approval as a small refiner?

* * * * *

(b) Applications for small refiner status must be sent to the attention of ''Gasoline Sulfur Program (Small Refiner)'' to the address in § 80.10(a).

* * * * *

■ 13. Section 80.290 is amended by revising paragraph (b) to read as follows:

§ 80.290 How does a refiner apply for a sulfur baseline?

* * * * *

(b) The sulfur baseline request must be sent to the attention of ''Gasoline Sulfur Program (Sulfur Baseline)'' to the address in § 80.10(a).

* * * * *

Subpart I—Motor Vehicle Diesel Fuel; Nonroad, Locomotive, and Marine Diesel Fuel; and ECA Marine Fuel

■ 14. Section 80.533 is amended by revising paragraph (b) as follows:

§ 80.533 How does a refiner or importer apply for a motor vehicle or non-highway baseline for the generation of NRLM credits or the use of the NRLM small refiner compliance options?

* * * * *

(b) The baseline must be sent to the attention of ''Nonroad Rule Diesel Fuel Baseline'' to the address in § 80.10(a).

* * * * *

■ 15. Section 80.574 is amended by revising paragraph (b) as follows:

§ 80.574 What labeling requirements apply to retailers and wholesale purchaser-consumers of ECA marine fuel beginning June 1, 2014?

* * * * *

(b) Alternative labels to those specified in paragraph (a) of this section may be used as approved by EPA. Send requests to the attention of ''ECA Marine Fuel Alternative Label Request'' to the address in § 80.10(a).

■ 16. Section 80.585 is amended:

■ a. In paragraph (d)(1), by removing ''paragraph (a) or (b)'' and adding ''paragraph (b)'' in its place;

■ b. In the first sentence of paragraph (d)(2), by removing ''paragraph (a) or (b)'' and adding ''paragraph (b)'' in its place; and

■ c. By revising paragraph (d)(4).

The revision reads as follows:

§ 80.585 What is the process for approval of a test method for determining the sulfur content of diesel or ECA marine fuel?

* * * * *

(d) * * *

(4) The approval of any test method under paragraph (b) of this section shall be valid from the date of approval from the Administrator.

* * * * *

■ 17. Section 80.595 is amended by revising paragraph (b) to read as follows:

§ 80.595 How does a small or GPA refiner apply for a motor vehicle diesel fuel volume baseline for the purpose of extending their gasoline sulfur standards?

* * * * *

(b) The volume baseline must be sent via certified mail with return receipt or express mail with return receipt to the attention of ''Diesel Baseline'' to the address in § 80.10(a).

* * * * *

■ 18. Section 80.607 is amended by revising paragraph (a) to read as follows:

§ 80.607 What are the requirements for obtaining an exemption for diesel fuel used for research, development or testing purposes?

(a) *Written request for a research and development exemption.* Any person may receive an exemption from the provisions of this subpart for diesel fuel or ECA marine fuel used for research, development, or testing purposes by submitting the information listed in paragraph (c) of this section to the attention of ''Diesel Program (Diesel Exemption Request)'' to the address in § 80.10(a).

* * * * *

■ Subpart J—Gasoline Toxics

■ 19. Section 80.855 is amended by revising paragraph (c)(2) to read as follows:

§ 80.855 What is the compliance baseline for refineries or importers with insufficient data?

* * * * *

(c) * * *

(2) *Application process.* Applications must be submitted to the attention of ''Anti-Dumping Compliance Period'' to the address in § 80.10(a).

* * * * *

Subpart L—Gasoline Benzene

■ 20. Section 80.1240 is amended in paragraph (a)(1)(i) in the equation by revising the definition ''OC'' to read as follows:

§ 80.1240 How is a refinery's or importer's compliance with the gasoline benzene requirements of this subpart determined?

(a) * * *

(1)(i) * * *

OC = Benzene credits used by the refinery or importer to show compliance (gallons benzene).

* * * * *

■ 21. Section 80.1285 is amended by revising paragraph (b) to read as follows:

§ 80.1285 How does a refiner apply for a benzene baseline?

* * * * *

(b) For U.S. Postal delivery, the benzene baseline application shall be sent to the attention of ''MSAT2 Benzene'' to the address in § 80.10(a).

* * * * *

■ 22. Section 80.1340 is amended by revising paragraph (b) to read as follows:

§ 80.1340 How does a refiner obtain approval as a small refiner?

* * * * *

(b) Applications for small refiner status must be sent to the attention of ''MSAT2 Benzene'' to the address in § 80.10(a).

* * * * *

Subpart M—Renewable Fuel Standard

■ 23. Section 80.1401 is amended by:

■ a. Adding in alphabetical order definitions for ''Certified non-transportation 15 ppm distillate fuel,'' ''Co-processed cellulosic diesel,'' and ''Covered location'';

■ b. Revising the definition of ''Exporter of renewable fuel'' and ''Foreign ethanol producer'';

■ c. Adding in alphabetical order a definition for ''Foreign renewable fuel producer'';

■ d. Revising paragraph (2) in the definition of ''Heating oil'';

■ e. Adding in alphabetical order definitions for ''Non-renewable feedstock'' and ''Non-RIN-generating foreign producer'';

■ f. Revising paragraph (2) in the definition of ''Renewable fuel''; and

■ g. Adding in alphabetical order a definition for ''RIN-generating foreign producer''. The additions and revisions read as follows:

§ 80.1401 Definitions

* * * * *

Certified non-transportation 15 ppm distillate fuel or *certified NTDF* means distillate fuel that meets all of the following:

(1) It has been certified as complying with the 15 ppm sulfur standard, cetane/aromatics standard, and all applicable sampling, testing, and recordkeeping requirements of subpart I of this part.

(2) It has been designated as 15 ppm heating oil, 15 ppm ECA marine fuel, or other non-transportation fuel (*e.g.,* jet fuel, kerosene, heating oil, or No. 4 fuel) on its product transfer document and has not been designated as MVNRLM diesel fuel.

(3) The PTD for the distillate fuel meets the requirements in § 80.1453(e).

* * * * *

Co-processed cellulosic diesel is any renewable fuel that meets the definition of cellulosic biofuel, as defined in this section 80.1401, and meets all of the requirements of paragraph (1) of this definition:

(1)(i) Is a transportation fuel, transportation fuel additive, heating oil, or jet fuel.

(ii) Meets the definition of either biodiesel or non-ester renewable diesel.

(iii) Is registered as a motor vehicle fuel or fuel additive under 40 CFR part 79, if the fuel or fuel additive is intended for use in a motor vehicle.

(2) Co-processed cellulosic diesel includes heating oil and jet fuel made from cellulosic feedstocks and cellulosic biofuel produced as a result of co-processing cellulosic feedstocks with petroleum.

* * * * *

Covered location means the contiguous 48 states, Hawaii, and any state or territory that has received an approval from the Administrator to opt-in to the RFS program under § 80.1443.

* * * * *

Exporter of renewable fuel means all buyers, sellers, and owners of the renewable fuel in any transaction that results in renewable fuel being transferred from a covered location to a destination outside of the covered locations.

* * * * *

Foreign ethanol producer means a foreign renewable fuel producer who produces ethanol for use in transportation fuel, heating oil, or jet fuel but who does not add ethanol denaturant to their product as described in paragraph (2) of the definition of ''renewable fuel'' in this section.

Foreign renewable fuel producer means a person from a foreign country or from an area outside the covered locations who produces renewable fuel (including neat (undenatured) ethanol for use in transportation fuel, heating oil, or jet fuel).

* * * * *

Heating oil * * *

(2) A fuel oil that is used to heat or cool interior spaces of homes or buildings to control ambient climate for human comfort. The fuel oil must be liquid at 60 degrees Fahrenheit and 1 atmosphere of pressure, and contain no more than 2.5% mass solids.

* * * * *

Non-renewable feedstock means a feedstock that does not meet the definition of renewable biomass.

Non-RIN-generating foreign producer means a foreign renewable fuel producer that has been registered by EPA to produce renewable fuel for which RINs have not been generated.

* * * * *

Renewable fuel * * *

(2) Ethanol covered by this definition shall be denatured using an ethanol denaturant as required in 27 CFR parts 19 through 21. Any volume of ethanol denaturant added to the undenatured ethanol by a producer or importer in excess of 2 volume percent shall not be included in the volume of ethanol for purposes of determining compliance with the requirements under this subpart.

* * * * *

RIN-generating foreign producer means a foreign renewable fuel producer that has been registered by EPA to generate RINs for renewable fuel it produces.

* * * * *

■ 24. Section 80.1405 is amended by adding paragraph (a)(11) and revising the definitions of GE_i and DE_i in the equation in paragraph (c) to read as follows:

§ 80.1405 What are the Renewable Fuel Standards?

(a) * * *

(11) *Renewable Fuel Standards for 2020.* (i) The value of the cellulosic biofuel standard for 2020 shall be 0.34 percent.

(ii) The value of the biomass-based diesel standard for 2020 shall be 2.10 percent.

(iii) The value of the advanced biofuel standard for 2020 shall be 2.93 percent.

(iv) The value of the renewable fuel standard for 2020 shall be 11.56 percent.

* * * * *

(c) * * *

GE_i = The total amount of gasoline projected to be exempt in year i, in gallons, per §§ 80.1441 and 80.1442.

DE_i = The total amount of diesel fuel projected to be exempt in year i, in gallons, per §§ 80.1441 and 80.1442.

* * * * *

■ 25. Section 80.1407 is amended by adding paragraphs (f)(9) through (11) to read as follows:

§ 80.1407. How are the Renewable Volume Obligations calculated?

* * * * *

(f) * * *

(9) Distillate fuel with a sulfur content greater than 15 ppm that is clearly designated for a use other than transportation fuel, such as heating oil or ECA marine fuel.

(10) Distillate fuel that meets a 15 ppm sulfur standard, is designated for non-transportation use, and that remains completely segregated from MVNRLM diesel fuel from the point of production through to the point of use for a non-transportation purpose, such as heating oil or ECA marine fuel.

(11) Certified NTDF, if the refiner or importer has a reasonable expectation that the fuel will be used for non-transportation purposes. To establish a reasonable expectation that the fuel will be used for non-transportation purposes, a refiner or importer must, at a minimum, be able to demonstrate that they supply areas that use heating oil, ECA marine fuel, or 15 ppm distillate fuel for non-transportation purposes in quantities that are consistent with past practices or changed circumstances. EPA may consider any other relevant information, including the price of the fuel, in assessing whether a refiner or importer has a reasonable expectation that the fuel will be used for non-transportation purposes.

■ 26. Section 80.1408 is added to read as follows:

§ 80.1408. What are the requirements for parties that own and redesignate certified NTDF as MVNRLM diesel fuel?

(a) Beginning January 1, 2021, a party that owns certified NTDF, and only a party that owns certified NTDF, may redesignate NTDF as MVNRLM diesel fuel if they meet all of the following requirements:

(1) Register as a refiner and register each facility where redesignation occurs as a refinery under § 80.76. NTDF may only be redesignated as MVNRLM diesel fuel at a facility registered as a refinery.

(2) At each facility, calculate a balance of MVNRLM diesel fuel during each annual compliance period according to the following equation:

$$MVNRLM_{BAL} = MVNRLM_{O} + MVNRLM_{INVCHG} - MVNRLM_{I}$$

Where:

$MVNRLM_{BAL}$ = the balance for MVNRLM diesel fuel for the compliance period.

$MVNRLM_{I}$ = the total volume of all batches of fuel designated as MVNRLM diesel fuel owned when the fuel was received at the facility and acquired at the facility during the compliance period. Any MVNRLM diesel fuel produced (apart from redesignation of NTDF to MVNRLM diesel fuel) or imported into the facility must also be included in this volume.

$MVNRLM_{O}$ = the total volume of all batches of fuel designated as MVNRLM diesel fuel owned and sold or transferred to other parties at the facility during the compliance period.

$MVNRLM_{INVCHG}$ = the volume of MVNRLM diesel fuel owned at the end of the compliance period minus the volume of MVNRLM diesel fuel owned at the beginning of the compliance period, including accounting for any corrections in inventory due to volume swell or shrinkage, difference in measurement calibration between receiving and delivering meters, and similar matters, where corrections that increase inventory are defined as positive.

(i) If $MVNRLM_{BAL}$ is greater than 0, an RVO is incurred by the redesignating party for the volume of diesel fuel equal to MVNRLM. The redesignating party must also comply with all of the following:

(A) The reporting requirements of § 80.1451(a)(1)(xix).

(B) The recordkeeping requirements of § 80.1454(t).

(C) The attest engagement requirements of §§ 80.1464 and 80.1475, as applicable.

(ii) If $MVNRLM_{BAL}$ is less than or equal to 0, no RVO is incurred by the redesignating party for any redesignated certified NTDF. These parties must comply with all of the following:

(A) The reporting requirements of § 80.1451(i).

(B) The recordkeeping requirements of § 80.1454(t).

(b) Parties that incur an RVO under paragraph (a)(2)(i) of this section must comply with all applicable requirements for obligated parties under this subpart.

(c) The provisions of this section do not apply to gasoline or diesel fuel that is designated for export.

■ 27. Section 80.1415 is amended by revising paragraph (c)(4) to read as follows:

§ 80.1415 How are equivalence values assigned to renewable fuel?

* * * * *

(c) * * *

(4) Applications for equivalence values must be sent to the attention of ''RFS2 Program (Equivalence Value Application)'' to the address in § 80.10(a).

* * * * *

■ 28. Section 80.1426 is amended:

■ a. By revising the section heading and paragraphs (a)(1)(iii), (a)(2), and (c)(4) and (5); and

■ b. In paragraph (f)(1), in Table 1 to § 80.1426, by revising the entries F, H, I, and M.

The revisions read as follows:

§ 80.1426 How are RINs generated and assigned to batches of renewable fuel?

(a) * * *

(1) * * *

(iii) The fuel was produced in compliance with the registration requirements of § 80.1450, the reporting requirements of § 80.1451, the recordkeeping requirements of § 80.1454, all conditions set forth in an approval document for a pathway petition submitted under § 80.1416, and all other applicable regulations of this subpart M.

* * * * *

(2) To generate RINs for imported renewable fuel, including any renewable fuel contained in imported transportation fuel, heating oil, or jet fuel, importers must obtain information from a non-RIN-generating foreign renewable fuel producer that is registered pursuant to § 80.1450 sufficient to make the appropriate determination regarding the applicable D code and compliance with the renewable biomass definition for each imported batch for which RINs are generated.

* * * * *

(c) * * *

(4) Importers shall not generate RINs for renewable fuel imported from a non-RIN-generating foreign renewable fuel producer unless the foreign renewable fuel producer is registered with EPA as required in § 80.1450.

(5) Importers shall not generate RINs for renewable fuel that has already been assigned RINs by a RIN-generating foreign renewable fuel producer.

* * * * *

(f) * * *

(1) * * *

TABLE 1 TO § 80.1426—APPLICABLE D CODES FOR EACH FUEL PATHWAY FOR USE IN GENERATING RINS

	Fuel type	Feedstock	Production process requirements	D-code
	* *	* *	* *	*
F	Biodiesel, renewable diesel, jet fuel and heating oil.	Soy bean oil; Oil from annual covercrops; Oil from algae grown photosynthetically; Biogenic waste oils/fats/greases; *Camelina sativa* oil; Distillers corn oil; Distillers sorghum oil; Commingled distillers corn oil and sorghum oil.	One of the following: Transesterification with or without esterification pre-treatment, or Hydrotreating; excludes processes that co-process renewable biomass and petroleum.	4
	* *	* *	* *	*
H	Biodiesel, renewable diesel, jet fuel and heating oil.	Soy bean oil; Oil from annual covercrops; Oil from algae grown photosynthetically; Biogenic waste oils/fats/greases; *Camelina sativa* oil; Distillers corn oil; Distillers sorghum oil; Commingled distillers corn oil and sorghum oil.	One of the following: Transesterification with or without esterification pre-treatment, or Hydrotreating; includes only processes that co-process renewable biomass and petroleum.	5
I	Naphtha, LPG	*Camelina sativa* oil; Distillers sorghum oil; Distillers corn oil; Commingled distillers corn oil and distillers sorghum oil.	Hydrotreating	5

TABLE 1 TO § 80.1426—APPLICABLE D CODES FOR EACH FUEL PATHWAY FOR USE IN GENERATING RINS—Continued

	Fuel type	Feedstock	Production process requirements	D-code
*	*	*	*	*
M	Renewable Gasoline and Renewable Gasoline Blendstock; Co-Processed Cellulosic Diesel, Jet Fuel, and Heating Oil.	Crop residue, slash, pre-commercial thinnings, tree residue, and separated yard waste; biogenic components of separated MSW; cellulosic components of separated food waste; and cellulosic components of annual cover crops.	Catalytic Pyrolysis and Upgrading, Gasification and Upgrading, Thermo-Catalytic Hydrodeoxygenation and Upgrading, Direct Biological Conversion, Biological Conversion and Upgrading utilizing natural gas, biogas, and/or biomass as the only process energy sources providing that process used converts cellulosic biomass to fuel; any process utilizing biogas and/or biomass as the only process energy sources which converts cellulosic biomass to fuel.	3
*	*	*	*	*

* * * * *

■ 29. Section 80.1427 is amended by revising the definition of ''RVO_i'' in paragraph (b)(2) and by revising paragraph (c)(2) to read as follows:

§ 80.1427 How are RINs used to demonstrate compliance?

* * * * *

(b) * * *

(2) * * *

RVO_i = The Renewable Volume Obligation for the obligated party or exporter of renewable fuel for calendar year i, in gallons.

* * * * *

(c) * * *

(2) In fulfillment of its ERVOs, each exporter of renewable fuel is subject to the provisions of paragraphs (a)(2), (3), (6), and (8) of this section.

* * * * *

■ 30. Section 80.1429 is amended by revising paragraph (b)(3) to read as follows:

§ 80.1429 Requirements for separating RINs from volumes of renewable fuel.

* * * * *

(b) * * *

(3) Any exporter of renewable fuel must separate any RINs that have been assigned to the exported renewable fuel volume. An exporter of renewable fuel may separate up to 2.5 RINs per gallon of exported renewable fuel.

* * * * *

■ 31. Section 80.1430 is amended by paragraph (a), the definition of ''k'' in paragraph (b)(1), and paragraphs (c), (d)(1), and (e) introductory text and adding paragraph (h) to read as follows:

§ 80.1430 Requirements for exporters of renewable fuels.

(a) Any exporter of renewable fuel, whether in its neat form or blended shall acquire sufficient RINs to comply with all applicable Renewable Volume Obligations under paragraphs (b) through (e) of this section representing the exported renewable fuel. No provision of this section applies to renewable fuel purchased directly from the renewable fuel producer and for which the exporter of renewable fuel can demonstrate that no RINs were generated through the recordkeeping requirements of § 80.1454(a)(6).

(b) * * *

(1) * * *

k = A discrete volume of renewable fuel that the exporter of renewable fuel knows or has reason to know is cellulosic biofuel that is exported in a single shipment.

* * * * *

(c) If the exporter of renewable fuel knows or has reason to know that a volume of exported renewable fuel is cellulosic diesel, the exporter of renewable fuel must treat the exported volume as either cellulosic biofuel or biomass-based diesel when determining his Renewable Volume Obligations pursuant to paragraph (b) of this section.

(d) * * *

(1) If the equivalence value for a volume of exported renewable fuel can be determined pursuant to § 80.1415 based on its composition, then the appropriate equivalence value shall be used in the calculation of the exporter of renewable fuel's Renewable Volume Obligations under paragraph (b) of this section.

* * * * *

(e) For renewable fuels that are in the form of a blend at the time of export, the exporter of renewable fuel shall determine the volume of exported renewable fuel based on one of the following:

* * * * *

(h) Each person meeting the definition of exporter of renewable fuel for a particular export transaction is jointly and severally liable for completion of the requirements of this section and all associated RIN retirement demonstration, registration, reporting, and attest engagement obligations under this subpart. However, these requirements for exporters of renewable fuel must be met only once for any export transaction.

■ 32. Section 80.1431 is amended by revising paragraph (b)(2) to read as follows:

§ 80.1431 Treatment of invalid RINs.

* * * * *

(b) * * *

(2) Invalid RINs cannot be used to achieve compliance with the Renewable Volume Obligations of an obligated party or exporter of renewable fuel, regardless of the party's good faith belief that the RINs were valid at the time they were acquired.

* * * * *

■ 33. Section 80.1434 is added to read as follows:

§ 80.1434 RIN retirement.

(a) A RIN must be retired in any of the following cases:

(1) *Demonstrate annual compliance.* Except as specified in paragraph (b) of this section or § 80.1456, each party that is an obligated party under § 80.1406 and is obligated to meet the RVO under § 80.1407 must retire a sufficient number of RINs to demonstrate compliance with an applicable RVO.

(2) *Exported renewable fuel.* Any exporter of renewable fuel that incurs an ERVO as described in § 80.1430(a) shall retire RINs pursuant to §§ 80.1430(b) through (g) and 80.1427(c).

(3) *Volume error correction.* A RIN must be retired when it was based on incorrect volumes or volumes that have not been standardized to 60 °F as described in § 80.1426(f)(8).

(4) *Import volume correction.* Where the port of entry volume is the lesser of the two volumes in § 80.1466(e)(1)(i), the importer shall calculate the

difference between the number of RINs originally assigned by the foreign producer and the number of RINs calculated under § 80.1426 for the volume of renewable fuel as measured at the port of entry, and retire that amount of RINs in accordance with § 80.1466(k)(4).

(5) *Spillage or disposal of renewable fuels.* Except as provided in § 80.1432(c), in the event that a reported spillage or disposal of any volume of renewable fuel, the owner of the renewable fuel must notify any holder or holders of the attached RINs and retire a number of gallon-RINs corresponding to the volume of spilled or disposed of renewable fuel multiplied by its equivalence value in accordance with § 80.1432(b).

(6) *Contaminated or spoiled fuel.* In the event that contamination or spoliation of any volume of renewable fuel is reported, the owner of the renewable fuel must notify any holder or holders of the attached RINs and retire a number of gallon-RINs corresponding to the volume of contaminated or spoiled renewable fuel multiplied by its equivalence value.

(i) If the equivalence value for the contaminated or spoiled volume may be determined pursuant to § 80.1415 based on its composition, then the appropriate equivalence value shall be used.

(ii) If the equivalence value for a contaminated or spoiled volume of renewable fuel cannot be determined, the equivalence value shall be 1.0.

(iii) If the owner of a volume of renewable fuel that is contaminated or spoiled and reported establishes that no RINs were generated to represent the volume, then no gallon-RINs shall be retired.

(7) *Delayed RIN generation.* In the event that a party generated a delayed RIN as described in § 80.1426(g)(1) through (4), parties must retire RINs as described in accordance with § 80.1426(g)(5) and (6).

(8) *Invalid RIN.* In the case that a RIN is invalid as described in § 80.1431(a), the RIN will be considered invalid and must be retired as described in § 80.1431(b).

(9) *Potentially invalid RINs.* In the case that a RIN is identified as a PIR under § 80.1474(b)(1), the PIRs or replacement RINs must be retired as described in § 80.1474(b)(2) through (5).

(10) *Replacement.* As required by § 80.1431(b) or § 80.1474, any party that must replace an invalid RIN or PIR that was used for compliance must retire valid RINs to replace the invalid RINs originally used for any RVO.

(11) *Other.* Any other instance identified by EPA.

(b) In the case that retirement of a RIN is necessary, the following provisions apply:

(1) Any party affected by such retirement must keep copies and adjust its records, reports, and compliance calculations in which the retired RIN was used.

(2) The retired RIN must be reported in the applicable reports under § 80.1451.

(3) The retired RIN must be reported in the EPA Moderated Transaction System pursuant to § 80.1452(c).

(4) Where the importer of renewable fuel is required to retire RINs under paragraph (a)(5) of this section, the importer must report the retired RINs in the applicable reports under §§ 80.1451, 80.1466(k), and 80.1466(m).

■ 34. Section 80.1440 is amended by revising the section heading and paragraph (a) and adding paragraph (f) to read as follows:

§ 80.1440 What are the provisions for blenders who handle and blend less than 250,000 gallons of renewable fuel per year or who handle renewable fuel blended for fuels under a national security exemption?

(a)(1) Renewable fuel blenders who handle and blend less than 250,000 gallons of renewable fuel per year, and who do not have one or more reported or unreported Renewable Volume Obligations, are permitted to delegate their RIN-related responsibilities to the party directly upstream of them who supplied the renewable fuel for blending.

(2) Renewable fuel blenders who handle and blend renewable fuel for parties that have a national security exemption under paragraph (f) of this section, or a national security exemption under any other subpart of 40 CFR part 80 (*e.g.,* §§ 80.606, 80.1655), and who do not have one or more reported or unreported Renewable Volume Obligations, are permitted to delegate their RIN-related responsibilities to the party directly upstream of them who supplied the renewable fuel for blending.

* * * * *

(f) The requirements described in paragraph (b) of this section may be delegated directly upstream for renewable fuel (neat or blended) that is produced, imported, sold, offered for sale, supplied, offered for supply, stored, dispensed, or transported for use in any of the following:

(1) Tactical military vehicles, engines, or equipment having an EPA national security exemption from emission standards under 40 CFR 85.1708, 89.908, 92.908, 94.908, 1042.635, or 1068.225.

(2) Tactical military vehicles, engines, or equipment that are not subject to a national security exemption from vehicle or engine emissions standards as described in paragraph (f)(1) of this section but, for national security purposes (for purposes of readiness for deployment overseas), need to be fueled on the same transportation fuel, heating oil, or jet fuel as the vehicles, engines, or equipment for which EPA has granted such a national security exemption.

■ 35. Section 80.1441 is amended by revising paragraph (h) to read as follows:

§ 80.1441 Small refinery exemption.

* * * * *

(h) Verification letters under paragraph (b) of this section, petitions for small refinery hardship extensions under paragraph (e) of this section, and small refinery exemption waiver notices under paragraph (f) of this section shall be sent to the attention of ''RFS Program'' to the address in § 80.10(a).

■ 36. Section 80.1442 is amended by revising paragraph (i) to read as follows:

§ 80.1442 What are the provisions for small refiners under the RFS program?

* * * * *

(i) Small refiner status verification letters, small refiner exemption waivers, or applications for extensions of the small refiner temporary exemption under this section must be sent to the attention of ''RFS Program'' to the address in § 80.10(a).

■ 37. Section 80.1443 is amended by revising paragraph (d)(2) to read as follows:

§ 80.1443 What are the opt-in provisions for noncontiguous states and territories?

* * * * *

(d) * * *

(2) A petition submitted under this section should be sent to the attention of ''RFS Program'' to the address in § 80.10(a).

* * * * *

■ 38. Section 80.1449 is amended by revising paragraph (d) to read as follows:

§ 80.1449 What are the Production Outlook Report requirements?

* * * * *

(d) Production outlook reports shall be sent to the attention of ''RFS Program (Production Output Reports)'' to the address in § 80.10(a).

* * * * *

■ 39. Section 80.1450 is amended by revising paragraphs (b) introductory text, (b)(1)(vii)(A)(*1*), (b)(1)(vii)(B), (b)(1)(viii)(A), (b)(1)(ix)(A) introductory

text, (b)(1)(xi)(A) and (B), the first sentence of paragraph (d)(1), and paragraphs (g)(9) and (h) to read as follows:

§ 80.1450 What are the registration requirements under the RFS program?

* * * * *

(b) *Producers.* Any RIN-generating foreign producer, any non-RIN-generating foreign producer, or any domestic renewable fuel producer that generates RINs must provide EPA the information specified under § 80.76 if such information has not already been provided under the provisions of this part, and must receive EPA-issued company and facility identification numbers prior to the generation of any RINs for their fuel or for fuel made with their ethanol. Unless otherwise specifically indicated, all the following registration information must be submitted and accepted by EPA by July 1, 2010, or 60 days prior to the generation of RINs, whichever date comes later, subject to this subpart:

(1) * * *

(vii) * * *

(A) * * *

(*1*) The location of any establishment from which the waste stream consisting solely of separated yard waste is collected.

* * * * *

(B) For a producer of renewable fuel or a foreign producer of ethanol made from separated food waste per § 80.1426(f)(5)(i)(B) or from biogenic waste oils/fats/greases:

(*1*) A plan documenting the type(s) of separated food waste or biogenic waste oils/fats/greases, the type(s) of establishment from which the waste is collected, how the waste will be collected, a description of ongoing verification measures that demonstrate such waste consists only of food waste (and an incidental amount of other components such as paper and plastics) or biogenic waste oils/fats/greases that is kept separate from other waste materials, and if applicable, how the cellulosic and non-cellulosic portions of the waste will be quantified.

(*2*) [Reserved]

* * * * *

(viii) * * *

(A) The location of the municipal waste establishment(s) from which the separated municipal solid waste is collected or from which material is collected that will be processed to produce separated municipal solid waste.

* * * * *

(ix) * * *

(A) For a producer of ethanol from grain sorghum or a foreign ethanol producer making product from grain sorghum and seeking to have it sold as renewable fuel after addition of ethanol denaturant, provide a plan that has been submitted and accepted by U.S. EPA that includes the following information:

* * * * *

(xi) * * *

(A) An affidavit from the producer of the fuel oil meeting paragraph (2) of the definition of ''heating oil'' in § 80.1401 stating that the fuel oil for which RINs have been generated will be sold for the purposes of heating or cooling interior spaces of homes or buildings to control ambient climate for human comfort, and no other purpose.

(B) Affidavits from the final end user or users of the fuel oil stating that the fuel oil meeting paragraph (2) of the definition of ''heating oil'' in § 80.1401 is being used or will be used for purposes of heating or cooling interior spaces of homes or buildings to control ambient climate for human comfort, and no other purpose, and acknowledging that any other use of the fuel oil would violate EPA regulations and subject the user to civil and/or criminal penalties under the Clean Air Act.

* * * * *

(d) * * *

(1) Any producer of renewable fuel or any foreign ethanol producer that makes changes to their facility that will allow them to produce renewable fuel that is not reflected in the producer's registration information on file with EPA must update their registration information and submit a copy of an updated independent third-party engineering review on file with EPA at least 60 days prior to producing the new type of renewable fuel. * * *

* * * * *

(g) * * *

(9) *Registration updates.* (i) Any independent third-party auditor who makes changes to its quality assurance plan(s) that will allow it to audit new renewable fuel production facilities, as defined in § 80.1401, that is not reflected in the independent third-party auditor's registration information on file with EPA must update its registration information and submit a copy of an updated QAP on file with EPA at least 60 days prior to auditing new renewable fuel production facilities.

(ii) Any independent third-party auditor who makes any changes other than those specified in paragraphs (g)(9)(i), (iii), and (iv) of this section that will affect the third-party auditor's registration information must update its registration information 7 days prior to the change.

(iii) Independent third-party auditors must update their QAPs at least 60 days prior to verifying RINs generated by a renewable fuel facility for a pathway not covered in the independent third-party auditor's QAPs.

(iv) Independent third-party auditors must update their QAPs at least 60 days prior to verifying RINs generated by any renewable fuel facility not identified in the independent third-party auditor's existing registration.

* * * * *

(h) *Deactivation of registration.* (1) EPA may deactivate the registration of any party required to register under this section § 80.1450, using the process in paragraph (h)(2) of this section, if any of the following criteria are met:

(i) The party has reported no activity in EMTS for twenty-four consecutive months.

(ii) The party has failed to comply with the registration requirements of this section.

(iii) The party has failed to submit any required notification or report within 30 days of the required submission date under § 80.1451.

(iv) The attest engagement required under § 80.1464 has not been received within 30 days of the required submission date.

(v) The party fails to pay a penalty or to perform any requirements under the terms of a court order, administrative order, consent decree, or administrative settlement between the party and EPA.

(vi) The party submits false or incomplete information.

(vii) The party denies EPA access or prevents EPA from completing authorized activities under sections 114 or 208 of the Clean Air Act despite presenting a warrant or court order. This includes a failure to provide reasonable assistance.

(viii) The party fails to keep or provide the records required by this subpart.

(ix) The party otherwise circumvents the intent of the Clean Air Act or of this subpart.

(2) Except as provided in paragraph (h)(3) of this section, EPA will use the following process whenever it decides to deactivate the registration of a party:

(i) EPA will provide written notification to the responsible corporate officer identifying the reasons or deficiencies for which EPA intends to deactivate the party's registration. The party will have fourteen calendar days from the date of the notification to correct the deficiencies identified or explain why there is no need for corrective action.

(ii) If the basis for EPA's notice of intent to deactivate registration is the

absence of EMTS activity under paragraph (h)(1)(i) of this section, a stated intent to engage in activity reported through EMTS will be sufficient to avoid deactivation of registration.

(iii) If the party does not correct identified deficiencies under paragraphs (h)(1)(ii) through (ix) of this section, or does not provide an adequate explanation regarding why such correction is not necessary within the time allotted for response, EPA may deactivate the party's registration without further notice to the party.

(3) In instances of willfulness or those in which public health, interest, or safety requires otherwise, EPA may deactivate the registration of the party without any notice to the party. EPA will provide written notification to the responsible corporate officer identifying the reasons EPA deactivated the registration of the party.

(4) Impact of registration deactivation:

(i) A party whose registration is deactivated shall still be liable for violation of any requirements of this subpart.

(ii) A party whose registration is deactivated will not be listed on any public list of actively registered parties that is maintained by EPA.

(iii) A party whose registration is deactivated will not have access to any of the electronic reporting systems associated with the renewable fuel standard program, including the EPA Moderated Transaction System (EMTS).

(iv) A party whose registration is deactivated must submit any corrections of deficiencies to EPA on forms, and following policies, established by EPA.

(v) If a party whose registration has been deactivated wishes to re-register, they may seek to do so by submitting a new registration pursuant to the requirements in paragraphs (a) through (c), (e), and (g) of this section, as applicable.

* * * * *

■ 40. Section 80.1451 is amended by:

■ a. Revising paragraphs (a)(1)(i) and (v);

■ b. Adding paragraph (a)(1)(xix);

■ c. Revising paragraphs (a)(4), (b) introductory text, (b)(1)(ii)(D) and (I), (g)(1)(ii)(D) and (I);

■ d. Redesignating paragraphs (i) and (j) as paragraphs (j) and (k); and

■ e. Adding new paragraph (i). The revisions and additions read as follows:

§ 80.1451 What are the reporting requirements under the RFS program?

(a) * * *

(1) * * *

(i) The obligated party's or exporter of renewable fuel's name.

* * * * *

(v)(A) For the 2010 through 2019 compliance periods, the production volume and import volume of all of the products listed in § 80.1407(c) and (e) for the compliance period.

(B) For the 2020 compliance period, separately, the production volume and import volume of all of the gasoline products listed in § 80.1407(c), the production volume and import volume of all of the MVNRLM diesel fuel products listed in § 80.1407(e), and the combined volume of all gasoline products and MVNRLM diesel fuel listed in § 80.1407(c) and (e) for the compliance period.

(C) Beginning with the 2021 compliance period, separately, the production volume and import volume for the compliance period of all of the following:

(*1*) All of the gasoline products listed in § 80.1407(c).

(*2*) All of the MVNRLM diesel fuel products listed in § 80.1407(e).

(*3*) The combined production volume of all gasoline products and MVNRLM diesel fuel.

(*4*) Distillate fuel that is not transportation fuel.

(*5*) Distillate fuel that is certified NTDF.

* * * * *

(xix) For parties that redesignate certified NTDF as MVNRLM diesel fuel under § 80.1408 at any time during the compliance period, the volumes $MVNRLM_{BAL}$, $MVNRLM_{O}$, $MVNRLM_{INVCHG}$, and $MVNRLM_{I}$ as calculated in § 80.1408(a)(2).

* * * * *

(4) Reports required under this paragraph (a) must be signed and certified as meeting all the applicable requirements of this subpart by the owner or a responsible corporate officer of the obligated party or exporter of renewable fuel.

(b) *Renewable fuel producers (domestic and foreign) and importers.* Any domestic producer or importer of renewable fuel who generates RINs, or any RIN-generating foreign producer must submit to EPA reports according to the schedule, and containing all of the following information:

(1) * * *

(ii) * * *

(D) The importer EPA facility registration number and foreign renewable fuel producer company registration number, if applicable.

* * * * *

(I) The volume of ethanol denaturant and applicable equivalence value of each batch.

* * * * *

(g) * * *

(1) * * *

(ii) * * *

(D) The importer EPA facility registration number and foreign renewable fuel producer company registration number, if applicable.

* * * * *

(I) The volume of ethanol denaturant and applicable equivalence value of each verified batch.

* * * * *

(i) Parties that redesignate certified NTDF as MVNRLM diesel fuel under § 80.1408 at any time during the compliance period, but do not incur an RVO under § 80.1408(a)(2)(i), must submit a report to EPA stating that they redesignated certified NTDF to MVNRLM diesel fuel during the compliance period, but that their net redesignated volume was less than or equal to zero, and they therefore did not incur an RVO for the compliance period.

* * * * *

■ 41. Section 80.1452 is amended by revising paragraph (b)(11) and the last sentence in paragraph (c) introductory text to read as follows:

§ 80.1452 What are the requirements related to the EPA Moderated Transaction System (EMTS)?

* * * * *

(b) * * *

(11) The volume of ethanol denaturant and applicable equivalence value of each batch.

* * * * *

(c) * * * The reportable event for a RIN separation or retirement occurs on the date of separation or retirement as described in § 80.1429 or § 80.1434.

* * * * *

■ 42. Section 80.1453 is amended by revising paragraphs (b) and (d) and adding paragraph (e) to read as follows:

§ 80.1453 What are the product transfer document (PTD) requirements for the RFS program?

* * * * *

(b) Except for transfers to truck carriers, retailers, or wholesale purchaser-consumers, product codes may be used to convey the information required under paragraphs (a)(1) through (11) and (e) of this section if such codes are clearly understood by each transferee.

* * * * *

(d) For fuel oil meeting paragraph (2) of the definition of ''heating oil'' in § 80.1401, the PTD of the fuel oil shall state: ''This volume of renewable fuel oil is designated and intended to be used to heat or cool interior spaces of homes or buildings to control ambient

climate for human comfort. Do NOT use for process heat or cooling or any other purpose, as these uses are prohibited pursuant to 40 CFR 80.1460(g).''.

(e) Beginning January 1, 2021, on each occasion when any party transfers custody or ownership of certified NTDF, except when such fuel is dispensed into motor vehicles or nonroad vehicles, engines, or equipment, the transferor must provide to the transferee documents that include all the following information, as applicable:

(1) The transferor of certified NTDF must list all applicable required information as specified at § 80.590 and, if the distillate fuel contains renewable fuel, all applicable required information in paragraphs (a), (b), and (d) of this section.

(2) The transferor must include the following statement on the PTD: ''15 ppm sulfur (maximum) certified NTDF—This fuel is designated for non-transportation use.''

■ 43. Section 80.1454 is amended by:

■ a. Revising paragraphs (a) introductory text, (a)(1), (d)(4), (h)(6)(iii), (j) introductory text, (j)(1), and (j)(2) introductory text;

■ b. Removing vacant paragraph (k) designation;

■ c. Revising paragraphs (n) and (q);

■ d. Redesignating paragraph (t) as paragraph (w); and

■ e. Adding new paragraph (t).

The revisions and addition reads as follows:

§ 80.1454 What are the recordkeeping requirements under the RFS program?

(a) *Requirements for obligated parties and exporters of renewable fuel.* Beginning July 1, 2010, any obligated party (as described at § 80.1406) or exporter of renewable fuel (as described at § 80.1430) must keep all of the following records:

(1) Product transfer documents consistent with § 80.1453 and associated with the obligated party's or exporter of renewable fuel's activity, if any, as transferor or transferee of renewable fuel or separated RINs.

* * * * *

(d) * * *

(4) Domestic producers of renewable fuel made from any other type of renewable biomass must have documents from their feedstock supplier certifying that the feedstock qualifies as renewable biomass as defined in § 80.1401, describing the feedstock. Separated yard and food waste, biogenic oils/fats/greases, and separated municipal solid waste are also subject to the requirements in paragraph (j) of this section.

* * * * *

(h) * * *

(6) * * *

(iii) The survey plan must be sent to the attention of ''RFS Program'' to the address in § 80.10(a).

* * * * *

(j) A renewable fuel producer that produces fuel from separated yard waste (as described in § 80.1426(f)(5)(i)(A)), separated food waste (as described in § 80.1426(f)(5)(i)(B)), separated municipal solid waste (as described in § 80.1426(f)(5)(i)(C)), or biogenic waste oils/fats/greases must keep all the following additional records:

(1) For separated yard waste, separated food waste, and biogenic waste oils/fats/greases:

(i) Documents demonstrating the amounts, by weight, purchased of separated yard waste, separated food waste, or biogenic waste oils/fats/greases for use as a feedstock in producing renewable fuel.

(ii) Documents demonstrating the location of any establishment(s) from which the waste stream consisting solely of separated yard waste, separated food waste, or biogenic waste oils/fats/greases is collected.

(iii) Such other records as may be requested by the Administrator.

(2) For separated municipal solid waste:

* * * * *

(n) The records required under paragraphs (a) through (d), (f) through (l), and (t) of this section and under § 80.1453 shall be kept for five years from the date they were created, except that records related to transactions involving RINs shall be kept for five years from the date of the RIN transaction.

* * * * *

(q) The records required in paragraphs (b)(3) and (c)(1) of this section must be transferred with any renewable fuel sent to the importer of that renewable fuel by any non-RIN-generating foreign producer.

* * * * *

(t) *Requirements for parties that redesignate certified NTDF as MVNRLM diesel fuel.* Parties that redesignate certified NTDF as MVNRLM diesel fuel under § 80.1408 must keep all of the following additional records:

(1) Records related to all transactions in which certified NTDF is redesignated as MVNRLM diesel fuel.

(2) Records related to all transactions in which MVNRLM diesel fuel is redesignated to a non-transportation use.

(3) Records related to the volume of MVNRLM diesel fuel received.

(4) Records related to the volume of MVNRLM diesel fuel delivered.

(5) Records related to the volume of certified NTDF received.

(6) Records related to the volume of certified NTDF delivered.

* * * * *

■ 44. Section 80.1460 is amended by adding paragraph (b)(7), revising paragraph (g), and adding paragraph (j) to read as follows:

§ 80.1460 What acts are prohibited under the RFS program?

* * * * *

(b) * * *

(7) Generate a RIN for fuel that fails to meet all the conditions set forth in an approval document for a pathway petition submitted under § 80.1416.

* * * * *

(g) *Failing to use a renewable fuel oil for its intended use.* No person shall use fuel oil that meets paragraph (2) of the definition of ''heating oil'' in § 80.1401 and for which RINs have been generated in an application other than to heat or cool interior spaces of homes or buildings to control ambient climate for human comfort.

* * * * *

(j) *Redesignation violations.* No person may exceed the balance requirements at § 80.1408(a)(2)(i) without incurring an RVO.

■ 45. Section 80.1461 is amended by revising paragraphs (a)(1) and (2) to read as follows:

§ 80.1461. Who is liable for violations under the RFS program?

(a) * * *

(1) Any person who violates a prohibition under § 80.1460(a) through (d) or § 80.1460(g) through (j) is liable for the violation of that prohibition.

(2) Any person who causes another person to violate a prohibition under § 80.1460(a) through (d) or § 80.1460(g) through (j) is liable for a violation of § 80.1460(e).

* * * * *

■ 46. Section 80.1463 is amended by revising paragraph (d) to read as follows:

§ 80.1463 What penalties apply under the RFS program?

* * * * *

(d) Any person liable under § 80.1461(a) for a violation of § 80.1460(b)(1) through (4), (6), or (7) is subject to a separate day of violation for each day that an invalid RIN remains available for an obligated party or exporter of renewable fuel to demonstrate compliance with the RFS program.

■ 47. Section 80.1464 is amended by revising paragraphs (a) introductory text, (a)(1)(i)(A), (a)(1)(iii), (a)(1)(iv)

introductory text, (a)(1)(iv)(A) and (D), and (a)(1)(v), adding paragraph (a)(1)(vii), and revising the first sentence of paragraph (b)(1)(ii) to read as follows:

§ 80.1464 What are the attest engagement requirements under the RFS program?

* * * * *

(a) *Obligated parties and exporters of renewable fuel.* The following attest procedures shall be completed for any obligated party (as described at § 80.1406(a)) or exporter of renewable fuel (as described at § 80.1430):

(1) * * *

(i) * * *

(A) The obligated party's volume of all products listed in § 80.1407(c) and (e), or the exporter of renewable fuel's volume of each category of exported renewable fuel identified in § 80.1430(b)(1) through (b)(4).

* * * * *

(iii) For obligated parties, compare the volumes of products listed in § 80.1407(c), (e), and (f) reported to EPA in the report required under § 80.1451(a)(1) with the volumes, excluding any renewable fuel volumes, contained in the inventory reconciliation analysis under § 80.133 and the volume of non-renewable diesel produced or imported. Verify that the volumes reported to EPA agree with the volumes in the inventory reconciliation analysis and the volumes of non-renewable diesel produced or imported, and report as a finding any exception.

(iv) For exporters of renewable fuel, perform all of the following:

(A) Obtain the database, spreadsheet, or other documentation that the exporter of renewable fuel maintains for all exported renewable fuel.

* * * * *

(D) Select sample batches in accordance with the guidelines in § 80.127 from each separate category of renewable fuel exported and identified in § 80.1451(a); obtain invoices, bills of lading and other documentation for the representative samples; state whether any of these documents refer to the exported fuel as advanced biofuel or cellulosic biofuel; and report as a finding whether or not the exporter of renewable fuel calculated an advanced biofuel or cellulosic biofuel RVO for these fuels pursuant to § 80.1430(b)(1) or (3).

(v) Compute and report as a finding the RVOs for the obligated party or exporter of renewable fuel, and any deficit RVOs carried over from the previous year or carried into the subsequent year, and verify that the values agree with the values reported to EPA.

* * * * *

(vii) For obligated parties that redesignate certified NTDF as MVNRLM diesel fuel under § 80.1408, perform the additional attest engagement procedures described at § 80.1475 and report any findings in the report described in paragraph (d) of this section. Parties that do not incur an RVO under § 80.1408(a)(2)(i) and do not otherwise need to complete an attest engagement under this paragraph (a) do not need to arrange for the additional attest engagement procedures under § 80.1475 to be performed.

* * * * *

(b) * * *

(1) * * *

(ii) Obtain production data for each renewable fuel batch by type of renewable fuel that was produced or imported during the year being reviewed; compute the RIN numbers, production dates, types, volumes of ethanol denaturant and applicable equivalence values, and production volumes for each batch; report the total RINs generated during the year being reviewed; and state whether this information agrees with the party's reports to EPA. * * *

* * * * *

■ 48. Section 80.1466 is amended by:

■ a. Revising the section heading, paragraphs (a) and (b), the paragraph (c) subject heading, paragraphs (c)(1), (d)(1)(iii) and (v), (d)(1)(vi)(B), (d)(3)(ii), (e)(2)(ii), (f) introductory text, (f)(1) introductory text, (f)(1)(ii)(C), (f)(1)(v)(A) and (C), (f)(1)(vii), (f)(2), (f)(4) through (8), (g), and (h) introductory text;

■ b. In the equation in paragraph (h)(1) revising the definition ''G'';

■ c. Revising paragraphs (h)(3)(iii), (h)(4), (i), (j)(2) through (4), (k)(1), (k)(2)(ii), (k)(4)(ii), the paragraph (l) subject heading, paragraphs (l)(1) introductory text, (l)(2)(i), (l)(3), (m)(3)(ii), (m)(6)(i), (n) introductory text, (n)(1), (3), and (4), (o) introductory text, and (o)(2); and

■ d. Adding paragraph (p).

The revisions and addition read as follows:

§ 80.1466 What are the additional requirements under this subpart for foreign renewable fuel producers and importers of renewable fuels?

(a) *Applicability.* This section only applies to foreign renewable fuel producers that are located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (collectively referred to in this section as ''the United States'').

(b) *General requirements.* A registered foreign renewable fuel producer under this section must meet all requirements that apply to renewable fuel producers under this subpart.

(c) *Designation, RIN-generating foreign producer certification, and product transfer documents.* (1) Any registered foreign renewable fuel producer must designate each batch of such renewable fuel as ''RFS–FRRF'' at the time the renewable fuel is produced.

* * * * *

(d) * * *

(1) * * *

(iii) Obtain the EPA-assigned registration number of the foreign renewable fuel producer.

* * * * *

(v) Determine the date and time the vessel departs the port serving the RIN-generating foreign producer.

(vi) * * *

(B) That the RFS–FRRF remained segregated from Non-RFS–FRRF and other RFS–FRRF produced by a different foreign producer.

* * * * *

(3) * * *

(ii) Be independent under the criteria specified in § 80.65(f)(2)(iii); and

* * * * *

(e) * * *

(2) * * *

(ii) Where the port of entry volume is the lesser of the two volumes in paragraph (e)(1)(i) of this section, the importer shall calculate the difference between the number of RINs originally assigned by the RIN-generating foreign producer and the number of RINs calculated under § 80.1426 for the volume of renewable fuel as measured at the port of entry, and acquire and retire that amount of RINs in accordance with paragraph (k)(3) of this section.

(f) *Foreign producer commitments.* Any foreign renewable fuel producer shall commit to and comply with the following provisions as a condition to being registered as a foreign renewable fuel producer under this subpart:

(1) Any EPA inspector or auditor must be given full, complete, and immediate access to conduct inspections and audits of the foreign renewable fuel producer facility.

* * * * *

(ii) * * *

(C) Renewable fuel is stored or transported between the foreign renewable fuel producer and the United States, including storage tanks, vessels and pipelines.

* * * * *

(v) * * *

(A) The volume of renewable fuel.

* * * * *

(C) Transfers of title or custody to renewable fuel.

* * * * *

(vii) Any employee of the foreign renewable fuel producer must be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.

* * * * *

(2) An agent for service of process located in the District of Columbia shall be named, and service on this agent constitutes service on the foreign renewable fuel producer or any employee of the foreign renewable fuel producer for any action by EPA or otherwise by the United States related to the requirements of this subpart.

* * * * *

(4) United States substantive and procedural laws shall apply to any civil or criminal enforcement action against the foreign renewable fuel producer or any employee of the foreign renewable fuel producer related to the provisions of this section.

(5) Applying to be an approved foreign renewable fuel producer under this section, or producing or exporting renewable fuel under such approval, and all other actions to comply with the requirements of this subpart relating to such approval constitute actions or activities covered by and within the meaning of the provisions of 28 U.S.C. 1605(a)(2), but solely with respect to actions instituted against the foreign renewable fuel producer, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign renewable fuel producer under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(6) The foreign renewable fuel producer, or its agents or employees, will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors for actions performed within the scope of EPA employment or contract related to the provisions of this section.

(7) The commitment required by this paragraph shall be signed by the owner or president of the foreign renewable fuel producer company.

(8) In any case where renewable fuel produced at a foreign renewable fuel production facility is stored or transported by another company between the production facility and the vessel that transports the renewable fuel to the United States, the foreign renewable fuel producer shall obtain from each such other company a commitment that meets the requirements specified in paragraphs (f)(1) through (7) of this section, and these commitments shall be included in the foreign renewable fuel producer's application to be an approved foreign renewable fuel producer under this subpart.

(g) *Sovereign immunity.* By submitting an application to be an approved foreign renewable fuel producer under this subpart, or by producing and exporting renewable fuel to the United States under such approval, the foreign renewable fuel producer, and its agents and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the foreign renewable fuel producer, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign renewable fuel producer under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(h) *Bond posting.* Any RIN-generating foreign producer shall meet the following requirements as a condition to approval as a RIN-generating foreign producer under this subpart:

(1) * * *

G = the greater of: the largest volume of renewable fuel produced by the RIN-generating foreign producer and exported to the United States, in gallons, during a single calendar year among the five preceding calendar years, or the largest volume of renewable fuel that the Rin-generating foreign producers expects to export to the United States during any calendar year identified in the Production Outlook Report required by § 80.1449. If the volume of renewable fuel exported to the United States increases above the largest volume identified in the Production Outlook Report during any calendar year, the RIN-generating foreign producer shall increase the bond to cover the shortfall within 90 days.

* * * * *

(3) * * *

(iii) Include a commitment that the bond will remain in effect for at least five years following the end of latest annual reporting period that the RIN-generating foreign producer produces renewable fuel pursuant to the requirements of this subpart.

(4) On any occasion a RIN-generating foreign producer bond is used to satisfy any judgment, the RIN-generating foreign producer shall increase the bond to cover the amount used within 90 days of the date the bond is used.

(i) *English language reports.* Any document submitted to EPA by a foreign renewable fuel producer shall be in English, or shall include an English language translation.

(j) * * *

(2) No foreign renewable fuel producer or other person may cause another person to commit an action prohibited in paragraph (j)(1) of this section, or that otherwise violates the requirements of this section.

(3) No foreign renewable fuel producer or importer may generate RINs for the same volume of renewable fuel.

(4) A foreign renewable fuel producer is prohibited from generating RINs in excess of the number for which the bond requirements of this section have been satisfied.

(k) * * *

(1) Renewable fuel shall be classified as RFS–FRRF according to the designation by the RIN-generating foreign producer if this designation is supported by product transfer documents prepared by the foreign producer as required in paragraph (c) of this section.

(2) * * *

(ii) Use the RIN-generating foreign producer's RFS–FRRF certification to determine the name and EPA-assigned registration number of the RIN-generating foreign producer that produced the RFS–FRRF.

* * * * *

(4) * * *

(ii) The RIN-generating foreign producer, containing the information determined under paragraph (k)(2)(i) of this section, and including identification of the port at which the product was offloaded, and any RINs retired under paragraph (e)(2) of this section.

* * * * *

(l) *Truck imports of RFS–FRRF produced by a RIN-generating foreign producer.* (1) Any RIN-generating foreign producer whose RFS–FRRF is transported into the United States by truck may petition EPA to use alternative procedures to meet all the following requirements:

* * * * *

(2) * * *

(i) Contracts with any facilities that receive and/or transport RFS–FRRF that prohibit the commingling of RFS–FRRF with Non-RFS–FRRF or RFS–FRRF from other foreign renewable fuel producers.

* * * * *

(3) The petition described in this section must be submitted to EPA along

with the application for approval as a RIN-generating foreign producer under this subpart.

(m) * * *

(3) * * *

(ii) Obtain the documents used by the independent third party to determine transportation and storage of the RFS–FRRF from the RIN-generating foreign producer's facility to the load port, under paragraph (d) of this section. Obtain tank activity records for any storage tank where the RFS–FRRF is stored, and activity records for any mode of transportation used to transport the RFS–FRRF prior to being loaded onto the vessel. Use these records to determine whether the RFS–FRRF was produced at the RIN-generating foreign producer's facility that is the subject of the attest engagement, and whether the RFS–FRRF was mixed with any Non-RFS–FRRF or any RFS–FRRF produced at a different facility.

* * * * *

(6) * * *

(i) Be independent of the RIN-generating foreign producer;

* * * * *

(n) *Withdrawal or suspension of foreign renewable fuel producer approval.* EPA may withdraw or suspend a foreign renewable fuel producer's approval where any of the following occur:

(1) A foreign renewable fuel producer fails to meet any requirement of this section.

* * * * *

(3) A foreign renewable fuel producer asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in this subpart.

(4) A foreign renewable fuel producer fails to pay a civil or criminal penalty that is not satisfied using the foreign renewable fuel producer bond specified in paragraph (h) of this section.

(o) *Additional requirements for applications, reports, and certificates.* Any application for approval as a foreign renewable fuel producer, alternative procedures under paragraph (l) of this section, any report, certification, or other submission required under this section shall be:

* * * * *

(2) Signed by the president or owner of the foreign renewable fuel producer company, or by that person's immediate designee, and shall contain the following declarations:

(i) ''I hereby certify:

(A) That I have actual authority to sign on behalf of and to bind [NAME OF FOREIGN RENEWABLE FUEL PRODUCER] with regard to all statements contained herein;

(B) That I am aware that the information contained herein is being Certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subpart M, and that the information is material for determining compliance under these regulations; and

(C) That I have read and understand the information being Certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof.''

(ii) ''I affirm that I have read and understand the provisions of 40 CFR part 80, subpart M, including 40 CFR 80.1465 apply to [NAME OF FOREIGN RENEWABLE FUEL PRODUCER]. Pursuant to Clean Air Act section 113(c) and 18 U.S.C. 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to $10,000 U.S., and/or imprisonment for up to five years.''.

(p) *Requirements for non-RIN-generating foreign producer.* Any non-RIN-generating foreign producer must comply with the requirements of this section beginning on the effective date of the final rule or prior to EPA acceptance, whichever is later.

■ 49. Section 80.1469 is amended by revising paragraphs (c)(1)(ii) and (f)(1) introductory text to read as follows:

§ 80.1469 Requirements for Quality Assurance Plans.

* * * * *

(c) * * *

(1) * * *

(ii) If applicable, plans under § 80.1426(f)(5)(ii) are accepted and up to date.

* * * * *

(f) * * *

(1) A new QAP shall be submitted to EPA according to paragraph (e) of this section and the third-party auditor shall update their registration according to § 80.1450(g)(9) whenever any of the following changes occur at a production facility audited by a third-party independent auditor and the auditor does not possess an appropriate pathway-specific QAP that encompasses the changes:

* * * * *

■ 50. Section 80.1472 is amended by revising paragraphs (b)(3)(i) introductory text, (b)(3)(ii)(B), and (b)(3)(iii) to read as follows:

§ 80.1472 Requirements for quality assurance audits.

* * * * *

(b) * * *

(3) * * *

(i) The independent third-party auditor shall conduct an on-site visit at the renewable fuel production facility or foreign ethanol production facility:

* * * * *

(ii) * * *

(B) 380 days after the previous on-site visit if a previously approved (by EPA) remote monitoring system is in place at the renewable fuel production facility or foreign ethanol production facility, as applicable. The 380-day period shall start the day after the previous on-site visit ends.

(iii) An on-site visit shall include verification of all QAP elements that require inspection or evaluation of the physical attributes of the renewable fuel production facility or foreign ethanol production facility.

* * * * *

■ 51. Section 80.1475 is added as follows:

§ 80.1475 What are the additional attest engagement requirements for parties that redesignate certified NTDF as MVNRLM diesel fuel?

(a) *General requirements.* (1) In addition to the attest engagement requirements under § 80.1464, all obligated parties required to arrange for additional attest engagement procedures under § 80.1464(a)(1)(vii) must have an annual attest engagement conducted by an auditor using the minimum attest procedures specified in this section.

(2) All applicable requirements and procedures outlined in §§ 80.125 through 80.127 and § 80.130 apply to the auditors and attest engagement procedures specified in this section.

(3) Obligated parties must include any additional information required under this section in the attest engagement report under § 80.1464(d).

(4) Report as a finding if the party failed to either incur or satisfy an RVO if required.

(b) *EPA reports.* Auditors must perform the following:

(1) Obtain and read a copy of the obligated party's reports filed with EPA as required by § 80.1451(a)(1)(xix) for the reporting period.

(2) In the case of an obligated party's report to EPA that represents aggregate calculations for more than one facility, obtain the facility-specific volume and property information that was used by the refiner to prepare the aggregate report. Foot and crossfoot the facility-specific totals and agree to the values in the aggregate report. The procedures in paragraphs (b) and (c) of this section are then performed separately for each facility.

(3) Obtain a written representation from a company representative that the report copies are complete and accurate copies of the reports filed with EPA.

(4) Identify, and report as a finding, the name of the commercial computer program used by the refiner or importer to track the data required by the regulations in this part, if any.

(c) *Inventory reconciliation analysis.* Auditors must perform the following:

(1) Obtain an inventory reconciliation analysis for the facility for the reporting period for each of the following and perform the procedures at paragraphs (c)(2) through (4) of this section separately for each of the following products:

(i) The volume of certified NTDF that was redesignated as MVNRLM diesel fuel.

(ii) The volume of MVNRLM diesel fuel that was redesignated to a non-transportation use.

(iii) The volume of MVNRLM diesel fuel owned when the fuel was received at the facility and acquired at the facility during the compliance period.

(iv) The volume of MVNRLM diesel fuel owned and sold or transferred to other parties at the facility during the compliance period.

(v) The volume of certified NTDF received.

(vi) The volume of certified NTDF delivered.

(2) Foot and crossfoot the volume totals reflected in the analysis.

(3) Agree the beginning and ending inventory amounts in the analysis to the facility's inventory records.

(4) If the obligated party delivered more MVNRLM diesel fuel than received, agree the annual balance with the reports obtained at § 80.1475(b)(1) and verify whether the obligated party incurred and satisfied its RVO under § 80.1408(a)(2)(i).

(5) Report as a finding each of the volume totals along with any discrepancies.

(d) *Listing of tenders.* Auditors must perform the following:

(1) For each of the volumes listed in paragraphs (b)(1)(iii) through (b)(1)(vi) of this section, obtain a separate listing of all tenders from the refiner or importer for the reporting period. Each listing should provide for each tender the volume shipped and other information as needed to distinguish tenders.

(2) Foot to the volume totals per the listings.

(3) Agree the volume totals on the listing to the tender volume total in the inventory reconciliation analysis obtained in paragraph (b) of this section.

(4) For each of the listings select a representative sample of the tenders in accordance with the guidelines in § 80.127, and for each tender selected perform the following:

(i) Obtain product transfer documents associated with the tender and agree the volume on the tender listing to the volume on the product transfer documents.

(ii) Note whether the product transfer documents include the information required by § 80.590 and, for tenders involving the transfer of certified NTDF, the information required by § 80.1453(e).

(5) Report as a finding any discrepancies.

Subpart N—Additional Requirements for Gasoline-Ethanol Blends

■ 52. Section 80.1501 is amended by revising the section heading and paragraphs (b)(3)(i) and (b)(5)(i) and removing and reserving paragraph (b)(5)(ii). The revisions read as follows:

§ 80.1501 Labeling requirements that apply to retailers and wholesale purchaser-consumers of gasoline that contains greater than 10 volume percent ethanol and not more than 15 volume percent ethanol.

* * * * *

(b) * * *

(3) * * *

(i) The word ''ATTENTION'' shall be capitalized in 20-point, black, Helvetica Neue LT 77 Bold Condensed font, and shall be placed in the top 1.25 inches of the label as further described in paragraph (b)(4)(iii) of this section.

* * * * *

(5) * * *

(i) A request for approval of an alternative label shall be sent to the attention of ''E15 Alternative Label Request'' to the address in § 80.10(a).

* * * * *

Subpart O—Gasoline Sulfur

§ 80.1600 [Amended]

■ 53. Section 80.1600 is amended by removing the definition for ''Ethanol denaturant''.

■ 54. Section 80.1603 is amended by:

■ a. Revising paragraph (d)(1);

■ b. Redesignating paragraph (d)(2) as paragraph (d)(3) and adding a new paragraph (d)(2); and

■ c. In the equation in paragraph (f)(1) revising the definition of ''OC''. The revisions and addition read as follows:

§ 80.1603 Gasoline sulfur standards for refiners and importers.

* * * * *

(d) * * *

(1) The refiner or importer shall calculate the sulfur content of the batch by volume weighting the sulfur content of the gasoline or BOB and the sulfur content of the added oxygenate pursuant to one of the methods listed in paragraphs (d)(1)(i) and (ii) of this section. A refiner or importer must choose to use only one method during each annual compliance period.

(i) Testing the sulfur content of a sample of the oxygenate pursuant to § 80.46 or § 80.47, as applicable. The refiner or importer must demonstrate through records relating to sampling, testing, and blending that the test result was derived from a representative sample of the oxygenate that was blended with the batch of gasoline or BOB.

(ii) If the oxygenate is denatured fuel ethanol, and the sulfur content has not been tested under paragraph (d)(1)(i) of this section, then the sulfur content must be assumed to be 5.00 ppm.

(2) For denatured fuel ethanol, the refiner or importer may assume that the denatured fuel ethanol was blended with gasoline or BOB at a concentration of 10 volume percent, unless the refiner or importer can demonstrate that a different amount of denatured fuel ethanol was actually blended with a batch of gasoline or BOB.

(i) The refiner or importer of conventional gasoline or CBOB must comply with the requirements of § 80.101(d)(4)(ii).

(ii) The refiner or importer of reformulated gasoline or RBOB must comply with the requirements of § 80.69(a).

(iii) Any gasoline or BOB must meet the per-gallon sulfur standard of paragraph (a)(2) of this section prior to calculating any dilution from the oxygenate added downstream.

(iv) The reported volume of the batch is the combined volume of the reformulated gasoline, RBOB, conventional gasoline, or CBOB and the downstream added oxygenate.

* * * * *

(f) * * *

(1) * * *

OC = Sulfur credits used by the refinery or importer to show compliance, in ppm-gallons.

* * * * *

■ 55. Section 80.1609 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 80.1609 Oxygenate blender requirements.

(a) * * * Such oxygenate blenders are subject to the requirements of paragraph (b) of this section, the requirements and prohibitions applicable to downstream parties, the requirements of

§ 80.1603(d)(3), and the prohibition specified in § 80.1660(e).

* * * * *

■ 56. Section 80.1616 is amended by revising paragraph (c)(3) to read as follows:

§ 80.1616 Credit use and transfer.

* * * * *

(c) * * *

(3) CR_{T2} credits generated under § 80.1615(d) from January 1, 2017, through December 31, 2019, may only be traded to and ultimately used from January 1, 2017, through December 31, 2019, by small refiners and small volume refineries approved under § 80.1622.

■ 57. Section 80.1622 is amended by revising paragraph (g) to read as follows:

§ 80.1622 Approval for small refiner and small volume refinery status.

* * * * *

(g) Small refiner and small volume refinery status applications, and any other correspondence required by this section, § 80.1620, or § 80.1621 shall be sent to the attention of ''Tier 3 Program (Small Refiner/Small Volume Refinery Application)'' to the address in § 80.10(a).

■ 58. Section 80.1625 is amended by revising paragraph (c)(2) to read as follows:

§ 80.1625 Hardship provisions.

* * * * *

(c) * * *

(2) Hardship applications under this section must be sent to the attention of ''Tier 3 Program (Hardship Application)'' to the address in § 80.10(a).

■ 59. Section 80.1650 is amended by revising paragraphs (b)(3), (e)(1)(iii)(A), and (g)(1)(iii)(A) to read as follows:

§ 80.1650 Registration.

* * * * *

(b) * * *

(3) Any oxygenate blender required to register shall do so by November 1, 2016, or at least 90 days in advance of the first date that such person will blend oxygenate into gasoline, RBOB, or CBOB where the resulting gasoline is subject to the gasoline sulfur standards under this subpart O.

* * * * *

(e) * * *

(1) * * *

(iii) * * *

(A) Whether records are kept on-site or off-site of the facility.

* * * * *

(g) * * *

(1) * * *

(iii) * * *

(A) Whether records are kept on-site or off-site of the facility.

* * * * *

■ 60. Section 80.1652 is amended by revising paragraph (a)(7) introductory text and adding paragraphs (a)(7)(v) and (vi) to read as follows:

§ 80.1652 Reporting requirements for gasoline refiners, gasoline importers, oxygenate producers, and oxygenate importers.

* * * * *

(a) * * *

(7) For each batch of BOB or gasoline produced or imported during the averaging period, all the following:

* * * * *

(v) The type and amount of oxygenate, along with identification of the method used to determine the type and amount of oxygenate content of the batch, as determined under § 80.1603(d).

(vi) The sulfur content of the oxygenate, reported to two decimal places, along with identification of the method used to determine the sulfur content of the oxygenate, as determined under § 80.1603(d).

* * * * *

■ 61. Section 80.1656 is amended by revising paragraph (h) to read as follows:

§ 80.1656 Exemptions for gasoline used for research, development, or testing purposes.

* * * * *

(h) *Submission.* Requests for research and development exemptions shall be sent to the attention of ''Tier 3 Program (R&D Exemption Request)'' to the address in § 80.10(a).

[FR Doc. 2020–00431 Filed 2–5–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL REGISTER

Vol. 85 Thursday,

No. 25 February 6, 2020

Part III

Department of Health and Human Services

45 CFR Parts 146, 149, 155, et al.

Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2021; Notice Requirement for Non-Federal Governmental Plans; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 146, 149, 155, 156, and 158

[CMS–9916–P]

RIN 0938–AT98

Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2021; Notice Requirement for Non-Federal Governmental Plans

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

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth payment parameters and provisions related to the risk adjustment and risk adjustment data validation programs; cost-sharing parameters and cost-sharing reductions; and user fees for federally-facilitated Exchanges and State-based Exchanges on the Federal platform. It also proposes changes related to essential health benefits and would provide states with additional flexibility in the operation and establishment of Exchanges. It includes proposed changes related to cost-sharing for prescription drugs; excepted benefit health reimbursement arrangements offered by non-Federal governmental plan sponsors; the medical loss ratio program; Exchange eligibility and enrollment; exemptions from the requirement to maintain coverage; quality rating information display standards for Exchanges; and other related topics. It also proposes to repeal regulations relating to the Early Retiree Reinsurance Program.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on March 2, 2020.

ADDRESSES: In commenting, please refer to file code CMS–9916–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9916–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9916–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Usree *Bandyopadhyay,* (410) 786–6650, Kiahana Brooks, (301) 492–5229, or Evonne Muoneke (301) 492–4402, for general information.

David Mlawsky, (410) 786–6851, for matters related to excepted benefit health reimbursement arrangements (HRAs).

Allison Yadsko, (410) 786–1740, Joshua Paul, (301) 492–4347, or Krutika Amin, (301) 492–5153, for matters related to risk adjustment.

Aaron Franz, (410) 786–8027, for matters related to federally-facilitated Exchange (FFE) and State-based Exchange on the Federal platform (SBE–FP) user fees and sequestration.

Joshua Paul, (301) 492–4347, or Allison Yadsko, (410) 786–1740, for matters related to risk adjustment data validation (RADV).

Joshua Paul, (301) 492–4347, for matters related to the premium adjustment percentage.

Rebecca Zimmermann, (301) 492–4396, for matters related to value-based insurance plan design.

Becca Bucchieri, (301) 492–4341, for matters related to essential health benefit (EHB)-benchmark plans and defrayal of state-required benefits.

Jill Gotts, (202) 603–0480, for matters related to eligibility appeals.

Emily Ames, (301) 492–4246, for matters related to coverage effective dates and termination notices.

Marisa Beatley, (301) 492–4307, for matters related to employer-sponsored coverage verification and periodic data matching (PDM).

Carolyn Kraemer, (301) 492–4197, for matters related to special enrollment periods under part 155.

Kendra May, (301) 492–4477, for matters related to terminations.

Ken Buerger, (410) 786–1190, for matters related to cost-sharing requirements.

Christina Whitefield, (301) 492–4172, for matters related to the medical loss ratio (MLR) program.

Kevin Kendrick, (301) 492–4127, for matters related to the Early Retiree Reinsurance Program (ERRP).

Jenny Chen, (301) 492–5156, Shilpa Gogna, (301) 492–4257 or Nidhi Singh Shah, (301) 492–5110), for matters related to quality rating information display standards for Exchanges.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

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I. Executive Summary

American Health Benefit Exchanges, or ''Exchanges,'' are entities established under the Patient Protection and Affordable Care Act [1] (PPACA) through which qualified individuals and qualified employers can purchase health insurance coverage in qualified health plans (QHPs). Many individuals who enroll in QHPs through individual market Exchanges are eligible to receive a premium tax credit (PTC) to reduce their costs for health insurance premiums and to receive reductions in required cost-sharing payments to reduce out-of-pocket expenses for health care services. The PPACA also established the risk adjustment program, which is intended to increase the workability of the PPACA regulatory changes in the individual and small group markets, both on and off Exchanges.

On January 20, 2017, the President issued an Executive Order which stated that, to the maximum extent permitted by law, the Secretary of HHS and heads of all other executive departments and agencies with authorities and responsibilities under the PPACA should exercise all authority and discretion available to them to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the PPACA that would impose a fiscal burden on any state or a cost, fee, tax, penalty, or regulatory burden on individuals, families, health care providers, health insurers, patients, recipients of health care services, purchasers of health insurance, or makers of medical devices, products, or medications. In this proposed rule, we propose, within the limitations of current law, to reduce fiscal and regulatory burdens across different program areas and to provide stakeholders with greater flexibility.

In previous rulemakings, we established provisions and parameters to implement many PPACA requirements and programs. In this proposed rule, we propose to amend some of these provisions and parameters, with a focus on maintaining a stable regulatory environment. These proposed changes are intended to provide issuers with greater predictability for upcoming plan years, while simultaneously enhancing the role of states in these programs. The proposals would also provide states with additional flexibilities, reduce unnecessary regulatory burdens on stakeholders, empower consumers, ensure program integrity, and improve affordability. In addition, we solicit comment on modifying the automatic re-enrollment process for enrollees who would be automatically re-enrolled with advance payments of the premium tax credit (APTC) that would cover the enrollee's entire premium. Finally, we discuss an alternative to the current requirement that Exchanges use random sampling as part of their methods for verifying eligibility for or enrollment in an eligible employer-sponsored plan that we are considering for future rulemaking. We also announce that, pending such future rulemaking, HHS will not take enforcement action against Exchanges that do not implement a random sampling methodology during plan years 2020 and 2021.

Risk adjustment continues to be a core program in the individual and small group markets both on and off Exchanges, and we propose recalibrated parameters for the HHS-operated risk adjustment methodology. To reduce issuer burden in participating in the risk adjustment program, we also propose changes intended to alleviate burden for small issuers associated with participating in risk adjustment data validation (RADV).

As we do every year in the HHS notice of benefit and payment parameters, we propose updated parameters applicable in the individual and small group markets. We propose the 2021 plan year user fee rates for issuers offering plans through the Exchanges using the Federal platform. We propose maintaining the Federal-facilitated Exchange (FFE) and State-based Exchange on the Federal platform (SBE–FP) user fees at the current 2020 plan year rates, 3.0 and 2.5 percent of total monthly premiums, respectively, in order to preserve and ensure that the FFE has sufficient funding to cover the cost of all special benefits provided to FFE issuers during the 2021 plan year. Alternatively, we are considering and seek comment on reducing the FFE and SBE–FP user fee rates below 2020 plan year levels. We are also seeking information on trends in usage of Federal platform functions and services, potential efficiencies in Federal platform operations, and premium and enrollment projections, all of which might inform a change in the user fee level in the final rule.

As we do every year, we also propose to update the maximum annual limitations on cost sharing for the 2021 benefit year, including those for CSR plan variations. These updates, which are required by law, will raise the annual limit on cost sharing, thereby increasing cost sharing and out-of-pocket spending for consumers who are close to the annual cost-sharing limit.

We are committed to promoting a consumer-driven health care system in which consumers are empowered to select and maintain health care coverage of their choosing. To this end, we provide detailed options to QHP issuers on ways in which they can implement value-based insurance plan designs that would empower consumers to receive high value services at lower costs. These value-based insurance plan designs will empower consumers and their providers to make evidence-based health decisions.

We also propose new rules related to special enrollment periods. We propose to allow Exchange enrollees and their dependents who are enrolled in silver plans and become newly ineligible for CSRs to change to a QHP one metal level higher or lower, if they choose. We propose to require Exchanges to apply plan category limitations to dependents who are currently enrolled in Exchange coverage and whose non-dependent household member qualifies for a special enrollment period to newly enroll in coverage. We also propose to shorten the time between the date a consumer enrolls in a plan through certain special enrollment periods and the effective date of that plan. We further propose to allow all enrollees granted retroactive coverage through a special enrollment period the option to select a later effective date and pay for only prospective coverage. We propose to allow individuals and their dependents who are provided a qualified small employer health reimbursement arrangement (QSEHRA) on a non-calendar year basis to qualify for the existing special enrollment period for individuals enrolled in any

[1] The PPACA (Pub. L. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the PPACA, was enacted on March 30, 2010. In this proposed rule, we refer to the two statutes collectively as the ''Patient Protection and Affordable Care Act'' or ''PPACA''.

non-calendar year group health plan or individual health insurance coverage. We also propose to allow enrollees whose requests for termination of their coverage were not implemented due to an Exchange technical error to terminate their coverage retroactive to the date they attempted the termination, at the option of the Exchange.

We also propose new notice requirements. To increase transparency in terminations of Exchange coverage or enrollment, we propose to require termination notices be provided in all scenarios where Exchange coverage or enrollment is terminated. We also propose to require excepted benefit health reimbursement arrangements (HRAs) sponsored by non-Federal governmental plan entities to provide a notice to participants that contains specified information about the benefits available under the excepted benefit HRA.

We also propose changes to the quality rating information display requirements for Exchanges. To continue providing flexibility for State Exchanges, we propose to codify in regulation the option for State Exchanges that operate their own eligibility and enrollment platforms to display the quality rating information provided by HHS or to display quality rating information based upon certain permissible state-specific customizations of the quality rating information provided by HHS.

Stable and affordable Exchanges with healthy risk pools are necessary for ensuring consumers maintain stable access to health insurance options. In order to minimize the potential for adverse selection in the Exchanges, we are sharing our future plans for rulemaking to allow Exchanges to conduct risk-based employer sponsored coverage verification and to remove the requirement that Exchanges select a statistically random sample of applicants when no electronic data sources are available. In order to make it easier for issuers to offer wellness incentives to enrollees and promote a healthier risk pool, we propose to allow issuers to include wellness incentives as quality improvement activities (QIA) in the individual market for MLR reporting and calculation purposes.

We propose annual state reporting of state-required benefits that are in addition to essential health benefits (EHB) for which states are required to defray the costs. This will help to ensure that Federal APTC dollars are protected and states are appropriately compensating enrollees or issuers for services that are in addition to EHB.

We propose changes to the policy regarding how drug manufacturer coupons accrue towards the annual limitation on cost sharing. Specifically, we propose to revise § 156.130(h) to state that, to the extent consistent with applicable state law, amounts paid toward reducing the cost sharing incurred by an enrollee using any form of direct support offered by drug manufacturers for specific prescription drugs may be, but are not required to be, counted toward the annual limitation on cost sharing. We propose to interpret the definition of cost sharing not to include expenditures covered by drug manufacturer coupons.

We propose additional steps to ensure the proper execution of Federal requirements and to safeguard and conserve Federal funds. To protect against unnecessary overpayments of APTC funds, we propose to streamline the process for terminating coverage of enrollees who die while enrolled in Exchange coverage. In order to ensure that MLR reporting and rebate calculations are accurate, we propose that issuers must report expenses for functions outsourced to or services provided by other entities consistently with issuers' non-outsourced expenses, and require issuers to deduct prescription drug rebates from MLR incurred claims not only when such rebates are received by the issuer, but also when they are received and retained by an entity that provides pharmacy benefit management services to the issuer. We further propose that where enrollees provide consent for the Exchange to end their QHP coverage if they are found to be dually enrolled in other qualifying coverage during the Exchange's periodic data matching (PDM) process, the Exchange will not be required to redetermine the enrollee's eligibility for financial assistance and may discontinue coverage consistent with the consent given by the enrollee.

Finally, we propose to repeal regulations currently set forth at 45 CFR part 149, governing the Early Retiree Reinsurance Program (ERRP) program and its implementation. The program sunset by law as of January 1, 2014.

II. Background

A. Legislative and Regulatory Overview

Title I of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) added a new title XXVII to the Public Health Service Act (PHS Act) to establish various reforms to the group and individual health insurance markets.

These provisions of the PHS Act were later augmented by other laws, including the PPACA. Subtitles A and C of title I of the PPACA reorganized, amended, and added to the provisions of part A of title XXVII of the PHS Act relating to group health plans and health insurance issuers in the group and individual markets. The term ''group health plan'' includes both insured and self-insured group health plans.[2]

Section 1301(a)(1)(B) of the PPACA directs all issuers of QHPs to cover the EHB package described in section 1302(a) of the PPACA, including coverage of the services described in section 1302(b) of the PPACA, adherence to the cost-sharing limits described in section 1302(c) of the PPACA, and meeting the AV levels established in section 1302(d) of the PPACA. Section 2707(a) of the PHS Act, which is effective for plan or policy years beginning on or after January 1, 2014, extends the requirement to cover the EHB package to non-grandfathered individual and small group health insurance coverage, irrespective of whether such coverage is offered through an Exchange. In addition, section 2707(b) of the PHS Act directs non-grandfathered group health plans to ensure that cost-sharing under the plan does not exceed the limitations described in sections 1302(c)(1) of the PPACA.

Section 1302 of the PPACA provides for the establishment of an EHB package that includes coverage of EHBs (as defined by the Secretary), cost-sharing limits, and AV requirements. The law directs that EHBs be equal in scope to the benefits provided under a typical employer plan, and that they cover at least the following 10 general categories: Ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care. Section 1302(d) of the PPACA describes the various levels of coverage based on their AV. Consistent with section 1302(d)(2)(A) of the PPACA, AV is calculated based on the provision of EHB to a standard population. Section 1302(d)(3) of the PPACA directs the Secretary to develop guidelines that

[2] The term ''group health plan'' is used in title XXVII of the PHS Act and is distinct from the term ''health plan'' as used in other provisions of title I of PPACA. The term ''health plan'' does not include self-insured group health plans.

allow for *de minimis* variation in AV calculations.

Section 1311(c) of the PPACA provides the Secretary the authority to issue regulations to establish criteria for the certification of QHPs. Section 1311(e)(1) of the PPACA grants the Exchange the authority to certify a health plan as a QHP if the health plan meets the Secretary's requirements for certification issued under section 1311(c) of the PPACA, and the Exchange determines that making the plan available through the Exchange is in the interests of qualified individuals and qualified employers in the state. Section 1311(c)(6)(C) of the PPACA establishes special enrollment periods and section 1311(c)(6)(D) of the PPACA establishes the monthly enrollment period for Indians, as defined by section 4 of the Indian Health Care Improvement Act.[3]

Section 1311(c)(3) of the PPACA provides the Secretary with authority to develop a system to rate QHPs offered through an Exchange, based on relative quality and price. Section 1311(c)(4) of the PPACA authorizes the Secretary to establish an enrollee satisfaction survey that evaluates the level of enrollee satisfaction of members with QHPs offered through an Exchange, for each QHP with more than 500 enrollees in the prior year. Further, sections 1311(c)(3) and 1311(c)(4) of the PPACA require an Exchange to provide this quality rating information [4] to individuals and employers on the Exchange's website.

Section 1311(d)(3)(B) of the PPACA permits a state, at its option, to require QHPs to cover benefits in addition to the EHB. This section also requires a state to make payments, either to the individual enrollee or to the issuer on behalf of the enrollee, to defray the cost of these additional state-required benefits.

Section 1312(c) of the PPACA generally requires a health insurance issuer to consider all enrollees in all health plans (except grandfathered health plans) offered by such issuer to be members of a single risk pool for each of its individual and small group markets. States have the option to merge the individual and small group market risk pools under section 1312(c)(3) of the PPACA.

Sections 1313 and 1321 of the PPACA provide the Secretary with the authority to oversee the financial integrity of State Exchanges, their compliance with HHS standards, and the efficient and non-discriminatory administration of State Exchange activities. Section 1321 of the PPACA provides for state flexibility in the operation and enforcement of Exchanges and related requirements.

Section 1321(a) of the PPACA provides broad authority for the Secretary to establish standards and regulations to implement the statutory requirements related to Exchanges, QHPs and other components of title I of the PPACA. Section 1321(a)(1) of the PPACA directs the Secretary to issue regulations that set standards for meeting the requirements of title I of the PPACA for, among other things, the establishment and operation of Exchanges. When operating an FFE under section 1321(c)(1) of the PPACA, HHS has the authority under sections 1321(c)(1) and 1311(d)(5)(A) of the PPACA to collect and spend user fees. Office of Management and Budget (OMB) Circular A–25 Revised establishes Federal policy regarding user fees and specifies that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.

Section 1321(d) of the PPACA provides that nothing in title I of the PPACA must be construed to preempt any state law that does not prevent the application of title I of the PPACA. Section 1311(k) of the PPACA specifies that Exchanges may not establish rules that conflict with or prevent the application of regulations issued by the Secretary.

Section 1343 of the PPACA establishes a permanent risk adjustment program to provide payments to health insurance issuers that attract higher-than-average risk populations, such as those with chronic conditions, funded by payments from those that attract lower-than-average risk populations, thereby reducing incentives for issuers to avoid higher-risk enrollees.

Section 1402 of the PPACA provides for, among other things, reductions in cost-sharing for EHB for qualified low- and moderate-income enrollees in silver level health plans offered through the individual market Exchanges. This section also provides for reductions in cost sharing for Indians enrolled in QHPs at any metal level.

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) of the PPACA requires the Secretary, in consultation with the Treasury and Homeland Security Department Secretaries and the Commissioner of Social Security, to establish procedures for hearing and making decisions governing appeals of Exchange eligibility determinations.

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 eligibility to purchase a QHP through the Exchange and for 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.

Sections 2722 and 2763 of the PHS Act provide that the requirements of title XXVII of the PHS Act generally do not apply to excepted benefits. Excepted benefits are described in section 2791 of the PHS Act. This provision establishes four categories of excepted benefits. One such category is limited excepted benefits, which may include limited scope vision or dental benefits, and benefits for long-term care, nursing home care, home health care, or community based care. Section 2791(c)(2)(C) of the PHS Act, section 733(c)(2)(C) of the Employee Retirement Income Security Act (ERISA), and section 9832(c)(2)(C) of the Internal Revenue Code (the Code) authorize the Secretary of Health and Human Services, with the Secretaries of Labor and the Treasury (collectively, the Secretaries), to issue regulations establishing other, similar limited benefits as excepted benefits. To be excepted under the category of limited excepted benefits, section 2722(c)(1) of the PHS Act provides that limited benefits must either: (1) Be provided under a separate policy, certificate, or contract of insurance; or (2) otherwise not be an integral part of the plan.

Section 2718 of the PHS Act, as added by the PPACA, generally requires health

[3] The Indian Health Care Improvement Act (IHCIA), the cornerstone legal authority for the provision of health care to American Indians and Alaska Natives, was made permanent when President Obama signed the bill on March 23, 2010, as part of the Patient Protection and Affordable Care Act.

[4] The term ''quality rating information'' includes the QRS scores and ratings and the results of the enrollee satisfaction survey (which is also known as the ''Qualified Health Plan (QHP) Enrollee Experience Survey'').

insurance issuers to submit an annual MLR report to HHS, and provide rebates to enrollees if the issuers do not achieve specified MLR thresholds.

Section 5000A of the Code, as added by section 1501(b) of the PPACA requires individuals to have minimum essential coverage (MEC) for each month, qualify for an exemption, or make an individual shared responsibility payment. Under the Tax Cuts and Jobs Act, which was enacted on December 22, 2017, the individual shared responsibility payment is reduced to $0, effective for months beginning after December 31, 2018.[5] Notwithstanding that reduction, certain exemptions are still relevant to determine whether individuals age 30 and above qualify to enroll in catastrophic coverage under § 155.305(h).

1. Premium Stabilization Programs[6]

In the July 15, 2011 **Federal Register** (76 FR 41929), we published a proposed rule outlining the framework for the premium stabilization programs. We implemented the premium stabilization programs in a final rule, published in the March 23, 2012 **Federal Register** (77 FR 17219) (Premium Stabilization Rule). In the December 7, 2012 **Federal Register** (77 FR 73117), we published a proposed rule outlining the benefit and payment parameters for the 2014 benefit year to expand the provisions related to the premium stabilization programs and set forth payment parameters in those programs (proposed 2014 Payment Notice). We published the 2014 Payment Notice final rule in the March 11, 2013 **Federal Register** (78 FR 15409). In the June 19, 2013 **Federal Register** (78 FR 37032), we proposed a modification to the HHS-operated methodology related to community rating states. In the October 30, 2013 **Federal Register** (78 FR 65046), we finalized the proposed modification to the HHS-operated methodology related to community rating states. We published a correcting amendment to the 2014 Payment Notice final rule in the November 6, 2013 **Federal Register** (78 FR 66653) to address how an enrollee's age for the risk score calculation would be determined under the HHS-operated risk adjustment methodology.

In the December 2, 2013 **Federal Register** (78 FR 72321), we published a proposed rule outlining the benefit and payment parameters for the 2015 benefit year to expand the provisions related to the premium stabilization programs, setting forth certain oversight provisions and establishing the payment parameters in those programs (proposed 2015 Payment Notice). We published the 2015 Payment Notice final rule in the March 11, 2014 **Federal Register** (79 FR 13743). In the May 27, 2014 **Federal Register** (79 FR 30240), the 2015 fiscal year sequestration rate for the risk adjustment program was announced.

In the November 26, 2014 **Federal Register** (79 FR 70673), we published a proposed rule outlining the benefit and payment parameters for the 2016 benefit year to expand the provisions related to the premium stabilization programs, setting forth certain oversight provisions and establishing the payment parameters in those programs (proposed 2016 Payment Notice). We published the 2016 Payment Notice final rule in the February 27, 2015 **Federal Register** (80 FR 10749).

In the December 2, 2015 **Federal Register** (80 FR 75487), we published a proposed rule outlining the benefit and payment parameters for the 2017 benefit year to expand the provisions related to the premium stabilization programs, setting forth certain oversight provisions and establishing the payment parameters in those programs (proposed 2017 Payment Notice). We published the 2017 Payment Notice final rule in the March 8, 2016 **Federal Register** (81 FR 12203).

In the September 6, 2016 **Federal Register** (81 FR 61455), we published a proposed rule outlining the benefit and payment parameters for the 2018 benefit year and to further promote stable premiums in the individual and small group markets. We proposed updates to the risk adjustment methodology, new policies around the use of external data for recalibration of our risk adjustment models, and amendments to the RADV process (proposed 2018 Payment Notice). We published the 2018 Payment Notice final rule in the December 22, 2016 **Federal Register** (81 FR 94058).

In the November 2, 2017 **Federal Register** (82 FR 51042), we published a proposed rule outlining the benefit and payment parameters for the 2019 benefit year, and to further promote stable premiums in the individual and small group markets. We proposed updates to the risk adjustment methodology and amendments to the RADV process (proposed 2019 Payment Notice). We published the 2019 Payment Notice final rule in the April 17, 2018 **Federal Register** (83 FR 16930). We published a correction to the 2019 risk adjustment coefficients in the 2019 Payment Notice final rule in the May 11, 2018 **Federal Register** (83 FR 21925). On July 27, 2018, consistent with 45 CFR 153.320(b)(1)(i), we updated the 2019 benefit year final risk adjustment model coefficients to reflect an additional recalibration related to an update to the 2016 enrollee-level External Data Gathering Environment (EDGE) dataset.[7]

In the July 30, 2018 **Federal Register** (83 FR 36456), we published a final rule that adopted the 2017 benefit year risk adjustment methodology as established in the final rules published in the March 23, 2012 (77 FR 17220 through 17252) and in the March 8, 2016 editions of the **Federal Register** (81 FR 12204 through 12352). This final rule set forth additional explanation of the rationale supporting use of statewide average premium in the HHS-operated risk adjustment state payment transfer formula for the 2017 benefit year, including the reasons why the program is operated in a budget-neutral manner. This final rule permitted HHS to resume 2017 benefit year risk adjustment payments and charges. HHS also provided guidance as to the operation of the HHS-operated risk adjustment program for the 2017 benefit year in light of publication of this final rule.[8]

In the August 10, 2018 **Federal Register** (83 FR 39644), we published a proposed rule seeking comment on adopting the 2018 benefit year risk adjustment methodology in the final rules published in the March 23, 2012 (77 FR 17219) and in the December 22, 2016 editions of the **Federal Register** (81 FR 94058). The proposed rule set forth additional explanation of the rationale supporting use of statewide average premium in the HHS-operated risk adjustment state payment transfer formula for the 2018 benefit year, including the reasons why the program is operated in a budget-neutral manner. In the December 10, 2018 **Federal Register** (83 FR 63419), we issued a final rule adopting the 2018 benefit year HHS-operated risk adjustment methodology as established in the final rules published in the March 23, 2012 (77 FR 17219) and the December 22, 2016 (81 FR 94058) editions of the **Federal Register**. This final rule sets forth additional explanation of the rationale supporting use of statewide

[5] Public Law 115–97, 131 Stat. 2054 (2017).

[6] The term premium stabilization programs refers to the risk adjustment, risk corridors, and reinsurance programs established by the PPACA. See 42 U.S.C. 18061, 18062, and 18063.

[7] ''Updated 2019 Benefit Year Final HHS Risk Adjustment Model Coefficients.'' July 27, 2018. Available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2019-Updtd-Final-HHS-RA-Model-Coefficients.pdf.*

[8] ''Update on the HHS-operated Risk Adjustment Program for the 2017 Benefit Year.'' July 27, 2018. Available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2017-RA-Final-Rule-Resumption-RAOps.pdf.*

average premium in the HHS-operated risk adjustment state payment transfer formula for the 2018 benefit year, including the reasons why the program is operated in a budget-neutral manner.

In the January 24, 2019, **Federal Register** (84 FR 227), we published a proposed rule outlining updates to the calibration of the risk adjustment methodology, the use of EDGE data for research purposes, and updates to RADV audits. We published the 2020 Payment Notice final rule in the April 25, 2019, **Federal Register** (84 FR 17454)

2. Program Integrity

In the June 19, 2013 **Federal Register** (78 FR 37031), we published a proposed rule that proposed certain program integrity standards related to Exchanges and the premium stabilization programs (proposed Program Integrity Rule). The provisions of that proposed rule were finalized in two rules, the ''first Program Integrity Rule'' published in the August 30, 2013 **Federal Register** (78 FR 54069) and the ''second Program Integrity Rule'' published in the October 30, 2013 **Federal Register** (78 FR 65045).

3. Market Rules

An interim final rule relating to the HIPAA health insurance reforms was published in the April 8, 1997 **Federal Register** (62 FR 16894). A proposed rule relating to the 2014 health insurance market rules was published in the November 26, 2012 **Federal Register** (77 FR 70584). A final rule implementing the health insurance market rules was published in the February 27, 2013 **Federal Register** (78 FR 13406) (2014 Market Rules).

A proposed rule relating to Exchanges and Insurance Market Standards for 2015 and beyond was published in the March 21, 2014 **Federal Register** (79 FR 15808) (2015 Market Standards Proposed Rule). A final rule implementing the Exchange and Insurance Market Standards for 2015 and Beyond was published in the May 27, 2014 **Federal Register** (79 FR 30240) (2015 Market Standards Rule). The 2018 Payment Notice final rule in the December 22, 2016 **Federal Register** (81 FR 94058) provided additional guidance on guaranteed availability and guaranteed renewability. In the Market Stabilization final rule that was published in the April 18, 2017 **Federal Register** (82 FR 18346), we released further guidance related to guaranteed availability.

4. Exchanges

We published a request for comment relating to Exchanges in the August 3, 2010 **Federal Register** (75 FR 45584). We issued initial guidance to states on Exchanges on November 18, 2010. We proposed a rule in the July 15, 2011 **Federal Register** (76 FR 41865) to implement components of the Exchanges, and a rule in the August 17, 2011 **Federal Register** (76 FR 51201) regarding Exchange functions in the individual market and Small Business Health Options Program (SHOP), eligibility determinations, and Exchange standards for employers. A final rule implementing components of the Exchanges and setting forth standards for eligibility for Exchanges was published in the March 27, 2012 **Federal Register** (77 FR 18309) (Exchange Establishment Rule).

In the 2014 Payment Notice and in the Amendments to the HHS Notice of Benefit and Payment Parameters for 2014 interim final rule, published in the March 11, 2013 **Federal Register** (78 FR 15541), we set forth standards related to Exchange user fees. We established an adjustment to the FFE user fee in the Coverage of Certain Preventive Services under the Affordable Care Act final rule, published in the July 2, 2013 **Federal Register** (78 FR 39869) (Preventive Services Rule).

In an interim final rule, published in the May 11, 2016 **Federal Register** (81 FR 29146), we made amendments to the parameters of certain special enrollment periods (2016 Interim Final Rule). We finalized these in the 2018 Payment Notice final rule, published in the December 22, 2016 **Federal Register** (81 FR 94058). In the April 18, 2017 Market Stabilization final rule **Federal Register** (82 FR 18346), we amended standards relating to special enrollment periods and QHP certification. In the 2019 Payment Notice final rule, published in the April 17, 2018 **Federal Register** (83 FR 16930), we modified parameters around certain special enrollment periods. In the April 25, 2019 **Federal Register** (84 FR 17454), the final 2020 Payment Notice established a new special enrollment period.

5. Essential Health Benefits

On December 16, 2011, HHS released a bulletin [9] that outlined an intended regulatory approach for defining EHB, including a benchmark-based framework. A proposed rule relating to EHBs was published in the November 26, 2012 **Federal Register** (77 FR 70643). We established requirements relating to EHBs in the Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation Final Rule, which was published in the February 25, 2013 **Federal Register** (78 FR 12833) (EHB Rule). In the 2019 Payment Notice, published in the April 17, 2018 **Federal Register** (83 FR 16930), we added § 156.111 to provide states with additional options from which to select an EHB-benchmark plan for plan years 2020 and beyond.

6. Cost-Sharing Requirements

In the 2020 Payment Notice, published on April 25, 2019 (84 FR 17454), we added § 156.130(h)(1) to clarify that issuers are not required to count toward the annual limitation on cost sharing any forms of direct support offered by drug manufacturers to reduce out-of-pocket costs for brand drugs when a generic drug is available and medically appropriate.

7. Excepted Benefit Health Reimbursement Arrangements

In the October 29, 2018 **Federal Register** (83 FR 54420), the Departments of Health and Human Services, Labor, and the Treasury (the Departments) published proposed regulations on HRAs and other account-based group health plans, including a new excepted benefit referred to as an excepted benefit HRA. In the June 20, 2019 **Federal Register** (84 FR 28888), the Departments published final regulations on HRAs and other account-based group health plans, including excepted benefit HRAs (the HRA rule).

8. Medical Loss Ratio (MLR)

We published a request for comment on section 2718 of the PHS Act in the April 14, 2010 **Federal Register** (75 FR 19297), and published an interim final rule with a 60-day comment period relating to the MLR program on December 1, 2010 (75 FR 74863). A final rule with a 30-day comment period was published in the December 7, 2011 **Federal Register** (76 FR 76573). An interim final rule with a 60-day comment period was published in the December 7, 2011 **Federal Register** (76 FR 76595). A final rule was published in the **Federal Register** on May 16, 2012 (77 FR 28790). The MLR program requirements were amended in final rules published in the March 11, 2014 **Federal Register** (79 FR 13743), the May 27, 2014 **Federal Register** (79 FR 30339), the February 27, 2015 **Federal Register** (80 FR 10749), the March 8, 2016 **Federal Register** (81 FR 12203), the December 22, 2016 **Federal Register** (81 FR 94183), and the April 17, 2018 **Federal Register** (83 FR 16930).

[9] ''Essential Health Benefits Bulletin.'' December 16, 2011. Available at *https://www.cms.gov/CCIIO/Resources/Files/Downloads/essential_health_benefits_bulletin.pdf.*

9. Early Retiree Reinsurance Program (ERRP)

In the May 5, 2010 **Federal Register** (75 FR 24450), we published an interim final rule with comment period governing the ERRP. In the April 5, 2011 **Federal Register** (76 FR 18766), we published a notice informing the public that as of May 5, 2011, the ERRP would stop accepting applications for new participants in the program due to the availability of funds. In the December 13, 2011 **Federal Register** (76 FR 77537), we published a notice informing the public that, due to the availability of funds, the ERRP would deny reimbursement requests that include claims incurred after December 31, 2011. In the March 21, 2012 **Federal Register** (77 FR 16551), we published a notice establishing a timeframe within which plan sponsors participating in the program were expected to use ERRP reimbursement funds. Specifically, the notice informed participating plan sponsors that reimbursement funds should be used as early as possible, but not later than January 1, 2014.

10. Quality Rating System (QRS) and Enrollee Satisfaction Survey

Sections 1311(c)(3) of the PPACA directs the Secretary of HHS to develop a quality rating for each QHP offered through an Exchange, based on relative quality and price. Further, section 1311(c)(4) of the PPACA requires the Secretary to establish an enrollee satisfaction survey that evaluates the level of enrollee satisfaction of members with QHPs offered through the Exchanges for each QHP with more than 500 enrollees in the prior year. Exchanges are also required to make quality rating and enrollee satisfaction information available to individuals and employers on their respective websites. Consistent with these statutory provisions, in May 2014, HHS issued regulation at §§ 155.1400 and 155.1405 to establish the Quality Rating System (QRS) and the QHP Enrollee Experience Survey display requirements for Exchanges and has worked towards requiring nationwide the prominent display of quality rating information on Exchange websites.[10] As a condition of certification and participation in the Exchanges, HHS requires that QHP issuers submit QRS clinical measure data and QHP Enrollee Survey response data for their respective QHPs offered through an Exchange in accordance with HHS guidance, which has been issued annually for each forthcoming plan year.[11]

B. Stakeholder Consultation and Input

HHS has consulted with stakeholders on policies related to the operation of Exchanges and the risk adjustment and RADV programs. We have held a number of listening sessions with consumers, providers, employers, health plans, advocacy groups and the actuarial community to gather public input. We have solicited input from state representatives on numerous topics, particularly EHBs, state mandates and risk adjustment. We consulted with stakeholders through regular meetings with the National Association of Insurance Commissioners (NAIC), regular contact with states through the Exchange Establishment grant and Exchange Blueprint approval processes, and meetings with Tribal leaders and representatives, health insurance issuers, trade groups, consumer advocates, employers, and other interested parties. We considered all public input we received as we developed the policies in this proposed rule.

C. Structure of Proposed Rule

The regulations outlined in this proposed rule would be codified in 45 CFR parts 146, 149, 153, 155, 156 and 158.

The proposed changes to 45 CFR part 146 would establish a notice requirement for non-Federal governmental plan sponsors that offer an excepted benefit HRA.

The proposed changes to part 149 would delete the regulations related to the ERRP, which ended on January 1, 2014.

The proposed changes to 45 CFR part 153 would recalibrate the risk adjustment models consistent with the approach outlined in the 2020 Payment Notice to transition away from the use of MarketScan® data and incorporate the most recent benefit years of enrollee-level EDGE data that are available for 2021 and beyond. The proposals regarding part 153 also relate to the risk adjustment user fee for the 2020 benefit year and modifications to RADV requirements for the states where HHS operates the risk adjustment program.

We propose several amendments to the definitions applicable to part 155. We discuss future changes to 45 CFR part 155 that would allow Exchanges to implement a verification process for enrollment in or eligibility for an eligible employer-sponsored plan based on the Exchange's assessment of risk for inappropriate payments of APTC/CSR. We also clarify that an Exchange will not redetermine eligibility for APTC/CSRs for Medicare dual enrollees who direct the Exchange to end their QHP coverage; clarify that when an Exchange identifies deceased enrollees via PDM, the Exchange will terminate coverage retroactively to the date of death; allow enrollees and their dependents who are eligible for a special enrollment period due to becoming newly ineligible for CSRs, and are enrolled in a silver-level QHP, to change to a QHP one metal level higher or lower if they elect to change their QHP enrollment through an Exchange; establish that an Exchange must apply plan category limitations to currently enrolled dependents whose non-dependent household member qualifies for a special enrollment period to newly enroll the non-dependent household member in Exchange coverage; provide that in the FFE, special enrollment periods currently following regular effective date rules would instead be effective on the first of the month following plan selection; align retroactive effective date and binder payment rules; establish that qualified individuals and dependents who are provided a QSEHRA with a non-calendar year plan year would qualify for the existing special enrollment period for individuals enrolled in any non-calendar year group health plan or individual health insurance coverage; and allow enrollees blocked from termination due to an Exchange technical error to terminate their coverage retroactive to the date they attempted the termination.

As we do every year in the HHS notice of benefit and payment parameters, we propose to update the required contribution percentage, the maximum annual limitation on cost sharing, and the reduced maximum annual limitation on cost sharing based on the premium adjustment percentage. We propose to update the user fee rates for the 2021 benefit year for all issuers participating on the Exchanges using the Federal platform. Further, a proposed change to 45 CFR part 156 would require QHP issuers to send to enrollees a termination notice for all termination events. We also propose to amend the

[10] Patient Protection and Affordable Care Act; Exchange and Insurance Market Standards for 2015 and Beyond, Final Rule, 79 FR 30240 at 30352 (May 27, 2014). Also see the CMS Bulletin on display of QRS star ratings and Qualified Health Plan (QHP) Enrollee Survey results for QHPs offered through Exchanges (August 15, 2019), available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/QualityRatingInformationBulletinforPlanYear2020.pdf.*

[11] See, for example, Center for Clinical Standards & Quality, CMS, The Quality Rating System and Qualified Health Plan Enrollee Experience Survey: Technical Guidance for 2020 (October 2019), available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/Downloads/QRS-and-QHP-Enrollee-Survey-Technical-Guidance-for-2020-508.pdf.*

regulation addressing state selection of EHB-benchmark plans to require the reporting of state-required benefits. We also propose to offer QHP issuers the option to design value-based insurance plans that would empower consumers to receive high value services at lower cost. We propose to revise § 156.130(h) in its entirety to address how any direct support offered by drug manufacturers to enrollees for specific prescription drugs are treated with regard to accrual towards the annual limitation on cost sharing.

The proposed changes to 45 CFR part 158 would require issuers, for MLR purposes, to report expenses for functions outsourced to or services provided by other entities consistently with issuers' non-outsourced expenses, and to deduct from incurred claims prescription drug rebates and other price concessions received and retained by the issuer or other entities providing pharmacy benefit management services to the issuers. The proposed changes to the MLR regulations would also explicitly allow issuers to report certain wellness incentives as QIA in the individual market.

III. Provisions of the Proposed HHS Notice of Benefit and Payment Parameters for 2021

A. Part 146—Requirements for the Group Health Insurance Market: Excepted Benefit HRAs Offered by Non-Federal Governmental Plan Sponsors

HHS proposes to add a new paragraph (b)(3)(viii)(E) to § 146.145 to establish notice requirements for excepted benefit HRAs offered by non-Federal governmental plan sponsors. Excepted benefit HRAs are a new type of excepted benefit the Departments recently established in the HRA rule.[12] The proposed new paragraph would require sponsors of non-Federal governmental plans that offer excepted benefit HRAs to provide a notice to eligible participants that contains specified information about the benefits available under the excepted benefit HRA.

In the HRA rule, the Departments authorized a new form of HRA (the individual coverage HRA), and recognized certain HRAs as limited excepted benefits (the excepted benefit HRA), for plan years beginning on or after January 1, 2020. The individual coverage HRA and the excepted benefit HRA were designed to provide Americans with additional options to obtain quality, affordable health care by expanding the flexibility and use of HRAs. An entity may offer an individual coverage HRA subject to the HRA meeting the applicable conditions for individual coverage HRAs set forth in the HRA rule, including satisfying certain notice requirements. The notice must include a description of the terms of the individual coverage HRA, information regarding the PTC consequences of enrollment in the individual coverage HRA, and a statement about the ability to opt out of and waive future reimbursement from the individual coverage HRA, among other information.[13] The individual coverage HRA can be used to reimburse, among other medical care expenses, premiums for individual health insurance coverage.

Separately, under the HRA rule, benefits provided under an HRA or other account-based group health plan (other than a health flexible spending arrangement) will qualify as limited excepted benefits not subject to requirements under title XXVII of the PHS Act if they: (1) Are offered by a plan sponsor that also offers traditional group health plan coverage for the plan year to the participant; (2) are funded with amounts newly made available for each plan year that do not exceed $1,800, adjusted annually in a manner set forth in the HRA rule; (3) do not reimburse premiums for individual health insurance coverage, group health plan coverage (other than COBRA continuation coverage or other continuation coverage), or Medicare, except for coverage that consists solely of excepted benefits; and (4) are made available under the same terms to all similarly situated individuals, regardless of any health factor.

Commenters on the proposed HRA rule[14] suggested that the Departments provide certain notice requirements for excepted benefit HRAs. The commenters suggested that the required notice should be similar to the notice required for individual coverage HRAs as described above, or should, at a minimum, inform participants and beneficiaries of the annual dollar limit for benefits under the excepted benefit HRA, and participants' and beneficiaries' rights under the excepted benefit HRA.[15]

In the preamble to the HRA rule, the Departments noted that long-standing notice requirements under Part 1 of the ERISA already apply to private-sector, employment-based plans. The Departments explained that under those notice requirements, excepted benefit HRAs that are subject to ERISA generally should provide information on eligibility to receive benefits, annual or lifetime caps or other limits on benefits under the plan, and a description or summary of the benefits. Accordingly, the HRA rule included a cross-reference to existing ERISA notice provisions for excepted benefit HRAs that are subject to ERISA, to help ensure that excepted benefit HRA plan sponsors are aware of their obligations under those provisions. However, the HRA rule did not finalize any notice requirements in addition to those ERISA already imposes on ERISA-covered plans. It also did not subject plans that are not subject to ERISA, such as excepted benefit HRAs sponsored by non-Federal governmental employers, to similar notice requirements.

HHS believes individuals offered excepted benefit HRAs by non-Federal governmental plan sponsors should also have access to clear information about their excepted benefit HRAs. Therefore, in the HRA rule, HHS announced its intent to propose notice requirements with respect to excepted benefit HRAs offered by non-Federal governmental plan sponsors in future notice and comment rulemaking. HHS indicated that it anticipated proposing that a non-Federal governmental plan excepted benefit HRA would be required to provide a notice that describes conditions pertaining to eligibility to receive benefits, annual or lifetime caps or other limits on benefits under the plan, and a description or summary of the benefits consistent with the requirements of Department of Labor (DOL) summary plan description regulations at 29 CFR 2520.102–3(j)(2) and (3). Further, HHS indicated that, under its anticipated proposal, this notice would be required to be provided in a time and manner consistent with the requirements of DOL regulations at 29 CFR 2520.104b–2(a).[16]

In this proposed rule, HHS proposes to add a new paragraph (b)(3)(viii)(E) to § 146.145 that would require excepted benefit HRAs sponsored by non-Federal governmental entities to provide notice consistent with the discussion in the preamble to the HRA rule.[17] Specifically, under this proposal, an excepted benefit HRA offered by a non-Federal governmental plan sponsor would be required to provide a notice that describes conditions pertaining to eligibility to receive benefits, annual or lifetime caps or other limits on benefits under the excepted benefit HRA, and a description or summary of the benefits

[12] 84 FR 28888 (June 20, 2019).

[13] Ibid at 28920–28924.

[14] 83 FR 54420 (October 29, 2018). This proposed rule was subsequently finalized, with some revisions in response to comments, by the final rule referenced in this preamble as the HRA rule.

[15] 84 FR 28888 at 28941.

[16] 84 FR 28888 at 28941.

[17] Ibid.

available under the excepted benefit HRA. This is generally consistent with the content requirements of DOL summary plan description regulations at 29 CFR 2520.102–3(j)(2) and (3), although the excepted benefit HRA notice provided by a non-Federal governmental plan sponsor would be required to be provided annually and would not necessarily have to include every data element specified in those DOL regulations. We also propose that the notice must be provided in a manner reasonably calculated to ensure actual receipt by participants eligible for the excepted benefit HRA, such as by providing the notice in the same manner in which the plan sponsor provides other notices or plan documents to plan participants.

We propose that this notice must be provided no later than 90 days after the employee becomes a participant in the excepted benefit HRA and annually thereafter. Under applicable rules at 45 CFR 144.103, ''participant'' is defined as having the meaning given the term under section 3(7) of the ERISA, which states, any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit. Furthermore, under existing DOL regulations at 29 CFR 2520.104b–2(a), ERISA-covered plans, including ERISA-covered excepted benefit HRAs, generally are required to furnish a copy of the notice to each participant no later than 90 days after the employee becomes a participant in the plan. Given that ERISA-covered plans and non-Federal governmental plans often contract with the same service providers to administer their health plans, to increase efficiencies, and minimize costs and confusion, we propose that the notice provided by non-Federal governmental plans must be provided on an annual basis no later than 90 days after the first day of the excepted benefit HRA plan year, or in the case of an employee who becomes a participant after the start of the plan year, no later than 90 days after the employee becomes a participant in the plan.

We propose this notice requirement would be applicable to excepted benefit HRA plan years beginning on or after 30 days following the effective date of the final rule.

We seek comment on all aspects of this proposal, including whether to apply a different timing standard than the one proposed for the notices for non-Federal governmental excepted benefit HRAs, and any logistical, cost, and other challenges that would ensue from applying a different timing standard for the notice for such excepted benefit HRAs than for those regulated by ERISA. We also solicit comments on the proposed applicability date and on ways to mitigate the potential costs and burdens this notice requirement may impose on non-Federal governmental plan sponsors interested in offering excepted benefit HRAs. For example, if, after the first year, this notice would be required only for plan years for which the terms of the excepted benefit HRA change from the previous plan year, sponsors of non-Federal governmental excepted benefit HRAs would incur lower costs to provide this notice to eligible participants. Therefore, we also seek comment on whether sponsors of non-Federal governmental excepted benefit HRAs should be required to provide the notice annually after the initial notice, or whether, after providing the initial notice, they should only be required to provide the notice with respect to plan years for which the terms of the excepted benefit HRA change from the previous plan year, and if so, what type or magnitude of change should trigger such a subsequent notice. For example, should a change in the dollar amount of the excepted benefit HRA trigger such a notice, and if so, what magnitude of increase or decrease? Should a change in just one type of medical care expense that may or may not be reimbursed by the excepted benefit HRA trigger such a subsequent notice, or would a subsequent notice be required only if more than one type of reimbursable medical care expense is added or eliminated?

B. Part 149—Requirements for the Early Retiree Reinsurance Program (ERRP)

We propose to delete part 149 of title 45 of the CFR, which sets forth requirements for participating in the ERRP, established by section 1102 of the PPACA. The ERRP provided financial assistance in the form of reinsurance to employment-based health plan sponsors—including for-profit companies, schools and educational institutions, unions, state and local governments, religious organizations, and other nonprofit plan sponsors—that made coverage available to early retirees, their spouses or surviving spouses, and dependents, for specified claims incurred prior to January 1, 2014, or until funding was depleted, whichever were to occur sooner. The goal of the program was to encourage and support comprehensive, quality health care for early retirees at least 55 years of age, and their spouses and dependents, not otherwise eligible for Medicare during the period preceding the effective date of the Exchanges and many of the market-wide rules created by the PPACA.

Under section 1102(a)(1) of the PPACA, the ERRP expired January 1, 2014. All ERRP payments have been made and there are no outstanding claims or disputes. A portion of the original appropriation remains, and will be returned to the Treasury when the appropriation is closed out in due course.

Repealing the ERRP regulations would reduce the volume of Federal regulations. Therefore, we propose to delete the regulations in part 149, and reserve part 149. We seek comment on this proposal.

C. Part 153—Standards Related to Reinsurance, Risk Corridors, and Risk Adjustment

1. Sequestration

In accordance with the OMB Report to Congress on the Joint Committee Reductions for Fiscal Year 2020,[18] both the transitional reinsurance program and the permanent risk adjustment program are subject to the fiscal year 2020 sequestration. The Federal Government's 2020 fiscal year began October 1, 2019. While the 2016 benefit year was the final year of the transitional reinsurance program, there might be reinsurance payments in the 2020 fiscal year for close-out activities. Therefore, the risk adjustment and reinsurance programs will be sequestered at a rate of 5.9 percent for payments made from fiscal year 2020 resources (that is, funds collected during the 2020 fiscal year).

HHS, in coordination with the OMB, has determined that, under section 256(k)(6) of the Balanced Budget and Emergency Deficit Control Act of 1985 (Pub. L. 99–177, enacted December 12, 1985), as amended, and the underlying authority for the reinsurance and risk adjustment program, the funds that are sequestered in fiscal year 2020 from the risk adjustment or reinsurance programs will become available for payment to issuers in fiscal year 2021 without further Congressional action. If Congress does not enact deficit reduction provisions that replace the Joint Committee reductions, the program would be sequestered in future fiscal years, and any sequestered funding

[18] Available at *https://www.whitehouse.gov/wp-content/uploads/2019/03/2020_JC_Sequestration_Report_3-18-19.pdf.*

would become available in the fiscal year following that in which it was sequestered.

2. Provisions and Parameters for the Risk Adjustment Program

In subparts A, B, D, G, and H of part 153, we established standards for the administration of the risk adjustment program. The risk adjustment program is a permanent program created by section 1343 of the PPACA that transfers funds from lower-than-average risk, risk adjustment covered plans to higher-than-average risk, risk adjustment covered plans in the individual and small group markets (including merged markets), inside and outside the Exchanges. In accordance with § 153.310(a), a state that is approved or conditionally approved by the Secretary to operate an Exchange may establish a risk adjustment program, or have HHS do so on its behalf. HHS did not receive any requests from states to operate risk adjustment for the 2021 benefit year. Therefore, HHS will operate risk adjustment in every state and the District of Columbia for the 2021 benefit year.

We propose changes in this rule to recalibrate the risk adjustment models consistent with the methodology we finalized for the 2020 benefit year. For the 2021 benefit year, we propose to incorporate the most recent benefit years of enrollee-level EDGE data that are available, and to rely only on enrollee-level EDGE data for 2021 and beyond for purposes of recalibrating the HHS risk adjustment models. We also propose the risk adjustment user fee for the 2020 benefit year and modifications to certain RADV requirements.

a. HHS Risk Adjustment (§ 153.320)

The HHS risk adjustment models predict plan liability for an average enrollee based on that person's age, sex, and diagnoses (also referred to as hierarchical condition categories (HCCs)), producing a risk score. The current structure of these models is described in the 2020 Payment Notice.[19] The HHS risk adjustment methodology utilizes separate models for adults, children, and infants to account for cost differences in each age group. In the adult and child models, the relative risk assigned to an individual's age, sex, and diagnoses are added together to produce an individual risk score. Additionally, to calculate enrollee risk scores in the adult models, we added enrollment duration factors beginning with the 2017 benefit year, and prescription drug categories (RXCs) beginning with the 2018 benefit year. Infant risk scores are determined by inclusion in one of 25 mutually exclusive groups, based on the infant's maturity and the severity of diagnoses. If applicable, the risk score for adults, children, or infants is multiplied by a CSR adjustment that accounts for differences in induced demand at various levels of cost sharing.

The enrollment-weighted average risk score of all enrollees in a particular risk adjustment covered plan (also referred to as the plan liability risk score) within a geographic rating area is one of the inputs into the risk adjustment state payment transfer formula, which determines the payment or charge that an issuer will receive or be required to pay for that plan for the applicable state market risk pool. Thus, the HHS risk adjustment models predict average group costs to account for risk across plans, in keeping with the Actuarial Standards Board's Actuarial Standards of Practice for risk classification.

(1) Updates to Data Used for Risk Adjustment Model Recalibration

We propose to discontinue our reliance on MarketScan® data to recalibrate the risk adjustment models. Previously, we used the 3 most recent years of MarketScan® data available to recalibrate the 2016, 2017, and 2018 benefit year risk adjustment models. For the 2019 benefit year, we recalibrated the models using 2 years of MarketScan® data (2014 and 2015) with 2016 enrollee-level EDGE data. The 2019 benefit year was the first recalibration year that enrollee-level EDGE data was used for this purpose. In keeping with our previously-stated intention to transition away from the MarketScan® commercial database, we further reduced our use of MarketScan® data in 2020 benefit year model recalibration by using only 1 year of MarketScan® data (2015), and the 2 most recent years of available enrollee-level EDGE data (2016 and 2017). During all prior recalibrations, we implemented an approach that used blended, or averaged, coefficients from 3 years of separately solved models to provide stability for the risk adjustment coefficients year-to-year, while reflecting the most recent years' claims experience available.

Consistent with the policy announced in the 2020 Payment Notice,[20] we propose in this rule to no longer incorporate MarketScan® data in the recalibration process beginning with the 2021 benefit year. Rather, we propose for the 2021 benefit year and beyond to blend the 3 most recent years of available enrollee-level EDGE data. This approach would incorporate the most recent years' claims experience that is available without resulting in drastic year-to-year changes to risk scores, as the recalibration of the models for the applicable benefit year would maintain 2 years of EDGE data that were used in the previous years' models. It also would continue our efforts to recalibrate the risk adjustment models using actual data from issuers' individual and small group populations and complete the transition from the MarketScan® commercial database that merely approximates individual and small group (including merged) market populations. For the 2021 benefit year, we propose to use 2016, 2017, and 2018 enrollee-level EDGE data to recalibrate the risk adjustment models. We propose to maintain the approach of using the 3 most recent years of available enrollee-level EDGE data for recalibration of the risk adjustment models for future benefit years beyond 2021, unless changed through rulemaking.

We seek comment on our proposal to determine coefficients for the 2021 benefit year based on a blend of separately solved coefficients from the 2016, 2017, and 2018 benefit years' enrollee-level EDGE data. We also seek comment on maintaining the approach of using the 3 most recent years of available enrollee-level EDGE data for recalibration of the risk adjustment models for future benefit years beyond 2021.

Due to the timing of this proposed rule, we are unable to incorporate the 2018 benefit year enrollee-level EDGE data in the calculation of the proposed coefficients in this rule. Therefore, consistent with prior years' proposed payment notices (2017 and 2019), the coefficients listed below are based on the 2 most recent years of data available at the time the proposed rule was drafted—the 2016 and 2017 benefit year enrollee-level EDGE data. Considering that 2 of the 3 years of enrollee-level EDGE data that we plan to use to recalibrate the 2021 risk adjustment models are reflected in the coefficients that we are publishing in this proposed rule, we believe that the draft coefficients listed below provide a reasonably close approximation of what could be anticipated from blending the 2016, 2017, and 2018 benefit years' enrollee-level EDGE data. If we finalize the proposed recalibration approach and are unable to incorporate the 2018 benefit year EDGE data in time to publish updated coefficients in the final rule, we will publish the final coefficients for the 2021 benefit year in guidance after the publication of the

[19] See 84 FR 17454 at 17463.

[20] 84 FR 17454 at 17464.

final rule, consistent with our approach in previous benefit years.[21]

(2) Updates to the Risk Adjustment Model Recalibration Hierarchical Condition Categories (HCCs)

We propose to incorporate the HCC changes identified below beginning with the 2021 benefit year risk adjustment models. The main purpose of these proposed HCC changes is to update the HCCs based on availability of more recent diagnosis code information and the availability of more recent claims data. To provide risk adjustment factors that best reflect more recent treatment patterns and costs, we propose to update the HHS–HCC clinical classification in the current HHS–HCC risk adjustment models by using more recent claims data to develop updated risk factors, as part of our continued assessment of modifications to the HHS-operated risk adjustment program for the individual and small group markets.

The HHS–HCC clinical classification is the foundation of the models used in calculating transfers under the state payment transfer formula in the HHS-operated risk adjustment program established under section 1343 of the PPACA. Except for annual diagnosis code updates and the reconfiguration of one HCC,[22] the HHS–HCC clinical classification has not been modified since it was implemented in the 2014 benefit year.

The HHS–HCC clinical classification, in place since 2014, was based on the International Classification of Diseases, 9th Edition, Clinical Modification (ICD–9–CM) diagnosis codes, an approved U.S. modification of the World Health Organization's classification system that was currently in use at the time. That system was subsequently replaced by the International Classification of Diseases, 10th Revision (ICD–10–PCS) and International Classification of Diseases, 10th Revision, Clinical Modification (a corresponding U.S. clinical modification) (ICD–10–CM). When ICD–10–CM was implemented in the U.S. on October 1, 2015, ICD–10 codes were cross-walked to ICD–9 codes and to the existing ICD–9-based HHS–HCC clinical classification.

In preparation for proposing these changes in this rulemaking, we released a paper on June 17, 2019 entitled ''Potential Updates to the HHS–HCCs for the HHS-operated Risk Adjustment Program'' (HHS–HCCs Update Paper).[23] This paper described our methodology for reviewing and restructuring the HHS–HCC classification to incorporate ICD–10 diagnosis codes, and our intention to evaluate potential changes to the HHS–HCC model classification using enrollee-level EDGE data, which is representative of the population for which the models are targeted. Our main goal for reclassifying HHS–HCCs is to use them to update the HHS–HCC models to better incorporate coding changes made in the transition to ICD–10 diagnosis classification system. We also used this opportunity to review and use the newly available 2016 and 2017 benefit years enrollee-level EDGE claims data, which reflect the first 2 full years of ICD–10 diagnosis coding on claims. While this analysis did not consider updates to the RXCs,[24] it examined other components of the clinical classification, including payment and non-payment HCCs, certain clinical hierarchies, HCC groups and *a priori* constraints on HCC coefficients, and other HCC interactions affected by potential changes.

In the HHS–HCCs Update Paper, we explained our considerations for examining potential changes to HCCs and in determining which diagnosis codes should be included, how they should be grouped, and how the diagnostic groupings should interact for risk adjustment purposes, which is a critical step in the development of the HHS–HCC risk adjustment models. To guide the reclassification process, we used 10 principles that were discussed in the proposed 2014 Payment Notice that guided the creation of the original HHS–HCC diagnostic classification system,[25] and that were used to develop the HCC classification system for the Medicare risk adjustment model.[26] These principles included:

- *Principle 1*—Diagnostic categories should be clinically meaningful.
- *Principle 2*—Diagnostic categories should predict medical (including drug) expenditures.
- *Principle 3*—Diagnostic categories that will affect payments should have adequate sample sizes to permit accurate and stable estimates of expenditures.
- *Principle 4*—In creating an individual's clinical profile, hierarchies should be used to characterize the person's illness level within each disease process, while the effects of unrelated disease processes accumulate.
- *Principle 5*—The diagnostic classification should encourage specific coding.
- *Principle 6*—The diagnostic classification should not reward coding proliferation.
- *Principle 7*—Providers should not be penalized for recording additional diagnoses (monotonicity).
- *Principle 8*—The classification system should be internally consistent (transitive).
- *Principle 9*—The diagnostic classification should assign all diagnosis codes (exhaustive classification).
- *Principle 10*—Discretionary diagnostic categories should be excluded from payment models.

Using these principles, we conducted a multi-step analysis of the current HHS–HCC classification to develop the list of HCC changes that we propose to reclassify.

We began by conducting a comprehensive review of the current HHS–HCC full classification and risk adjustment model classification, including an examination of disease groups with extensive ICD–10 code classification changes, HCCs whose counts had changed considerably following ICD–10 implementation, clinical areas of interest (for example, substance use disorders), and model under-prediction or over-prediction as identified by predictive ratios. We then examined HCC reconfigurations, payment HCC designation, HCC Groups, and hierarchies to develop the preliminary regression analyses using 2016 data.[27] We also conducted a series of clinical reviews to inform potential changes. Next, we reviewed the payment model and full classification

[21] For example, see the HHS Notice of Benefit and Payment Parameters for 2018 Final Rule (the 2018 Payment Notice), 81 FR 94058 (December 22, 2016). Also see 45 CFR 153.320(b)(1)(i).

[22] As detailed in the 2018 Payment Notice, beginning with the 2018 benefit year, HCC 37—Chronic Hepatitis—was split into two HCCs to distinguish the treatment costs of chronic hepatitis C into HCC 37_1—Chronic Viral Hepatits and HCC 37_2—Chronic Hepatitis, Other/Unspecified. See 81 FR 94058 at 94085 (December 22, 2016).

[23] The Potential Updates to HHS–HCCs for the HHS-operated Risk Adjustment Program (June 17, 2019) paper is available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Potential-Updates-to-HHS-HCCs-HHS-operated-Risk-Adjustment-Program.pdf.*

[24] RXCs were not implemented in the HHS-operated risk adjustment models until the 2018 benefit year and they currently only apply to the adult models.

[25] See the HHS Notice of Benefit and Payment Parameters for 2014, Proposed Rule, 77 FR 73118 at 73128 (December 7, 2012).

[26] Report to Congress: Risk Adjustment in Medicare Advantage (December 2018) also discusses these principles in Section 2.3 under ''Principle for Risk Adjustment Models'' from pages 14–16 and is available at *https://www.cms.gov/Medicare/Health-Plans/MedicareAdvtgSpecRateStats/Downloads/RTC-Dec2018.pdf.*

[27] Payment HCCs are those included in the HHS–HCC risk adjustment models. The full classification includes both payment and non-payment HCCs. HCC Groups refers to payment HCCs that are grouped together in the HHS–HCC risk adjustment model.

regressions to compare frequencies and predicted incremental costs of HCCs. Then, we repeated the preliminary regression analyses using 2017 data, reviewed regression results, and developed the new potential HHS–HCC reclassification.[28]

During our analysis, for some disease groups, such as substance use disorders and pregnancy, we explored multiple model variations. For substance use disorders, we tested different configurations to add new drug use disorder HCCs and alcohol use disorder HCCs to the HHS–HCC risk adjustment model—a single hierarchy approach; two hierarchies (drug and alcohol HCCs being additive); interaction terms; and for each of these iterations, grouping HCCs or leaving them ungrouped. For pregnancy, we tested different configurations for adding ongoing pregnancy HCCs to the model, which already includes miscarriage HCCs and completed pregnancy HCCs. These configurations included a single hierarchy or separate additive HCCs to distinguish pregnancy care from delivery; interactions between completed and ongoing pregnancy HCCs to account for when in the episode of care complications occur; and removal of or changes to HCC groups to better reflect cost distinctions.

In evaluating options for reclassification, we considered their predictive power, model complexity, and coding incentives. Based on this reclassification analysis, we propose to incorporate the changes presented in Table 1 to payment HCCs beginning with the 2021 benefit year risk adjustment models.

TABLE 1—SUMMARY OF PROPOSED PAYMENT HCC RISK ADJUSTMENT MODEL CHANGES

Condition	Payment HCC proposed change	Summary of proposed payment HCC changes
Payment HCC Changes		
Substance Use Disorders	+3	• Add 2 new HCCs for alcohol use disorders and one new HCC for lower severity drug use disorders to risk adjust for a larger number of substance use diagnoses for all models.[29] • Reconfigure drug dependence HCC to include drug use disorders with non-psychotic complications and a subset of drug poisoning (overdose) codes to reflect the revised conceptualization of substance use disorders in ICD–10 for all models. • Impose a new combined hierarchy on drug use and alcohol use HCCs due to the high prevalence of both drugs and alcohol use among those with alcohol or drug use disorders for all models.
Pregnancy	+3	• Add 3 (ongoing) pregnancy-without-delivery HCCs, leaving them ungrouped in the adult models (to reflect differences in costs by level of complications) and grouping them in the child models (to address small sample sizes and unstable estimates). • Revise two existing pregnancy HCC Groups in both adult and child models, separating out the ectopic/molar pregnancy HCC and the uncomplicated pregnancy-with-delivery HCC to better distinguish incremental costs.
Diabetes: Type 1	+1	• Add a diabetes type 1 additive HCC to the adult models to distinguish additional costs for diabetes type 1. • Remap hyperglycemia and hypoglycemia codes in the adult model from the ''chronic complications'' HCC to the ''without complication'' HCC based on clinical input.
Asthma	+1	• Split current asthma HCC into two severity-specific HCCs given new clinical distinctions for severity levels in the ICD–10 and to distinguish costs by severity for all models. • Continue to group asthma HCCs with chronic obstructive pulmonary disease HCC in adult model and leave the 3 HCCs ungrouped to distinguish costs in child models.
Fractures	−1, +1	• Delete an HCC (pathological fractures) to address a clinical distinction that may be inconsistently diagnosed/coded for all models. • Reconfigure an existing HCC (hip fractures) to better distinguish fracture codes by site for all models. • Add a new HCC (vertebral fractures) to better predict vertebral fractures, which may be indicative of chronic disease and frailty for all models.
Third Degree Burns and Major Skin Conditions.	+2	• Reconfigure and add 2 HCCs (extensive third degree burns; major skin burns or conditions) in an imposed hierarchy because these HCCs are currently being under-predicted, contain chronic conditions or are burns that involve long-term follow up care for all models. • Impose an *a priori* constraint[30] between extensive third degree burns and severe head injury in child models due to small sample size.
Coma and Severe Head Injury.	+1	• Add a new severe head injury HCC (represents a condition with ongoing care costs; similar to the inclusion of other injury HCCs) in a hierarchy above the coma/brain compression for all models. • Impose an *a priori* constraint between extensive third degree burns and severe head injury in the child models due to small sample size.
Traumatic Amputations	+1	• Add a new HCC in a hierarchy with the current amputation status HCC and reconfigure codes between the new HCC and current amputation status HCC to better distinguish early treatment and complication costs from long-term costs for all models. • Leave HCCs ungrouped in the adult models; group them in the child model for coefficient stability purposes due to small sample size.
Narcolepsy and Cataplexy	+1	• Add a new HCC to both child and adult models because these conditions are currently under-predicted and have associated treatment costs.
Exudative Macular Degeneration.	+1	• Add a new HCC to adult models because the condition is currently under-predicted; costs are primarily related to drug treatments.
Congenital Heart Anomalies	new to adult	• Add 3 new HCCs to adult models (already in the child and infant models) because the conditions are currently under-predicted. Group them in the adult models only.
Changes in HCC Groups, Hierarchies		
Metabolic and Endocrine Disorders.	N/A	• Group HCCs 26 and 27 together in both the child and adult models to distinguish their significantly higher incremental costs from other HCCs (HCCs 28–30) previously in the full group (HCCs 26 and 27 are currently under-predicted in the models due to grouping). • Ungroup HCCs 29 and 30 in the adult models as they have adequate sample sizes and clinical and cost distinctions.

[28] To further clarify, in the HHS–HCCs Update Paper V05 reflects the current classification model, V06 is the initial assessment of potential revisions to the classification model developed using the 2016 benefit year data, and V06a is the reassessment of potential revisions to the classification model that included 2017 benefit year data.

[29] References to ''all models'' in Table 1 refers to the adult, child and infants models.

[30] In *a priori* constraints, the HCC estimates are constrained to be equal to each other. These are applied to stabilize high cost estimates that may vary greatly due to small sample size.

TABLE 1—SUMMARY OF PROPOSED PAYMENT HCC RISK ADJUSTMENT MODEL CHANGES—Continued

Condition	Payment HCC proposed change	Summary of proposed payment HCC changes
		• Group HCCs 28 and 29 in the child models due to small sample sizes, clinical similarity, and similar predicted costs. • Leave HCC 30 ungrouped in the child models because it is clinically distinct from HCCs 28 and 29.
Necrotizing Fasciitis	N/A	• Ungroup the necrotizing fasciitis HCC (HCC 54) in the adult models to better predict higher incremental costs compared to HCC 55 (the condition that is currently grouped with this HCC).
Blood Disorders	N/A	• Revise groups in both adult and child models to move HCC 69 from its previous grouping with HCCs 70 and 71 to the group with HCCs 67 and 68 to better reflect clinical severity and associated costs. • Reconfigure HCCs 69 and 71 in both adult and child models based on clinical input.
Mental Health	N/A	• Move delusional disorders/psychosis HCC above major depressive disorders/bipolar disorders HCC in the hierarchy and renumber the HCCs (that is, HCCs 88 and 89 switch positions) because the costs and diagnoses associated with the HCC are more aligned with HCC 87 (Schizophrenia) for all models. • Relabel HCCs to align with ICD–10 categorizations for all models.
Cerebral Palsy and Spina Bifida.	N/A	• Refine hierarchies to exclude paralysis HCCs for enrollees with cerebral palsy HCCs, as ICD–10 coding guidelines prohibit these conditions from coding together for all models. • Refine hierarchies to exclude hydrocephalus HCC for enrollees with spina bifida HCC for similar coding restriction purposes for all models.
Pancreatitis	N/A	• Reconfigure the acute pancreatitis HCC to move pancreatic disorders and intestinal malabsorption out of the acute pancreatitis HCC to differentiate higher cost conditions for all models. • Revise the hierarchy for pancreas transplant HCC to remove exclusion of pancreatitis HCCs because pancreas transplants are done primarily for diabetes and insulin conditions rather than pancreatitis for all models.
Liver	N/A	• Reconfigure codes in liver HCCs to reflect clinical distinctions for all models. • Move acute liver failure HCC above chronic liver failure HCC in the hierarchy and renumber HCCs to address cost implications of chronic versus acute liver failure for all models.
Summary of the Adult Model Specific Changes		
Payment HCC change	+17	• Net change of 17 HCCs; 18 HCCs added and 1 HCC deleted (for details see the above portion of this table).
Severe Illness Interactions	−1 (other model variable).	• Remove medium cost severe illness interaction term from model because its parameter estimate is usually very low or negative.
Summary of the Child Model Specific Changes		
Payment HCC change	+12	• Net change of 12 HCCs; 13 HCCs added and 1 HCC deleted (for details see the above portion of this table).
Transplant *A Priori* Constraints.	N/A	• Revise *a priori* constraints applied to the transplant HCCs to better distinguish costs while improving estimate stability due to small sample sizes and unconstrained HCC 129 Cystic Fibrosis from HCC 158 Lung Transplant Status/Complications due to the high associated drug costs and higher predicted costs.
Summary of the Infant Model Specific Changes		
Payment HCC change	+8	• Net change of 8; 9 HCCs added and 1 HCC deleted (for details see the above portion of this table).
Categorical Model	N/A	• Revise severity level assignments of a subset of HCCs to better reflect clinical severity and costs and assign new HCCs to severity levels. • Reconfigure code assignments to newborn HCCs for subset of codes whose weeks gestation classification in ICD–10 differed from ICD–9.

We propose to incorporate these changes into the risk adjustment coefficients beginning with the 2021 benefit year and they are reflected in the draft factors below.[31] Under the above-proposed HHS–HCC updates, we made one modification to the child model from the potential updates described in HHS–HCCs Update Paper. In the paper, we noted that we may re-examine the hierarchy violation constraints for non-transplant HCCs in the child model that affect the predicted costs of the transplant set. We explained that HCC 159 Cystic Fibrosis in the child model, which has high associated drug costs, has higher predicted costs than HCC 158 Lung Transplant Status/Complications. For this reason, a hierarchy violation was occurring whereby the higher-cost HCC 159 Cystic Fibrosis was being constrained to the lower-cost transplant coefficients. To address this hierarchy violation, we propose in this rule to not impose a hierarchy in this case beginning with the 2021 benefit year coefficients in the child models and propose to remove a constraint for HCC 159 Cystic Fibrosis to allow it to have higher predicted costs than HCC 158 Lung Transplant Status/Complications.

We are proposing to apply all of the HHS–HCC changes at one time for the 2021 benefit year and beyond to account for all of the ICD–10 coding changes at one time. Additionally, to assist commenters in reviewing the code level changes, we are providing a crosswalk of ICD–10 codes to the proposed HCCs under the ''Draft ICD–10 Crosswalk for Potential Updates to the HHS–HCC Risk Adjustment Model for the 2021 Benefit Year'', which is available here at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/index.html.*[32] While we recognize that the number of HHS–HCC changes proposed in this rule is significantly higher than in previous annual Payment Notice rulemakings, we do not expect to make significant HHS–HCC changes each year. We solicit comment on all of the proposed HHS–HCC updates.

For the 2020 benefit year adult models, we made a pricing adjustment for one RXC coefficient for Hepatitis C drugs.[33] In the 2020 Payment Notice, we stated that we intend to reassess this pricing adjustment in future benefit years' model recalibrations with additional years of enrollee-level EDGE

[31] As noted earlier, the factors displayed in this rulemaking reflect the equally weighted blended factors from the 2016 and 2017 enrollee-level EDGE data separately solved models, including all of the proposed HHS–HCC updates and the proposed constraints for the Hepatitis C RXC coefficient. If the recalibration policies are finalized as proposed, we would incorporate the 2018 enrollee-level EDGE data in the coefficients listed in the final rule or, if necessary, after publication of the final rule consistent with 45 CFR 153.320(b)(1)(i).

[32] The Draft ICD–10 Crosswalk for Potential Updates to the HHS–HCC Risk Adjustment Model for the 2021 Benefit Year includes Table 3, which crosswalks ICD–10 codes to the Condition Categories (CCs) in the risk adjustment models, and Table 4, which provides the hierarchy rules to apply to the CCs to create HCCs. These Tables are similar to the Tables 3 and 4 that CMS includes as part of the HHS-Developed Risk Adjustment Model Algorithm ''Do It Yourself (DIY)'' Software.

[33] 84 FR 17454 at 17463 through 17466.

data.[34] For the 2021 benefit year model recalibration, we reassessed the Hepatitis C RXC to consider whether the adjustment was still needed, or needed to be modified. We found that the current data for the Hepatitis C RXC still does not take into account the significant pricing changes due to the introduction of new Hepatitis C drugs, and therefore, it does not precisely reflect the average cost of Hepatitis C treatments applicable to the benefit year in question. We also continue to be cognizant that issuers might seek to influence provider prescribing patterns if a drug claim can trigger a large increase in an enrollee's risk score, and therefore, make the risk adjustment transfer results more favorable for the issuer. For these reasons, we continue to believe that a pricing adjustment is needed for this RXC coefficient and are proposing to adjust the Hepatitis C RXC for the 2021 benefit year model recalibration. For the proposed RXC coefficients listed in Table 2 of this proposed rule, we constrained the Hepatitis C coefficient to the average expected costs of Hepatitis C drugs. Similar to the adjustment for the 2020 benefit year model recalibration, this has the material effect of reducing the Hepatitis C RXC, and the RXC–HCC interaction coefficients. For the final 2021 benefit year Hepatitis C factors in the adult models, we propose to make an adjustment to the plan liability associated with Hepatitis C drugs to reflect future market pricing of these drugs before solving for the adult model coefficients. Applying an adjustment to the plan liability would ensure that enrollees can continue to receive incremental credit for having both the RXC and HCC for Hepatitis C, and allow for differential plan liability across metal levels.

In light of the recent recommendation by the U.S. Preventive Service Task Force to expand the use of pre-exposure prophylaxis (PrEP) as a preventive service that must be covered by applicable health plans for persons who are at high risk of HIV acquisition,[35] we also propose to incorporate PrEP as a preventive service in the simulation of plan liability for HHS's adult and child risk adjustment models in the final 2021 benefit year model recalibration.[36] Currently, PrEP is not incorporated into RXC 1 (Anti-HIV) because PrEP does not indicate an HIV/AIDS diagnosis.[37] As a general principle, RXCs are incorporated into the HHS risk adjustment adult models to impute a missing diagnosis or indicate severity of a diagnosis.[38] Although preventive services are incorporated in the simulation of plan liability, they do not directly affect specific HCCs. We incorporate preventive services into the models to ensure that 100 percent of the cost of those services are reflected in the simulation of plan liability; preventive services are applied under relevant recommended conditions or groups. We propose including PrEP as a preventive service along with our general updates to preventive services in the simulation of plan liability for the HHS risk adjustment models in the final 2021 benefit year adult and child models. We seek comment on this proposal.

As part of the proposed 2021 model recalibration, we also considered whether to add an additional age-sex category for enrollees age 65 and over as part of the recalibration of the adult models. MarketScan® data does not include enrollees who are age 65 and over, but the enrollee-level EDGE data does. Currently, the risk adjustment program incorporates the risk and costs of enrollees age 65 and over using the 60–64 age-sex coefficients. We originally excluded enrollees age 65 and over from recalibration to prevent having different methodologies for the MarketScan® and the enrollee-level EDGE datasets that were used to solve for the blended coefficients for the risk adjustment models.

Given that we are proposing to no longer use the MarketScan® data to recalibrate the risk adjustment models beginning with the 2021 benefit year, we considered whether new age-sex coefficients should be created for enrollees age 65 and over beginning with the 2021 benefit year adult models. In reviewing the enrollee-level EDGE data, we found that over 70 percent of the enrollees age 65 and over are within the 65–66 age range, and we believe these enrollees are likely transferring into Medicare coverage once eligible. Our analysis also found that the enrollees ages 65–66 have lower average annual expenditures than those enrollees between ages 60 and 64. In contrast, we found that enrollees age 67 and over have higher average annual expenditures than those between ages 60 and 64. Due to these two different trends in the age 65 and over population, we are not proposing to add new age-sex coefficients to the adult models at this time, and would continue to exclude enrollees age 65 and over in the adult models' calibration. However, we intend to continue to monitor expenditures for enrollees age 65 and over to determine whether the addition of new age-sex coefficients to the adult models in a future year is appropriate.

(3) Improving Risk Adjustment Model Predictions

In addition to the aforementioned updates to the HHS–HCCs, we are soliciting comment on different options to modify the risk adjustment models to improve model prediction for enrollees without HCCs or enrollees with low actual expenditures. In the 2018 Payment Notice, we stated that based on the commercial MarketScan® data, the HHS risk adjustment models slightly under-predict risk for low-cost enrollees and slightly over-predict risk for high-cost enrollees.[39] More precisely, the current HHS–HCC models under predict for enrollees without HCCs, slightly over-predict for enrollees with low HCC counts and under predict for enrollees with the highest HCC counts. In the 2018 Payment Notice, we also sought comments on ways to address these issues in response to feedback from stakeholders that HHS should adjust the risk adjustment models to address the under-prediction of risk for low cost enrollees and the over-prediction of risk for enrollees with higher expenditures, which affects the plan liability risk scores of plans that enroll more healthy individuals or plans that enroll more individuals with the most extreme chronic health conditions.[40] While we did not implement changes to address these issues, we indicated we would continue to explore different options to improve the models' predictive power for certain subgroups of enrollees, including analyses of these issues using enrollee-level EDGE data once available,

[34] Ibid.

[35] Final Recommendation Statement on ''Prevention of Human Immunodeficiency Virus (HIV) Infection: Preexposure Prophylaxis. U.S. Preventive Services Task Force. June 2019. *https://www.uspreventiveservicestaskforce.org/Page/Document/RecommendationStatementFinal/prevention-of-human-immunodeficiency-virus-hiv-infection-pre-exposure-prophylaxis.*

[36] The June 11, 2019 ''Preexposure Prophylaxis for the Prevention of HIV Infection: US Preventive Services Task Force Recommendations Statement'' published in JAMA states that adolescents at high risk of HIV acquisition could benefit from PrEP and it is approved for adolescents who weigh at least 35kg (~77 pounds). *https://jamanetwork.com/journals/jama/fullarticle/2735509.*

[37] *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Draft-RxC-Crosswalk-Memo-9-18-17.pdf.*

[38] See 81 FR 94058 at 94075. Also see March 31, 2016, HHS-Operated Risk Adjustment Methodology Meeting Questions & Answers. June 8, 2016. Available at *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/RA-OnsiteQA-060816.pdf.*

[39] See 81 FR 61455 at 61472 through 61473. Also see 81 FR 94058 at 94082 through 94083.

[40] 81 FR 94058 at 94082 through 94083.

and consider changes for future benefit years.[41]

As detailed below, we are still evaluating the tradeoffs that would need to be made in model predictive power among subgroups of enrollees. We continue to believe that further evaluation is appropriate before pursuing these options; however, we also recognize that additional stakeholder comment is a critical aspect to this analysis. Therefore, in this rule, we outline and solicit comment on the different options that we continue to consider to improve the models' predictive ability for certain subgroups of enrollees in light of experience and currently available information.

As detailed in the 2018 Payment Notice,[42] we previously considered implementing a constrained regression approach, under which we would estimate the adult risk adjustment model using only the age-sex variables, and then, we would re-estimate the model using the full set of HCCs, while constraining the value of the age-sex coefficients to be the same as those from the first estimation. At the time, we believed that this two-step estimation approach would result in age-sex coefficients of greater magnitude, potentially helping us predict the risk of the healthiest subpopulations more accurately. However, upon further analysis, we also found that the mean expenditures of individual HCCs under this approach were under-predicted compared to the current adult models. In particular, the mean expenditures of extremely expensive enrollees are more under-predicted under this approach than in the current adult models.

Another option we previously evaluated was directly adjusting plan liability risk scores outside of the models for these subpopulations.[43] Specifically, we evaluated using a post-estimation adjustment to the current models' individual-level risk scores in order to correct for the patterns of over- and under-prediction. Under this approach, we would adjust individual-level plan liability risk scores by directly increasing underestimated plan liability risk scores or reducing overestimated plan liability risk scores in an attempt to better match the relative risks of these sub-populations. These adjustments would be based on predictive ratios calculated from the models. This approach would estimate the models for all five metal levels, and within each metal level, predictive ratios for each decile of predicted expenditures would be calculated to generate a ''predicted'' predictive ratio based on metal level, predictive ratio, and risk score. In theory, this approach should have the advantages of retaining the current models. We noted that, while we believed modifications of this type could improve the model's performance along this specific dimension (deciles of predicted expenditures), there is a risk that such modifications could unintentionally worsen model performance along other dimensions on which the model currently performs well. One possible problem is that the scores are being adjusted by the average predictive ratio of the predicted expenditure level they are in, not their own over- or under-prediction.

We recently reassessed this adjustment option given the availability of the more recent enrollee-level EDGE data and the implementation of several updates beginning with the 2018 benefit year.[44] We did not find improvements in the predictive ratios when compared to the predictive ratios of the current approach. Our analysis of this adjustment option showed that the estimates for the lowest-cost decile and top two highest-cost deciles of enrollees were more underpredicted under this approach as compared to the current model. Additionally, this approach results in worse prediction along other dimensions, such as for subgroups of enrollees with no HCCs and those with 1 or more payment HCCs.

Given the shortcomings with both of these approaches, we ultimately did not adopt either of them. However, we have continued to consider other potential approaches to address the under-prediction of risk for low-cost enrollees and over-prediction for high-cost enrollees. In particular, we are examining non-linear and count model specifications and whether these options could be used to improve the current adult models' predictive power. Our initial analysis of these options has shown that these alternatives can improve prediction in the adult models.

For the non-linear model, we have been considering an option that would add a coefficient-weighted sum of payment HCCs raised to a power to the linear specification. Under this approach, the non-linear term would be added as the exponentiated *p* term as shown in the following formula:

$$\text{Plan liability} = \text{Current Model} + (\Sigma\beta_i HCC_i)^p$$

Where:

$\Sigma\beta_i HCC_i$ = the sum of payment HCCs weighted by their parameter estimates;

p = an exponential factor estimated by the model.

The non-linear term could be interpreted as a measure of overall disease burden for the enrollee in which having combinations of conditions can have a larger effect than the sum of the individual conditions. This type of non-linear model would measure the total disease burden by a weighted count of HCCs rather than a simple count of the payment HCCs, while only requiring one additional parameter. This approach allows the demographic terms for enrollees with no payment HCCs to be better estimated, while using a nonlinearity for the disease burden that could keep the model reasonably simple. As such, we believe that adding a non-linear term to the models could be a reasonable approach to potentially improve the prediction of the models. However, the non-linear model may not improve the prediction for all subpopulations in the models.

Under the count model that we have been considering, we would add eight indicator variables corresponding to 1 to 8-or-more payment HCCs. Under this option, the incremental predictions would vary with a person's count of HCCs (from 1 to 8-or-more payment HCCs) as the incremental predictions for HCCs in a HCC count model have two components, the HCC coefficient and the change in the number of HCCs (from 1 to 8-or-more payment HCCs). We are considering using 1 to 8 or more payment HCCs based on reviewing the information on enrollees with HCCs in the 2017 benefit year enrollee-level EDGE data. We found that the population size of enrollees with a given count of HCCs begins to drop off around 8 HCCs per enrollee. In general, the count model that we are considering is similar to the recently finalized Medicare Advantage risk adjustment model incorporating payment HCC counts.[45] Even though the Medicare Advantage count model has variables that use more than 8 HCCs in its model, this option would be generally more consistent with other programs than the non-linear model, and has yielded

[41] Ibid.

[42] Ibid.

[43] Ibid.

[44] For example, we incorporated the high costs risk pool parameters into the HHS risk adjustment methodology, added RXCs into the adult risk adjustment models, and applied an administrative cost reduction to the statewide average premiums in the state payment transfer formula starting with the 2018 benefit year. See the 2018 Payment Notice, 81 FR 94058 (December 22, 2016).

[45] Announcement of Calendar Year (CY) 2020 Medicare Advantage Capitation Rates and Medicare Advantage and Part D Payment Policies and Final Call Letter. April 1, 2019. *https://www.cms.gov/Medicare/Health-Plans/MedicareAdvtgSpecRateStats/Downloads/Announcement2020.pdf.*

similar results in model performance and improving the prediction in the adult models as the non-linear model. However, similar to the non-linear model, the count model may not improve the prediction for all subpopulations in the models.

In short, both the non-linear and count models could allow the incremental effect of payment HCCs on plan liability to vary with the total number of payment HCCs (or overall disease burden). Our recent analyses on the enrollee-level EDGE data suggest that the non-linear and count models may yield considerable gains in the adult models for predictive accuracy across several groups when compared to the current linear model.

To further assess these approaches, we have been testing the impact of the count and non-linear model specifications on subpopulations within the adult model using the silver metal tier level and examining the model fit using the R-squared of the models and predictive ratios for various subgroups. As part of our analysis, we have been assessing the models based on subpopulations that can be determined by the age-sex categories, the number of HCCs an enrollee has, the applicable enrollment duration and other relevant criteria.

Based on the initial testing of both the count and non-linear models' impact on the adult silver model, we found that the enrollees with the lowest costs have better predictive ratios under both the count and non-linear models than under the current model, with the non-linear model slightly over-predicting the costs of those enrollees. Unlike the current model and the count model, the non-linear model does not over-predict for enrollees with higher costs. While both the count and non-linear models show promise in terms of improving the HHS risk adjustment models' predictive power, we are not proposing to adopt either of these options as part of the 2021 benefit year recalibration. We believe further evaluation is needed of the model performance before choosing to implement such an approach. For example, we would like to assess these options using additional data and applying the options to different metal levels beyond the silver metal level to consider whether the results on subpopulations persist across metal levels, and whether the adoption of one or more of these options would necessitate adjustments to other model specifications. We also have concerns about making these changes concurrent with the numerous changes to the HCCs being proposed in this rule for the adult, child and infant models for the 2021 benefit year. As such, we intend to test the model specifications with an additional year of data before considering these model changes for future years.

As noted above, we continue to evaluate all of these alternative modeling approaches while considering several important trade-offs in making improvements to risk prediction and providing consistency year-to-year for issuers in the HHS-operated risk adjustment program. Although we do not propose to incorporate any of these options in the 2021 benefit year risk adjustment model recalibration in this rule, we are generally soliciting comments on these options. We also solicit comments on the incorporation of one (or more) of these approaches as part of the 2022 benefit year risk adjustment model recalibration or for other future benefit years, whether one of these approaches is preferable to the other and why, and any considerations that should be made to implement either model and to analyze the resulting factors. For example, we are interested in comments on the model specifications of the count and non-linear variables described in this rule (such as whether the described 8 HCC variables should be used for the count model). While we do not believe that the count or non-linear models would impact incentives to code additional HCCs in comparison to the current model, we are also interested in comments about whether and what considerations should be made about count and non-linear models' impact on coding incentives.

In addition to considering the non-linear and count model approaches for future benefit years, we are also considering potential adjustments to the enrollment duration factors in the adult models, as well as assessing whether such factors should be incorporated into the child and infant models. In the past, we found that partial-year enrollment is more common in the individual and small group markets than in the MarketScan® data, which generally reflects the large group market, that we had been using to recalibrate the risk adjustment models in prior years. Using the 2016 and 2017 enrollee-level EDGE data that recently became available, we have investigated heterogeneity (variations) in the relationship between partial-year enrollment and predicted expenditures. We have explored heterogeneity according to the presence of certain diagnoses, market (individual or small group),[46] and enrollment circumstances, such as enrollment beginning later in the year or ending before the end of the year. Our preliminary analysis of 2017 enrollee-level EDGE data found that current enrollment duration factors are driven mainly by enrollees with HCCs, that is, partial year enrollees with HCCs have higher per member per month (PMPM) expenditures on average as compared to full year enrollees with HCCs, whereas partial year enrollees without HCCs have similar PMPM expenditures compared to their full year counterparts. In comparison to the effect of the presence of HCCs on enrollment duration factors, enrollment timing (for example, enrollment at the beginning of the year compared to enrollment after open enrollment period, or drop in enrollment before the end of the year) does not appear to affect PMPM expenditures on average. Our analysis also found that separate enrollment duration factors by market in the adult models may be warranted, given the differences in risk profiles of partial year enrollees between the individual and small group markets.[47] However, due to limitations with the extracted enrollee-level EDGE data for the 2016 and 2017 benefit years that do not permit us to connect non-calendar year enrollees in the small group market across plan years within the same calendar year, we are unable to develop and propose separate enrollment duration factors by market at this time. Based on these analyses, because partial-year enrollees with HCCs seem to have the most distinctive additional expenditures, we believe that eliminating the enrollment duration factors and replacing them with monthly enrollment duration factors (up to 6-months), for those with HCCs, would most improve model prediction.

For the child and infant models, we analyzed incorporating enrollment duration factors in the same manner as the adult models. We found that partial year enrollees in the child models did not have the same risk differences as partial year enrollees in the adult models, and partial year enrollees in the child models tended to have similar risk to full year enrollees in the child models. In the infant models, we found that partial year infants have higher expenditures on average compared to their full year counterparts. However, we found that the incorporation of

[46] In the enrollee-level EDGE data, merged market enrollees are assigned to the individual or small group market indicator based on their plan.

[47] In the enrollee-level EDGE data, merged market enrollees are assigned to the individual or small group market indicator based on their plan.

enrollment duration factors created interaction issues with the current severity and maturity factors in the infant models and did not have a meaningful impact on the general predictive accuracy of the infant models. As such, we are not proposing to add partial year factors to the child or infant models.

We are not proposing any changes to the current enrollment duration factors for the adult models at this time given the aforementioned data limitation in the extracted enrollee-level EDGE data and the numerous changes to the HCCs being proposed in this rule for the 2021 benefit year. As previously mentioned, we intend to review the enrollment duration factor assumptions seen in the 2016 and 2017 benefit year enrollee-level EDGE data before considering changes for future benefit years. Although we do not propose any changes to enrollment duration factors as part of this rulemaking, we generally solicit comments on these options and potential changes to the enrollment duration factors for future benefit years.

Finally, as we analyzed the count and non-linear models and the enrollment duration factors (including potential changes to such factors) and evaluated the interaction of such changes, we also found that enrollment duration factors may no longer be needed if a count or non-linear model specification is applied to the HHS risk adjustment adult models. We intend to continue to conduct analysis on enrollment duration factors and the interaction of such changes on other potential updates to the risk adjustment models, using 2018 benefit year enrollee-level EDGE data once available, and will solicit comments on any such proposed changes for future benefit years.

(4) List of Factors To Be Employed in the Risk Adjustment Models (§ 153.320)

The factors resulting from the equally weighted blended factors from the 2016 and 2017 enrollee-level EDGE data separately solved models, including all of the proposed HCC changes detailed in the previous section and the proposed constraints for the Hepatitis C RXC coefficient, are shown in Tables 2 through 7. As stated above, we believe that the draft coefficients listed below provide a reasonably close approximation of what could be anticipated from blending the 2016, 2017 and 2018 benefit years' enrollee-level EDGE data. If we finalize the recalibration approach proposed in this rule, we would incorporate the 2018 benefit year enrollee-level EDGE data in the final rule or in guidance after publication of the final rule, consistent with our approach in previous benefit years.[48] The adult, child, and infant models have been truncated to account for the high-cost risk pool payment parameters by removing 60 percent of costs above the $1 million threshold.[49] Table 2 contains factors for each adult model, including the age-sex, HCCs, RXCs, RXC–HCC interactions, and enrollment duration coefficients.

Table 3 contains the HHS–HCCs in the severity illness indicator variable. Table 4 contains the factors for each child model. Table 5 contains the factors for each infant model. Tables 6 and 7 contain the HCCs included in the infant models' maturity and severity categories, respectively.

TABLE 2—PROPOSED ADULT RISK ADJUSTMENT MODEL FACTORS FOR 2021 BENEFIT YEAR

HCC or RXC No.	Factor	Platinum	Gold	Silver	Bronze	Catastrophic
	Demographic Factors					
	Age 21–24, Male	0.128	0.099	0.062	0.027	0.024
	Age 25–29, Male	0.138	0.108	0.070	0.034	0.031
	Age 30–34, Male	0.166	0.130	0.085	0.042	0.038
	Age 35–39, Male	0.198	0.154	0.102	0.051	0.047
	Age 40–44, Male	0.235	0.186	0.128	0.070	0.065
	Age 45–49, Male	0.269	0.214	0.149	0.085	0.079
	Age 50–54, Male	0.346	0.282	0.204	0.127	0.120
	Age 55–59, Male	0.391	0.319	0.233	0.150	0.142
	Age 60–64, Male	0.437	0.355	0.261	0.167	0.159
	Age 21–24, Female	0.212	0.170	0.113	0.059	0.054
	Age 25–29, Female	0.239	0.193	0.130	0.071	0.065
	Age 30–34, Female	0.315	0.256	0.185	0.117	0.111
	Age 35–39, Female	0.386	0.317	0.237	0.160	0.154
	Age 40–44, Female	0.442	0.363	0.272	0.185	0.177
	Age 45–49, Female	0.453	0.369	0.272	0.177	0.168
	Age 50–54, Female	0.489	0.401	0.296	0.191	0.181
	Age 55–59, Female	0.465	0.377	0.272	0.166	0.156
	Age 60–64, Female	0.466	0.375	0.265	0.155	0.145
	Diagnosis Factors					
HCC001	HIV/AIDS	5.048	4.623	4.355	4.286	4.282
HCC002	Septicemia, Sepsis, Systemic Inflammatory Response Syndrome/Shock	7.523	7.302	7.196	7.241	7.248
HCC003	Central Nervous System Infections, Except Viral Meningitis	6.357	6.266	6.212	6.226	6.228
HCC004	Viral or Unspecified Meningitis	5.200	4.965	4.831	4.739	4.732
HCC006	Opportunistic Infections	6.905	6.829	6.780	6.732	6.727
HCC008	Metastatic Cancer	23.310	22.744	22.402	22.419	22.421
HCC009	Lung, Brain, and Other Severe Cancers, Including Pediatric Acute Lymphoid Leukemia.	13.030	12.613	12.358	12.314	12.310
HCC010	Non-Hodgkin Lymphomas and Other Cancers and Tumors	6.063	5.794	5.613	5.525	5.516
HCC011	Colorectal, Breast (Age < 50), Kidney, and Other Cancers	4.278	4.012	3.832	3.736	3.727
HCC012	Breast (Age 50+) and Prostate Cancer, Benign/Uncertain Brain Tumors, and Other Cancers and Tumors.	2.860	2.667	2.529	2.439	2.431
HCC013	Thyroid Cancer, Melanoma, Neurofibromatosis, and Other Cancers and Tumors.	1.248	1.108	0.988	0.858	0.846
HCC018	Pancreas Transplant Status	2.602	2.537	2.494	2.494	2.493
HCC019	Diabetes with Acute Complications	0.481	0.414	0.349	0.282	0.276

[48] See 45 CFR 153.320(b)(1)(i).

[49] As detailed below, we are not proposing changes to the high-cost risk pool parameters for the 2021 benefit year. Therefore, consistent with the policy finalized in the 2020 Payment Notice, we would maintain the $1 million threshold and 60 percent coinsurance rate for the 2021 benefit year. See 84 FR at 17466 through 17468.

TABLE 2—PROPOSED ADULT RISK ADJUSTMENT MODEL FACTORS FOR 2021 BENEFIT YEAR—Continued

HCC or RXC No.	Factor	Platinum	Gold	Silver	Bronze	Catastrophic
HCC020	Diabetes with Chronic Complications	0.481	0.414	0.349	0.282	0.276
HCC021	Diabetes without Complication	0.481	0.414	0.349	0.282	0.276
HCC022	Type 1 Diabetes Mellitus, add-on to Diabetes HCCs 19–21	0.493	0.432	0.400	0.342	0.336
HCC023	Protein-Calorie Malnutrition	11.452	11.450	11.455	11.553	11.561
HCC026	Mucopolysaccharidosis	29.027	28.794	28.644	28.659	28.661
HCC027	Lipidoses and Glycogenosis	29.027	28.794	28.644	28.659	28.661
HCC029	Amyloidosis, Porphyria, and Other Metabolic Disorders	7.542	7.410	7.320	7.287	7.284
HCC030	Adrenal, Pituitary, and Other Significant Endocrine Disorders	1.890	1.792	1.715	1.649	1.644
HCC034	Liver Transplant Status/Complications	10.612	10.532	10.481	10.478	10.475
HCC035_1	Acute Liver Failure/Disease, Including Neonatal Hepatitis	10.010	9.944	9.902	9.941	9.941
HCC035_2	Chronic Liver Failure/End-Stage Liver Disorders	3.346	3.145	3.034	3.023	3.021
HCC036	Cirrhosis of Liver	1.189	1.066	0.984	0.917	0.910
HCC037_1	Chronic Viral Hepatitis C	0.967	0.852	0.775	0.707	0.701
HCC037_2	Chronic Hepatitis, Except Chronic Viral Hepatitis C	0.967	0.852	0.775	0.707	0.701
HCC041	Intestine Transplant Status/Complications	37.750	37.652	37.589	37.563	37.564
HCC042	Peritonitis/Gastrointestinal Perforation/Necrotizing Enterocolitis	9.512	9.264	9.117	9.131	9.133
HCC045	Intestinal Obstruction	5.721	5.459	5.315	5.286	5.284
HCC046	Chronic Pancreatitis	4.065	3.860	3.754	3.762	3.764
HCC047	Acute Pancreatitis	3.357	3.091	2.947	2.876	2.872
HCC048	Inflammatory Bowel Disease	2.466	2.283	2.148	2.037	2.026
HCC054	Necrotizing Fasciitis	11.372	11.264	11.191	11.262	11.266
HCC055	Bone/Joint/Muscle Infections/Necrosis	5.586	5.381	5.258	5.277	5.279
HCC056	Rheumatoid Arthritis and Specified Autoimmune Disorders	4.212	3.966	3.797	3.735	3.729
HCC057	Systemic Lupus Erythematosus and Other Autoimmune Disorders	0.841	0.716	0.607	0.477	0.464
HCC061	Osteogenesis Imperfecta and Other Osteodystrophies	2.728	2.522	2.381	2.295	2.287
HCC062	Congenital/Developmental Skeletal and Connective Tissue Disorders	2.728	2.522	2.381	2.295	2.287
HCC063	Cleft Lip/Cleft Palate	2.077	1.912	1.798	1.715	1.709
HCC066	Hemophilia	70.505	70.072	69.794	69.809	69.810
HCC067	Myelodysplastic Syndromes and Myelofibrosis	14.381	14.246	14.162	14.150	14.149
HCC068	Aplastic Anemia	14.381	14.246	14.162	14.150	14.149
HCC069	Acquired Hemolytic Anemia, Including Hemolytic Disease of Newborn	14.381	14.246	14.162	14.150	14.149
HCC070	Sickle Cell Anemia (Hb-SS)	2.797	2.644	2.532	2.451	2.444
HCC071	Beta Thalassemia Major	2.797	2.644	2.532	2.451	2.444
HCC073	Combined and Other Severe Immunodeficiencies	5.580	5.432	5.343	5.334	5.334
HCC074	Disorders of the Immune Mechanism	5.580	5.432	5.343	5.334	5.334
HCC075	Coagulation Defects and Other Specified Hematological Disorders	2.934	2.842	2.776	2.735	2.731
HCC081	Drug Use with Psychotic Complications	5.206	4.919	4.756	4.704	4.701
HCC082	Drug Use Disorder, Moderate/Severe, or Drug Use with Non-Psychotic Complications.	3.098	2.855	2.681	2.523	2.507
HCC083	Alcohol Use with Psychotic Complications	2.264	2.005	1.864	1.847	1.847
HCC084	Alcohol Use Disorder, Moderate/Severe, or Alcohol Use with Specified Non-Psychotic Complications.	1.390	1.218	1.097	0.989	0.980
HCC085	Drug Use Disorder, Mild, Uncomplicated, Except Cannabis	0.993	0.836	0.704	0.549	0.534
HCC087	Schizophrenia	2.734	2.500	2.349	2.238	2.229
HCC088	Delusional and Other Specified Psychotic Disorders, Unspecified Psychosis.	2.724	2.500	2.349	2.238	2.229
HCC089	Major Depressive Disorder, Severe, and Bipolar Disorders	1.546	1.382	1.254	1.121	1.108
HCC090	Personality Disorders	1.178	1.055	0.940	0.802	0.788
HCC094	Anorexia/Bulimia Nervosa	2.787	2.612	2.484	2.399	2.391
HCC096	Prader-Willi, Patau, Edwards, and Autosomal Deletion Syndromes	7.260	7.189	7.142	7.098	7.092
HCC097	Down Syndrome, Fragile X, Other Chromosomal Anomalies, and Congenital Malformation Syndromes.	1.413	1.319	1.243	1.175	1.168
HCC102	Autistic Disorder	1.235	1.125	1.010	0.877	0.864
HCC103	Pervasive Developmental Disorders, Except Autistic Disorder	1.178	1.055	0.940	0.802	0.788
HCC106	Traumatic Complete Lesion Cervical Spinal Cord	12.545	12.385	12.284	12.256	12.253
HCC107	Quadriplegia	12.545	12.385	12.284	12.256	12.253
HCC108	Traumatic Complete Lesion Dorsal Spinal Cord	8.420	8.227	8.104	8.059	8.054
HCC109	Paraplegia	8.420	8.227	8.104	8.059	8.054
HCC110	Spinal Cord Disorders/Injuries	5.728	5.472	5.313	5.264	5.259
HCC111	Amyotrophic Lateral Sclerosis and Other Anterior Horn Cell Disease	2.500	2.272	2.124	2.001	1.990
HCC112	Quadriplegic Cerebral Palsy	1.461	1.226	1.079	0.993	0.985
HCC113	Cerebral Palsy, Except Quadriplegic	0.766	0.661	0.577	0.485	0.476
HCC114	Spina Bifida and Other Brain/Spinal/Nervous System Congenital Anomalies.	1.640	1.497	1.399	1.326	1.319
HCC115	Myasthenia Gravis/Myoneural Disorders and Guillain-Barre Syndrome/Inflammatory and Toxic Neuropathy.	5.608	5.480	5.403	5.388	5.386
HCC117	Muscular Dystrophy	1.871	1.723	1.615	1.502	1.490
HCC118	Multiple Sclerosis	4.312	4.071	3.906	3.814	3.805
HCC119	Parkinson's, Huntington's, and Spinocerebellar Disease, and Other Neurodegenerative Disorders.	1.871	1.723	1.615	1.502	1.490
HCC120	Seizure Disorders and Convulsions	1.176	1.031	0.925	0.824	0.815
HCC121	Hydrocephalus	8.731	8.600	8.508	8.481	8.479
HCC122	Coma, Brain Compression/Anoxic Damage	8.322	8.162	8.060	8.059	8.058
HCC123	Narcolepsy and Cataplexy	5.216	5.016	4.864	4.746	4.733
HCC125	Respirator Dependence/Tracheostomy Status	24.309	24.275	24.263	24.371	24.379
HCC126	Respiratory Arrest	7.162	6.991	6.911	7.005	7.016
HCC127	Cardio-Respiratory Failure and Shock, Including Respiratory Distress Syndromes.	7.162	6.991	6.911	7.005	7.016
HCC128	Heart Assistive Device/Artificial Heart	29.666	29.439	29.311	29.335	29.338
HCC129	Heart Transplant Status/Complications	29.666	29.439	29.311	29.335	29.338
HCC130	Heart Failure	2.668	2.560	2.494	2.480	2.479

TABLE 2—PROPOSED ADULT RISK ADJUSTMENT MODEL FACTORS FOR 2021 BENEFIT YEAR—Continued

HCC or RXC No.	Factor	Platinum	Gold	Silver	Bronze	Catastrophic
HCC131	Acute Myocardial Infarction	7.022	6.720	6.551	6.599	6.605
HCC132	Unstable Angina and Other Acute Ischemic Heart Disease	5.250	4.924	4.756	4.734	4.734
HCC135	Heart Infection/Inflammation, Except Rheumatic	5.986	5.859	5.779	5.747	5.745
HCC137	Hypoplastic Left Heart Syndrome and Other Severe Congenital Heart Disorders.	2.826	2.703	2.606	2.538	2.532
HCC138	Major Congenital Heart/Circulatory Disorders	2.826	2.703	2.606	2.538	2.532
HCC139	Atrial and Ventricular Septal Defects, Patent Ductus Arteriosus, and Other Congenital Heart/Circulatory Disorders.	2.826	2.703	2.606	2.538	2.532
HCC142	Specified Heart Arrhythmias	2.569	2.423	2.318	2.237	2.231
HCC145	Intracranial Hemorrhage	7.001	6.724	6.563	6.520	6.517
HCC146	Ischemic or Unspecified Stroke	1.669	1.516	1.434	1.391	1.388
HCC149	Cerebral Aneurysm and Arteriovenous Malformation	2.891	2.700	2.577	2.495	2.488
HCC150	Hemiplegia/Hemiparesis	4.722	4.595	4.532	4.576	4.582
HCC151	Monoplegia, Other Paralytic Syndromes	3.044	2.909	2.822	2.767	2.762
HCC153	Atherosclerosis of the Extremities with Ulceration or Gangrene	9.241	9.131	9.079	9.187	9.198
HCC154	Vascular Disease with Complications	6.988	6.834	6.742	6.742	6.741
HCC156	Pulmonary Embolism and Deep Vein Thrombosis	3.767	3.608	3.503	3.431	3.424
HCC158	Lung Transplant Status/Complications	24.105	23.953	23.866	23.912	23.916
HCC159	Cystic Fibrosis	8.916	8.553	8.315	8.257	8.253
HCC160	Chronic Obstructive Pulmonary Disease, Including Bronchiectasis	0.887	0.771	0.669	0.560	0.550
HCC161_1	Severe Asthma	0.887	0.771	0.669	0.560	0.550
HCC161_2	Asthma, Except Severe	0.887	0.771	0.669	0.560	0.550
HCC162	Fibrosis of Lung and Other Lung Disorders	2.069	1.953	1.877	1.816	1.809
HCC163	Aspiration and Specified Bacterial Pneumonias and Other Severe Lung Infections.	6.983	6.979	6.977	7.024	7.028
HCC174	Exudative Macular Degeneration	1.623	1.444	1.322	1.195	1.183
HCC183	Kidney Transplant Status/Complications	6.450	6.230	6.091	6.009	6.013
HCC184	End Stage Renal Disease	25.460	25.135	24.947	25.122	25.210
HCC187	Chronic Kidney Disease, Stage 5	1.310	1.251	1.219	1.234	1.242
HCC188	Chronic Kidney Disease, Severe (Stage 4)	1.310	1.251	1.219	1.234	1.242
HCC203	Ectopic and Molar Pregnancy	2.232	1.929	1.728	1.468	1.445
HCC204	Miscarriage with Complications	0.878	0.754	0.613	0.392	0.367
HCC205	Miscarriage with No or Minor Complications	0.878	0.754	0.613	0.392	0.367
HCC207	Pregnancy with Delivery with Major Complications	4.401	3.896	3.635	3.286	3.259
HCC208	Pregnancy with Delivery with Complications	4.401	3.896	3.635	3.286	3.259
HCC209	Pregnancy with Delivery with No or Minor Complications	3.125	2.749	2.526	2.092	2.046
HCC210	(Ongoing) Pregnancy without Delivery with Major Complications	1.343	1.158	0.962	0.699	0.672
HCC211	(Ongoing) Pregnancy without Delivery with Complications	0.854	0.730	0.560	0.356	0.337
HCC212	(Ongoing) Pregnancy without Delivery with No or Minor Complications	0.356	0.297	0.195	0.105	0.097
HCC217	Chronic Ulcer of Skin, Except Pressure	2.067	1.946	1.874	1.848	1.846
HCC218	Extensive Third Degree Burns	19.316	18.987	18.771	18.723	18.719
HCC219	Major Skin Burn or Condition	2.976	2.833	2.729	2.663	2.657
HCC223	Severe Head Injury	17.344	17.207	17.106	17.069	17.064
HCC226	Hip and Pelvic Fractures	8.859	8.562	8.388	8.418	8.421
HCC228	Vertebral Fractures without Spinal Cord Injury	5.295	5.072	4.928	4.846	4.838
HCC234	Traumatic Amputations and Amputation Complications	5.657	5.468	5.362	5.374	5.377
HCC251	Stem Cell, Including Bone Marrow, Transplant Status/Complications	27.223	27.219	27.217	27.250	27.253
HCC253	Artificial Openings for Feeding or Elimination	8.573	8.481	8.432	8.485	8.489
HCC254	Amputation Status, Upper Limb or Lower Limb	2.358	2.206	2.120	2.095	2.095
	Interaction Factors					
SEVERE × HCC006	Severe illness × Opportunistic Infections	6.705	6.924	7.064	7.208	7.220
SEVERE × HCC008	Severe illness × Metastatic Cancer	6.705	6.924	7.064	7.208	7.220
SEVERE × HCC009	Severe illness × Lung, Brain, and Other Severe Cancers, Including Pediatric Acute Lymphoid Leukemia.	6.705	6.924	7.064	7.208	7.220
SEVERE × HCC010	Severe illness × Non-Hodgkin Lymphomas and Other Cancers and Tumors.	6.705	6.924	7.064	7.208	7.220
SEVERE × HCC115	Severe illness × Myasthenia Gravis/Myoneural Disorders and Guillain-Barre Syndrome/Inflammatory and Toxic Neuropathy.	6.705	6.924	7.064	7.208	7.220
SEVERE × HCC135	Severe illness × Heart Infection/Inflammation, Except Rheumatic	6.705	6.924	7.064	7.208	7.220
SEVERE × HCC145	Severe illness × Intracranial Hemorrhage	6.705	6.924	7.064	7.208	7.220
SEVERE × _G06A	Severe illness × HCC group G06A (HCC 67 Myelodysplastic Syndromes and Myelofibrosis or HCC 68 Aplastic Anemia or HCC 69 Acquired Hemolytic Anemia, Including Hemolytic Disease of Newborn).	6.705	6.924	7.064	7.208	7.220
SEVERE × G08	Severe illness × HCC group G08 (HCC 73 Combined and Other Severe Immunodeficiencies or HCC 74 Disorders of the Immune Mechanism).	6.705	6.924	7.064	7.208	7.220
	Enrollment Duration Factors					
	1 month of enrollment	0.252	0.219	0.196	0.183	0.182
	2 months of enrollment	0.252	0.219	0.196	0.183	0.182
	3 months of enrollment	0.252	0.219	0.196	0.183	0.182
	4 months of enrollment	0.215	0.184	0.159	0.147	0.146
	5 months of enrollment	0.201	0.174	0.149	0.135	0.134
	6 months of enrollment	0.176	0.152	0.128	0.115	0.114
	7 months of enrollment	0.123	0.105	0.087	0.076	0.075
	8 months of enrollment	0.085	0.073	0.059	0.051	0.051
	9 months of enrollment	0.051	0.042	0.033	0.028	0.027
	10 months of enrollment	0.000	0.000	0.000	0.000	0.000
	11 months of enrollment	0.000	0.000	0.000	0.000	0.000

TABLE 2—PROPOSED ADULT RISK ADJUSTMENT MODEL FACTORS FOR 2021 BENEFIT YEAR—Continued

HCC or RXC No.	Factor	Platinum	Gold	Silver	Bronze	Catastrophic
	Prescription Drug Factors					
RXC 01	Anti-HIV Agents	7.913	7.213	6.737	6.388	6.360
RXC 02	Anti-Hepatitis C (HCV) Agents	10.016	9.334	8.948	9.021	9.034
RXC 03	Antiarrhythmics	0.127	0.116	0.114	0.073	0.058
RXC 04	Phosphate Binders	1.998	1.987	1.980	1.913	1.775
RXC 05	Inflammatory Bowel Disease Agents	1.688	1.537	1.409	1.222	1.202
RXC 06	Insulin	1.940	1.753	1.549	1.315	1.293
RXC 07	Anti-Diabetic Agents, Except Insulin and Metformin Only	0.793	0.676	0.563	0.399	0.382
RXC 08	Multiple Sclerosis Agents	21.606	20.549	19.915	19.748	19.731
RXC 09	Immune Suppressants and Immunomodulators	13.848	13.192	12.820	12.893	12.902
RXC 10	Cystic Fibrosis Agents	18.151	17.703	17.461	17.511	17.519
RXC 01 × HCC001	Additional effect for enrollees with RXC 01 (Anti-HIV Agents) and HCC 001 (HIV/AIDS).	−2.152	−1.718	−1.385	−0.930	−0.891
RXC 02 × HCC037_1, 036, 035, 034.	Additional effect for enrollees with RXC 02 (Anti-Hepatitis C (HCV) Agents) and (HCC 037_1 (Chronic Viral Hepatitis C) or 036 (Cirrhosis of Liver) or 035 (End-Stage Liver Disease) or 034 (Liver Transplant Status/Complications)).	−0.412	−0.208	−0.082	0.034	0.040
RXC 03 × HCC142	Additional effect for enrollees with RxC 03 (Antiarrhythmics) and HCC 142 (Specified Heart Arrhythmias).	0.000	0.000	0.000	0.000	0.000
RXC 04 × HCC184, 183, 187, 188.	Additional effect for enrollees with RxC 04 (Phosphate Binders) and (HCC 184 (End Stage Renal Disease) or 183 (Kidney Transplant Status) or 187 (Chronic Kidney Disease, Stage 5) or 188 (Chronic Kidney Disease, Severe Stage 4)).	0.000	0.000	0.000	0.000	0.000
RXC 05 × HCC048, 041	Additional effect for enrollees with RxC 05 (Inflammatory Bowel Disease Agents) and (HCC 048 (Inflammatory Bowel Disease) or 041 (Intestine Transplant Status/Complications)).	−0.676	−0.629	−0.565	−0.520	−0.515
RXC 06 × HCC018, 019, 020, 021.	Additional effect for enrollees with RxC 06 (Insulin) and (HCC 018 (Pancreas Transplant Status/Complications) or 019 (Diabetes with Acute Complications) or 020 (Diabetes with Chronic Complications) or 021 (Diabetes without Complication)).	0.049	0.038	0.129	0.208	0.214
RXC 07 × HCC018, 019, 020, 021.	Additional effect for enrollees with RxC 07 (Anti-Diabetic Agents, Except Insulin and Metformin Only) and (HCC 018 (Pancreas Transplant Status/Complications) or 019 (Diabetes with Acute Complications) or 020 (Diabetes with Chronic Complications) or 021 (Diabetes without Complication)).	−0.481	−0.414	−0.349	−0.282	−0.276
RXC 08 × HCC118	Additional effect for enrollees with RxC 08 (Multiple Sclerosis Agents) and HCC 118 (Multiple Sclerosis).	−2.347	−1.771	−1.399	−1.043	−1.007
RXC 09 × HCC056 or 057 and 048 or 041.	Additional effect for enrollees with RxC 09 (Immune Suppressants and Immunomodulators) and (HCC 048 (Inflammatory Bowel Disease) or 041 (Intestine Transplant Status/Complications)) and (HCC 056 (Rheumatoid Arthritis and Specified Autoimmune Disorders) or 057 (Systemic Lupus Erythematosus and Other Autoimmune Disorders)).	1.001	1.149	1.262	1.390	1.402
RXC 09 × HCC056	Additional effect for enrollees with RxC 09 (Immune Suppressants and Immunomodulators) and HCC 056 (Rheumatoid Arthritis and Specified Autoimmune Disorders).	−4.212	−3.966	−3.797	−3.735	−3.729
RXC 09 × HCC057	Additional effect for enrollees with RxC 09 (Immune Suppressants and Immunomodulators) and HCC 057 (Systemic Lupus Erythematosus and Other Autoimmune Disorders).	−0.841	−0.716	−0.607	−0.477	−0.464
RXC 09 × HCC048, 041	Additional effect for enrollees with RxC 09 (Immune Suppressants and Immunomodulators) and (HCC 048 (Inflammatory Bowel Disease) or 041 (Intestine Transplant Status/Complications)).	−1.791	−1.655	−1.583	−1.517	−1.511
RXC 10 × HCC159, 158	Additional effect for enrollees with RxC 10 (Cystic Fibrosis Agents) and (HCC 159 (Cystic Fibrosis) or 158 (Lung Transplant Status/Complications)).	43.951	44.137	44.226	44.340	44.347

TABLE 3—HHS HCCS IN THE SEVERITY ILLNESS INDICATOR VARIABLE

HCC/description
Septicemia, Sepsis, Systemic Inflammatory Response Syndrome/Shock.
Peritonitis/Gastrointestinal Perforation/Necrotizing Enterocolitis.
Seizure Disorders and Convulsions.
Coma, Brain Compression/Anoxic Damage.
Respirator Dependence/Tracheostomy Status.
Respiratory Arrest.
Cardio-Respiratory Failure and Shock, Including Respiratory Distress Syndromes.
Pulmonary Embolism and Deep Vein Thrombosis.

TABLE 4—PROPOSED CHILD RISK ADJUSTMENT MODEL FACTORS FOR 2021 BENEFIT YEAR

Factor	Platinum	Gold	Silver	Bronze	Catastrophic
Demographic Factors					
Age 2–4, Male	0.217	0.175	0.126	0.082	0.078
Age 5–9, Male	0.159	0.125	0.084	0.052	0.049

TABLE 4—PROPOSED CHILD RISK ADJUSTMENT MODEL FACTORS FOR 2021 BENEFIT YEAR—Continued

Factor	Platinum	Gold	Silver	Bronze	Catastrophic
Age 10–14, Male	0.187	0.152	0.106	0.073	0.070
Age 15–20, Male	0.229	0.186	0.133	0.087	0.083
Age 2–4, Female	0.164	0.130	0.091	0.060	0.057
Age 5–9, Female	0.106	0.077	0.044	0.020	0.017
Age 10–14, Female	0.175	0.141	0.100	0.069	0.067
Age 15–20, Female	0.251	0.199	0.134	0.077	0.072
Diagnosis Factors					
HIV/AIDS	4.963	4.448	4.125	3.974	3.961
Septicemia, Sepsis, Systemic Inflammatory Response Syndrome/Shock	13.606	13.374	13.257	13.250	13.252
Central Nervous System Infections, Except Viral Meningitis	8.979	8.793	8.685	8.692	8.692
Viral or Unspecified Meningitis	3.297	3.038	2.882	2.694	2.676
Opportunistic Infections	15.380	15.343	15.312	15.287	15.283
Metastatic Cancer	38.340	38.034	37.827	37.835	37.835
Lung, Brain, and Other Severe Cancers, Including Pediatric Acute Lymphoid Leukemia	9.944	9.643	9.433	9.331	9.322
Non-Hodgkin Lymphomas and Other Cancers and Tumors	8.185	7.898	7.693	7.569	7.557
Colorectal, Breast (Age <50), Kidney, and Other Cancers	4.162	3.968	3.822	3.694	3.681
Breast (Age 50+) and Prostate Cancer, Benign/Uncertain Brain Tumors, and Other Cancers and Tumors	4.162	3.968	3.822	3.694	3.681
Thyroid Cancer, Melanoma, Neurofibromatosis, and Other Cancers and Tumors	1.089	0.955	0.840	0.717	0.706
Pancreas Transplant Status	11.602	11.388	11.260	11.196	11.191
Diabetes with Acute Complications	2.923	2.541	2.309	1.978	1.949
Diabetes with Chronic Complications	2.923	2.541	2.309	1.978	1.949
Diabetes without Complication	2.923	2.541	2.309	1.978	1.949
Protein-Calorie Malnutrition	15.462	15.352	15.286	15.324	15.327
Mucopolysaccharidosis	40.368	40.041	39.835	39.821	39.820
Lipidoses and Glycogenosis	40.368	40.041	39.835	39.821	39.820
Congenital Metabolic Disorders, Not Elsewhere Classified	5.342	5.207	5.103	5.035	5.028
Amyloidosis, Porphyria, and Other Metabolic Disorders	5.342	5.207	5.103	5.035	5.028
Adrenal, Pituitary, and Other Significant Endocrine Disorders	6.403	6.133	5.947	5.901	5.897
Liver Transplant Status/Complications	11.602	11.388	11.260	11.196	11.191
Acute Liver Failure/Disease, Including Neonatal Hepatitis	11.602	11.388	11.260	11.196	11.191
Chronic Liver Failure/End-Stage Liver Disorders	11.602	11.388	11.260	11.196	11.191
Cirrhosis of Liver	3.872	3.780	3.730	3.705	3.707
Chronic Viral Hepatitis C	3.654	3.477	3.370	3.375	3.379
Chronic Hepatitis, Except Chronic Viral Hepatitis C	0.171	0.103	0.045	0.000	0.000
Intestine Transplant Status/Complications	18.843	18.775	18.746	18.763	18.763
Peritonitis/Gastrointestinal Perforation/Necrotizing Enterocolitis	13.335	13.022	12.831	12.820	12.821
Intestinal Obstruction	5.279	5.057	4.899	4.788	4.777
Chronic Pancreatitis	12.466	12.206	12.054	12.051	12.051
Acute Pancreatitis	7.967	7.708	7.549	7.452	7.443
Inflammatory Bowel Disease	8.630	8.166	7.866	7.739	7.727
Necrotizing Fasciitis	3.865	3.630	3.462	3.372	3.364
Bone/Joint/Muscle Infections/Necrosis	3.865	3.630	3.462	3.372	3.364
Rheumatoid Arthritis and Specified Autoimmune Disorders	4.660	4.380	4.177	4.082	4.074
Systemic Lupus Erythematosus and Other Autoimmune Disorders	0.853	0.719	0.594	0.457	0.443
Osteogenesis Imperfecta and Other Osteodystrophies	1.303	1.185	1.085	1.002	0.994
Congenital/Developmental Skeletal and Connective Tissue Disorders	1.303	1.185	1.085	1.002	0.994
Cleft Lip/Cleft Palate	1.305	1.118	0.981	0.846	0.834
Major Congenital Anomalies of Diaphragm, Abdominal Wall, and Esophagus, Age <2	0.000	0.000	0.000	0.000	0.000
Hemophilia	72.963	72.352	71.961	71.927	71.924
Myelodysplastic Syndromes and Myelofibrosis	15.864	15.660	15.531	15.503	15.502
Aplastic Anemia	15.864	15.660	15.531	15.503	15.502
Acquired Hemolytic Anemia, Including Hemolytic Disease of Newborn	15.864	15.660	15.531	15.503	15.502
Sickle Cell Anemia (Hb-SS)	6.184	5.903	5.700	5.560	5.547
Beta Thalassemia Major	6.184	5.903	5.700	5.560	5.547
Combined and Other Severe Immunodeficiencies	6.330	6.151	6.031	5.981	5.976
Disorders of the Immune Mechanism	6.330	6.151	6.031	5.981	5.976
Coagulation Defects and Other Specified Hematological Disorders	4.965	4.828	4.724	4.642	4.635
Drug Use with Psychotic Complications	3.275	3.036	2.876	2.745	2.734

TABLE 4—PROPOSED CHILD RISK ADJUSTMENT MODEL FACTORS FOR 2021 BENEFIT YEAR—Continued

Factor	Platinum	Gold	Silver	Bronze	Catastrophic
Drug Use Disorder, Moderate/Severe, or Drug Use with Non-Psychotic Complications	3.275	3.036	2.876	2.745	2.734
Alcohol Use with Psychotic Complications	0.831	0.688	0.565	0.410	0.396
Alcohol Use Disorder, Moderate/Severe, or Alcohol Use with Specified Non-Psychotic Complications	0.831	0.688	0.565	0.410	0.396
Drug Use Disorder, Mild, Uncomplicated, Except Cannabis	0.831	0.688	0.565	0.410	0.396
Schizophrenia	5.241	4.864	4.620	4.470	4.455
Delusional and Other Specified Psychotic Disorders, Unspecified Psychosis	3.493	3.209	3.007	2.832	2.817
Major Depressive Disorder, Severe, and Bipolar Disorders	2.952	2.706	2.515	2.341	2.325
Personality Disorders	0.497	0.396	0.283	0.145	0.131
Anorexia/Bulimia Nervosa	2.438	2.226	2.065	1.954	1.943
Prader-Willi, Patau, Edwards, and Autosomal Deletion Syndromes	1.556	1.402	1.294	1.202	1.193
Down Syndrome, Fragile X, Other Chromosomal Anomalies, and Congenital Malformation Syndromes	1.556	1.402	1.294	1.202	1.193
Autistic Disorder	2.952	2.706	2.515	2.341	2.325
Pervasive Developmental Disorders, Except Autistic Disorder	0.527	0.442	0.341	0.226	0.216
Traumatic Complete Lesion Cervical Spinal Cord	10.660	10.444	10.322	10.337	10.341
Quadriplegia	10.660	10.444	10.322	10.337	10.341
Traumatic Complete Lesion Dorsal Spinal Cord	7.948	7.672	7.503	7.436	7.428
Paraplegia	7.948	7.672	7.503	7.436	7.428
Spinal Cord Disorders/Injuries	4.052	3.825	3.665	3.547	3.536
Amyotrophic Lateral Sclerosis and Other Anterior Horn Cell Disease	25.035	24.747	24.542	24.466	24.460
Quadriplegic Cerebral Palsy	4.502	4.268	4.155	4.153	4.155
Cerebral Palsy, Except Quadriplegic	0.887	0.724	0.606	0.476	0.463
Spina Bifida and Other Brain/Spinal/Nervous System Congenital Anomalies	2.436	2.284	2.181	2.112	2.106
Myasthenia Gravis/Myoneural Disorders and Guillain-Barre Syndrome/Inflammatory and Toxic Neuropathy	11.304	11.122	11.009	11.018	11.020
Muscular Dystrophy	3.484	3.273	3.131	3.013	3.004
Multiple Sclerosis	12.435	11.963	11.675	11.652	11.650
Parkinson's, Huntington's, and Spinocerebellar Disease, and Other Neurodegenerative Disorders	3.484	3.273	3.131	3.013	3.004
Seizure Disorders and Convulsions	2.304	2.137	1.992	1.844	1.830
Hydrocephalus	5.235	5.125	5.045	5.012	5.009
Coma, Brain Compression/Anoxic Damage	5.348	5.203	5.104	5.056	5.051
Narcolepsy and Cataplexy	4.262	4.066	3.904	3.739	3.720
Respirator Dependence/Tracheostomy Status	33.399	33.291	33.254	33.422	33.437
Respiratory Arrest	10.466	10.201	10.058	10.029	10.027
Cardio-Respiratory Failure and Shock, Including Respiratory Distress Syndromes	10.466	10.201	10.058	10.029	10.027
Heart Assistive Device/Artificial Heart	18.843	18.775	18.746	18.763	18.763
Heart Transplant Status/Complications	18.843	18.775	18.746	18.763	18.763
Heart Failure	6.428	6.307	6.223	6.181	6.177
Acute Myocardial Infarction	5.114	4.984	4.935	4.944	4.947
Unstable Angina and Other Acute Ischemic Heart Disease	2.526	2.378	2.302	2.284	2.288
Heart Infection/Inflammation, Except Rheumatic	13.717	13.595	13.518	13.514	13.513
Hypoplastic Left Heart Syndrome and Other Severe Congenital Heart Disorders	4.066	3.895	3.736	3.623	3.612
Major Congenital Heart/Circulatory Disorders	1.226	1.120	0.994	0.876	0.866
Atrial and Ventricular Septal Defects, Patent Ductus Arteriosus, and Other Congenital Heart/Circulatory Disorders	0.831	0.735	0.632	0.543	0.536
Specified Heart Arrhythmias	3.957	3.782	3.644	3.563	3.556
Intracranial Hemorrhage	11.763	11.547	11.426	11.425	11.426
Ischemic or Unspecified Stroke	3.610	3.533	3.497	3.498	3.501
Cerebral Aneurysm and Arteriovenous Malformation	3.322	3.116	2.986	2.900	2.892
Hemiplegia/Hemiparesis	7.246	7.110	7.024	6.991	6.987
Monoplegia, Other Paralytic Syndromes	3.285	3.098	2.978	2.898	2.890
Atherosclerosis of the Extremities with Ulceration or Gangrene	14.234	13.963	13.796	13.739	13.735
Vascular Disease with Complications	10.519	10.396	10.319	10.348	10.349
Pulmonary Embolism and Deep Vein Thrombosis	17.678	17.551	17.486	17.500	17.501
Lung Transplant Status/Complications	18.843	18.775	18.746	18.763	18.763
Cystic Fibrosis	40.080	39.483	39.100	39.106	39.106
Chronic Obstructive Pulmonary Disease, Including Bronchiectasis	3.156	2.986	2.856	2.739	2.729
Severe Asthma	0.818	0.633	0.468	0.270	0.251
Asthma, Except Severe	0.354	0.289	0.200	0.113	0.106

TABLE 4—PROPOSED CHILD RISK ADJUSTMENT MODEL FACTORS FOR 2021 BENEFIT YEAR—Continued

Factor	Platinum	Gold	Silver	Bronze	Catastrophic
Fibrosis of Lung and Other Lung Disorders	1.708	1.621	1.529	1.444	1.436
Aspiration and Specified Bacterial Pneumonias and Other Severe Lung Infections	6.676	6.622	6.585	6.603	6.605
Exudative Macular Degeneration	0.000	0.000	0.000	0.000	0.000
Kidney Transplant Status/Complications	11.602	11.388	11.260	11.196	11.191
End Stage Renal Disease	41.286	41.057	40.934	41.046	41.057
Chronic Kidney Disease, Stage 5	5.961	5.857	5.771	5.679	5.670
Chronic Kidney Disease, Severe (Stage 4)	5.961	5.857	5.771	5.679	5.670
Ectopic and Molar Pregnancy	1.847	1.546	1.348	1.100	1.080
Miscarriage with Complications	0.834	0.700	0.534	0.292	0.266
Miscarriage with No or Minor Complications	0.834	0.700	0.534	0.292	0.266
Pregnancy with Delivery with Major Complications	3.796	3.315	3.047	2.628	2.585
Pregnancy with Delivery with Complications	3.796	3.315	3.047	2.628	2.585
Pregnancy with Delivery with No or Minor Complications	2.681	2.342	2.111	1.635	1.578
(Ongoing) Pregnancy without Delivery with Major Complications	0.403	0.313	0.179	0.035	0.028
(Ongoing) Pregnancy without Delivery with Complications	0.403	0.313	0.179	0.035	0.028
(Ongoing) Pregnancy without Delivery with No or Minor Complications	0.403	0.313	0.179	0.035	0.028
Chronic Ulcer of Skin, Except Pressure	2.956	2.861	2.771	2.695	2.690
Extensive Third Degree Burns	16.269	16.040	15.884	15.865	15.864
Major Skin Burn or Condition	2.467	2.297	2.168	2.059	2.050
Severe Head Injury	16.269	16.040	15.884	15.865	15.864
Hip and Pelvic Fractures	4.925	4.669	4.475	4.362	4.354
Vertebral Fractures without Spinal Cord Injury	4.052	3.820	3.642	3.495	3.480
Traumatic Amputations and Amputation Complications	5.553	5.291	5.118	4.987	4.971
Stem Cell, Including Bone Marrow, Transplant Status/Complications	18.843	18.775	18.746	18.763	18.763
Artificial Openings for Feeding or Elimination	11.570	11.418	11.359	11.471	11.484
Amputation Status, Upper Limb or Lower Limb	5.553	5.291	5.118	4.987	4.971

TABLE 5—PROPOSED INFANT RISK ADJUSTMENT MODEL FACTORS FOR 2021 BENEFIT YEAR

Group	Platinum	Gold	Silver	Bronze	Catastrophic
Extremely Immature * Severity Level 5 (Highest)	225.321	223.595	222.465	222.451	222.455
Extremely Immature * Severity Level 4	144.819	142.871	141.573	141.365	141.352
Extremely Immature * Severity Level 3	33.455	32.014	31.032	30.738	30.717
Extremely Immature * Severity Level 2	33.455	32.014	31.032	30.738	30.717
Extremely Immature * Severity Level 1 (Lowest)	33.455	32.014	31.032	30.738	30.717
Immature *Severity Level 5 (Highest)	142.379	140.578	139.388	139.305	139.299
Immature *Severity Level 4	71.986	70.220	69.038	68.884	68.870
Immature *Severity Level 3	33.455	32.014	31.032	30.738	30.717
Immature *Severity Level 2	25.570	24.161	23.190	22.827	22.795
Immature *Severity Level 1 (Lowest)	25.570	24.161	23.190	22.827	22.795
Premature/Multiples * Severity Level 5 (Highest)	110.794	109.215	108.168	108.011	107.996
Premature/Multiples * Severity Level 4	29.484	27.938	26.919	26.632	26.612
Premature/Multiples * Severity Level 3	14.338	13.201	12.389	11.819	11.768
Premature/Multiples * Severity Level 2	8.284	7.501	6.838	6.107	6.031
Premature/Multiples * Severity Level 1 (Lowest)	5.769	5.196	4.607	4.019	3.967
Term *Severity Level 5 (Highest)	86.802	85.471	84.564	84.347	84.329
Term *Severity Level 4	17.042	15.936	15.163	14.630	14.588
Term *Severity Level 3	6.318	5.730	5.154	4.524	4.466
Term *Severity Level 2	3.559	3.136	2.604	1.944	1.884
Term *Severity Level 1 (Lowest)	1.698	1.477	1.054	0.712	0.691
Age1 *Severity Level 5 (Highest)	65.628	64.812	64.248	64.124	64.114
Age1 *Severity Level 4	12.979	12.412	12.003	11.748	11.726
Age1 *Severity Level 3	3.335	3.059	2.809	2.602	2.585
Age1 *Severity Level 2	2.054	1.841	1.620	1.396	1.376
Age1 *Severity Level 1 (Lowest)	0.545	0.501	0.447	0.404	0.400
Age 0 Male	0.645	0.597	0.560	0.489	0.481
Age 1 Male	0.115	0.099	0.083	0.062	0.060

TABLE 6—HHS HCCS INCLUDED IN INFANT MODEL MATURITY CATEGORIES

Maturity category	HCC/description
Extremely Immature	Extremely Immature Newborns, Birth weight <500 Grams.
Extremely Immature	Extremely Immature Newborns, Including Birth weight 500–749 Grams.
Extremely Immature	Extremely Immature Newborns, Including Birth weight 750–999 Grams.

TABLE 6—HHS HCCs INCLUDED IN INFANT MODEL MATURITY CATEGORIES—Continued

Maturity category	HCC/description
Immature	Premature Newborns, Including Birth weight 1000–1499 Grams.
Immature	Premature Newborns, Including Birth weight 1500–1999 Grams.
Premature/Multiples	Premature Newborns, Including Birth weight 2000–2499 Grams.
Premature/Multiples	Other Premature, Low Birth weight, Malnourished, or Multiple Birth Newborns.
Term	Term or Post-Term Singleton Newborn, Normal or High Birth weight.
Age 1	All age 1 infants.

TABLE 7—HHS HCCs INCLUDED IN INFANT MODEL SEVERITY CATEGORIES

Severity category	HCC/description
Severity Level 5 (Highest)	Metastatic Cancer.
Severity Level 5	Pancreas Transplant Status.
Severity Level 5	Liver Transplant Status/Complications.
Severity Level 5	Intestine Transplant Status/Complications.
Severity Level 5	Peritonitis/Gastrointestinal Perforation/Necrotizing Enterocolitis.
Severity Level 5	Respirator Dependence/Tracheostomy Status.
Severity Level 5	Heart Assistive Device/Artificial Heart.
Severity Level 5	Heart Transplant Status/Complications.
Severity Level 5	Heart Failure.
Severity Level 5	Hypoplastic Left Heart Syndrome and Other Severe Congenital Heart Disorders.
Severity Level 5	Lung Transplant Status/Complications.
Severity Level 5	Kidney Transplant Status/Complications.
Severity Level 5	End Stage Renal Disease.
Severity Level 5	Stem Cell, Including Bone Marrow, Transplant Status/Complications.
Severity Level 4	Septicemia, Sepsis, Systemic Inflammatory Response Syndrome/Shock.
Severity Level 4	Lung, Brain, and Other Severe Cancers, Including Pediatric Acute Lymphoid Leukemia.
Severity Level 4	Mucopolysaccharidosis.
Severity Level 4	Acute Liver Failure/Disease, Including Neonatal Hepatitis.
Severity Level 4	Chronic Liver Failure/End-Stage Liver Disorders.
Severity Level 4	Major Congenital Anomalies of Diaphragm, Abdominal Wall, and Esophagus, Age <2.
Severity Level 4	Myelodysplastic Syndromes and Myelofibrosis.
Severity Level 4	Aplastic Anemia.
Severity Level 4	Traumatic Complete Lesion Cervical Spinal Cord.
Severity Level 4	Quadriplegia.
Severity Level 4	Amyotrophic Lateral Sclerosis and Other Anterior Horn Cell Disease.
Severity Level 4	Quadriplegic Cerebral Palsy.
Severity Level 4	Myasthenia Gravis/Myoneural Disorders and Guillain-Barre Syndrome/Inflammatory and Toxic Neuropathy.
Severity Level 4	Coma, Brain Compression/Anoxic Damage.
Severity Level 4	Respiratory Arrest.
Severity Level 4	Cardio-Respiratory Failure and Shock, Including Respiratory Distress Syndromes.
Severity Level 4	Acute Myocardial Infarction.
Severity Level 4	Heart Infection/Inflammation, Except Rheumatic.
Severity Level 4	Major Congenital Heart/Circulatory Disorders.
Severity Level 4	Intracranial Hemorrhage.
Severity Level 4	Ischemic or Unspecified Stroke.
Severity Level 4	Vascular Disease with Complications.
Severity Level 4	Pulmonary Embolism and Deep Vein Thrombosis.
Severity Level 4	Aspiration and Specified Bacterial Pneumonias and Other Severe Lung Infections.
Severity Level 4	Chronic Kidney Disease, Stage 5.
Severity Level 4	Artificial Openings for Feeding or Elimination.
Severity Level 3	HIV/AIDS.
Severity Level 3	Central Nervous System Infections, Except Viral Meningitis.
Severity Level 3	Opportunistic Infections.
Severity Level 3	Non-Hodgkin Lymphomas and Other Cancers and Tumors.
Severity Level 3	Colorectal, Breast (Age <50), Kidney and Other Cancers.
Severity Level 3	Breast (Age 50+), Prostate Cancer, Benign/Uncertain Brain Tumors, and Other Cancers and Tumors.
Severity Level 3	Lipidoses and Glycogenosis.
Severity Level 3	Adrenal, Pituitary, and Other Significant Endocrine Disorders.
Severity Level 3	Intestinal Obstruction.
Severity Level 3	Necrotizing Fasciitis.
Severity Level 3	Bone/Joint/Muscle Infections/Necrosis.
Severity Level 3	Osteogenesis Imperfecta and Other Osteodystrophies.
Severity Level 3	Cleft Lip/Cleft Palate.
Severity Level 3	Hemophilia.
Severity Level 3	Combined and Other Severe Immunodeficiencies.
Severity Level 3	Disorders of the Immune Mechanism.
Severity Level 3	Coagulation Defects and Other Specified Hematological Disorders.
Severity Level 3	Drug Use with Psychotic Complications.

TABLE 7—HHS HCCs INCLUDED IN INFANT MODEL SEVERITY CATEGORIES—Continued

Severity category	HCC/description
Severity Level 3	Drug Use Disorder, Moderate/Severe, or Drug Use with Non-Psychotic Complications.
Severity Level 3	Alcohol Use with Psychotic Complications.
Severity Level 3	Alcohol Use Disorder, Moderate/Severe, or Alcohol Use with Specified Non-Psychotic Complications.
Severity Level 3	Drug Use Disorder, Mild, Uncomplicated, Except Cannabis.
Severity Level 3	Prader-Willi, Patau, Edwards, and Autosomal Deletion Syndromes.
Severity Level 3	Traumatic Complete Lesion Dorsal Spinal Cord.
Severity Level 3	Paraplegia.
Severity Level 3	Spinal Cord Disorders/Injuries.
Severity Level 3	Cerebral Palsy, Except Quadriplegic.
Severity Level 3	Spina Bifida and Other Brain/Spinal/Nervous System Congenital Anomalies.
Severity Level 3	Muscular Dystrophy.
Severity Level 3	Parkinson's, Huntington's, and Spinocerebellar Disease, and Other Neurodegenerative Disorders.
Severity Level 3	Hydrocephalus.
Severity Level 3	Unstable Angina and Other Acute Ischemic Heart Disease.
Severity Level 3	Atrial and Ventricular Septal Defects, Patent Ductus Arteriosus, and Other Congenital Heart/Circulatory Disorders.
Severity Level 3	Specified Heart Arrhythmias.
Severity Level 3	Cerebral Aneurysm and Arteriovenous Malformation.
Severity Level 3	Hemiplegia/Hemiparesis.
Severity Level 3	Cystic Fibrosis.
Severity Level 3	Extensive Third Degree Burns.
Severity Level 3	Severe Head Injury.
Severity Level 3	Hip and Pelvic Fractures.
Severity Level 3	Vertebral Fractures without Spinal Cord Injury.
Severity Level 2	Viral or Unspecified Meningitis.
Severity Level 2	Thyroid Cancer, Melanoma, Neurofibromatosis, and Other Cancers and Tumors.
Severity Level 2	Diabetes with Acute Complications.
Severity Level 2	Diabetes with Chronic Complications.
Severity Level 2	Diabetes without Complication.
Severity Level 2	Protein-Calorie Malnutrition.
Severity Level 2	Congenital Metabolic Disorders, Not Elsewhere Classified.
Severity Level 2	Amyloidosis, Porphyria, and Other Metabolic Disorders.
Severity Level 2	Cirrhosis of Liver.
Severity Level 2	Chronic Pancreatitis.
Severity Level 2	Acute Pancreatitis.
Severity Level 2	Inflammatory Bowel Disease.
Severity Level 2	Rheumatoid Arthritis and Specified Autoimmune Disorders.
Severity Level 2	Systemic Lupus Erythematosus and Other Autoimmune Disorders.
Severity Level 2	Congenital/Developmental Skeletal and Connective Tissue Disorders.
Severity Level 2	Acquired Hemolytic Anemia, Including Hemolytic Disease of Newborn.
Severity Level 2	Sickle Cell Anemia (Hb-SS).
Severity Level 2	Down Syndrome, Fragile X, Other Chromosomal Anomalies, and Congenital Malformation Syndromes.
Severity Level 2	Seizure Disorders and Convulsions.
Severity Level 2	Monoplegia, Other Paralytic Syndromes.
Severity Level 2	Atherosclerosis of the Extremities with Ulceration or Gangrene.
Severity Level 2	Chronic Obstructive Pulmonary Disease, Including Bronchiectasis.
Severity Level 2	Severe Asthma.
Severity Level 2	Fibrosis of Lung and Other Lung Disorders.
Severity Level 2	Chronic Kidney Disease, Severe (Stage 4).
Severity Level 2	Chronic Ulcer of Skin, Except Pressure.
Severity Level 2	Major Skin Burn or Condition.
Severity Level 1 (Lowest)	Chronic Viral Hepatitis C.
Severity Level 1	Chronic Hepatitis, Except Chronic Viral Hepatitis C.
Severity Level 1	Beta Thalassemia Major.
Severity Level 1	Autistic Disorder.
Severity Level 1	Pervasive Developmental Disorders, Except Autistic Disorder.
Severity Level 1	Multiple Sclerosis.
Severity Level 1	Asthma, Except Severe.
Severity Level 1	Traumatic Amputations and Amputation Complications.
Severity Level 1	Amputation Status, Upper Limb or Lower Limb.

(5) Cost-Sharing Reduction Adjustments

We propose to continue including an adjustment for the receipt of CSRs in the risk adjustment models to account for increased plan liability due to increased utilization of health care services by enrollees receiving CSRs in all 50 states and the District of Columbia. For the 2021 benefit year, to maintain stability and certainty for issuers, we are proposing to maintain the CSR factors

finalized in the 2019 and 2020 Payment Notices.[50] See Table 8.

Consistent with the approach finalized in the 2017 Payment Notice,[51] we will continue to use a CSR adjustment factor of 1.12 for all Massachusetts wrap-around plans in the risk adjustment plan liability risk score calculation, as all of Massachusetts' cost-sharing plan variations have AVs above 94 percent.

We seek comment on these proposals.

TABLE 8—COST-SHARING REDUCTION ADJUSTMENT

Household income	Plan AV	Induced utilization factor
Silver Plan Variant Recipients		
100–150% of FPL	Plan Variation 94%	1.12
150–200% of FPL	Plan Variation 87%	1.12
200–250% of FPL	Plan Variation 73%	1.00
>250% of FPL	Standard Plan 70%.	1.00
Zero Cost Sharing Recipients		
<300% of FPL	Platinum (90%)	1.00
<300% of FPL	Gold (80%)	1.07
<300% of FPL	Silver (70%)	1.12
<300% of FPL	Bronze (60%)	1.15
Limited Cost Sharing Recipients		
>300% of FPL	Platinum (90%)	1.00
>300% of FPL	Gold (80%)	1.07
>300% of FPL	Silver (70%)	1.12
>300% of FPL	Bronze (60%)	1.15

(6) Model Performance Statistics

To evaluate risk adjustment model performance, we examined each model's R-squared statistic and predictive ratios. The R-squared statistic, which calculates the percentage of individual variation explained by a model, measures the predictive accuracy of the model overall. The predictive ratio for each of the HHS risk adjustment models is the ratio of the weighted mean predicted plan liability for the model sample population to the weighted mean actual plan liability for the model sample population. The predictive ratio represents how well the model does on average at predicting plan liability for that subpopulation.

A subpopulation that is predicted perfectly would have a predictive ratio of 1.0. For each of the HHS risk adjustment models, the R-squared statistic and the predictive ratios are in the range of published estimates for concurrent risk adjustment models.[52] Because we blended the coefficients from separately solved models based on the 2016 and 2017 benefit years' enrollee-level EDGE data that were available at the time of this proposed rule, we are publishing the R-squared statistic for each model separately to verify their statistical validity. The R-squared statistic for each model is shown in Table 9. If the proposed 2021 benefit year model recalibration data is finalized, we intend to publish updated R-squared statistics to reflect results from the blending of the 2016, 2017, and 2018 benefit years' enrollee-level EDGE datasets used to recalibrate the models for the 2021 benefit year.

TABLE 9—R-SQUARED STATISTIC FOR PROPOSED HHS RISK ADJUSTMENT MODELS

Models	R-Squared statistic	
	2016 enrollee-level EDGE data	2017 enrollee-level EDGE data
Platinum Adult	0.4256	0.4210
Gold Adult	0.4198	0.4148
Silver Adult	0.4154	0.4101
Bronze Adult	0.4123	0.4068
Catastrophic Adult	0.4119	0.4064
Platinum Child	0.3212	0.3382
Gold Child	0.3166	0.3336
Silver Child	0.3129	0.3299
Bronze Child	0.3095	0.3267
Catastrophic Child	0.3091	0.3263
Platinum Infant	0.3283	0.3303
Gold Infant	0.3245	0.3263
Silver Infant	0.3218	0.3235
Bronze Infant	0.3203	0.3220
Catastrophic Infant	0.3201	0.3218

b. Overview of the Risk Adjustment Transfer Methodology (§ 153.320)

We are proposing to continue to use the HHS state payment transfer formula that was finalized in the 2020 Payment Notice.[53] Although the proposed HHS state payment transfer formula for the 2021 benefit year is unchanged from what was finalized for the previous benefit year, we believe it is useful to republish the formula in its entirety in this proposed rule. Additionally, we are republishing the description of the administrative cost reduction to the statewide average premium and high-cost risk pool factors, although these factors and terms also remain unchanged in this proposed rule.[54]

We previously defined the calculation of plan average actuarial risk and the calculation of payments and charges in the Premium Stabilization Rule. In the 2014 Payment Notice, we combined those concepts into a risk adjustment state payment transfer formula.[55] This formula generally calculates the difference between the revenues required by a plan, based on the health risk of the plan's enrollees, and the revenues that the plan can generate for those enrollees. These differences are then compared across plans in the state market risk pool and converted to a dollar amount via a cost scaling factor. In the absence of additional funding, we established, through notice and comment rulemaking,[56] the HHS-operated risk adjustment program as a budget-neutral program to provide certainty to issuers regarding risk adjustment payments and charges, which allows issuers to set rates based on those expectations. In light of the budget-neutral framework, HHS uses statewide average premium as the cost-scaling factor in the state payment transfer formula under the HHS-operated risk adjustment methodology, rather than a different parameter, such as each plan's own premium, which would not have automatically achieved equality between risk adjustment payments and charges in each benefit year.[57]

Risk adjustment transfers (total payments and charges, including high-cost risk pool payments and charges) are calculated after issuers have completed their risk adjustment EDGE data submissions for the applicable benefit year. Transfers (payments and charges) under the state payment transfer formula are calculated as the difference between the plan premium estimate reflecting risk selection and the plan premium estimate not reflecting risk selection. The state payment transfer calculation that is part of the HHS risk

[50] See 83 FR 16930 at 16953 and 84 FR 17454 at 17478 through 17479.

[51] See 81 FR 12203 at 12228.

[52] Winkleman, Ross and Syed Mehmud. ''A Comparative Analysis of Claims-Based Tools for Health Risk Assessment.'' Society of Actuaries. April 2007.

[53] 84 FR 17454 at 17480 and 17485.

[54] Ibid.

[55] The state payment transfer formula refers to the part of the HHS risk adjustment methodology that calculates payments and charges at the state market risk pool level prior to the calculation of the high-cost risk pool payment and charge terms that apply beginning with the 2018 benefit year.

[56] For example, see Standards Related to Reinsurance, Risk Corridors, and Risk Adjustment, Proposed Rule, 76 FR 41938 (July 15, 2011); Standards Related to Reinsurance, Risk Corridors, and Risk Adjustment, Final Rule, 77 FR 17232 (March 23, 2012); and the 2014 Payment Notice, Final Rule, 78 FR 15441 (March 11, 2013). Also see, the 2018 Payment Notice, Final Rule, 81 FR 94058 (December 22, 2016); and the 2019 Payment Notice, Final Rule, 83 FR 16930 (April 17, 2018). Also see the Adoption of the Methodology for the HHS-Operated Permanent Risk Adjustment Program Under the Patient Protection and Affordable Care Act for the 2017 Benefit Year, Final Rule, 83 FR 36456 (July 30, 2018) and the Patient Protection and Affordable Care Act; and Adoption of the Methodology for the HHS-Operated Permanent Risk Adjustment Program for the 2018 Benefit Year Final Rule, 83 FR 63419 (December 10, 2018).

[57] See the 2020 Payment Notice for further details on why statewide average premium is the cost-scaling factor in the state payment transfer formula. See 84 FR 17454 at 17480 through 17484.

adjustment transfer methodology follows the formula:

$$T_i = \left[\frac{PLRS_i \cdot IDF_i \cdot GCF_i}{\sum_i (s_i \cdot PLRS_i \cdot IDF_i \cdot GCF_i)} - \frac{AV_i \cdot ARF_i \cdot IDF_i \cdot GCF_i}{\sum_i (s_i \cdot AV_i \cdot ARF_i \cdot IDF_i \cdot GCF_i)}\right] \overline{P}_s$$

Where:

$\bar{P}_S$ = statewide average premium;
$PLRS_i$ = plan i's plan liability risk score;
AV_i = plan i's metal level AV;
ARF_i = allowable rating factor;
IDF_i = plan i's induced demand factor;
GCF_i = plan i's geographic cost factor;
s_i = plan i's share of state enrollment.

The denominators are summed across all risk adjustment covered plans in the risk pool in the market in the state.

The difference between the two premium estimates in the state payment transfer formula determines whether a plan pays a risk adjustment charge or receives a risk adjustment payment. The value of the plan average risk score by itself does not determine whether a plan would be assessed a charge or receive a payment—even if the risk score is greater than 1.0, it is possible that the plan would be assessed a charge if the premium compensation that the plan may receive through its rating (as measured through the allowable rating factor) exceeds the plan's predicted liability associated with risk selection. Risk adjustment transfers under the state payment transfer formula are calculated at the risk pool level, and catastrophic plans are treated as a separate risk pool for purposes of the risk adjustment state payment transfer calculations.[58] This resulting PMPM plan payment or charge is multiplied by the number of billable member months to determine the plan payment or charge based on plan liability risk scores for a plan's geographic rating area for the risk pool market within the state. The payment or charge under the state payment transfer formula is thus calculated to balance the state market risk pool in question.

We are maintaining the 14 percent administrative cost reduction to the statewide average premium for the 2021 benefit year and are not proposing to modify the adjustment at this time.[59]

To account for costs associated with exceptionally high-risk enrollees we previously added a high-cost risk pool adjustment to the HHS risk adjustment transfer methodology. As finalized in the 2020 Payment Notice, [60] we intend to maintain the high-cost risk pool parameters with a threshold of $1 million and a coinsurance rate of 60 percent for benefit years 2020 and onward, unless amended through notice-and-comment rulemaking. We are not proposing any changes to the high-cost risk pool parameters as part of this rulemaking, so would maintain the threshold of $1 million and coinsurance rate of 60 percent for the 2021 benefit year.

The high-cost risk pool adjustment amount is added to the state payment transfer formula to account for: (1) The payment term, representing the portion of costs above the threshold reimbursed to the issuer for high-cost risk pool payments (HRP_i), if applicable; and (2) the charge term, representing a percentage of premium adjustment, which is the product of the high-cost risk pool adjustment factor ($HRPC_m$) for the respective national high-cost risk pool m (one for the individual market, including catastrophic, non-catastrophic and merged market plans, and another for the small group market), and the plan's total premiums (TP_i). For this calculation, we use a percent of premium adjustment factor that is applied to each plan's total premium amount.

The total plan transfers for a given benefit year are calculated as the product of the plan's PMPM transfer amount (T_i) multiplied by the plan's billable member months (M_i), plus the high-cost risk pool adjustments. The total plan transfer (payment or charge) amounts under the HHS risk adjustment payment transfer formula are calculated as follows:

$$Total\ transfer_i = (T_i \cdot M_i) + HRP_i - (HRPC_m \cdot TP_i)$$

Where:

$Total\ Transfer_i$ = Plan i's total HHS risk adjustment program transfer amount;
T_i = Plan i's PMPM transfer amount based on the state transfer calculation;
M_i = Plan i's billable member months;
HRP_i = Plan i's total high-cost risk pool payment;
$HRPC_m$ = High-cost risk pool percent of premium adjustment factor for the respective national high-cost risk pool m;
TP_i = Plan i's total premium amounts.

(1) State Flexibility Requests (§ 153.320(d))

In the 2019 Payment Notice, we provided states the flexibility to request a reduction to the otherwise applicable risk adjustment transfers calculated under the HHS-operated risk adjustment methodology, which is calibrated on a national dataset, for the state's individual, small group, or merged markets by up to 50 percent to more precisely account for differences in actuarial risk in the applicable state's market(s). We finalized that any requests received would be published in the respective benefit year's proposed notice of benefit and payment parameters, and the supporting evidence would be made available for public comment.[61]

As finalized in the 2020 Payment Notice, if the state requests that HHS not make publicly available certain supporting evidence and analysis because it contains trade secrets or confidential commercial or financial information within the meaning of the HHS FOIA regulations at 45 CFR 5.31(d), HHS will make available on the CMS website only the supporting evidence submitted by the state that is not a trade secret or confidential commercial or financial information by posting a redacted version of the state's supporting evidence.[62]

In accordance with § 153.320(d)(2), beginning with the 2020 benefit year, states must submit such requests with the supporting evidence and analysis outlined under § 153.320(d)(1) by August 1st of the calendar year that is 2 calendar years prior to the beginning of the applicable benefit year. If approved by HHS, state reduction requests will be applied to the plan PMPM payment or charge transfer amount (T_i in the state payment transfer calculation).

For the 2021 benefit year, HHS received a request to reduce risk adjustment transfers for the Alabama small group market by 50 percent. Alabama's request states that the presence of a dominant carrier in the small group market precludes the HHS-operated risk adjustment program from

[58] As detailed elsewhere in this proposed rule, catastrophic plans are considered part of the individual market for purposes of the national high-cost risk pool payment and charge calculations.

[59] See 84 FR 17454 at 17486 for a visual illustration of the equation for this adjustment.

[60] 84 FR 17454 at 17466 through 17468.

[61] 2019 Payment Notice Final Rule, 83 FR 16930 (April 17, 2018) and 45 CFR 153.320(d)(3).

[62] See 45 CFR 153.320(d)(3).

working as precisely as it would with a more balanced distribution of market share. The state regulators stated that their review of the risk adjustment payment issuers' financial data suggested that any premium increase resulting from a reduction to risk adjustment payments of 50 percent in the small group market for the 2021 benefit year would not exceed 1 percent, the *de minimis* premium increase threshold set forth in § 153.320(d)(1)(iii) and (d)(4)(i)(B). We seek comment on this request to reduce risk adjustment transfers in the Alabama small group market by 50 percent for the 2021 benefit year. The request and additional documentation submitted by Alabama are posted under the ''State Flexibility Requests'' heading at *https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/index.html.*

c. Risk Adjustment User Fee for 2021 Benefit Year (§ 153.610(f))

As noted above, if a state is not approved to operate, or chooses to forgo operating, its own risk adjustment program, HHS will operate risk adjustment on its behalf. For the 2021 benefit year, HHS will be operating a risk adjustment program in every state and the District of Columbia. As described in the 2014 Payment Notice, HHS's operation of risk adjustment on behalf of states is funded through a risk adjustment user fee. Section 153.610(f)(2) provides that, where HHS operates a risk adjustment program on behalf of a state, an issuer of a risk adjustment covered plan must remit a user fee to HHS equal to the product of its monthly billable member enrollment in the plan and the PMPM risk adjustment user fee specified in the annual HHS notice of benefit and payment parameters for the applicable benefit year.

OMB Circular No. A–25R established Federal policy regarding user fees, and specifies that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. The risk adjustment program will provide special benefits as defined in section 6(a)(1)(B) of Circular No. A–25R to issuers of risk adjustment covered plans because it mitigates the financial instability associated with potential adverse risk selection. The risk adjustment program also contributes to consumer confidence in the health insurance industry by helping to stabilize premiums across the individual, merged, and small group markets.

In the 2020 Payment Notice, we calculated the Federal administrative expenses of operating the risk adjustment program for the 2020 benefit year to result in a risk adjustment user fee rate of $0.18 PMPM based on our estimated contract costs for risk adjustment operations and estimated billable member months for individuals enrolled in risk adjustment covered plans. For the 2021 benefit year, we propose to use the same methodology to estimate our administrative expenses to operate the program. These costs cover development of the model and methodology, collections, payments, account management, data collection, data validation, program integrity and audit functions, operational and fraud analytics, stakeholder training, operational support, and administrative and personnel costs dedicated to risk adjustment program activities. To calculate the user fee, we divided HHS's projected total costs for administering the risk adjustment programs on behalf of states by the expected number of billable member months in risk adjustment covered plans in states where the HHS-operated risk adjustment program will apply in the 2021 benefit year.

We estimate that the total cost for HHS to operate the risk adjustment program on behalf of states for 2021 will be approximately $50 million, and the risk adjustment user fee would be $0.19 PMPM. The risk adjustment user fee costs for the 2021 benefit year are expected to remain steady from the prior 2020 benefit year estimates. However, we project a small decline in billable member months in the individual and small group markets overall in the 2021 benefit year based on the declines observed in the 2018 benefit year. We seek comment on the proposed risk adjustment user fee for the 2021 benefit year.

3. Risk Adjustment Data Validation Requirements When HHS Operates Risk Adjustment (§ 153.630)

We conduct RADV under §§ 153.630 and 153.350 in any state where HHS is operating risk adjustment on a state's behalf, which for the 2021 benefit year includes all 50 states and the District of Columbia. The purpose of RADV is to ensure issuers are providing accurate and complete risk adjustment data to HHS, which is crucial to the purpose and proper functioning of the HHS-operated risk adjustment program. The HHS RADV program also ensures that risk adjustment transfers reflect verifiable actuarial risk differences among issuers, rather than risk score calculations that are based on poor data quality, thereby helping to ensure that the HHS-operated risk adjustment program assesses charges to issuers with plans with lower-than-average actuarial risk while making payments to issuers with plans with higher-than-average actuarial risk.

RADV consists of an initial validation audit and a second validation audit. Under § 153.630, each issuer of a risk adjustment covered plan must engage an independent initial validation auditor. The issuer provides demographic, enrollment, and medical record documentation for a sample of enrollees selected by HHS to the issuer's initial validation auditor for data validation. Each issuer's initial validation audit is followed by a second validation audit, which is conducted by an entity HHS retains to verify the accuracy of the findings of the initial validation audit. Set forth below are proposed amendments and clarifications to the RADV program that stem from issuer feedback and HHS's examination of results from during the first 2 pilot years and first transfer adjustment year of the program. None of the policy options discussed in the ''HHS Risk Adjustment Data Validation (HHS–RADV) White Paper'',[63] published on December 6th, 2019, preclude or supersede the proposals in this proposed rule.

a. Application of Risk Adjustment Data Validation Adjustments in Cases Where HCC Count is Low

Beginning with the 2019 benefit year RADV, we propose to amend the outlier identification process when an issuer has fewer HCCs within an HCC group than are necessary to determine statistical significance. Specifically, we propose not to consider as an outlier any issuer's failure rate for an HCC group in which that issuer has fewer than 30 HCCs recorded on the issuer's EDGE server. Under this proposed approach, an issuer with fewer than 30 HCCs recorded on its EDGE server in an HCC group would have its data included in the calculation of the overall national metrics, but would not have its risk score adjusted for that group, even if the magnitude of its failure rate appeared to otherwise be very large relative to other issuers. Such an issuer could still be considered an outlier, and have its risk score adjusted, in another HCC group in which it had at least 30 HCCs recorded.

In the 2019 Payment Notice,[64] to avoid adjusting all issuers' risk

[63] See *https://www.cms.gov/files/document/2019-hhs-risk-adjustment-data-validation-hhs-radv-white-paper.*

[64] 83 FR 16930.

adjustment transfers for expected variation and error, we finalized a proposal to evaluate material statistical deviation in data validation failure rates beginning with 2017 benefit year RADV. When an issuer's failure rate within a group of HCCs materially deviates from the mean of the failure rate for that HCC group, we apply the difference between the mean group failure rate and the issuer's calculated failure rate. If all failure rates in a state market risk pool do not materially deviate from the national mean failure rates, we do not apply any adjustments to issuers' risk scores for that benefit year in the respective state market risk pool.[65]

Consistent with the methodology finalized in the 2019 Payment Notice, for RADV for 2017 and 2018 benefit years, we currently calculate the data validation failure rate for each HCC in issuers' initial validation audit samples as:

$$FR^h = 1 - \frac{Freq_IVA^h}{Freq_EDGE^h}$$

Where:

$Freq_EDGE^h$ is the frequency of HCC code h occurring on EDGE, which is the number of sampled enrollees recording HCC code h on EDGE.

$Freq_IVA^h$ is the frequency of HCC code h occurring in initial validation audit results, which is the number of sampled enrollees with HCC code h on in initial validation audit results.

FR^h is the failure rate of HCC code h.

HHS then creates three HCC groups based on the HCC failure rates derived in the calculation above. These HCC groups are determined by first ranking all HCC failure rates and then dividing the rankings into three groups, weighted by total observations or frequencies, of that HCC across all issuers' initial validation audit samples, to assign each unique HCC in the initial validation audit samples to a high, medium, or low failure rate group with an approximately even number of observations in each group. That is, each HCC group may have an unequal number of unique HCCs, but the total observations in each group are approximately equal based on total observations of HCCs reflected in EDGE data for all issuers' initial validation audit sample enrollees, which prevents small sample sizes for an HCC group for any issuer.

HHS then compares each issuer's failure rate for each HCC group based on the number of HCCs validated in the initial validation audit, compared to the number of HCCs recorded on EDGE within that HCC group for the initial validation audit sample enrollees. The issuer's HCC group failure rate is compared to the weighted mean failure rate for that HCC group. We calculate an issuer's HCC group failure rate as:

$$GFR_i^G = 1 - \frac{Freq_IVA_i^G}{Freq_EDGE_i^G}$$

Where:

$Freq_EDGE_i^G$ is the number of HCCs in group G in the EDGE sample of issuer i.

$Freq_IVA_i^G$ is the number of HCCs in group G in the initial validation audit sample of issuer i.

GFR_i^G is i's group failure rate for the HCC group G.

We also calculate the weighted mean failure rate and the standard deviation of each HCC group as:

$$\mu^*(GFR^G) = 1 - \frac{\sum Freq_IVA_i^G}{\sum Freq_EDGE_i^G}$$

$$Sd(GFR^G) = \sqrt{\frac{\sum_i Freq_EDGE_i^G * \left(GFR_i^G - \mu(GFR^G)\right)^2}{\sum_i Freq_EDGE_i^G}}$$

Where:

$\mu(GFR^G)$ is the weighted mean of GFR_i^G of all issuers for the HCC group G weighted by all issuers' sample observations in each group.

$Sd(GFR^G)$ is the standard deviation of GFR_i^G of all issuers for the HCC group G.

If an issuer's failure rate for an HCC group falls outside the confidence interval for the weighted mean failure rate for the HCC group, the failure rate for the issuer's HCCs in that group is considered an outlier. We use a 1.96 standard deviation cutoff, for a 95 percent confidence interval, to identify outliers. To calculate the thresholds to classify an issuer's group failure rate as outliers or not, the lower and upper limits are computed as:

$LB^G = \mu(GFR^G) - sigma_cutoff * Sd(GFR^G)$

$UB^G = \mu(GFR^G) + sigma_cutoff * Sd(GFR^G)$

Where:

$sigma_cutoff$ is the parameter used to set the threshold for the outlier detection as the number of standard deviations away from the mean.

LB^G, UB^G are the lower and upper thresholds to classify issuers as outliers or not outliers for group G.

When an issuer's HCC group failure rate is an outlier, we reduce (or increase) each of the applicable initial validation audit sample enrollees' HCC coefficients by the difference between the outlier issuer's failure rate for the HCC group and the weighted mean failure rate for the HCC group. Specifically, this results in the sample enrollees' applicable HCC risk score components being reduced (or increased) by a partial value, or percentage, calculated as the difference between the outlier failure rate for the HCC group and the weighted mean failure rate for the applicable HCC group. The adjustment amount for outliers is the distance between issuer i's Group Failure Rate GFR_i^G and the weighted mean $\mu(GFR^G$ calculated as:

If $GFR_i^G > UB^G$ or $GFR_i^G < LB^G$:

Then $Flag_i^G$ = ''*outlier*'' and

$Adjustment_i^G = GFR_i^G - \mu(GFR^G)$

If $GFR_i^G \leq UB^G$ and $GFR_i^G \geq LB^G$:

Then $Flag_i^G$ = ''*not outlier*'' and

$Adjustment_i^G = 0$

Where:

$Flag_i^G$ is the indicator if issuer i's group failure rate for group G locates beyond a calculated threshold that we are using to classify issuers into ''outliers'' or ''not outliers'' for group G.

$Adjustment_i^G$ is the calculated adjustment amount to adjust issuer i's EDGE risk scores for all sampled HCCs in group G.

We then compute total adjustments and risk adjustment transfer error rates

[65] When an issuer is determined to be an outlier in an HCC group, the transfers for other issuers in the state market risk pool (including those who are not outliers in any HCC group) will also be adjusted due to the budget neutral nature of the HHS-operated risk adjustment program.

for each issuer based on the sums of the $Adjustment_i^G$.[66]

Although the failure rate and error estimation methodology described above are based on the number of HCCs within a sample, our sampling methodology samples individual enrollees and varies in size for issuers with fewer than 4,000 enrollees,[67] rather than sampling HCCs directly. This difference in unit of analysis between the error estimation methodology—which applies to all non-exempt RADV issuers, regardless of their size—and the sampling methodology may lead to fewer HCCs in an HCC group than are necessary to reliably determine, at the targeted precision and confidence levels, whether an issuer is an outlier—that is, whether an issuer is statistically different from the national (average) HCC failure rate, as defined by an unadjusted 95 percent confidence interval.

Standard statistical theorems[68] state that, as sample sizes increase, the sampling distribution of the means of those samples (in this case, the distribution of mean HCC group failure rates) will more closely approximate a normal distribution. Lower sample sizes are more likely to lead to non-normal distributions of sample summary statistics—for example, the means of multiple samples—if the distribution of the underlying population is non-normal. The divergence from a normally distributed distribution of sample means that can occur at lower sample sizes may result in violations of the assumptions of statistical testing, which may lead to the detection of more apparent outliers than would be desirable.

Taking all of these points into consideration, we conducted an analysis in which we simulated the selection of samples from an average issuer using progressively smaller HCC counts. By this process, we identified a threshold of 30 HCCs per sample of enrollees below which the implied alpha of our statistical tests for outliers was higher than 5 percent. Moreover, statistical practice often relies on a standard recommendation regarding the determination of sample size, which states that sample sizes below 30 observations are often insufficient to assume that the sampling distribution is normally distributed.[69]

Based on these findings, beginning with 2019 benefit year RADV, we propose to not consider as an outlier any issuer's failure rate for an HCC group in which that issuer has fewer than 30 HCCs. Such an issuer's data would be included in the calculation of national metrics for that HCC group, including the national mean failure rate, standard deviation, and upper and lower confidence interval bounds. In addition, this issuer may be considered an outlier in other HCC groups in which it has 30 or more HCCs. Under this proposal, the adjustment amount for outliers will continue to be the distance between issuer *i*'s Group Failure Rate GFR_i^G and the weighted mean $\mu(GFR^G)$, now calculated as:

If $GFR_i^G > UB^G$ or $GFR_i^G < LB^G$,
And if $Freq_EDGE_i^G \geq 30$:
Then $Flag_i^G$ = "*outlier*" and
$Adjustment_i^G = GFR_i^G - \mu(GFR^G)$
If $GFR_i^G \leq UB^G$ and $GFR_i^G \geq LB^G$,
Or if $Freq_EDGE_i^G$:
Then $Flag_i^G$ = "*not outlier*" and
$Adjustment_i^G = 0$

We are committed to monitoring and improving the RADV methodology as we gain experience with years for which we make transfer adjustments under the program, and believe that this proposed change will improve the precision and reliability of RADV results, while mitigating the burden on smaller issuers. We may explore additional methodological changes for future benefit years.

We solicit comments on this proposal.

b. Prescription Drugs for the 2019 Benefit Year Risk Adjustment Data Validation

We propose that the 2019 benefit year RADV will serve as a second pilot year for the purposes of prescription drug data validation, in addition to the 2018 benefit year RADV pilot for prescription drugs. This proposal is intended to give HHS and issuers more time and experience with the prescription drug data validation process before those results would be used to adjust risk scores and transfers. The proposed second pilot year is consistent with the two pilot years provided for the 2015 and 2016 benefit years of the HHS RADV program. This proposal is also responsive to issuer concerns that were previously expressed in comments to the 2020 Payment Notice.[70]

In the 2020 Payment Notice,[71] we finalized an approach to incorporate RXCs into RADV as a method of discovering materially incorrect EDGE server data submissions in a manner similar to how we address demographic and enrollment errors discovered during RADV. We also finalized an approach to pilot the incorporation of these drugs into the RADV process for 2018 benefit year RADV, and stated that RXC errors that we identified during 2018 benefit year RADV RXC pilot will not be used to adjust risk scores or transfers. We stated that we finalized this policy to treat the incorporation of RXCs into 2018 benefit year RADV as a pilot year to allow HHS and issuers to gain experience in validating RXCs before RXCs are used to adjust issuers' risk scores. Through continued analysis of this issue after publication of the 2020 Payment Notice, we have recognized that there may be more differences between validating HCCs and RXCs that need to be considered when incorporating RXCs into RADV than initially anticipated and that the metrics to validate a RXC are not the same as coding a HCC. A second pilot year for validation of RXCs provides additional time to examine these issues and any potential mitigating strategies (as may be necessary). Therefore, after further consideration, we are proposing a second pilot year (2019 benefit year) for RXC validation.

We solicit comments on this proposal.

[66] See, for example, the 2018 Benefit Year Protocols: PPACA HHS Risk Adjustment Data Validation, Version 7.0 (June 24, 2019) that are available at *https://www.regtap.info/uploads/library/HRADV_2018Protocols_070319_5CR_070519.pdf.*

[67] For issuers with fewer than 4,000 enrollees, the sample size varies according to a finite population correction (FPC) such that , $n_{adjusted} = n_{original} * FPC$, where $n_{adjusted}$ is the adjusted sample size and $n_{original}$ is the original sample size of 200 enrollees. The FPC is determined by the equation $FPC = (N - n_original)/N$, where N is the population size. By these formulae, if an issuer's adjusted sample size would be smaller than 50 enrollees, that issuer should sample either a minimum of 50 enrollees or their entire population of enrollees, whichever is smaller. See Ibid at 37.

[68] In other words, the Central Limit Theorem (CLT). For background regarding the CLT, see Ivo D. Dinov, Nicolas Christou, and Juana Sanchez. "Central limit theorem: New SOCR applet and demonstration activity." Journal of Statistics Education 16, no. 2 (2008). DOI: 10.1080/10691898.2008.11889560.

[69] For example, David C. Howell, "Hypothesis Tests Applied to Means" In *Statistical Methods for Psychology (8th Ed.),* 177–228. Belmont, CA: Wadsworth, 2010.

[70] See, for example, America's Health Insurance Plans comment on HHS Notice of Benefit and Payment Parameters for 2020 Proposed Rule, February 19, 2019, *https://www.regulations.gov/contentStreamer?documentId=CMS-2019-0006-23013&attachmentNumber=1&contentType=pdf,* and BlueCross BlueShield Association comment on HHS Notice of Benefit and Payment Parameters for 2020 Proposed Rule, February 19, 2019, *https://www.regulations.gov/contentStreamer?documentId=CMS-2019-0006-23345&attachmentNumber=1&contentType=pdf.*

[71] 84 FR 17454 at 17498 through 17503.

D. Part 155—Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act

1. Verification Process Related to Eligibility for Insurance Affordability Programs

a. Employer-sponsored Plan Verification

Strengthening program integrity with respect to subsidy payments in the individual market continues to be a top priority. Currently, Exchanges must verify whether an applicant is eligible for or enrolled in an eligible employer-sponsored plan for the benefit year for which coverage is requested using available data sources, if applicable, as described in § 155.320(d). For any coverage year that an Exchange does not reasonably expect to obtain sufficient verification data as described in § 155.320(d)(2)(i) through (iii), an alternate procedure applies. Specifically, Exchanges must select a statistically significant random sample of applicants and meet the requirements of § 155.320(d)(4)(i). For benefit years 2016 through 2019, Exchanges also could use an alternative process approved by HHS. We are exploring a new alternative approach to replace the current procedures in § 155.320(d)(4)(i), under which an Exchange may design its verification process based on the Exchange's assessment of risk for inappropriate eligibility or payment for APTC or CSRs.

HHS's experience conducting random sampling revealed that employer response rates to HHS's request for information were low. The manual verification process described in § 155.320(d)(4)(i) requires significant resources and government funds, and the value of the results ultimately does not appear to outweigh the costs of conducting the work because only a small percentage of sample enrollees have been determined by HHS to have received APTC/CSRs inappropriately. We believe an approach to verifying an applicant's attestation regarding access to an employer-sponsored plan should be rigorous, while posing the least amount of burden on states, employers, consumers, and taxpayers. Based on our experiences with random sampling methodology under § 155.320(d)(4)(i), HHS now believes that this methodology may not be the best approach for all Exchanges to assess the associated risk for inappropriate payment of APTC/CSRs. As such, HHS is currently conducting a study to (1) determine the unique characteristics of the population with offers of employer-sponsored coverage that meets minimum value and affordability standards, (2) compare premium and out-of-pocket costs for consumers enrolled in affordable employer-sponsored coverage to Exchange coverage, and (3) identify the incentives, if any, that drive consumers to enroll in Exchange coverage rather than coverage offered through their current employer. The results of this study, which HHS expects to be finalized in early 2020, will inform the risk assessment of potential inappropriate payments of APTC/CSRs to those with offers of affordable employer-sponsored coverage for Exchanges using the Federal eligibility and enrollment platform. HHS encourages State Exchanges to conduct similar research of their past and current enrolled populations in anticipation of this future rulemaking.

As HHS continues to explore the best options for verification of employer-sponsored coverage, we will not take enforcement action against Exchanges that do not perform random sampling as required by § 155.320(d)(4) for plan years 2020 and 2021. HHS will exercise such discretion in anticipation of receiving the results of the employer verification study described above and of the future changes discussed earlier in this preamble.

2. Eligibility Redetermination During a Benefit Year (§ 155.330)

a. Process for Voluntary Termination Upon a Finding of Dual Enrollment via Periodic Data Matching (PDM)

In accordance with § 155.330(d), Exchanges must periodically examine available data sources to determine whether enrollees in a QHP through an Exchange who are receiving APTC or CSRs have been determined eligible for or are enrolled in other qualifying coverage through Medicare, Medicaid, CHIP, or the Basic Health Program (BHP), if a BHP is operating in the service area of the Exchange. Individuals enrolled in one of these forms of MEC and Exchange coverage are referred to as dually enrolled consumers and are identified through periodic checks known as PDM.

Section 155.430(b)(1)(ii) requires an Exchange to provide an opportunity at the time of plan selection for an enrollee to choose to remain enrolled in QHP coverage or have their QHP coverage terminated if the Exchange finds that he or she has become eligible for or enrolled in 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, HHS added language to the single streamlined application generally used by the Exchanges using the Federal platform to allow consumers 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 periodic checks that the consumer has become eligible for or enrolled in other MEC. This consumer authorization to provide written consent for the Exchange to end QHP coverage is voluntary, as consumers may opt-in to or opt-out of permitting the Exchange to process a voluntary termination of QHP coverage if the consumers are found to be also enrolled in other MEC, via PDM. We note that the PDM operational processes described above pertain only to those Exchange enrollees receiving APTC/CSRs in accordance with § 155.330(d).

We further note that for plan year 2019, the Exchanges using the Federal platform will continue to end QHP coverage or subsidies for Medicare PDM only; terminations of Exchange coverage based on consumer pre-authorization resulting from Medicaid/CHIP PDM will be implemented at a time deemed appropriate by CMS to ensure the accuracy of the Medicaid/CHIP data before it is utilized for Exchange coverage terminations. Additionally, because the Medicaid/CHIP population may become eligible or ineligible for Medicaid/CHIP throughout a plan year as eligibility for the program is directly tied to fluctuations in income, HHS will continue to evaluate the best manner by which to implement this process for Medicaid/CHIP PDM to ensure that Exchange enrollees do not experience unnecessary gaps in coverage. Similarly, we expect that the two State Exchanges that operate their own eligibility and enrollment platform and that currently offer BHP coverage—New York and Minnesota—consider adding the option for consumer pre-authorization of terminations of Exchange coverage resulting from BHP PDM.

Given that enrollees may permit the Exchanges to terminate their QHP enrollment upon finding that they are dually eligible for or enrolled in other MEC, in accordance with § 155.330(d), discussed above, we are proposing to amend § 155.330(e)(2)(i)(D) to provide that Exchanges need not redetermine eligibility for APTC or CSRs for enrollees who (1) are found to be dually enrolled in QHP coverage and MEC consisting of Medicare, Medicaid/CHIP, or, if applicable, the BHP, (2) have not responded to the Exchange notice to provide updated information within 30-days, as required by § 155.330(e)(2)(i) and (e)(3) have provided written consent to the Exchange to act to end

their QHP coverage via PDM in the event of dual enrollment or eligibility. We believe that this revision would ensure more efficient Exchange operations and would make clear that a voluntary QHP termination conducted as part of PDM under § 155.430(b)(1)(ii) follows the same process as other enrollee-initiated voluntary terminations of QHP coverage. Furthermore, we believe these changes would support HHS's program integrity efforts by helping to ensure that APTC or CSRs are not paid inappropriately to those enrollees who are ineligible to receive subsidies. Finally, we believe this change would also ensure more efficient termination of unnecessary or duplicative coverage for consumers who have opted to have their coverage terminated in such circumstances.

We seek comment on this proposal.

b. Effective Date for Termination via Death PDM

In accordance with § 155.330(e)(2), Exchanges must periodically check available data sources to identify Exchange enrollees who may have become deceased during a plan year and subsequently terminate QHP coverage after following the process outlined at § 155.330(e)(2)(i) and following a redetermination of eligibility in accordance with § 155.330(e)(1).

In late 2019, Exchanges using the Federal platform will conduct periodic checks for enrollees who are enrolled in QHP coverage and may have become deceased during plan year 2019. Additionally, the Exchange will follow the termination process outlined at § 155.430(d)(7) that requires the Exchange to terminate QHP coverage retroactively to the date of death when the Exchange initiates a termination due to the death of an enrollee during a plan year. As such, we are proposing to further amend § 155.330(e)(2)(i)(D) by adding new language that clarifies when the Exchange identifies deceased enrollees via PDM, specifically for enrollees who do not respond or contest the updated information within the 30-day period specified in paragraph (e)(2)(i)(B), the Exchange will follow the process outlined in § 155.430(d)(7) and terminate coverage retroactively to the date of death, without a need to redetermine the eligibility of the deceased enrollee. We believe that these changes clarify the Exchange's operations when conducting periodic checks for deceased enrollees as part of PDM and would serve to strengthen the integrity of the individual market by mitigating the risk of unnecessary funds leaving the Treasury in the form of APTC or CSRs for enrollees identified as deceased during a plan year.

We seek comment on this proposal.

3. Automatic Re-Enrollment Process

In the proposed rule titled, ''Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2020'' (84 FR 227) (proposed 2020 Payment Notice) we noted that enrollees in plans offered through Exchanges using the Federal platform can take action to re-enroll in their current plan, can take action to select a new plan, or can take no action and be re-enrolled in their current plan (or if their current plan is no longer available, a plan selected under a hierarchy designed to identify a plan that is similar to their current plan).

Since the program's inception, Exchanges using the Federal platform have maintained an automatic re-enrollment process which generally continues enrollment for current enrollees who do not notify the Exchange of eligibility changes or take action to actively select the same or different plan. Automatic re-enrollment significantly reduces issuer administrative expenses, makes enrolling in health insurance more convenient for the consumer, and is consistent with general health insurance industry practice. In the open enrollment period for 2019 coverage, 1.8 million people in FFE and SBE–FP states were automatically re-enrolled in coverage, including about 270,000 persons who were enrolled in a plan with zero premium after application of APTC.

We continue to believe that while allowing auto-re-enrollment was designed to be consistent with broader industry practices, this market is different because most current enrollees receive significant government subsidies, making them potentially less sensitive to premiums and premium changes.

The proposed 2020 Payment Notice sought comment on automatic re-enrollment processes and capabilities, as well as additional policies or program measures that would reduce eligibility errors and potential government misspending for potential action in future rulemaking applicable not sooner than plan year 2021. As we noted in the final rule, ''Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2020'' (84 FR 17454) (final 2020 Payment Notice), commenters unanimously supported retaining automatic re-enrollment processes. Supporters cited benefits such as the stabilization of the risk pool due to the retention of lower-risk enrollees who are least likely to actively re-enroll, the increased efficiencies and reduced administrative costs for issuers, the reduction of the numbers of uninsured, and lower premiums. Commenters stated that existing processes, such as eligibility redeterminations, electronic and document-based verification of eligibility information, PDM, and PTC reconciliations, are sufficient safeguards against potential eligibility errors and increased Federal spending.

We also noted in the final 2020 Payment Notice that we would continue to explore options to improve Exchange program integrity. To that end, we remain concerned that automatic re-enrollment may lead to incorrect expenditures of APTC, some of which cannot be recovered through the reconciliation process due to statutory caps. We believe that there may be particular risk associated with enrollees who are automatically re-enrolled with APTC that cover the entire plan premium, since such enrollees do not need to make payments to continue coverage.

As such, we solicit comment on modifying the automatic re-enrollment process such that any enrollee who would be automatically re-enrolled with APTC that would cover the enrollee's entire premium would instead be automatically re-enrolled without APTC. This would ensure that any enrollee in this situation would need to return to the Exchange and obtain an updated eligibility determination prior to having APTC paid on his or her behalf for the upcoming year. We also request comments on a variation on this approach that we are considering finalizing in a final rule, where APTC for this population would be reduced to a level that would result in an enrollee premium that is greater than zero dollars, but not eliminated entirely. This variation would be designed to ensure a consumer's active involvement in re-enrollment, because any enrollment in a plan with an enrollee premium that is greater than zero would require the enrollee to take an action by making the premium payment to effectuate or maintain coverage, or else face eventual termination of coverage for non-payment. We would also appreciate commenters' perspectives on whether there are other approaches that could help limit risk in connection with automatic re-enrollment into plans with APTC that cover the entire plan premium. If we were to implement such a change, we would conduct consumer outreach and education alerting consumers to the new process and emphasizing the importance of

returning to the Exchange during open enrollment to update their application to ensure that their income and other information is correct and that they are still in the best plan for their needs. This outreach could include fact sheets, email or mail outreach depending on preference, and education among issuers, agents, brokers, Navigators, and other assisters.

We note that under current regulations at § 155.335, each Exchange has some flexibility to define its own annual redetermination procedures. We solicit comment on whether the approaches discussed above should be adopted only for Exchanges using the Federal platform, or whether they should also be required for State Exchanges that operate their own eligibility and enrollment platforms.

On December 20, 2019, section 1311(c) of PPACA was amended to require the Secretary to establish a process to re-enroll persons enrolled in QHP coverage through an FFE during the 2020 plan year who do not actively re-enroll for plan year 2021 and who do not elect to disenroll for 2021 coverage during the open enrollment period for 2021 coverage in a QHP for the 2021 plan year.[72] We believe the current auto-reenrollment process under § 155.335(j) (that was in place during the 2020 open enrollment period and prior years) aligns with this requirement.

4. Enrollment of Qualified Individuals Into QHPs (§ 155.400)

For a discussion of the proposals related to prospective binder payment rules at § 155.400(e)(1)(i) and (ii), and retroactive binder payment rules at § 155.400(e)(1)(iii) and (iv), please see the preamble to § 155.420 of this proposed rule.

5. Special Enrollment Periods (§ 155.420)

a. Exchange Enrollees Newly Ineligible for Cost-Sharing Reductions

In 2017, the HHS Market Stabilization Rule preamble explained that HHS would move forward with a pre-enrollment verification of eligibility for certain special enrollment periods in all states served by the Federal platform. This practice was part of an effort to stabilize the individual market, and addressed concerns that allowing individuals to enroll in coverage through a special enrollment period without electronic or document-based verification could negatively affect the individual market risk pool by allowing individuals to newly enroll in coverage based on health needs during the coverage year as opposed to enrolling during open enrollment and maintaining coverage for a full year.

To address related concerns that Exchange enrollees were utilizing special enrollment periods to change plan metal levels based on ongoing health needs during the coverage year, negatively affecting the individual market risk pool, the Market Stabilization Rule also set forth requirements at § 155.420(a)(4) to limit Exchange enrollees' ability to change to a QHP of a different metal level when they qualify for, or when a dependent(s) newly enrolls, in Exchange coverage through most types of special enrollment periods.[73]

Generally, § 155.420(a)(4) provides that enrollees who newly add a dependent through most types of special enrollment periods may add the dependent to their current QHP or enroll the dependent in a separate QHP,[74] and that if an enrollee qualifies for certain special enrollment periods, the Exchange must allow the enrollee and his or her dependents to change to another QHP within the same level of coverage (or one metal level higher or lower, if no such QHP is available), as outlined in § 156.140(b). To ensure that individuals who are newly eligible for CSRs can access this benefit, § 155.420(a)(4)(ii) provides that if an enrollee and his or her dependents become newly eligible for CSRs in accordance with paragraph (d)(6)(i) or (ii) of this section and are not enrolled in a silver-level QHP, the Exchange must allow them to change to a silver-level QHP if they elect to change their QHP enrollment so that they may access CSRs they are eligible for.

However, there is no corresponding provision to permit enrollees and their dependents who become newly ineligible for CSRs in accordance with § 155.420(d)(6)(i) or (ii), and who are enrolled in a silver-level QHP, to change to a QHP of a different metal level in order to account for their change in financial assistance. Instead, if they wish to change plans, § 155.420(a)(4)(iii)(A) limits them to changing to another QHP within the same level of coverage (or one metal level higher or lower, if no such QHP is available) because § 155.420(a)(4)(ii) does not include them and the provision at § 155.420(a)(4)(iii) that excepts the special enrollment period triggering events at § 155.420(d)(6)(i) and (ii) from this limitation only applies to individuals becoming newly eligible for CSRs, not those becoming newly ineligible for CSRs. Since the implementation of § 155.420(a)(4) in states served by the Federal platform, HHS has received questions and concerns about this issue from HHS Navigators and other enrollment assisters, as well as from agents and brokers, based on their experiences with consumers who, upon losing eligibility for CSRs, are unable to afford cost sharing for their current silver-level QHP and therefore wish to change to a lower-cost QHP in order to maintain their coverage.

Therefore, we propose to redesignate § 155.420(a)(4)(ii) as (a)(4)(ii)(A) and add a new § 155.420(a)(4)(ii)(B) in order to allow enrollees and their dependents who become newly ineligible for CSRs in accordance with paragraph (d)(6)(i) or (ii) of this section, and are enrolled in a silver-level QHP, to change to a QHP one metal level higher or lower if they elect to change their QHP enrollment in an Exchange. We further propose to modify § 155.420(a)(4)(iii) to include § 155.420(d)(6)(i) and (ii) for becoming newly ineligible for CSRs in the list of trigger events excepted from the limitations at § 155.420(a)(3)(iii). This proposal may help impacted enrollees' ability to maintain continuous coverage for themselves and for their dependents in spite of a potentially significant change to their out of pocket costs. For example, an enrollee impacted by an increase to his or her monthly premium payment could change to a bronze-level plan, while an enrollee who has concerns about higher copayment or co-insurance cost sharing requirements could change to a gold-level plan. HHS requests comment on this proposal. Current regulations at 45 CFR 147.104(b)(2)(iii) establish that plan category limitations do not apply off-Exchange. Therefore, in the case of an individual who loses eligibility for CSRs and wishes to use his or her special enrollment period to purchase coverage

[72] Further Consolidated Appropriations Act, 2020, Division N, title I, subtitle F, section 608 (Pub. L. 116–94: December 20, 2019, enacting H.R. 1865).

[73] These limitations do not apply to enrollees who qualify for certain types of special enrollment period, including those under §§ 155.420(d)(4), (8), (9), (10), (12), and (14). While special enrollment periods under §§ 155.420(d)(2)(i) and (d)(6)(i) and (ii) are excepted from § 155.420(a)(4)(iii), § 155.420(a)(4)(i) and (ii) apply other plan category limitations to them. See also the proposals about applicability of plan category limitations to certain special enrollment periods in this section of this proposed rule.

[74] Section 155.420(a)(4)(i) and (a)(4)(iii)(B) also provide that alternatively, if the QHP's business rules do not allow the dependent to enroll, the Exchange must allow the enrollee and his or her dependents to change to another QHP within the same level of coverage (or one metal level higher or lower, if no such QHP is available), as outlined in 45 CFR 156.140(b).

off-Exchange, he or she is not limited to any specific metal level(s) of coverage.

We seek comments on these proposals.

b. Special Enrollment Period Limitations for Enrollees Who Are Dependents

As discussed in the preceding section of this preamble, per § 155.420(a)(4)(i) and (a)(4)(iii)(B), enrollees who newly add a dependent through most types of special enrollment periods may add the dependent to their current QHP or enroll the dependent in a separate QHP.[75] Specifically, § 155.420(a)(4)(i) establishes that if an enrollee has gained a dependent in accordance with § 155.420(d)(2)(i), the Exchange must allow the enrollee to add the dependent to his or her current QHP, or, if the current QHP's business rules do not allow the dependent to enroll, the Exchange must allow the enrollee and his or her dependents to change to another QHP within the same level of coverage (or one metal level higher or lower, if no such QHP is available), as outlined in § 156.140(b), or, at the option of the enrollee or dependent, enroll the dependent in any separate QHP.[76] Per § 155.420(a)(4)(iii)(B), if a dependent qualifies for a special enrollment period not related to becoming a new dependent, and an enrollee is adding the dependent to his or her QHP, the Exchange must allow the enrollee to add the dependent to his or her current QHP; or, if the QHP's business rules do not allow the dependent to enroll in that plan, the Exchange must allow the enrollee and his or her dependents to change to another QHP within the same level of coverage (or one metal level higher or lower, if no such QHP is available), as outlined in § 156.140(b), or enroll the new qualified individual in a separate QHP. Finally, § 155.420(a)(4)(iii)(A) requires that if an enrollee qualifies for certain special enrollment periods, the Exchange must allow the enrollee and his or her dependents to change to another QHP within the same level of coverage (or one metal level higher or lower, if no such QHP is available), as outlined in § 156.140(b).

Per § 155.420(a)(2), a dependent refers to any individual who is or who may become eligible for coverage under the terms of a QHP because of a relationship to a qualified individual or enrollee. The current rules do not explicitly address all situations in which a current enrollee is a dependent of a qualified individual who is newly enrolling in Exchange coverage through a special enrollment period. For example, the rules do not currently explicitly address what limitations apply when a mother loses her self-only employer-sponsored coverage, thereby gaining eligibility for a special enrollment period for loss of MEC, and seeks to be added as an enrollee to the Exchange coverage in which her two young children are currently enrolled. Applying the limitations at § 155.420(a)(4) to such circumstances is consistent with HHS's goals of establishing equivalent treatment for all special enrollment period eligible qualified individuals, and preventing enrollees from changing plans in the middle of the coverage year based on ongoing or newly emerging health issues. In fact, preamble language from the 2017 Market Stabilization Proposed Rule explains that the requirement at § 155.420(a)(4)(iii) would extend to enrollees who are on an application where a new applicant is enrolling in coverage through a special enrollment period, using general terms to convey that restrictions should apply to enrollees and newly-enrolling individuals regardless of whether the new enrollee is a dependent.[77]

Therefore, we are proposing to apply the same limitations to dependents who are currently enrolled in Exchange coverage that applies to current, non-dependent Exchange enrollees by adding a new § 155.420(a)(4)(iii)(C) to establish that the Exchange must allow a qualified individual who is not an enrollee, who qualifies for a special enrollment period and has one or more dependents who are enrollees, to add him or herself to a dependent's current QHP; or, per similar existing rules at § 155.420(a)(4)(iii)(B), if the QHP's business rules do not allow the qualified individual to enroll in such coverage, to enroll with his or her dependent(s) in another QHP within the same level of coverage (or one metal level higher or lower, if no such QHP is available), as outlined in § 156.140(b), or enroll him or herself in a separate QHP.

Proposed § 155.420(a)(4)(iii)(C) would be parallel to § 155.420(a)(4)(iii)(B), which applies plan category limitations to current enrollees whose dependent(s) qualify for a special enrollment period to newly enroll in coverage, and specifies that the Exchange must permit the enrollee to change plans in order to add the dependent when the enrollee's current plan's business rules do not permit adding the dependent, notwithstanding whether the enrollee also qualifies for a special enrollment period. In other words, proposed § 155.420(a)(4)(iii)(C) would apply plan category limitations in allowing currently enrolled dependents who are enrolled in a plan that has business rules that do not permit the non-dependent to be added to the enrollment, to change plans in order to enroll together with the non-dependent.

Current regulations at § 147.104(b)(2)(iii) establish that § 155.420(a)(4) does not apply off-Exchange. Therefore, the existing and proposed requirements and restrictions of that section, including the proposed requirements that would require an issuer to newly enroll a non-dependent household member(s) who qualifies for a special enrollment period, with currently enrolled dependents, and the plan category limitations associated with that requirement, do not apply off-Exchange. However, our regulations do not prohibit issuers off-Exchange from newly enrolling with currently enrolled dependents a non-dependent household member(s) who qualifies for a special enrollment period, or from newly enrolling dependent household members who qualify for a special enrollment period with currently enrolled individuals of whom they are a dependent, to the extent consistent with applicable state law.

We seek comments on these proposals.

c. Special Enrollment Period Prospective Coverage Effective Dates

Under regular special enrollment period effective date rules at § 155.420(b)(1), the Exchange must ensure a coverage effective date of the first day of the following month for individuals who select a QHP between the 1st and the 15th day of any month. The Exchange must ensure a coverage effective date of the first day of the second following month for individuals who select a QHP between the 16th and the last day of any month. Under these rules, it could take as many as 47 days from plan selection to effectuate coverage under a special enrollment period (that is, from the 16th of a month to the first of the next following month; or for example, from July 16 to September 1). In the Exchanges using the Federal platform, these rules apply

[75] Section 155.420(a)(4)(i) and (a)(4)(iii)(B) also provide that alternatively, if the QHP's business rules do not allow the dependent to enroll, the Exchange must allow the enrollee and his or her dependents to change to another QHP within the same level of coverage (or one metal level higher or lower, if no such QHP is available), as outlined in 45 CFR 156.140(b).

[76] Per § 155.420(a)(2), ''dependent'' has the same meaning as it does in 26 CFR 54.9801–2, referring to any individual who is or who may become eligible for coverage under the terms of a QHP because of a relationship to a qualified individual or enrollee.

[77] 82 FR at 10986.

to special enrollment periods provided under § 155.420(d)(3), (d)(6)(i), (ii), (iv), and (v), and (d)(7), (8), (10), and (12). Under other special enrollment periods, such as those under § 155.420(d)(4), (5), and (9), in the Exchanges using the Federal platform, the consumer is generally offered a choice of regular effective dates that would apply under § 155.420(b)(1), or an effective date that is retroactive to the date that would have applied if not for the harm to the individual per the trigger event. In addition, under § 147.104(b)(5), the coverage effective date rules in § 155.420(b) apply to each of those special enrollment periods to the extent they apply off-Exchange, as specified in § 147.104(b)(2)(i).

These regular special enrollment period effective date rules under § 155.420(b)(1), along with the initial open enrollment period effective date rules under § 155.410(c), were originally designed to provide issuers several weeks to collect binder payments, mail identification cards, and complete other administrative actions prior to the policy's start date. However, all issuers already effectuate coverage and process changes in circumstance using first-of-the-month rules. In 2017, issuers processed 88 percent of special enrollment periods for individuals newly enrolling in coverage through Exchanges using the Federal platform under accelerated or retroactive effective date rules.[78] HHS internal data on enrollments through Exchanges using the Federal platform in 2018 indicates that issuers processed a majority of changes in circumstances (including those resulting in special enrollment periods) under accelerated or faster effective date rules. Because issuers in Exchanges using the Federal platform routinely effectuate coverage on a shorter timeframe, we do not anticipate that this change would be difficult for issuers to implement.

Additionally, as a program integrity measure, we believe any changes in enrollment related to changes in eligibility for coverage through the Exchange or for insurance affordability programs should be implemented as soon as practicably possible. This is particularly important for consumers with special enrollment periods based on changes in eligibility for APTC under § 155.420(d)(6)(i) and (ii), which currently follow regular effective date rules in the Exchanges using the Federal platform. Therefore, we propose that in the Exchanges using the Federal platform, special enrollment periods currently following regular effective date rules would instead be effective on the first of the month following plan selection. Specifically, we propose to amend § 155.420(b)(3) for improved clarity and to specify how Exchanges using the Federal platform would implement this proposal.

This proposal would permit Exchanges, including those using the Federal platform, and issuers to more rapidly implement changes in QHP enrollment, particularly those related to changes in financial assistance eligibility, and would standardize prospective special enrollment period effective dates across the Exchanges using the Federal platform. It would also help reduce consumer confusion regarding different effective date rules and minimize gaps in coverage. For example, under current rules, a consumer in off-Exchange coverage who is eligible for a special enrollment period because she gains access to new QHPs as a result of a permanent move under § 155.420(d)(7) would be subject to regular effective date rules under § 155.420(b)(1) (because the Exchanges using the Federal platform have not adopted the option under § 155.420(c)(2) to provide advanced availability of the special enrollment period under § 155.420(d)(7)). This means that if she moved out of her current plan's service area on May 10 and selected a QHP on May 16, the FFE would set an effective date for her new coverage of July 1; she could therefore be with limited coverage in her new service area—or no coverage, if her current issuer terminates her coverage based on her moving outside the issuer's service area—for almost 2 months. Instead, under our proposal to modify prospective special enrollment period effective dates so that coverage is effective the first of the month following plan selection, this enrollee would have coverage beginning June 1, minimizing any unintended gap in coverage.

This proposal would also allow State Exchanges the flexibility to retain current special enrollment period regular effective date rules or to adopt the approach that would be taken in the Exchanges using the Federal platform. State Exchanges already have flexibility under § 155.420(b)(3) to effectuate coverage in a shorter timeframe if their issuers agree. Several State Exchanges have already transitioned to faster than regular effective date rules for special enrollment periods. Under our proposed changes, State Exchanges could retain their current effective date rules or implement faster ones without needing to demonstrate issuer concurrence.

By reference, the effective-date-of-coverage rules at § 155.420(b) apply off-Exchange, under § 147.104(b)(5). This proposal would continue to provide the applicable state authority with flexibility regarding the options for effective dates under current rules for off-Exchange coverage.

We note that many special enrollment periods already have effective date rules that provide Exchanges and/or qualified individuals or enrollees with discretion regarding effective dates, regardless of issuer concurrence. Under § 155.420(b)(2)(i), (iv), and (v), Exchanges and/or qualified individuals or enrollees have the option to apply regular effective date rules or provide an effective date on the first of the month following plan selection for special enrollment periods provided under § 155.420(d)(1) and (3), (d)(6)(iii) and (iv), and (d)(7), and certain triggering events under (d)(2). Under § 155.420(b)(2)(iii), Exchanges have discretion to ensure that coverage is effective on an appropriate date based on the circumstances of the special enrollment period, for special enrollment periods provided under § 155.420(d)(4), (5), (9), (10), (12), and (13). Since regulations already allow Exchanges and/or qualified individuals or enrollees discretion regarding which effective date rules to use for many special enrollment periods, we do not believe issuers will experience difficulty implementing this proposal.

This proposal would also help reduce confusion around binder payment deadlines, since these deadlines depend on a policy's coverage effective date. Accordingly, we propose to make updates to binder payment deadlines in § 155.400(e)(1)(ii) to ensure that special enrollment periods using effective dates under revised § 155.420(b)(3) would also be subject to the same binder payment rules as other special enrollment periods that are effective the first of the month following plan selection. Because the Exchanges using the Federal platform would no longer be following regular coverage effective dates for special enrollment periods under § 155.420(b)(1), we also propose to remove reference to that provision in § 155.400(e)(1)(i) and to replace ''regular effective dates'' in § 155.400(e)(1)(iii) with a reference to § 155.420(b)(3). This latter change would provide that in the Exchanges using the Federal platform, coverage would be effective on the first of the month following plan selection for consumers who are eligible for retroactive coverage but just pay 1 month's premium and receive only

[78] Centers for Medicare & Medicaid Services, The Exchanges Trends Report (July 2, 2018), available at *https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/2018-07-02-Trends-Report-3.pdf.*

prospective coverage. This change would help ensure that prospective effective dates across the Exchanges using the Federal platform are streamlined under one rule.

We seek comments on these proposals.

d. Special Enrollment Period Retroactive Coverage Effective Dates

Section 155.400(e)(1)(iii) states that for coverage to be effectuated under retroactive special enrollment period effective dates, as provided for in § 155.420(b)(2), a consumer's binder payment must include the premium due for all months of retroactive coverage through the first prospective month of coverage. If only the premium for 1 month of coverage is paid, only prospective coverage should be effectuated, in accordance with regular effective dates. As an example, a consumer has a special enrollment period that is not subject to verification with a March 1 effective date, but the enrollment is delayed due to an Exchange error. The issuer does not receive the transaction until April 15. Under this rule, to effectuate retroactive coverage beginning March 1, the issuer must receive premiums for March, April, and May. If the issuer only receives a premium payment for 1 or 2 months of coverage, it must effectuate only prospective coverage beginning May 1. This rule was designed to allow consumers who might have difficulty paying for retroactive coverage through a special enrollment period or a favorable eligibility appeal decision to enroll with prospective coverage only.[79]

The Market Stabilization Rule added a different set of binder payment rules at § 155.400(e)(1)(iv) for retroactive effective dates after an enrollment has been delayed due to a prolonged special enrollment period verification under § 155.420(b)(5).[80] If a consumer's enrollment is delayed until after the verification of the consumer's eligibility for a special enrollment period, and the assigned effective date would require the consumer to pay 2 or more months of retroactive premium to effectuate coverage or avoid cancellation, the consumer has the option to choose a coverage effective date that is no more than 1 month later than had previously been assigned. If the consumer does not move her effective date, her binder payment would be the premium due for all months of retroactive coverage through the first prospective month of coverage, consistent with other binder payment rules. For instance, if the consumer's special enrollment period in the above example were subject to verification, and, as above, the March 1 effective date were pended until April 15 due to pre-enrollment verification, the consumer's only effective date options require payment for retroactive months, unlike the previous example. To effectuate coverage under the special enrollment period verification rules in §§ 155.400(e)(1)(iv) and 155.420(b)(5), she could either pay the premiums for March, April, and May; or move her effective date forward only 1 month to April 1, and must still pay for April and May coverage.

HHS established the special enrollment period verification effective date rules in response to issuer concerns that delays in special enrollment period verification and an un-checked ability of consumers to move their effective date later (as contemplated in the original version of that paragraph in the 2018 Payment Notice) would result in adverse selection, with healthier enrollees requesting a later effective date and sicker enrollees keeping the original retroactive date. However, we have been able to manage our operational processes so that delays in special enrollment period verification processing have not materialized. In 2017, HHS averaged a response time of 1 to 3 days to review consumer-submitted special enrollment period verification documents and provide consumers a response.[81] The response time in 2018 was substantially similar. Additionally, in 2018 and 2019, CMS resolved over 800,000 special enrollment period verifications, and fewer than 300 enrollees subject to special enrollment period verification have requested to move forward their effective date under §§ 155.400(e)(1)(iv) and 155.420(b)(5). This indicates that these rules are largely unnecessary.

Therefore, we propose to eliminate the option to move forward by no more than 1 month the effective date of enrollments that have been pended due to special enrollment period verification, aligning the retroactive effective date and binder payment rules so that any consumer who is eligible to receive retroactive coverage, whether due to a special enrollment period, a favorable eligibility appeal decision, or a special enrollment period verification processing delay, has the option to pay the premium due for all months of retroactive coverage through the first prospective month of coverage, or only the premium for 1 month of coverage and receive prospective coverage only. Specifically, we propose to eliminate § 155.420(b)(5).

We also propose to remove the corresponding cross-reference at § 155.420(b)(1) and the special enrollment period verification binder payment rule at § 155.400(e)(1)(iv). Finally, we propose to amend § 155.400(e)(1)(iii) to state more explicitly that any consumer who can effectuate coverage with a retroactive effective date, including those whose enrollment is delayed until after special enrollment period verification, also has the option to effectuate coverage with the applicable prospective coverage date by choosing to only pay for 1 month of coverage by the applicable deadline, notwithstanding the retroactive effective date that the Exchange otherwise would be required to ensure.

Standardizing a single binder payment rule for retroactive effective dates would improve operational efficiency for issuers and Exchanges using the Federal platform. Issuers have indicated that it is difficult to determine the appropriate binder payment rule to apply to an enrollment with a retroactive effective date when they receive fewer than all retroactive months of premium, as they need to discern whether the consumer's eligibility stems from an appeal, a non-verified special enrollment period, or a special enrollment period with a delay in verification processing. For example, if on March 5, an issuer receives a plan selection for a mother and child enrolling through an adoption special enrollment period with a January 10 effective date, and neither the mother nor child are current enrollees with the issuer, the issuer has no way of knowing whether this transaction was subject to verification. If the issuer in this case only receives 1 month's premium, it would not know whether to cancel the enrollment or effectuate prospective-only coverage. This change would simplify issuer operations by eliminating that complexity.

Implementing a single set of binder payment rules would help ensure all enrollees (including those subject to special enrollment period verification) can access affordable coverage without being required to pay for months of retroactive coverage that may be prohibitively expensive, and during

[79] If the enrollee pays some, but not all, months of retroactive premium due (two months in the example above), then the issuer would effectuate coverage prospectively. See 2017 Payment Notice, 81 FR at 12272. The issuer could then apply any amount paid in excess of 1 month's premium but less than the full amount needed to effectuate retroactive coverage to the next month's premium, or refund the excess amount to the enrollee, at the enrollee's request.

[80] Market Stabilization Rule, 82 FR at 18346.

[81] Centers for Medicare & Medicaid Services, The Exchanges Trends Report (July 2, 2018), available at *https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/2018-07-02-Trends-Report-3.pdf.*

which most providers would have insisted on direct payment in order to provide health care services.

Finally, by reference, the effective-date-of-coverage rules at § 155.420(b) apply off-Exchange, in accordance with § 147.104(b)(5). Therefore, our proposal to remove § 155.420(b)(5) would also remove this requirement off-Exchange.

We seek comments on these proposals, including alternative approaches to streamlining retroactive effective date rules.

e. Enrollees Covered by a Non-Calendar Year Plan Year QSEHRA

The HRA rule allows employers to offer HRAs and other account-based group health plans integrated with individual health insurance coverage or Medicare Part A and B or Part C, if certain conditions are satisfied.[82] These are called individual coverage HRAs. Among other conditions, an individual coverage HRA must require that the participant and any covered dependent(s) be enrolled in individual health insurance coverage (either on or off-Exchange) or Medicare Part A and B or Part C, for each month that they are covered by the individual coverage HRA.[83]

The HRA rule provides a special enrollment period to employees and dependents who newly gain access to an individual coverage HRA to enroll in individual health insurance coverage, or to change to other individual health insurance coverage in order to maximize the use of their individual coverage HRA.[84] In addition, because employees and dependents with a qualified small employer health reimbursement arrangement (QSEHRA)[85] generally must be enrolled in MEC,[86] and one category of MEC is individual health insurance coverage, the HRA rule provides that individuals who are newly provided a QSEHRA also qualify for the new special enrollment period.[87]

The HRA rule also solicited and addressed public comments on whether the new special enrollment period should be available on an annual basis at the beginning of each new plan year of the employee's individual coverage HRA or QSEHRA, particularly if the new plan year is not aligned with the calendar year.[88] In the preamble to the HRA rule, HHS stated that it had determined that individual coverage HRA or QSEHRA enrollees should have the option to re-evaluate their individual health insurance coverage for each new HRA plan year, regardless of whether the HRA is provided on a calendar year basis. Therefore, while the HRA rule did not make the new individual coverage HRA and QSEHRA special enrollment period available on an annual basis, it clarified that those who are enrolled in an individual coverage HRA with a non-calendar year plan year—that is, the HRA's plan year begins on a day other than January 1—will be eligible annually for the special enrollment period under existing regulations at § 155.420(d)(1)(ii), because individual coverage HRAs are group health plans. While the HRA rule did not make any changes to § 155.420(d)(1)(ii), the preamble of the rule expressed HHS's intention to treat a QSEHRA with a non-calendar year plan year as a group health plan for the limited purpose of qualifying for this special enrollment period, and to codify this interpretation in future rulemaking.[89]

As HHS explained in the HRA rule, we believe making the non-calendar year plan year special enrollment period available annually to individual market enrollees with a non-calendar year plan year individual coverage HRA or QSEHRA appropriately provides employers with flexibility to offer individual coverage HRAs or provide QSEHRAs on a 12-month cycle that meets their needs. The expansion also allows employees and their dependents the flexibility to re-assess their individual health insurance coverage options at the same time that the terms of their individual coverage HRA or QSEHRA may change. We believe accessing this non-calendar year plan year special enrollment period may be important to some individuals, including those who wish to change their individual health insurance plan due to a change in the terms of their individual coverage HRA or QSEHRA. However, we anticipate that most individuals with an individual coverage HRA or a QSEHRA would not seek to change their individual coverage outside of the individual market open enrollment period when their new HRA plan year starts since doing so would generally cause their accumulators to reset. Therefore, we do not anticipate significant additional administrative burden for issuers or a significant increase in the potential for adverse selection in the individual market associated with this special enrollment period. In addition, because the non-calendar year plan year special enrollment period is subject to plan category limitations for Exchange enrollees, HHS determined these limitations will further mitigate the potential risk of adverse selection in the Exchanges.

As discussed in the HRA rule preamble,[90] under section 2791 of the PHS Act, section 733 of the ERISA, and section 9831 of the Code, QSEHRAs are not group health plans[91] and so employees and their dependents with a QSEHRA do not qualify for the non-calendar year special enrollment period as currently written. Therefore, we propose to amend § 155.420(d)(1)(ii) to codify that individuals and dependents who are provided a QSEHRA with a non-calendar year plan year may qualify for this special enrollment period. We note that this special enrollment period also is incorporated by reference in the guaranteed availability regulations at § 147.104(b)(2). Therefore, if this approach is finalized as proposed, individuals provided a non-calendar year plan year QSEHRA would be entitled to a special enrollment period to enroll in or change their individual health insurance coverage through or outside of an Exchange.

We seek comment on this proposal.

6. Termination of Exchange Enrollment or Coverage (§ 155.430)

a. Enrollee-Initiated Terminations Upon a Finding of Dual Enrollment in Medicare via PDM

Consistent with our discussion of voluntary terminations upon a finding of dual enrollment in the preamble to § 155.330, we propose to revise paragraph (b)(1)(ii) by removing the requirement that the Exchange must initiate termination of a Medicare dual

[82] 84 FR 28888 (June 20, 2019).

[83] For purposes of individual coverage HRAs, references to individual health insurance coverage do not include individual health insurance coverage that consists solely of excepted benefits. See 45 CFR 146.123(c)(1)(i).

[84] See § 155.420(d)(14).

[85] Section 18001 of the Cures Act amends the Code, ERISA, and the PHS Act to permit an eligible employer to provide a QSEHRA to its eligible employees. See IRS Notice 2017–67, 2017–11 IRB 1010, for related guidance: *https://www.irs.gov/pub/irs-drop/n-17-67.pdf.*

[86] Generally, payments from a QSEHRA to reimburse an eligible employee's medical care expenses are not includible in the employee's gross income if the employee has coverage that provides MEC as defined in Code section 5000A(f), which includes individual health insurance coverage.

[87] This preamble refers to a QSEHRA being ''provided'' as opposed to being ''offered'' because, per § 146.123(c)(4), an individual coverage HRA eligible employee has an annual opportunity to opt out of and forfeit future payments from the HRA. However, this is not the case for employees and dependents with a QSEHRA.

[88] 84 FR at 28955 through 28956.

[89] Id. at 28956.

[90] 84 FR at 28956.

[91] One exception to this general rule is that a QSEHRA continues to be treated as a group health plan under the PHS Act for purpose of Part C Title XI of the Social Security Act. See section 2791(a)(1) of the PHS Act.

enrollee's QHP coverage upon completion of the redetermination process specified in § 155.330. We also propose to add to § 155.330(b)(1)(ii) a reference to the process and authority outlined in § 155.330(e)(2) to align with the proposed changes to § 155.330(e)(2)(i)(D), discussed in the preamble to § 155.330. For more detailed discussions of these proposals, please see the preamble discussion under § 155.330.

b. Effective Dates for Retroactive Termination of Coverage or Enrollment Due to Exchange Error

The 2019 Payment Notice amended § 155.430(d)(2) to allow additional flexibility regarding the effective date for enrollee-initiated terminations. This flexibility included permitting Exchanges—at the option of the Exchange—to provide for enrollee-initiated terminations to be effective on the date on which the termination was requested by the enrollee, or on another prospective date selected by the enrollee. Previously, enrollees generally had to provide 14-days advance notice before termination became effective. Corresponding updates to reflect the new flexibilities were not made to § 155.430(d)(9), which defines the effective date for retroactive terminations due to a technical error as described in paragraph (b)(1)(iv)(A). The current provision specifies that termination in these circumstances will be no sooner than 14 days after the date that the enrollee can demonstrate he or she contacted the Exchange to terminate his or her coverage or enrollment through the Exchange, unless the issuer agrees to an earlier effective date as set forth in § 155.430(d)(2)(iii).

To ensure that enrollees who suffered technical errors are put in the position they would have been absent the technical error, we propose to align § 155.430(d)(9) with the provisions for enrollee-initiated terminations at § 155.430(d)(2).

We seek comment on this proposal.

7. Eligibility Pending Appeal (§ 155.525)

a. Retroactive Applicability of Eligibility Pending Appeal

We are considering whether changes to § 155.525 governing eligibility pending appeals are necessary or prudent to provide greater clarity to Exchanges, issuers, and consumers who appeal Exchange determinations. Under § 155.525, when an appellant accepts eligibility pending appeal, an Exchange must continue the appellant's eligibility for enrollment in a QHP, APTC, and CSR, as applicable, in accordance with the level of eligibility that was in effect immediately before the eligibility redetermination that the consumer is appealing. Based on the experience of the FFEs and HHS appeals entity in administering this provision, we are considering changes for future rulemaking that would provide greater clarity to Exchanges, issuers, and appellants. We identify in the discussion that follows examples to illustrate issues that are not explicitly addressed in the current regulations and invite comment on them.

Should appellants who request and are granted eligibility pending appeal be permitted to enroll in any plan or otherwise be limited in any way to a particular issuer or plan category? For example, an enrollee who had been receiving APTC and CSR is redetermined ineligible for APTC and CSR for the subsequent plan year. This enrollee might select a bronze plan during open enrollment because it is the most affordable option available. However, this same enrollee may end up submitting the appeal request well after the date on which the enrollment in the bronze plan became effective. In the course of filing an appeal, the appellant may ask for eligibility pending appeal; if the request is granted, the appellant may wish to remain enrolled in the bronze plan. However, there is no ability to continue the appellant's eligibility for CSRs in such a plan.

We generally believe the appellant should have the option to remain enrolled in the bronze plan to allow for the continuation of APTC only, as well as the option to be enrolled in a silver plan offered by the same or a different issuer to allow for the continuation of both APTC and CSRs. We also believe it may be appropriate for eligibility pending appeal and the corresponding enrollment to take effect retroactively, as if the challenged redetermination had not been made. We welcome feedback on the value and implications of such flexibility. We would also welcome feedback on whether there are advantages to other options, such as allowing eligibility pending appeal and enrollment to take effect prospectively based on the date that the request for eligibility pending appeal is granted.

b. Timeliness of Filing for Eligibility Pending Appeal

Section 155.520(b) specifies that in general an applicant or enrollee must request an appeal within 90 days of the date of the eligibility determination being appealed. However, there is no similar timeliness requirement for requesting eligibility pending appeal with respect to Exchange coverage and eligibility. The preamble of the first Program Integrity Rule stated that pended benefits are offered on appeal of a redetermination, regardless of when the appellant requests the appeal within the 90-day appeal request timeframe.[92] If it is unclear whether an individual is asking for eligibility pending appeal at the time an appeal request is made; if the individual is unable to make this request absent additional information about it; or if an appeal request is filed on the 90th day of the appeal request timeframe, there may be little to no time remaining in the 90-day appeal request timeframe for the appellant to ask for eligibility pending appeal.

We considered for example whether a reasonable period may be 30 days from the date the Exchange appeals entity issues a notice to the appellant acknowledging receipt of a valid appeal request consistent with § 155.520(d), provided that the appeal had not been decided or dismissed prior to the end of that 30-day period. For example, a 30-day period might provide an opportunity for appellants to learn about the appeals process including their right to ask for eligibility pending appeal, which could occur after the appeal receipt date. We also considered whether a shorter period to make this request is preferable in order to limit downstream impacts on issuers. The more time an appellant has to make this request, the longer period of time over which an issuer could be required to make retroactive adjustments to the appellant's enrollment, premiums, and benefits. Conversely, we did not think that it was reasonable to require appellants to make a request for eligibility pending appeal on the date they submit their appeal request, since they may not be aware of this option and have a chance to weigh the financial consequences of this choice, particularly should they ultimately receive an unfavorable decision. Finally, we considered whether there ought to be a good cause exception for an appellant who does not request eligibility pending appeal within a prescribed timeframe. In the context of an untimely appeal request, § 155.520(d)(2)(i)(D) permits an applicant or enrollee to demonstrate within a reasonable timeframe as determined by the appeals entity that failure to timely submit was due to exceptional circumstances. Consideration could be given to similar exceptional circumstances such as a hospitalization, natural disaster, or another such event should an appellant fail to make a request for eligibility

[92] 78 FR at 54102.

pending appeal within a reasonable timeframe. We solicit comment on the advisability of establishing a timeliness standard, whether Exchanges should have the flexibility to determine their own timeliness standards, and what a reasonable timeliness standard should be.

c. Life Events Occurring During the Pendency of the Appeal

When an eligibility redetermination is being appealed and eligibility pending appeal has been granted, it is possible that the appellant may subsequently experience a life event that impacts eligibility. For example, an appellant who is redetermined ineligible for APTC and CSR may appeal this redetermination and request and be granted eligibility pending appeal. If the appellant has a baby during the pendency of the appeal and reports the change in family size to the Exchange, the appellant would have her eligibility redetermined based on the addition of the newborn to the household. The regulations do not explicitly specify how an Exchange should resolve a pending appeal with eligibility pending appeal when an appellant who is receiving APTC and, as applicable, CSRs under eligibility pending appeal reports a change to the Exchange, and how the resultant eligibility from this reported change interacts with this appellant's eligibility pending appeal. We solicit comment on ways to facilitate the administration of these eligibility changes.

d. Impact of Eligibility Decision on Eligibility Pending Appeal

Appellants who are granted eligibility pending appeal may ultimately have their eligibility redetermination overturned. When a decision overturns the eligibility redetermination being appealed, under § 155.545(c)(1)(ii) the appellant has the option to have the decision implemented retroactively, to the coverage effective date the appellant did receive or would have received if they had enrolled in coverage under the incorrect eligibility (re)determination that is being appealed. In cases where the appellant is continuing to receive APTC and CSRs under a grant of eligibility pending appeal, it is possible that the decision determines the appellant eligible for a higher dollar amount of APTC and/or a higher level of CSRs than what was provided during the pendency of the appeal. We also recognize that retroactive implementation of a decision may create additional burdens on issuers who may have to re-process claims and recalculate cost-sharing amounts and out-of-pocket maximums, as well as refund premiums in excess of what the appellant paid, which an issuer may be experiencing for a second time, following implementation of a request for eligibility pending appeal. We solicit input on what if any limitations on implementation of a decision when eligibility pending appeal has been granted may be appropriate and under what circumstances.

e. Eligibility Pending Appeal and Non-Payment of Premiums

Finally, we solicit comment on how eligibility pending appeal interacts with the consequences of non-payment of premiums. The preamble to the final rule establishing § 155.525 stated that an issuer may terminate coverage as provided in § 155.430(b)(2)(ii); however, the regulations are not explicit about the applicability of the 3-month grace period as described in § 156.270(d) and (g) for appellants who are granted eligibility pending appeal. We believe that issuers and appellants may appreciate more clarity about this issue in general, as well as about how to treat appellants who may be in a grace period at the time that the redetermination is made and eligibility pending appeal request is granted. We will consider any comments we receive on this topic for future rulemaking.

We appreciate comment on these issues, as well as any others impacting the administration of eligibility pending appeal.

8. Eligibility Standards for Exemptions (§ 155.605)

a. Required Contribution Percentage (§ 155.605(d)(2))

HHS calculates the required contribution percentage for each benefit year using the most recent projections and estimates of premium growth and income growth over the period from 2013 to the preceding calendar year. We propose to calculate the required contribution percentage for the 2021 benefit year, using income and premium growth data for the 2013 and 2020 calendar years.

Under section 5000A of the Code, an individual must have MEC for each month, qualify for an exemption, or make an individual shared responsibility payment. Under § 155.605(d)(2), an individual is exempt from the requirement to have MEC if the amount that he or she would be required to pay for MEC (the required contribution) exceeds a particular percentage (the required contribution percentage) of his or her projected household income for a year. Although the Tax Cuts and Jobs Act reduced the individual shared responsibility payment to $0 for months beginning after December 31, 2018, the required contribution percentage is still used to determine whether individuals above the age of 30 qualify for an affordability exemption that would enable them to enroll in catastrophic coverage under § 155.305(h).

The initial 2014 required contribution percentage under section 5000A of the Code was 8 percent. For plan years after 2014, section 5000A(e)(1)(D) of the Code and Treasury regulations at 26 CFR 1.5000A–3(e)(2)(ii) provide that the required contribution percentage is the percentage determined by the Secretary of HHS that reflects the excess of the rate of premium growth between the preceding calendar year and 2013, over the rate of income growth for that period. The excess of the rate of premium growth over the rate of income growth is also used for determining the applicable percentage in section 36B(b)(3)(A) of the Code and the required contribution percentage in section 36B(c)(2)(C) of the Code.

As discussed elsewhere in this preamble, we are proposing as the measure for premium growth the 2021 premium adjustment percentage of 1.3542376277 (or an increase of about 35.4 percent over the period from 2013 to 2020). This reflects an increase of about 5.0 percent over the 2020 premium adjustment percentage (1.3542376277/1.2895211380).

As the measure of income growth for a calendar year, we established in the 2017 Payment Notice that we would use per capita personal income (PI). Under the approach finalized in the 2017 Payment Notice, using the National Health Expenditure Accounts (NHEA) data, the rate of income growth for 2021 is the percentage (if any) by which the most recent projection of per capita PI for the preceding calendar year ($58,821 for 2020) exceeds per capita PI for 2013 ($44,922), carried out to ten significant digits. The ratio of per capita PI for 2020 over the per capita PI for 2013 is estimated to be 1.3094029651 (that is, per capita income growth of about 30.9 percent).[93] This rate of income growth

[93] The 2013 and 2020 per capita personal income figures used for this calculation reflect the latest NHEA data, which was updated between the publication of the proposed rule and this final rule, on February 20, 2019. The series used in the determinations of the adjustment percentages can be found in Tables 1 and 17 on the CMS website, which can be accessed by clicking the ''NHE Projections 2018–2027—Tables'' link located in the Downloads section at *http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsProjected.html.* A detailed

between 2013 and 2020 reflects an increase of approximately 4.6 percent over the rate of income growth for 2013 to 2019 (1.3094029651/1.2524152976) that was used in the 2020 Payment Notice. Per capita PI includes government transfers, which refers to benefits individuals receive from Federal, state, and local governments (for example, Social Security, Medicare, unemployment insurance, workers' compensation, etc.).[94]

Thus, using the 2021 premium adjustment percentage proposed in this rule, the excess of the rate of premium growth over the rate of income growth for 2013 to 2020 is 1.3542376277 ÷1.3094029651, or 1.0342405385. This results in a proposed required contribution percentage for 2021 of 8.00×1.0342405385 or 8.27 percent, when rounded to the nearest one-hundredth of one percent, an increase of 0.04 percentage points from 2020 (8.27392–8.23702). We seek comment on this proposal.

9. Quality Rating Information Display Standards for Exchanges (§§ 155.1400 and 155.1405)

To implement sections 1311(c)(3) and 1311(c)(4) of the PPACA, we developed the QRS and the QHP Enrollee Experience Survey (collectively referred to as the quality rating information). In the Exchange and Insurance Market Standards for 2015 and Beyond Final Rule,[95] HHS issued regulations at §§ 155.1400 and 155.1405 to establish quality rating information display standards for Exchanges.[96] Consistent with these regulations, Exchanges must prominently display on its website, in accordance with § 155.205(b)(1)(iv) and (v), quality rating information assigned for each QHP,[97] as provided by HHS and in a form and manner specified by HHS.

To balance HHS's strategic goals of empowering consumers through data, minimizing cost and burden on QHP issuers, and supporting state flexibility, HHS developed a phased-in approach to display of quality rating information across the Exchanges. In particular, during plan years 2017, 2018, and 2019, HHS displayed quality rating information on HealthCare.gov in a handful of select FFE states as part of a limited pilot program. During this time, State Exchanges that operate their own eligibility and enrollment platforms were given the option to display their respective QHP quality rating information and several of these State Exchanges voluntarily elected to display on their State Exchange websites. The QRS pilot involved focused consumer testing of the display of quality rating information to maximize the clarity of the information provided and to assess how the information was displayed and used on Exchange websites.

In August 2019, HHS issued a Quality Rating Information Bulletin to announce the transition away from the QRS pilot to the public display of quality rating information for plan year 2020 by all Exchanges, including FFEs, SBE–FPs, and State Exchanges that operate their own eligibility and enrollment platform.[98] This included flexibility for State Exchanges that operate their own eligibility and enrollment platforms to display QHP quality rating information on their websites in the form and manner specified by HHS or with some limited state customizations. Based upon experience during the QRS pilot, we recognize there are benefits to permitting some flexibility for State Exchanges that operate their own eligibility and enrollment platforms to customize the quality rating information for their QHPs. We understand that during the QRS pilot, some State Exchanges that operate their own eligibility and enrollment platforms displayed the quality rating information as provided by HHS, while others displayed quality rating information with certain state-specific customizations in order to best reflect local priorities or information. Therefore, HHS proposes to amend §§ 155.1400 and 155.1405 to codify this flexibility and provide State Exchanges that operate their own eligibility and enrollment platforms some flexibility to customize the display of quality rating information for their respective QHPs. For example, we would allow State Exchanges that operate their own eligibility and enrollment platform to make some state-specific customizations, such as to incorporate additional state or local quality information or to modify the display names of the QRS star ratings. However, we clarify that State Exchanges that operate their own eligibility and enrollment platform cannot develop their own programs to replace the quality ratings calculated by HHS. Consistent with the statute, the Secretary remains responsible for the development of the QRS and QHP Enrollee Survey and the calculation of quality ratings under these programs across all Exchanges.[99] We believe this flexibility supports the feedback we received from a Request for Information, entitled ''Reducing Regulatory Burdens Imposed by the Patient Protection and Affordable Care Act and Improving Healthcare Choices to Empower Patients'', published in the June 12, 2017 **Federal Register** (82 FR 26885), in identifying ways to reduce burden and promote State Exchange flexibility. We seek comment on this proposal.

E. Part 156—Health Insurance Issuer Standards under the Affordable Care Act, Including Standards Related to Exchanges

1. Definitions (§ 156.20)

We are proposing to remove the definition of the term ''generic'' at § 156.20 because the proposed revision at § 156.130(h) would no longer use the term ''generic''. For a discussion of that proposal, please see the preamble to § 156.130(h).

2. FFE and SBE–FP User Fee Rates for the 2021 Benefit Year (§ 156.50)

Section 1311(d)(5)(A) of the PPACA permits an Exchange to charge assessments or user fees on participating health insurance issuers as a means of generating funding to support its operations. If a state does not elect to operate an Exchange or does not have an approved Exchange, section 1321(c)(1) of the PPACA directs HHS to operate an Exchange within the state. Accordingly, in § 156.50(c), we specified that a participating issuer offering a plan through an FFE or SBE–FP must remit a user fee to HHS each month that is equal to the product of the annual user fee rate specified in the annual HHS notice of benefit and payment parameters for FFEs and SBE–FPs for the applicable benefit year and the

description of the NHE projection methodology is available at *https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/ProjectionsMethodology.pdf.*

[94] U.S Department of Commerce Bureau of Economic Analysis (BEA) Table 3.12 Government Social Benefits. Available at *https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=3&isuri=1&categories=survey&nipa_table_list=110.*

[95] See the Patient Protection and Affordable Care Act; Exchange and Insurance Market Standards for 2015 and Beyond; Final Rule; (May 27, 2014), 79 FR 30240 at 30310, available at *https://www.gpo.gov/fdsys/pkg/FR-2014-05-27/pdf/2014-11657.pdf.*

[96] Patient Protection and Affordable Care Act; Exchange and Insurance Market Standards for 2015 and Beyond, Final Rule, 79 FR 30240 at 30352 (May 27, 2014).

[97] Exchanges can satisfy the requirement to display the QHP Enrollee Survey results by displaying the QRS star ratings (which incorporate member experience data from the QHP Enrollee Survey). See 79 FR at 30310.

[98] Quality Rating Information Bulletin for Plan Year 2020. Available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/QualityRatingInformationBulletinforPlanYear2020.pdf.*

[99] See sections 1311(c)(3) and (c)(4) of the PPACA.

monthly premium charged by the issuer for each policy where enrollment is through an FFE or SBE–FP. In addition, OMB Circular No. A–25R establishes Federal policy regarding the assessment of user charges under other statutes and applies to the extent permitted by law. Furthermore, OMB Circular A–25R specifically provides that a user fee charge will be assessed against each identifiable recipient of special benefits derived from Federal activities beyond those received by the general public. Activities performed by the Federal Government that do not provide issuers participating in an FFE with a special benefit are not covered by this user fee. As in benefit years 2014 through 2020, issuers seeking to participate in an FFE in the 2021 benefit year will receive two special benefits not available to the general public: (1) The certification of their plans as QHPs; and (2) the ability to sell health insurance coverage through an FFE to individuals determined eligible for enrollment in a QHP.

For the 2021 benefit year, issuers participating in an FFE will receive special benefits from the following Federal activities:

- Provision of consumer assistance tools;
- Consumer outreach and education;
- Management of a Navigator program;
- Regulation of agents and brokers;
- Eligibility determinations;
- Enrollment processes; and
- Certification processes for QHPs (including ongoing compliance verification, recertification, and decertification).

Activities through which FFE issuers receive a special benefit also include the Health Insurance and Oversight System (HIOS) and Multidimensional Insurance Data Analytics System (MIDAS) platforms, which are partially funded by Exchange user fees. Based on estimated costs, enrollment (including anticipated establishment of State Exchanges in certain states in which FFEs currently are operating), and premiums for the 2021 plan year, we seek comment on two alternative proposals. First, we propose maintaining the FFE user fee for all participating FFE issuers at 3.0 percent of total monthly premiums in order to preserve and ensure that the FFE has sufficient funding to cover the cost of all special benefits provided to FFE issuers during the 2021 plan year.

Alternatively, we are considering and seek comment on reducing the FFE user fee rate below the 2020 benefit year level. This alternative proposal reflects our estimates of premium increases and enrollment decreases for the 2021 benefit year, as well as potential savings resulting from cost-saving measures implemented over the last several years in hopes of reducing the user fee burden on consumers and creating downward pressure on premiums. We are also seeking information on trends in usage of Exchange functions and services, potential efficiencies in Exchange operations, and premium and enrollment projections, all of which might inform a change in the user fee level in the final rule. If these savings do not materialize, CMS anticipates having to increase user fee rates for the subsequent benefit year, to ensure that sufficient funds would be available to cover the costs of special benefits provided to FFE issuers. We seek comment on this proposal.

As previously discussed, OMB Circular No. A–25R establishes Federal policy regarding user fees, and specifies that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.

SBE–FPs enter into a Federal platform agreement with HHS to leverage the systems established for the FFEs to perform certain Exchange functions, and to enhance efficiency and coordination between state and Federal programs. Accordingly, in § 156.50(c)(2), we specified that an issuer offering a plan through an SBE–FP must remit a user fee to HHS, in the timeframe and manner established by HHS, equal to the product of the monthly user fee rate specified in the annual HHS notice of benefit and payment parameters for the applicable benefit year, unless the SBE–FP and HHS agree on an alternative mechanism to collect the funds from the SBE–FP or state. The benefits provided to issuers in SBE–FPs by the Federal Government include use of the Federal Exchange information technology and call center infrastructure used in connection with eligibility determinations for enrollment in QHPs and other applicable state health subsidy programs, as defined at section 1413(e) of the PPACA, and QHP enrollment functions under § 155.400. The user fee rate for SBE–FPs is calculated based on the proportion of FFE costs that are associated with the FFE information technology infrastructure, the consumer call center infrastructure, and eligibility and enrollment services, and allocating a share of those costs to issuers in the relevant SBE–FPs.

For the same reasons we discuss above in relation to the FFE user fee rate, we are considering and seek comment on an alternative proposal to ensure HHS can cover the costs of the special benefits it will provide to SBE–FP issuers during the 2021 benefit year. First, we are proposing a user fee rate of 2.5 percent of the monthly premium charged by the issuer for each policy under plans offered through an SBE–FP. Similar to our proposal to maintain the FFE user rate applicable to benefit year 2020, maintaining the SBE–FP user rate at 2.5 percent of premium would help to ensure that user fees sufficiently cover the costs of the special benefits HHS provides to SBE–FP issuers.

Also, for the same reasons discussed above in relation to the FFE user fee rate, we are also considering and seek comment on lowering the SBE–FP user fee rate below the 2020 benefit year level. In addition, we are also seeking information on trends in usage of Federal platform functions and services, potential efficiencies in Federal platform operations, and premium and enrollment projections, all of which might inform a change in the user fee level in the final rule. We seek comment on this alternative proposal.

We will continue to examine contract cost estimates for the special benefits provided to issuers offering QHPs on the Exchanges using the Federal platform for the 2021 benefit year as we finalize the FFE and SBE–FP user fee rates.

3. State Selection of EHB-Benchmark Plan for Plan Years Beginning on or after January 1, 2020 (§ 156.111)

a. Annual Reporting of State-Required Benefits

We propose amending § 156.111 to require states each year, beginning in plan year 2021, to identify required benefits mandated by state law and which of those benefits are in addition to EHB in a format and by a date specified by HHS. If the state does not comply with this annual reporting submission deadline, we propose that HHS will determine which benefits are in addition to EHB for the state.

Section 1311(d)(3)(B) of the PPACA permits a state to require QHPs offered in the state to cover benefits in addition to the EHB, but requires the state to make payments, either to the individual enrollee or to the issuer on behalf of the enrollee, to defray the cost of these additional state-required benefits. In the EHB final rule,[100] we finalized a standard at § 155.170(a)(2) that specifies benefits mandated by state action taking place on or before December 31, 2011,

[100] Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation, 78 FR 12834, 12837 through 12838 (February 20, 2013), available at *https://www.gpo.gov/fdsys/pkg/FR-2013-02-25/pdf/2013-04084.pdf.*

even if not effective until a later date, may be considered EHB, such that the state is not required to defray costs for these state-required benefits. Under this policy, benefits mandated by state action taking place after December 31, 2011 are considered in addition to EHB, even if the mandated benefits also are embedded in the state's selected EHB-benchmark plan. In such cases, states must defray the associated costs of QHP coverage of such benefits, and those costs should not be included in the percentage of premium attributable to coverage of EHB for purpose of calculating PTCs.

We also finalized in the EHB final rule that, because the Exchange is responsible for certifying QHPs, the Exchange would be the entity responsible for identifying which additional state-required benefits, if any, are in addition to the EHB. We also finalized that it is the QHP issuer's responsibility to quantify the cost attributable to each additional required benefit based on an analysis performed in accordance with generally accepted actuarial principles and methodologies conducted by a member of the American Academy of Actuaries and to then report this to the state. Although § 155.170 contemplates issuers conducting the cost analysis independently from the state, we now clarify that it would also be permissible for issuers to choose to rely on another entity, such as the state, to produce the cost analysis, provided the issuer remains responsible for ensuring that the quantification has been completed in a manner that complies with § 155.170(c)(2)(i) through (iii).

We also finalized that this calculation should be done prospectively to allow for the offset of an enrollee's share of premium and for purposes of calculating the PTC and reduced cost sharing. We reminded states and issuers that section 36B(b)(3)(D) of the Code specifies that the portion of the premium allocable to state-required benefits in addition to EHB shall not be taken into account in determining a PTC. We also finalized that because states may wish to take different approaches with regard to basing defrayal payments on either a statewide average or each issuer's actual cost that we were not establishing a standard and would permit both options for calculating state payments, at the election of the state. We also now clarify that we interpret actual cost to refer to the actuarial estimate of what part of the premium is attributable to the state-required benefit that is in addition to EHB, which is an analysis that should be performed prospectively to the extent possible.

In the 2017 Payment Notice,[101] we clarified that section 1311(d)(3)(B) of the PPACA governing defrayal of state-required benefits is not specific to state statutes and we thus interpreted that section to apply not only in cases of legislative action but also in cases of state regulation, guidance, or other state action. We also finalized a change to § 155.170(a)(3), designating the state, rather than the Exchange, as the entity required to identify which benefits mandated by state action are in addition to EHB and require defrayal. We also clarified in the 2017 Payment Notice [102] that there is no requirement to defray the cost of benefits added through supplementation of the state's base-benchmark plan, as long as the state is supplementing the base-benchmark to comply with the PPACA or another Federal requirement. We also explained in the 2017 Payment Notice that this means benefits mandated by state action after December 31, 2011 for purposes of compliance with new Federal requirements would not require defrayal. Examples of such Federal requirements include: requirements to provide benefits and services in each of the ten categories of EHB; requirements to cover preventive services; requirements to comply with the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) (Pub. L. 110–343, enacted October 3, 2008); and the removal of discriminatory age limits from existing benefits.

In the 2017 Payment Notice, we also affirmed a transitional policy originating from the 2016 Payment Notice, specifying that § 156.110(f) allows states to determine services included in the habilitative services and devices category without triggering defrayal if the state's base-benchmark plan does not include coverage for that category. We interpreted this to mean that, when a state has an opportunity to reselect its EHB-benchmark plan, a state may use this as an opportunity to also update its habilitative services category within the applicable Federal parameters for doing so as part of EHB-benchmark plan reselection. As such, once a state has defined its habilitative services category under § 156.110(f), state-required benefits related to habilitative services may trigger defrayal in accordance with § 155.170 if they are in addition to EHB and/or outside of an EHB-benchmark plan selection process.

In the 2019 Payment Notice,[103] we finalized that, as part of the new EHB-benchmark plan selection options for states at § 156.111, we would not make any changes to the policies governing defrayal of state-required benefits at § 155.170. That is, whether a benefit mandated by state action could be considered EHB would continue to depend on when the state enacted the mandate (unless the benefit mandated was for the purposes of compliance with Federal requirements). We reminded states of their obligations in light of the new EHB-benchmark plan selection options for states at § 156.111 in an October 2018 FAQ.[104] In this FAQ we also reminded states that, although it is the state's responsibility to identify which state-required benefits require defrayal, states must make such determinations using the framework finalized at § 155.170. For example, a law requiring coverage of a benefit passed by a state after December 31, 2011, is still a state-required benefit requiring defrayal even if the text of the law says otherwise. We affirm that here. We also noted that we are monitoring state compliance with the defrayal requirements regarding state-required benefits in addition to EHB at § 155.170, and that we encourage states to reach out to us concerning any state defrayal questions in advance of passing and implementing benefit mandates.

HHS is aware of stakeholder concerns that there may be states not defraying the costs of their state-required benefits in addition to EHB in accordance with Federal requirements. HHS shares these concerns.

State noncompliance with section 1311(d)(3)(B) of the PPACA, as implemented at § 155.170, may result in an increase in the percent of premium that QHP issuers report as attributable to EHB, more commonly referred to as the ''EHB percent of premium,'' which is used to calculate PTCs. Issuers may be covering as EHB benefits required by state action after December 31, 2011 that actually require defrayal under Federal requirements, but for which the state is not actively defraying costs. As such, to strengthen program integrity and potentially reduce improper Federal expenditures, we are proposing to amend § 156.111(d) and add a new § 156.111(f) to explicitly require states to annually notify HHS in a form and

[101] 81 FR at 12242.

[102] This was originally clarified in the 2016 Payment Notice, and reiterated in the 2017 Payment Notice.

[103] 83 FR 16930, at 16977.

[104] Frequently Asked Questions on Defrayal of State Additional Required Benefits (October 2018), available at *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQ-Defrayal-State-Benefits.pdf.*

manner specified by HHS, and by a date determined by HHS, of any state-required benefits applicable to QHPs in the individual and/or small group market that are considered to be ''in addition to EHB'' in accordance with § 155.170(a)(3).

As part of this proposed collection at § 156.111(f), we are also proposing that states identify which state-required benefits it has determined are not in addition to EHB and do not require defrayal in accordance with § 155.170, and provide the basis for the state's determination. A state's submission would be required to describe all benefits requirements under state mandates applicable to QHPs in the individual or small group market that were imposed on or before December 31, 2011 and that were not withdrawn or otherwise no longer effective before December 31, 2011, as well as all benefits requirements under state mandates that were imposed any time after December 31, 2011 applicable to the individual or small group market. For example, if a state benefit requirement applicable to QHPs in the individual or small group market was imposed before December 31, 2011, but was no longer in effect on December 31, 2011, then the state would not be expected to include that state mandate in its report. The state's report would also be required to describe whether any of the state benefit requirements in the report were amended or repealed after December 31, 2011. Information in the state's report would be required to be accurate as of the day that is at least 60 days prior to the annual reporting submission deadline set by HHS.

We are also proposing at § 156.111(d)(2) to specify that if the state does not notify HHS of its required benefits considered to be in addition to EHB by the annual reporting submission deadline, or does not do so in the form and manner specified by HHS, HHS will determine which benefits are in addition to EHB for the state for the applicable plan year. HHS's determination of which benefits are in addition to EHB would become part of the definition of EHB for the applicable state for the applicable plan year. We solicit comment on whether we should also allow states to affirmatively decline to report, indicating to HHS that HHS should determine which of the states' mandated benefits require defrayal.

We believe requiring states to annually report to HHS on their state-required benefits would also help states be diligent about their framework for determining which mandates are in addition to EHB in accordance with § 155.170. This proposal properly aligns with Federal requirements for defraying the cost of state-required benefits, would generally improve transparency with regard to the types of benefit requirements states are enacting, would provide the necessary information to HHS for increased oversight over whether states are appropriately determining which state-required benefits require defrayal, whether states are correctly implementing the definition of EHB, and whether QHP issuers are properly allocating the portion of premiums attributable to EHB for purposes of calculating PTCs.

We propose that the annual reporting of state-required benefits would begin in plan year 2021. We believe this would give states sufficient time to review the proposed requirements and prepare for submission of their annual EHB reporting package. For the first year of reporting, we propose that the deadline for states to submit to HHS their complete annual reporting package would be July 1, 2021. This would mean that for the first year of reporting, states would notify HHS in the manner specified by HHS by July 1, 2021, of any benefits in addition to EHB that QHPs are required to cover in plan year 2021 or after plan year 2021 by state action taken by May 2, 2021 (60 days prior to the annual submission deadline). As specified below at § 156.111(f) we are also proposing states identify which state-required benefits are not in addition to EHB and do not require defrayal in accordance with § 155.170, and provide the basis for the state's determination, by the annual reporting submission deadline.

We acknowledge that the start and end dates of state legislative sessions vary greatly by state, and that many state legislative sessions may not have concluded by May 2, 2021. However, we believe it is important to set a cut-off date after which states are not expected to report on their state-required benefits until the following annual reporting deadline. We believe that setting this cut-off date at least 60 days prior to the submission deadline would allow a state sufficient time to analyze its state benefit requirements imposed, amended, or repealed through state action taken by that date and prepare the required documents we are proposing that states submit to HHS. A state where a legislative session ends after the 60-day cut-off date (for example, after May 2, 2021) that happens to enact, amend, or repeal a state-required benefit after this cut-off date but before the annual reporting submission deadline (for example, before July 1, 2021) would not be expected to report that state-required benefit in that plan year's annual reporting submission. Instead, the state would be expected to include that state-required benefit in the annual reporting package for the following year. States would be permitted to submit their reports any time between the 60-day cut-off date and the applicable deadline.

As explained further below, this proposed annual reporting cut-off date would not impact a state's requirement to defray the cost of benefits in addition to EHB that result from state action taken after the cut-off date. In other words, states must defray benefits in addition to EHB in accordance with § 155.170 regardless of whether the state benefit requirement was imposed, amended, or repealed through state action taken before or after the proposed 60 day cut-off date for inclusion in that plan year's annual reporting submission.

We solicit comment on the proposed reporting deadline and 60 day cut-off date, including on whether the window between the cut-off date and submission deadline should be shortened to 30 days, and whether this reporting should be required less frequently to decrease burden on states, for example, every other year.

At § 156.111(f), we propose specifying the type of information states would be required to submit to HHS by the annual submission deadline in a form and manner specified by HHS. We propose that for a reporting package to be complete, it would need to comply with the following requirements. Specifically, § 156.111(f)(1) proposes that states annually reporting to HHS would be required to provide a document that is accurate as of the day that is at least 60 days prior to the annual reporting submission deadline set by HHS that lists all state benefit requirements applicable to QHPs in the individual and/or small group market under state mandates that were imposed on or before December 31, 2011, and that were not withdrawn or otherwise no longer effective before December 31, 2011, as well as any state benefit requirements under state mandates applicable to QHPs in the individual or small group market that were imposed any time after December 31, 2011.

In the first reporting year, this document would include a comprehensive list of all state benefit requirements applicable to QHPs in the individual and/or small group market under state mandates that were imposed on or before December 31, 2011 and that were not withdrawn or otherwise no longer effective before December 31, 2011, and any state benefit requirements under state mandates that were imposed

any time after December 31, 2011, regardless of whether the state believes they require defrayal in accordance with § 155.170. The first reporting cycle is intended to set the baseline list of state-required benefits applicable to QHPs in the individual and/or small group market. Each annual reporting cycle thereafter, the state would only need to update the content in its report to add any new benefit requirements, and to indicate whether benefit requirements previously reported to HHS have been amended or repealed. State reports for subsequent years must be accurate as of 60 days prior to the annual reporting submission deadline set by HHS for that year. We will announce the annual reporting submission deadline for subsequent years in subsequent Payment Notices. If a state has not imposed, amended, or repealed any state benefit requirements during the applicable time period, the state would still be required to report to HHS that there have been no changes to state-required benefits since the previous reporting cycle. We propose that, in such a scenario, the state submit the same reporting package as the previous reporting cycle and affirmatively indicate to HHS that there have been no changes. We solicit comment on this proposal.

Section 156.111(f)(2) proposes that states annually reporting to HHS would also be required to specify which of those state-required benefits listed in accordance with § 156.111(f)(1) the state has identified as in addition to EHB and subject to state defrayal under § 155.170. We expect states to already be carefully considering state benefit requirements imposed, amended, or repealed through state action taken after December 31, 2011, to determine whether they require state defrayal in accordance with Federal requirements. We further expect that states are already defraying the costs of those benefits. As such, we expect that this information will be readily accessible to states.

Section 156.111(f)(3) proposes that states must identify in their annual reports which of the state-required benefits listed in accordance with § 156.111(f)(1) the state has identified as not in addition to EHB and not subject to defrayal, in accordance with § 155.170, and describe the basis for the state's determination. The justification that states would be required to provide under this proposal should be concise and refer to applicable Federal standards for determining whether a state-required benefit is not in addition to EHB and does not require defrayal. For example, a state could explain that a state-required benefit is not in addition to EHB and does not require defrayal because the state benefit requirement was enacted on or before December 31, 2011.

The proposal in § 156.111(f)(4) would require states to submit other information about those state-required benefits listed in accordance with § 156.111(f)(1). This information is necessary for HHS oversight and would include information such as the following: date of state action imposing the requirement to cover the state-required benefit; the effective date of the applicable state action; the market it applies to (that is, individual, small group, or both); the precise benefit or set of benefits that QHPs in the individual and/or small group market are required to cover; any exclusions; and the citation to the relevant state action. In § 156.111(f)(5), we propose requiring the document to be signed by a state official with authority to make the submission on behalf of the state, to confirm the accuracy of the submission. In § 156.111(f)(6), we propose to require states to make updates to this list of state-required benefits annually, in a form and manner and by a date specified by HHS, to include any new state benefit requirements, and to indicate whether benefit requirements previously reported to HHS under this paragraph (f) have been amended, repealed, or otherwise affected by state regulatory or legislative action.

We solicit comment generally on this proposal, including its information collection requirements, specifically with regard to whether HHS should require any additional information from states as part of the annual reporting submission on state-required benefits.

If this proposal is finalized as proposed, HHS would provide template(s) reflecting the form and manner of the report that states would be required to use for reporting the required information proposed in § 156.111(f)(1) through (6). We intend to post state submissions of these documents on the CMS website prior to the end of the plan year during which the annual reporting takes place such that this information is accessible to states, QHP issuers, enrollees, stakeholders, and the general public. If the state does not notify HHS of its state-required benefits that are in addition to EHB in accordance with the proposed requirements at § 156.111(f), HHS will complete a similar document for the state and post it to the CMS website. We seek comment on whether any benefit would be derived from offering a public comment period on the aforementioned documents that we plan to post to the CMS website. We are particularly interested in whether the benefit to such a comment period would outweigh publishing the final documents later in the year, as would be necessary to accommodate such a comment period.

We emphasize for states that this proposed reporting requirement would be independent of the state's requirement to defray the cost of QHP coverage of state-required benefits in addition to EHB in accordance with § 155.170. The obligation for a state to defray the cost of QHP coverage of state-required benefits in addition to EHB is an independent statutory requirement under section 1311(d)(3)(b) of the PPACA, as implemented at § 155.170, and would remain fully applicable to states regardless of whether they annually report state-required benefits to HHS under this proposal or defer to HHS to make determinations as to which state-required benefits require defrayal. We also note that under these proposals the issuer would still be responsible for quantifying the cost of these benefits and reporting that to the state. States remain required to make payments to defray the cost of additional required benefits to the enrollee or QHP issuer on behalf of the enrollee.

We acknowledge that each state's structure likely varies for tracking, analyzing, and defraying state-required benefits in accordance with § 155.170. So long as the state's current structure for identifying state-required benefits in addition to EHB and defraying the cost of those benefits complies with § 155.170, the state may continue its current approach and need not make changes to align with the timing of the proposed annual reporting requirements at § 156.111, provided it still reports according to the timeline established under § 156.111.

We are proposing the annual reporting requirement to strengthen program integrity and to provide the necessary information to HHS for increased oversight over whether states are appropriately determining which state-required benefits require defrayal, whether states are correctly implementing the definition of EHB, and whether QHP issuers are properly allocating the portion of premiums attributable to EHB for purposes of calculating PTCs. However, the annual reporting proposal is also intended to be complementary to a state's current process for identifying state-required benefits in addition to EHB.

For example, a state may currently have in place a structure for identifying and defraying state-required benefits in addition to EHB where the state works

in tandem with its state legislature as bills are introduced to assess whether they contain state-required benefits that would require defrayal if passed. The same state may be working on a continual basis with actuaries to conduct actuarial analyses of the potential state-required benefits in advance of the bill's passage to anticipate the amount the state may be required to defray. If the bill passes, the same state may then collect issuers' actuarial quantifications of the state-required benefit and, depending on the effective date of the state-required benefit, immediately begin making payments to the issuer or enrollee on a monthly basis to defray the cost of the state-required benefit. Under this example, a state that annually reports to HHS would not be required to delay or modify the timing of any of these steps due to the proposed annual reporting requirement and associated deadlines. If finalized, the annual reporting requirement may function as an additional, but complementary step to those already in place at § 155.170.

Although this would remain true for a state that does not annually report to HHS by the annual submission deadline such that HHS will determine which benefits are in addition to EHB for the state, we recognize it may be best for these states to wait for HHS to post the information required in § 156.111(f)(1) through (6) on the CMS website before the state begins making payments to the enrollee or the QHP issuer to defray the costs of state-required benefits in addition to EHB. In other words, we recommend that where states defer to HHS the task of identifying state-required benefits that require defrayal, states may modify their existing timeline for defrayal as necessary to work in tandem with HHS determinations as to which of the state-required benefits are in addition to EHB.

We seek comment on the extent to which states are not appropriately identifying and defraying state-required benefits in addition to EHB to inform HHS' understanding of whether there is sufficient value in finalizing this proposal. We also solicit comment on whether states are the appropriate entities to continue making these determinations, or whether HHS should amend § 155.170(a)(3) to make the Exchanges again responsible for determining which state-required benefits are in addition to EHB, since the Exchange is responsible for certifying QHPs.

In practice, providing Exchanges with this authority would mean that the Federal government, as operator of the FFEs, would determine which state-required benefits are in addition to EHB in FFE states. State Exchanges would have the authority to make that determination in states that established their own Exchanges. We also solicit comment on whether we should instead revise § 155.170(a)(3) to make HHS the entity responsible for determining which state-required benefits are in addition to EHB in every state such that HHS would determine which state-required benefits require defrayal. Regardless of whether HHS or a state makes this determination, QHP issuers would still be responsible for quantifying the costs for these additional mandates and reporting them to the state, which would generally trigger the state's duty to make defrayal payments directly to the enrollee or the QHP issuer.

Given the proposed changes to this section, we are further proposing to rename this section ''State selection of EHB-benchmark plan for plan years beginning on or after January 1, 2020, and annual reporting of state-required benefits'' to better reflect its contents.

b. States' EHB-Benchmark Plan Options

In the 2019 Payment Notice, we stated that we believe states should have additional choices with respect to benefits and affordable coverage. Therefore, we finalized options for states to select new EHB-benchmark plans starting with the 2020 plan year. Under § 156.111(a), a state may modify its EHB-benchmark plan by: (1) Selecting the EHB-benchmark plan that another state used for the 2017 plan year; (2) Replacing one or more EHB categories of benefits in its EHB-benchmark plan used for the 2017 plan year with the same categories of benefits from another state's EHB-benchmark plan used for the 2017 plan year; or (3) Otherwise selecting a set of benefits that would become the state's EHB-benchmark plan.

Under any of these three options, the EHB-benchmark plan also has to meet additional standards, including EHB scope of benefit requirements under § 156.111(b). These requirements include providing a scope of benefits that is equal to, or greater than, to the extent any supplementation is required to provide coverage within each EHB category, the scope of benefits provided under a typical employer plan. Section 156.111(b)(2) defines a typical employer plan as either: (1) One of the selecting state's 10 base-benchmark plan options established at § 156.100 from which the state was able to select for the 2017 plan year; or (2) the largest health insurance plan by enrollment in any of the five largest large group health insurance products by enrollment in the selecting state, as product and plan are defined at § 144.103, provided that: (a) The product has at least 10 percent of the total enrollment of the five largest large group health insurance products by enrollment in the selecting state; (b) the plan provides minimum value; (c) the benefits are not excepted benefits; and (d) the benefits in the plan are from a plan year beginning after December 31, 2013. The state's EHB-benchmark plan must also satisfy the generosity standard at § 156.111(b)(2)(ii), which specifies that a state's EHB-benchmark plan must not exceed the generosity of the most generous among a set of comparison plans, including the EHB-benchmark plan used by the state in 2017, and any of the state's base-benchmark plan options for the 2017 plan year, supplemented as necessary.

Additionally, states must document meeting these requirements through an actuarial certification and associated actuarial report from an actuary who is a member of the American Academy of Actuaries, in accordance with generally accepted actuarial principles and methodologies. We published the ''Example of an Acceptable Methodology for Comparing Benefits of a State's EHB-benchmark Plan Selection in Accordance with § 156.111(b)(2)(i) and (ii)'' (example methodology guidance), alongside the 2019 Payment Notice.[105] We finalized that the current EHB-benchmark plan selection would continue to apply for any year for which a state does not select a new EHB-benchmark plan from among these options.

The 2019 Payment Notice stated that we would propose EHB-benchmark plan submission deadlines in the HHS annual Notice of Benefit and Payment Parameters. Accordingly, we propose May 7, 2021, as the deadline for states to submit the required documents for the state's EHB-benchmark plan selection for the 2023 plan year. We emphasize that this deadline would be firm, and that states should optimally have one of their points of contact who has been predesignated to use the EHB Plan Management Community reach out to us using the EHB Plan Management Community well in advance of the deadline with any questions. Although not a requirement, we recommend states submit applications at least 30 days prior to the submission deadline to

[105] Example of an Acceptable Methodology for Comparing Benefits of a State's EHB-benchmark Plan Selection in Accordance with 45 CFR 156.111(b)(2)(i) and (ii), available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Final-Example-Acceptable-Methodology-for-Comparing-Benefits.pdf.*

ensure completion of their documents by the proposed deadline. We also remind states that they must complete the required public comment period and submit a complete application by the deadline. We seek comment on the proposed deadline.

In the 2019 Payment Notice, we also finalized a policy through which states may opt to permit issuers to substitute benefits between EHB categories. In the preamble to that rule, we stated that the deadline applicable to state selection of a new benchmark plan would also apply to this state opt-in process. We therefore propose May 7, 2021, as the deadline for states to notify us that they wish to permit between-category substitution for the 2023 plan year. States wishing to make such an election must do so via the EHB Plan Management Community. We seek comment on the proposed deadline.

We also reiterate the scope of benefits requirements at § 156.111(b)(2). We finalized the definition of a typical employer plan to establish the minimum level of benefits for the state's EHB-benchmark plan selection and to ensure plans that meet EHB standards are equal in scope to a typical employer plan as required pursuant to section 1302(2)(A) of the PPACA, and a generosity standard to establish the maximum level of benefits for a state's EHB-benchmark plan selection.

The generosity standard at § 156.111(b)(2)(ii) balances our goal of promoting state flexibility with the need to preserve coverage affordability by minimizing the opportunity for a state to select EHB in a manner that would make coverage unaffordable for patients and increase Federal costs. As such, we clarify for states that when selecting an updated EHB-benchmark plan from the available options listed at § 156.111(a), the new EHB-benchmark plan may not exceed the generosity of the most generous among the set of comparison plans listed at § 156.111(b)(2)(ii) even by a *de minimis* amount, and that states must clearly demonstrate in their actuarial report to HHS how the state's updated EHB-benchmark plan satisfies the generosity test. In other words, the generosity of the state's updated EHB-benchmark plan may not exceed a 0.0 percentage point actuarial increase above the most generous among the set of comparison plans listed at § 156.111(b)(2)(ii).

Finally, we clarify that the typical employer plan and generosity standard requirements are two separate tests that an EHB-benchmark plan must satisfy. However, we recognize that there may be some instances in which it may be difficult to design an EHB-benchmark plan that satisfies both standards. Therefore, we remind states that, as we stated in the *example methodology* guidance,[106] states should consider using the same plan as the comparison plan for both tests, to the extent possible, to help minimize burden and to mitigate against any potential conflict caused by applying each test with a different comparison plan.

4. Essential Health Benefits Package (§ 156.130)

a. Premium Adjustment Percentage (§ 156.130)

We propose to update the annual premium adjustment percentage using the most recent estimates and projections of per enrollee premiums for private health insurance (excluding Medigap and property and casualty insurance) from the NHEA, which are calculated by the CMS Office of the Actuary. For the 2021 benefit year, the premium adjustment percentage will represent the percentage by which this measure for 2020 exceeds that for 2013.

Section 1302(c)(4) of the PPACA directs the Secretary to determine an annual premium adjustment percentage, a measure of premium growth that is used to set the rate of increase for three parameters detailed in the PPACA: (1) The maximum annual limitation on cost sharing (defined at § 156.130(a)); (2) the required contribution percentage used to determine eligibility for certain exemptions under section 5000A of the Code (defined at § 155.605(d)(2)); and (3) the employer shared responsibility payment amounts under section 4980H(a) and (b) of the Code (see section 4980H(c)(5) of the Code). Section 1302(c)(4) of the PPACA and § 156.130(e) provide that the premium adjustment percentage is the percentage (if any) by which the average per capita premium for health insurance coverage for the preceding calendar year exceeds such average per capita premium for health insurance for 2013, and the regulations provide that this percentage will be published in the annual HHS notice of benefit and payment parameters.

The 2015 Payment Notice [107] and 2015 Market Standards Rule [108] established a methodology for estimating the average per capita premium for purposes of calculating the premium adjustment percentage for the 2015 benefit year and beyond. Beginning with the 2015 benefit year, the premium adjustment percentage was calculated based on the estimates and projections of average per enrollee employer-sponsored insurance premiums from the NHEA. In the proposed 2015 Payment Notice, we proposed that the premium adjustment percentage be calculated based on the projections of average per enrollee private health insurance premiums. Based on comments received, we finalized the 2015 Payment Notice to instead use per enrollee employer-sponsored insurance premiums in the methodology for calculating the premium adjustment percentage. We chose employer-sponsored insurance premiums because they reflected trends in health care costs without being skewed by individual market premium fluctuations resulting from the early years of implementation of the PPACA market reforms. We adopted this methodology in subsequent Payment Notices for the 2016 through 2019 benefit years, but noted in the 2015 Payment Notice that we may propose to change our methodology after the initial years of implementation of the market reforms, once the premium trend is more stable.

In the 2020 Payment Notice, we adopted a modification of the premium measure that we use to calculate the premium adjustment percentage. This premium measure captures increases in individual market premiums in addition to increases in employer-sponsored insurance premiums for purposes of calculating the premium adjustment percentage. Specifically, we calculate the premium measures for 2013 and 2020 as private health insurance premiums minus premiums paid for Medicare supplement (Medigap) insurance and property and casualty insurance, divided by the unrounded number of unique private health insurance enrollees, excluding all Medigap enrollees.

This premium measure is an adjusted private individual and group market health insurance premium measure, which is similar to NHEA's private health insurance premium measure. NHEA's private health insurance premium measure includes premiums for employer-sponsored insurance; ''direct purchase insurance,'' which includes individual market health insurance purchased directly by consumers from health insurance issuers, both on and off the Exchanges and Medigap insurance; and the medical portion of accident insurance (''property and casualty'' insurance).

[106] Example of an Acceptable Methodology for Comparing Benefits of a State's EHB-benchmark Plan Selection in Accordance with 45 CFR 156.111(b)(2)(i) and (ii), available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Final-Example-Acceptable-Methodology-for-Comparing-Benefits.pdf.*

[107] 79 FR 13743.

[108] 79 FR 30240.

The measure we used in the 2020 Payment Notice is published by NHEA and includes NHEA estimates and projections of employer-sponsored insurance and direct purchase insurance premiums, but we excluded Medigap and property and casualty insurance from the premium measure since these types of coverage are not considered primary medical coverage for individuals who elect to enroll. We used per enrollee premiums for private health insurance (excluding Medigap and property and casualty insurance) so that the premium measure more closely reflects premium trends for all individuals primarily covered in the private health insurance market since 2013, and we anticipated that the change to use per enrollee premiums for private health insurance (excluding Medigap and property and casualty insurance) would additionally reduce Federal PTC expenditures, if the Department of the Treasury and the IRS were to adopt the proposed change.[109]

We propose to continue to use the private health insurance premium measure (excluding Medigap and property and casualty insurance) for the 2021 benefit year. As such, we propose that the premium adjustment percentage for 2021 be the percentage (if any) by which the most recent NHEA projection of per enrollee premiums for private health insurance (excluding Medigap and property and casualty insurance) for 2020 ($6,759) exceeds the most recent NHEA estimate of per enrollee premiums for private health insurance (excluding Medigap and property and casualty insurance) for 2013 ($4,991).[110] Using this formula, the proposed premium adjustment percentage for the 2021 benefit year is 1.3542376277 ($6,759/$4,991), which represents an increase in private health insurance (excluding Medigap and property and casualty insurance) premiums of approximately 35.4 percent over the period from 2013 to 2020.

Based on the proposed 2021 premium adjustment percentage, we propose the following cost-sharing parameters for benefit year 2021.

(1) Maximum Annual Limitation on Cost Sharing for Plan Year 2021

We propose to increase the maximum annual limitation on cost sharing for the 2021 benefit year based on the proposed value calculated for the premium adjustment percentage for the 2021 benefit year. Under § 156.130(a)(2), for the 2021 calendar year, cost sharing for self-only coverage may not exceed the dollar limit for calendar year 2014 increased by an amount equal to the product of that amount and the premium adjustment percentage for 2021. For other than self-only coverage, the limit is twice the dollar limit for self-only coverage. Under § 156.130(d), these amounts must be rounded down to the next lowest multiple of $50.

Using the premium adjustment percentage of 1.3542376277 for 2021 as proposed above, and the 2014 maximum annual limitation on cost sharing of $6,350 for self-only coverage, which was published by the IRS on May 2, 2013,[111] we propose that the 2021 maximum annual limitation on cost sharing would be $8,550 for self-only coverage and $17,100 for other than self-only coverage. This represents an approximately 4.9 percent increase above the 2020 parameters of $8,150 for self-only coverage and $16,300 for other than self-only coverage. We seek comment on this proposal.

b. Reduced Maximum Annual Limitation on Cost-Sharing (§ 156.130)

We propose to continue to use the method we established in the 2014 Payment Notice for determining the appropriate reductions in the maximum annual limitation on cost sharing for cost-sharing plan variations to serve enrollees at three ranges of household income below 250 percent of FPL. Sections 1402(a) through (c) of the PPACA direct issuers to reduce cost sharing for EHBs for eligible individuals enrolled in a silver-level QHP. In the 2014 Payment Notice, we established standards related to the provision of these CSRs. Specifically, in part 156, subpart E, we specified that QHP issuers must provide CSRs by developing plan variations, which are separate cost-sharing structures for each eligibility category that change how the cost sharing required under the QHP is to be shared between the enrollee and the Federal Government. At § 156.420(a), we detailed the structure of these plan variations and specified that QHP issuers must ensure that each silver-plan variation has an annual limitation on cost sharing no greater than the applicable reduced maximum annual limitation on cost sharing specified in the annual HHS notice of benefit and payment parameters. Although the amount of the reduction in the maximum annual limitation on cost sharing is specified in section 1402(c)(1)(A) of the PPACA, section 1402(c)(1)(B)(ii) of the PPACA states that the Secretary may adjust the cost-sharing limits to ensure that the resulting limits do not cause the AV of the health plans to exceed the levels specified in section 1402(c)(1)(B)(i) of the PPACA (that is, 73 percent, 87 percent, or 94 percent, depending on the income of the enrollee).

As we propose above, the 2021 maximum annual limitation on cost sharing would be $8,550 for self-only coverage and $17,100 for other than self-only coverage. We analyzed the effect on AV of the reductions in the maximum annual limitation on cost sharing described in the statute to determine whether to adjust the reductions so that the AV of a silver plan variation will not exceed the AV specified in the statute. Below, we describe our analysis for the 2021 plan year and our proposed results.

(1) Analysis for Determining the Reduced Maximum Annual Limitation on Cost-Sharing

Consistent with our analysis in the 2014 through 2020 Payment Notices, we developed three test silver level QHPs, and analyzed the impact on AV of the reductions described in the PPACA to the proposed estimated 2021 maximum annual limitation on cost sharing for self-only coverage ($8,550). The test plan designs are based on data collected for 2020 plan year QHP certification to ensure that they represent a range of plan designs that we expect issuers to offer at the silver level of coverage through the Exchanges. For 2021, the test silver level QHPs included a PPO with typical cost-sharing structure ($8,550 annual limitation on cost sharing, $2,650 deductible, and 20 percent in-network coinsurance rate); a PPO with a lower annual limitation on cost sharing ($6,800 annual limitation on cost sharing, $3,000 deductible, and 20 percent in-network coinsurance rate); and an HMO ($8,550 annual limitation on cost sharing, $4,375 deductible, 20 percent in-network coinsurance rate,

[109] The Department of the Treasury and the IRS have since adopted the premium growth measure provided in the 2020 Payment Notice for purposes of the indexing adjustments under section 36B of the Code. See Revenue Procedure 2019–29, 2019–32 IRB 620. *https://www.irs.gov/pub/irs-drop/rp-19-29.pdf.*

[110] The 2013 and 2020 per enrollee premiums for private health insurance (excluding Medigap and property and casualty insurance) figures used for this calculation reflect the latest NHEA data. The series used in the determinations of the adjustment percentages can be found in Table 17 on the CMS website, which can be accessed by clicking the ''NHE Projections 2018–2027—Tables'' link located in the Downloads section at *http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsProjected.html.* A detailed description of the NHE projection methodology is available at *https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/ProjectionsMethodology.pdf.*

[111] See Revenue Procedure 2013–25, 2013–21 IRB 1110. *http://www.irs.gov/pub/irs-drop/rp-13-25.pdf.*

and the following services with copayments that are not subject to the deductible or coinsurance: $500 inpatient stay per day, $500 emergency department visit, $30 primary care office visit, and $55 specialist office visit). All three test QHPs meet the AV requirements for silver level health plans.

We then entered these test plans into the draft version of the 2021 AV Calculator [112] and observed how the reductions in the maximum annual limitation on cost sharing specified in the PPACA affected the AVs of the plans. We found that the reduction in the maximum annual limitation on cost sharing specified in the PPACA for enrollees with a household income between 100 and 150 percent of FPL (⅔ reduction in the maximum annual limitation on cost sharing), and 150 and 200 percent of FPL (⅔ reduction), would not cause the AV of any of the model QHPs to exceed the statutorily specified AV levels (94 and 87 percent, respectively).

In contrast, the reduction in the maximum annual limitation on cost sharing specified in the PPACA for enrollees with a household income between 200 and 250 percent of FPL (½ reduction), would cause the AVs of two of the test QHPs to exceed the specified AV level of 73 percent. As a result, we propose that the maximum annual limitation on cost sharing for enrollees with a household income between 200 and 250 percent of FPL be reduced by approximately ⅕, rather than ½, consistent with the approach taken for benefit years 2017 through 2019. We further propose that the maximum annual limitation on cost sharing for enrollees with a household income between 100 and 200 percent of FPL be reduced by approximately ⅔, as specified in the statute, and as shown in Table 10.

These proposed reductions in the maximum annual limitation on cost sharing must adequately account for unique plan designs that may not be captured by our three model QHPs. We also note that selecting a reduction for the maximum annual limitation on cost sharing that is less than the reduction specified in the statute would not reduce the benefit afforded to enrollees in the aggregate because QHP issuers are required to further reduce their annual limitation on cost sharing, or reduce other types of cost sharing, if the required reduction does not cause the AV of the QHP to meet the specified level.

In prior years we found, and we continue to find, that for individuals with household incomes of 250 to 400 percent of FPL, without any change in other forms of cost sharing, the statutory reductions in the maximum annual limitation on cost sharing will cause an increase in AV that exceeds the maximum 70 percent level in the statute. As a result, we do not propose to reduce the maximum annual limitation on cost sharing for individuals with household incomes between 250 and 400 percent of FPL. We seek comment on this analysis and the proposed reductions in the maximum annual limitation on cost sharing for 2021.

We note that for 2021, as described in § 156.135(d), states are permitted to submit for HHS approval state-specific datasets for use as the standard population to calculate AV. No state submitted a dataset by the September 1, 2019 deadline.

TABLE 10—REDUCTIONS IN MAXIMUM ANNUAL LIMITATION ON COST SHARING FOR 2021

Eligibility category	Reduced maximum annual limitation on cost sharing for self-only coverage for 2020	Reduced maximum annual limitation on cost sharing for other than self-only coverage for 2020
Individuals eligible for CSRs under § 155.305(g)(2)(i) (100–150 percent of FPL)	$2,850	$5,700
Individuals eligible for CSRs under § 155.305(g)(2)(ii) (151–200 percent of FPL)	2,850	5,700
Individuals eligible for CSRs under § 155.305(g)(2)(iii) (201–250 percent of FPL)	6,800	13,600

c. Cost-Sharing Requirements (§ 156.130)

In the 2020 Payment Notice at § 156.130(h)(1), we finalized that, for plan years beginning on or after January 1, 2020, notwithstanding any other provision of § 156.130, and to the extent consistent with applicable state law, amounts paid toward cost sharing using any form of direct support offered by drug manufacturers to enrollees to reduce or eliminate immediate out-of-pocket costs for specific prescription brand drugs that have an available and medically appropriate generic equivalent are not required to be counted toward the annual limitation on cost sharing. In that rule, we expressed concern that market distortion can exist when a consumer selects a higher-cost brand name drug when an equally effective generic drug is available.

Since finalizing § 156.130(h)(1), we have received feedback that indicates there is confusion about whether § 156.130(h)(1), as finalized, requires plans and issuers to count the value of drug manufacturers' coupons toward the annual limitation on cost sharing, other than in circumstances in which there is a medically appropriate generic equivalent available, particularly with regard to large group market and self-insured group health plans. On August 26, 2019, HHS and the Departments of Labor and the Treasury released FAQ Part 40, acknowledging the confusion among stakeholders and the possibility that the requirement could create a conflict with certain rules for HDHPs that are intended to allow eligible individuals to establish a health savings account (HSA).

Specifically, Q&A–9 of IRS Notice 2004–50 states that the provision of drug discounts will not disqualify an individual from being an eligible individual if the individual is responsible for paying the costs of any drugs (taking into account the discount) until the deductible under the HDHP is satisfied. Thus, Q&A–9 of Notice 2004–50 requires an HDHP to disregard drug discounts and other manufacturer and provider discounts when determining if the deductible for an HDHP has been satisfied, and only allows amounts actually paid by the individual to be taken into account for that purpose. Such a requirement could put the issuer or sponsor of an HDHP in the position of complying with either the requirement under the 2020 Payment Notice for limits on cost sharing in the case of a drug manufacturer coupon for

[112] Available at *https://www.cms.gov/cciio/resources/regulations-and-guidance/index.*

a brand name drug with no available or medically appropriate generic equivalent or the IRS rules for minimum deductibles for HDHPs, but potentially being unable to comply with both rules simultaneously.[113]

Accordingly, in FAQ Part 40, we explained that we intended to undertake rulemaking in the HHS Notice of Benefit and Payment Parameters for 2021, in consultation with the Departments of Labor and the Treasury to address the conflict, and that until the 2021 Payment Notice is issued and effective, the Departments will not initiate an enforcement action if an issuer of group or individual health insurance coverage or a group health plan excludes the value of drug manufacturers' coupons from the annual limitation on cost sharing, including in circumstances in which there is no medically appropriate generic equivalent available.

Accordingly, we propose to revise § 156.130(h) in its entirety to provide that, notwithstanding any other provision of the annual limitation on cost sharing regulation, and to the extent consistent with applicable state law, amounts paid toward reducing the cost sharing incurred by an enrollee using any form of direct support offered by drug manufacturers to enrollees for specific prescription drugs are permitted, but not required, to be counted toward the annual limitation on cost sharing. Under this proposal, plans and issuers have the flexibility to determine whether to include or exclude coupon amounts from the annual limitation on cost sharing, regardless of whether a generic equivalent is available.

Consistent with this proposal, we also propose to interpret the definition of cost sharing to exclude expenditures covered by drug manufacturer coupons. Therefore, the value of these coupons would not be required to count towards the annual limitation on cost sharing. Section 1302(c)(3)(A) of the PPACA defines the term cost sharing to include: (1) Deductibles, coinsurance, copayments, or similar charges; and (2) any other expenditure required of an insured individual which is a qualified medical expense [114] with respect to EHB covered under the plan. Section 1302(c)(1) of the PPACA states that the cost sharing incurred under a health plan shall not exceed the annual limitation on cost sharing. Drug manufacturer coupon amounts reduce the costs incurred by an enrollee under the health plan because they reduce the amount that the enrollee is required to pay at the point-of-sale in order to obtain coverage for the drug. The value of the coupon is not a cost incurred by or charged to the enrollee; thus, we believe its value should not be required to count toward the annual limitation on cost sharing. Under this interpretation, and to the extent consistent with applicable state law, issuers of non-grandfathered individual and group market coverage, and all non-grandfathered group health plans subject to section 2707(b) of the PHS Act, would have flexibility to determine whether to include or exclude drug manufacturer coupon amounts from the annual limitation on cost sharing, regardless of whether a medically appropriate generic equivalent is available.[115] This proposal would enable issuers and group health plans to continue longstanding practices with regard to how and whether drug manufacturer coupons accrue towards an enrollee's annual limitation on cost sharing.

The proposal would also afford issuers of non-grandfathered individual and group market coverage, and all non-grandfathered group health plans subject to section 2707(b) of the PHS Act, the same opportunity as under the current § 156.130(h)(1) to incentivize generic drug usage by excluding the amounts of drug manufacturer coupons for brand name drugs from the annual limitation on cost sharing when a medically appropriate generic equivalent is available. We encourage issuers and group health plans to consider utilizing this proposed flexibility to find innovative methods to address the market distortion that occurs when consumers select a higher-cost brand name drug when an equally effective, medically appropriate generic drug is available.[116] We would expect issuers and group health plans to be transparent with enrollees and prospective enrollees regarding whether the value of drug manufacturer coupons accrues to the annual limitation on cost sharing as issuers' policies would affect enrollees' out-of-pocket liability under their plans. We would expect issuers to prominently include this information on websites and in brochures, plan summary documents, and other collateral material that consumers may use to select, plan, and understand their benefits.

We seek comment on this proposal.

5. Requirements for Timely Submission of Enrollment Reconciliation Data (§ 156.265)

In the Establishment of Exchanges and Qualified Health Plans; Exchange Standards interim final rule,[117] we established standards for the collection and transmission of enrollment information. At § 156.265(f), we set forth standards on the enrollment reconciliation process, specifying that issuers must reconcile enrollment with the Exchange no less than once a month. Issuers in Exchanges using the Federal platform currently update data through ongoing processes collectively referred to as Enrollment Data Alignment, which includes 834 transactions, the monthly enrollment reconciliation cycle, and two dispute processes (enrollment disputes and payment disputes) that are used to make enrollment updates that cannot be handled through monthly reconciliation. Issuers offering plans through State Exchanges update Exchange data through processes designed by the State Exchange.

Although the regulations in § 156.265 require issuers to reconcile enrollment with the Exchange monthly, they do not specify standards for the format or quality of these data exchanges, such as the manner in which enrollment updates must be reflected in updates of previously submitted enrollment data, or the timeframe in which issuers should report data updates and data errors to the Exchange. If QHP issuers fail to make or report enrollment updates accurately and timely, the accuracy of payment, the accuracy of enrollment data that the Exchange has available to address consumer questions, and the accuracy of the data reported to consumers on their 1095–A tax forms after the end of the coverage year could be affected. For example, if an issuer does not regularly update its enrollment data to reflect retroactive enrollment changes throughout the year, and instead submits large volumes of changes to the Exchange well after the plan year has ended. These late changes trigger the mailing of corrected tax forms to consumers after tax season, creating consumer burden and confusion.

To more explicitly state requirements for issuers in the Exchanges, we propose amending § 156.265(f) to require an

[113] FAQs About Affordable Care Act Implementation Part 40. August 26, 2019. Available at *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-Part-40.pdf* and *https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-40*.

[114] As defined in section 223(d)(2) of the Code.

[115] We note that an issuer or group health plan that elects to credit coupon amounts toward the minimum deductible of an HDHP could disqualify an individual from making HSA contributions, pursuant to Q&A–9 of Notice 2004–50.

[116] We also encourage issuers and group health plans to consider utilizing this flexibility to promote the use of biosimilars over the use of their respective reference biological product.

[117] See 77 FR 18309 at 18425.

issuer to include in its enrollment reconciliation submission to the Exchange the most recent enrollment information that is available and that has been verified to the best of its knowledge or belief. We also propose to amend § 156.265(g) to direct QHP issuers to update their enrollment records as directed by the Exchange, and to inform the Exchange if any such records contain errors, within 30 days. In State Exchanges on the Federal platform, references in this section to the Exchange should be understood to mean CMS, as administrator of the Federal platform. We believe these amendments will encourage more timely reconciliation and error reporting, resulting in an improved consumer experience.

6. Promoting Value-Based Insurance Design

The proposals in this section seek to promote a consumer-driven health care system in which consumers are empowered to select and maintain health care coverage of their choosing. We are proposing to offer QHP issuers options to assist them design value-based insurance plans that would empower consumers to receive high value services at lower cost.

In the 2017, 2018, and 2019 Payment Notices, we sought comment on ways in which HHS can foster market-driven programs that can improve the management and costs of care and that provide consumers with quality, person-centered coverage. We also sought comment on how we may encourage value-based insurance design within the individual and small group markets and ways to support issuers in using cost sharing to incentivize more cost-effective consumer behavior. We solicited comments on how HHS can better encourage these types of plan designs, and whether any existing regulatory provisions or practices discourage such designs.

We also previously noted our interest in value-based insurance designs that: focus on cost effective drug tiering structures; address overused, higher cost health services; provide innovative network design that incentivizes enrollees to use higher quality care; and promote use of preventive care and wellness services. In response to these comment solicitations we received many comments supporting HHS's efforts to explore ways to encourage innovations and value-based insurance design.

We are now pursuing strategies that will assist in the uptake and offering of value-based insurance design by QHP issuers. Specifically, we are outlining a ''value-based'' model QHP that contains consumer cost-sharing levels aimed at driving utilization of high value services and lowering utilization of low value services when medically appropriate.

Currently, under our rules, issuers have considerable discretion in the design of cost-sharing structures, subject to certain statutory AV requirements, non-discrimination provisions,[118] and other applicable laws such as the MHPAEA (section 2726 of the PHS Act). We are not proposing any changes to this flexibility. We are providing additional specificity around value-based design and how issuers could opt to incorporate such design into their QHPs. Offering a value-based insurance design QHP would be voluntary and issuers are encouraged to select services and cost sharing that work best for their consumers.

Borrowing from work provided by the Center for Value-based Insurance Design at the University of Michigan [119] (the Center), Table 11 lists high value services and drugs that an issuer may want to consider offering with lower or zero cost sharing. Table 11 also includes a list of low value services that issuers should consider setting at higher consumer cost sharing. High value services are those that most people will benefit from and have a strong clinical evidence base demonstrating appropriate care. The high value services and drugs identified in Table 11 are supported by strong clinical effectiveness evidence. Low value services are those services in which the majority of consumers would not derive a clinical benefit. The Center considered services that have been identified by other aligned efforts, such as the *Choosing Wisely initiative,* the *Value-based Insurance Design Health Task Force on Low Value Care,* the *Oregon Public Employee's Benefits Board, SmarterCare CA,* and the *Washington State Health Authority.*[120] *The Center's research has shown that a silver level of coverage base plan could alter the cost sharing as proposed in Table* 11 *and could achieve a zero impact on plan premiums, while incentivizing the consumer to seek more appropriate care.*

TABLE 11—HIGH AND LOW VALUE SERVICES AND DRUG CLASSES

High Value Services With Zero Cost Sharing
Blood pressure monitors (hypertension)
Cardiac rehabilitation
Glucometers and testing strips (diabetes)
Hemoglobin a1c testing (diabetes)
INR testing (hypercoagulability)
LDL testing (hyperlipidemia)
Peak flow meters (asthma)
Pulmonary rehabilitation
High Value Generic Drug Classes With Zero Cost Sharing
ACE inhibitors and ARBs
Anti-depressants
Antipsychotics
Anti-resorptive therapy
Antiretrovirals
Antithrombotics/anticoagulants
Beta blockers
Buprenorphine-naloxone
Glucose lowering agents
Inhaled corticosteroids
Naloxone
Rheumatoid arthritis medications
Statins
Thyroid-related
Tobacco cessation treatments
High Value Branded Drug Classes With Reduced Cost Sharing
Anti-TNF (tumor necrosis factor)
Hepatitis C directing-acting combination
Pre-exposure prophylaxis for HIV (PrEP)[121]
Specific Low Value Services Considered
Proton beam therapy for prostate cancer
Spinal fusions
Vertebroplasty and kyphoplasty
Vitamin D testing
Commonly Overused Service Categories With Increased Cost-Sharing
Outpatient specialist services
Outpatient labs
High-cost imaging
X-rays and other diagnostic imaging
Outpatient surgical services
Non-preferred branded drugs

[118] We note that issuers are also subject to federal civil rights laws, including Title VI of the Civil Rights Act. Section 504 of the Rehabilitation Act, the Age Discrimination Act, section 1557 of the PPACA, and conscience and religious freedom laws.

[119] For more information please see information about the VBID–X project available at *http://vbidcenter.org/initiatives/vbid-x/* and resulting white paper, available at *http://vbidcenter.org/wp-content/uploads/2019/07/VBID-X-Final-Report_White-Paper-7.13.19.pdf.*

[120] Additional information on data sources considered by the Center, please see: *https://www.choosingwisely.org/;http://vbidhealth.com/low-value-care-task-force.php; https://www.oregon.gov/oha/pebb/pages/index.aspx; https://www.iha.org/our-work/insights/smart-care-california; https://www.hca.wa.gov.*

[121] Per 26 CFR 54.9815–2713, 29 CFR 2590.715–2713 and 45 CFR 147.130, non-grandfathered group health plans and non-grandfathered health insurance coverage in the group or individual markets, including QHP issuers in the individual market, will be required to cover PrEP without imposing any cost-sharing requirements for plan or policy years beginning on or after June 30, 2020, in a manner consistent with the U.S Preventive

Continued

For issuers in Exchanges using the Federal platform, HHS is not proposing to offer preferential display on *HealthCare.gov* for QHPs that include value-based insurance design. However, we are considering ways in which consumers could easily identify a ''value-based'' QHP. We seek comments on ways in which these ''value-based'' QHPs could be identified to consumers on *HealthCare.gov*, how best to communicate their availability to consumers, how best demonstrate how the cost-sharing structures who affect different consumers, and how to assist consumers in selecting a value-based QHP if it is an appropriate option.

We are also soliciting comment on how HHS could collect information from issuers in Exchanges using the Federal platform to indicate that their QHP includes value-based insurance design. This could include collecting the information from the issuer, instructing issuers to include ''value-based'' in the plan name, or establishing HHS-adopted criteria that an issuer would have to meet in order to be labeled value-based.

We also solicit comment on principles that HHS could adopt to establish what constitutes a value-based plan, perhaps establishing minimum standards, as well as obstacles to other obstacles to implementation. We are interested in additional ways in which HHS could provide operational assistance to issuers offering value-based QHPs. We understand that some states require the use of standardized plan designs and may not be able to certify QHPs with alternative cost sharing structures. We solicit comment from states that believe their cost sharing laws would not allow for this type of plan design.

Lastly, we solicit comment on other value-based insurance design activities HHS should pursue in the future, including applicable models for stand-alone dental plans.

7. Termination of Coverage or Enrollment for Qualified Individuals (§ 156.270)

Issuers are currently required under § 156.270(b)(1) to send termination notices, including the termination effective date and reason for termination, to enrollees only for terminations due to (1) loss of eligibility for QHP coverage, (2) non-payment of premiums, and (3) rescission of coverage. For this purpose, we consider a termination of coverage of a consumer whose enrollment would violate the anti-duplication provision of section 1882 of the Social Security Act to be a termination because the enrollee is no longer eligible for QHP coverage under § 155.430(b)(2)(i), and therefore issuers are required to send a termination notice under § 156.270(b)(1) when the consumer's coverage is non-renewed.[122]

However, there are a number of scenarios where issuers are not clearly required to send termination notices, including enrollee-initiated terminations, the death of the enrollee, the enrollee changing from one QHP to another during an annual open enrollment period or special enrollment period, and terminations for dual enrollment when an enrollee has asked the Exchange to end QHP coverage when found in other coverage, such as through Medicare PDM. We propose to amend § 156.270(b)(1) to require QHP issuers to send to enrollees a termination notice for all termination events described in § 155.430(b), regardless of who initiated the termination.

The original version of § 156.270 required a termination notice when an enrollee's coverage was terminated ''for any reason,'' [123] with a 30-day advance notice requirement. This requirement was eventually replaced with the current requirement. As bases for termination in § 155.430(b)(2) were expanded, § 156.270 was not updated in parallel. Although we currently recommend that issuers send termination notices whenever an enrollee's coverage is terminated, questions have arisen from issuers regarding when termination notices are required. Updating our regulations to require issuers to send termination notices to enrollees for all termination events, regardless of who initiated the termination, would help streamline issuer operations and reduce confusion. This change would also help promote continuity of coverage by ensuring that enrollees are aware that their coverage is ending, as well as the reason for its termination and the termination effective date, so that they can take appropriate action to enroll in new coverage, if eligible.

We request comments on this proposal.

8. Dispute of HHS Payment and Collections Reports (§ 156.1210)

In the 2014 Payment Notice,[124] we established provisions related to confirmation and dispute of payment and collection reports. These provisions were written under the assumption that issuers would generally be able to provide these confirmations or disputes automatically to HHS. However, we have found that many issuers prefer to research payment errors and use enrollment reconciliation and disputes to update their enrollment and payment data, and may be unable to complete this research and provide confirmation or dispute of their payment and collection reports within 15 days, as currently required under § 156.1210. In addition, because the FFE typically reflects enrollment reconciliation updates 1 to 2 months after they have occurred, issuers attempting to comply with the 15-day deadline may submit disputes that are no longer necessary after the reconciliation updates have been processed.

Therefore, we propose to amend § 156.1210 to lengthen the time to report payment inaccuracies from 15 days to 90 days to allow issuers more time to research, report, and correct inaccuracies through other channels. The longer timeframe also allows for the processing of reconciliation updates, which may resolve potential disputes. This is captured in the new proposed § 156.1210(a).

We also propose to remove the requirement currently captured at § 156.1210(a) that issuers actively confirm payment accuracy to HHS each month, as well as the language currently captured at § 156.1210(b) regarding late filed discrepancies. We propose to instead require at new § 156.1210(b) an annual confirmation after the end of each payment year, in a form and manner specified by HHS. Issuers would also have an opportunity as part of the proposed annual confirmation process to notify HHS of disputes related to identified inaccuracies. These changes are based on our experience with current enrollment and payment operations, which include frequent updates to enrollment and payment data throughout the year, and that we believe make monthly confirmation unnecessarily burdensome.

Finally, we propose to delete the current provision at § 156.1210(c)

Services Task Force (USPSTF) final recommendation at *https://www.uspreventiveservicestaskforce.org/Page/Document/RecommendationStatementFinal/prevention-of-human-immunodeficiency-virus-hiv-infection-pre-exposure-prophylaxis.*

[122] See 3.4.8 Medicare Enrollment and Non-renewals of the 2019 federally-facilitated Exchanges (FFEs) and federally-facilitated Small Business Health Options Program (FF–SHOP) Enrollment Manual at *https://www.regtap.info/uploads/library/ENR_EnrollmentManualForFFEandFF-SHOP_5CR_071019.pdf.*

[123] Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers; Final Rule and Interim Final Rule, March 27, 2012 (77 FR 18310).

[124] See 78 FR 65045 at 65080.

related to discrepancies to be addressed in future reports. We believe that any discrepancies would already be addressed through the payment process described in the payment dispute paragraph as described in the proposed new § 156.1210 or through the adjustments to the enrollment process in § 156.265(f). Therefore, the current provision at § 156.1210(c) would be duplicative and unnecessary.

HHS intends to work cooperatively with issuers that make a good faith effort to comply with these procedures. Issuers can demonstrate that they are working in good faith cooperatively with HHS by sending regular and accurate enrollment reconciliation files and timely enrollment disputes throughout the applicable enrollment calendar, submitting payment disputes within the proposed 90 day dispute window, making timely and regular changes to enrollment reconciliation and dispute files to correct past errors, and by reaching out to HHS and responding timely to HHS outreach to address any issues identified.

We solicit comment on these proposed changes.

F. Part 158—Issuer Use of Premium Revenue: Reporting and Rebate Requirements

1. Reporting Requirements Related to Premiums and Expenditures (§ 158.110)

We propose amending § 158.110(a) to clarify requirements for MLR purposes for issuer reporting of expenses for functions outsourced to or services provided by other entities. Such entities include third-party vendors, other health insurance issuers, and other entities, whether affiliated or unaffiliated with the issuer.

Section 2718(a) of the PHS Act requires health insurance issuers to separately report the percentage of premium revenue (after certain adjustments) expended on reimbursement for clinical services provided to enrollees under such coverage. Section 158.110 codifies the general reporting requirements for issuers in the group and individual health insurance markets. However, the current regulation does not comprehensively address the reporting requirements for expenses for functions outsourced to other entities that are contracted to perform clinical and administrative activities for health insurance issuers in the group and individual markets.

Section 158.140(b)(3)(i) through (iii) specifies that issuers may not include in incurred claims amounts paid to third-party vendors for secondary network savings, and administrative costs and profits, but does not explicitly state that payment to third-party vendors for provision of clinical services may be included in incurred claims. The May 13, 2011 CCIIO Technical Guidance (CCIIO 2011–002) (May 2011 Guidance) [125] Q&A #12 clarified that issuers may include payments to third-party vendors attributable to direct provision of clinical services to enrollees in incurred claims, and that such payments to a third-party vendor may include an administrative cost component.

We note that the inclusion of a third-party vendor's administrative costs as incurred claims in this scenario is only permitted to the extent the vendor is reimbursed under a capitation arrangement, which is consistent with how capitation payments to providers (addressed in Q&A #8 in the May 2011 Guidance) are treated for MLR purposes. Q&A #14 in the May 2011 Guidance similarly clarified that payments to third-party vendors for performing health care QIA expenses on behalf of the issuer may be reported as QIA, to the extent that the issuer and the vendor can show that these activities meet the definitions in §§ 158.150 and 158.151.

However, Q&A #14 also specified that third-party vendor QIA expenses must not include the vendor's administrative costs or profits, consistently with the treatment of reporting third-party vendor incurred claims costs which is codified in § 158.140(b)(3)(ii). We note that this requirement applies regardless of whether QIA services are provided under a capitation arrangement, due to the difference in the nature of clinical services and QIA and the greater potential for abuse.

The July 18, 2011 CCIIO Technical Guidance (CCIIO 2011–004) [126] Q&A #19 further clarified that payments to third-party vendors may only be included in incurred claims to the extent the vendor provides clinical services through its own employees, and that payments to the vendor to perform administrative functions on behalf of the issuer must be reported as a non-claims administrative expense. As stated in the May 2011 Guidance, Q&A #11, an issuer that needs to include payments to third-party vendors in its MLR reporting is only required to obtain from the third-party vendor the aggregate amounts attributable to providing direct clinical services to enrollees and attributable to administrative cost and profit component of the payments, and that nothing in the regulation requires the third-party vendor to disclose proprietary data concerning pricing arrangements.

In order to consolidate and clarify the MLR treatment of payments to third-party vendors and other entities, we propose to revise § 158.110(a) to capture the requirement that expenses for functions outsourced to or services provided by other entities retained by an issuer must be reported consistently with how expenses must be reported when incurred directly by the issuer. We seek comments on this proposal.

2. Reimbursement for Clinical Services Provided to Enrollees (§ 158.140)

Section 2718(a) of the PHS Act requires health insurance issuers to, for MLR purposes, separately report the percentage of premium revenue (after certain adjustments) expended on reimbursement for clinical services provided to enrollees under such coverage, on activities that improve health care quality, and on non-claims (administrative) costs. Section 158.140 sets forth the MLR reporting requirements related to the reimbursement for clinical services provided to enrollees, including a requirement that issuers must deduct from incurred claims prescription drug rebates received by the issuer. We propose to amend § 158.140(b)(1)(i) to require issuers to deduct from incurred claims prescription drug rebates and other price concessions not only when received by the issuer, but also when received and retained by an entity providing pharmacy benefit management services (including drug price negotiation services) to the issuer, typically a pharmacy benefit manager (PBM). The phrase ''price concession,'' when used in this context, is intended to capture any time an issuer or an entity that provides pharmacy benefit management services to the issuer receives something of value related to the provision of a covered prescription drug (for example, manufacturer rebate, incentive payment, direct or indirect remuneration, etc.) regardless from whom the item of value is received (for example, pharmaceutical manufacturer, wholesaler, retail pharmacy, vendor, etc.).

For example, pharmaceutical drug manufacturers often provide, either directly to issuers or indirectly through PBMs retained by issuers, prescription drug rebates and other price concessions based upon such considerations as securing a more favorable placement on

[125] Available at *https://www.cms.gov/CCIIO/Resources/Files/Downloads/dwnlds/mlr-guidance-20110513.pdf.*

[126] Available at *https://www.cms.gov/CCIIO/Resources/Files/Downloads/20110718_mlr_guidance.pdf.*

an issuer's drug formulary, increasing the drug utilization and market share, or limiting an issuer's exposure to drug price changes. The portion of premium revenue that an issuer expends on its enrollees' pharmacy costs (excluding the administrative costs and profits related to the provision of pharmacy benefits) is the actual reimbursement to pharmacies, less the prescription drug rebates or other price concessions secured from drug manufacturers.

For purposes of the MLR and rebate calculations, the MLR December 1, 2010 interim final rule (75 FR 74864) directed issuers to deduct from incurred claims prescription drug rebates received by issuers.[127] The MLR December 1, 2010 interim final rule additionally required issuers who outsource administration of their pharmacy benefits to PBMs (or other third-party vendors) to exclude from incurred claims the portion of payments they make to PBMs that exceeds the reimbursement to providers and thus represents the PBMs' administrative costs and profits.[128] This approach sought to ensure that issuers' spending on pharmacy benefits was treated consistently regardless of whether issuers choose to administer the benefits themselves or outsource these functions to an entity providing pharmacy benefit management services. However, the current approach provides an unfair advantage to issuers who utilize an entity to provide pharmacy benefit management services and allow the entity to retain prescription drug rebates or other price concessions.

An issuer that chooses to retain an entity to provide pharmacy benefit management services may incur administrative costs in the form of paying the entity a fee, providing the entity an inflated pharmacy reimbursement amount, and/or allowing the entity to retain a portion or all of the prescription drug rebates and other price concessions generated by the issuer's enrollees' drug utilization. The issuer may realize a profit on pharmacy benefits to the extent outsourcing pharmacy benefit management and compensating the entity in any one of the above ways is more cost-effective than providing pharmacy benefits directly. The current regulatory framework in § 158.140(b)(1)(i) and (b)(3)(i) through (iii) only accounts for the situation where the administrative costs and profits related to the provision of pharmacy benefits are comprised of an administrative fee paid by an issuer to the entity providing pharmacy benefit management services or a ''spread'' (retained by the entity) between the amount the issuer provides to the entity for pharmacy reimbursement and a lower amount the entity actually reimburses to the pharmacy. The regulation does not clearly address the situation where the administrative costs and profits related to the provision of pharmacy benefits are comprised, in whole or in part, of a portion or all of the prescription drug rebates or other price concession that the issuer allows the entity providing pharmacy benefit management services to retain. In both situations, the net portion of premium revenue that an issuer expends on enrollees' pharmacy costs is the actual reimbursement to pharmacies, less prescription drug rebates or other price concessions. However, because the regulation currently requires an issuer to deduct from incurred claims prescription drug rebates only when received by the issuer and does not clearly provide that rebates and price concessions retained by an entity providing pharmacy benefit management services to the issuer must be reported in situations where the issuer allows the entity to retain a portion or all of such rebates and price concessions, the portion retained by the entity is not reflected anywhere in the MLR reporting or calculation. Consequently, under the current regulation, enrollees fail to receive the benefit of prescription drug rebates and price concessions to the extent these are retained by an entity other than the issuer. In addition, the current regulation enables issuers who compensate entities providing pharmacy benefit management services by allowing them to retain prescription drug rebates or price concessions to inflate the incurred claims and MLRs relative to financially identically situated issuers who choose to compensate these entities by paying a fee or an inflated pharmacy reimbursement amount.

Therefore, we propose to revise § 158.140(b)(1)(i) to require adjustments that must be deducted from incurred claims to include not only prescription drug rebates received by the issuer, but also any price concessions received by the issuer, and any prescription drug rebates or other price concessions received and retained by an entity providing pharmacy benefit management services (including drug price negotiation services) to the issuer that are associated with administering the issuer's prescription drug benefits. We also propose to make conforming revisions to § 158.160(b)(2) to require issuers to report the prescription drug rebates and price concessions described above as non-claims costs. These proposed revisions would not only provide for a more equitable treatment of issuers in the commercial health insurance markets, but also align more closely with the MLR provisions that apply to the Medicare Advantage organizations and Part D sponsors and Medicaid managed care organizations,[129] both of which require that the full amount of prescription drug rebates and price concessions be deducted from incurred claims. We seek comments on all aspects of these proposals.

We propose that these amendments would be applicable beginning with the 2021 MLR reporting year (reports due by July 31, 2022). We seek comments regarding the applicability date to ensure that issuers have adequate time to adjust contracts with entities that provide pharmacy benefit management service to issuers to share information with those issuers about rebates and other price concessions they receive (to the extent not already required by law).

3. Activities That Improve Health Care Quality (§ 158.150)

We propose amending § 158.150(b)(2)(iv)(A)(*5*) to clarify that issuers in the individual market may include the cost of certain wellness incentives [130] as QIA expenses in the MLR calculation.

Section 2718(a)(2) of the PHS Act requires health insurance issuers to submit an annual report to the Secretary that includes information on the percent of total premium revenue that is spent on activities that improve health care quality. A non-exhaustive list of examples of allowable wellness QIA in § 158.150(b)(2)(iv) includes the cost of certain wellness incentives offered by issuers in the group markets, but does not explicitly list wellness incentives offered in the individual market. However, issuers in the individual market are currently permitted to offer participatory wellness programs,

[127] The MLR reporting form instructions further clarify that prescription drug price concessions must be deducted regardless of the specific form they take, including prescription drug rebates, refunds, incentive payments, bonuses, discounts, charge backs, coupons, grants, direct or indirect subsidies, direct or indirect remuneration, upfront payments, goods in kinds, or similar benefits.

[128] 45 CFR 158.140(b)(3)(i) through (iii).

[129] See the Medicare Advantage program and Prescription Drug Benefit program May 23, 2013 final rule (78 FR 31284), as amended by the April 16, 2018 final rule (83 FR 16440); and the Medicaid managed care May 6, 2016 final rule (81 FR 27497) and the CMCS May 15, 2019 information bulletin available at *https://www.medicaid.gov/federal-policy-guidance/downloads/cib051519.pdf.*

[130] For this purpose, the term ''wellness incentive'' has the same meaning as the term ''reward'' in § 146.121(f)(1)(i).

provided such programs are consistent with applicable state law and available to all similarly situated individuals.[131] In addition, CMS recently announced a new wellness program demonstration project through the September 30, 2019 CMS Bulletin: Opportunity for States to Participate in a Wellness Program Demonstration Project to Implement Health-Contingent Wellness Programs in the Individual Market.[132] This bulletin announced the opportunity for states to apply to participate in a 10-state wellness program demonstration project, as described in section 2705(l) of the PHS Act. Under this demonstration project, participating states may implement nondiscriminatory health-contingent wellness programs in the individual market, subject to the wellness program provisions of section 2705(j) of the PHS Act.

To ensure consumer choice and access to wellness programs, we propose to amend § 158.150(b)(2)(iv)(A)(*5*) to clarify that issuers in the individual market are allowed to include wellness incentives in the same manner as is permitted for the group market, to the extent such incentives are permitted by section 2705 of the PHS Act, as QIA in the MLR calculation.[133] We propose that these amendments would be applicable beginning with the 2021 MLR reporting year (reports due by July 31, 2022). We seek comment on this proposal.

4. Other Non-Claims Costs (§ 158.160)

For a discussion of the proposed amendment to § 158.160(b)(2) regarding non-claims costs other than taxes and regulatory fees, please see the preamble to § 158.140.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. This proposed rule contains information collection requirements (ICRs) that are subject to review by OMB. A description of these provisions is given in the following paragraphs with an estimate of the annual burden, summarized in Table 15. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (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 affected public, including automated collection techniques.

We are soliciting public comment on each of the required issues under section 3506(c)(2)(A) of the PRA for the following information collection requirements.

A. Wage Estimates

To derive wage estimates, we generally used data from the Bureau of Labor Statistics to derive average labor costs (including a 100 percent increase for fringe benefits and overhead) for estimating the burden associated with the ICRs.[134] Table 12 in this proposed rule presents the mean hourly wage, 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. Nonetheless, there is no practical alternative, and we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

TABLE 12—ADJUSTED HOURLY WAGES USED IN BURDEN ESTIMATES

Occupation title	Occupational code	Mean hourly wage ($/hr.)	Fringe benefits and overhead ($/hr.)	Adjusted hourly wage ($/hr.)
Chief Executive *	11–1011	$96.22	$96.22	$192.44
General and Operations Manager	11–1021	59.56	59.56	119.12
Compensation and Benefits Manager	11–3111	63.87	63.87	127.74
Lawyer	23–1011	69.34	69.34	138.68
Legal Support Worker	23–2099	34.34	34.34	68.68

* Chief executive wage is used to estimate the state official wages.

B. ICRs Regarding Notice Requirement for Excepted Benefit HRAs Offered by Non-Federal Governmental Plan Sponsors (§ 146.145(b)(3)(viii)(E))

In § 146.145(b)(3)(viii)(E), we are proposing that an excepted benefit HRA offered by a non-Federal governmental plan sponsor must provide a notice that describes conditions pertaining to eligibility to receive benefits, annual or lifetime caps or other limits on benefits under the plan, and a description or summary of the benefits. This notice would be provided on an annual basis no later than 90 days after the first day of the excepted benefit HRA plan year (or, if a participant is not eligible to participate at the beginning of the plan year, no later than 90 days after the employee becomes a participant in the excepted benefit HRA).

We estimate that for each excepted benefit HRA sponsored by a non-Federal governmental plan, a compensation and

[131] See the Incentives for Nondiscriminatory Wellness Programs in Group Health Plans; Final Rule; 78 FR 33158 at 33167 (June 3, 2013).

[132] *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Wellness-Program-Demonstration-Project-Bulletin.pdf.* Available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Wellness-Program-Demonstration-Project-Bulletin.pdf.*

[133] Under section 2705(j) of the PHS Act and 45 CFR 146.121(f), health-contingent and participatory wellness programs are permitted in the group market. As detailed above, HHS previously recognized that participatory wellness programs in the individual market do not violate section 2705 and are therefore permitted, provided that such programs are consistent with applicable state law and available to all similarly situated individuals enrolled in the individual health insurance coverage. See 78 FR at 33167. In addition, section 2705(l) of the PHS Act authorizes the Secretary to establish a 10-state wellness program demonstration project under which issuers may offer non-discriminatory wellness programs in the individual market.

[134] See May 2018 Bureau of Labor Statistics, Occupational Employment Statistics, National Occupational Employment and Wage Estimates. Available at *https://www.bls.gov/oes/current/oes_stru.htm.*

benefits manager would need 1 hour (at $127.74 per hour) and a lawyer would need 0.5 hours (at $138.68 per hour) to prepare the notice. The total burden for an HRA plan sponsor would be 1.5 hours with an equivalent cost of approximately $197. This burden would be incurred the first time the non-Federal governmental plan sponsor provides an excepted benefit HRA. In subsequent years, the burden to update the notice is expected to be minimal and therefore is not estimated.

We estimate that approximately 901 state and local government entities will offer excepted benefit HRAs each year.[135] The total burden to prepare the notices would be approximately 1,352 hours with an equivalent cost of approximately $177,569.

Non-Federal government sponsors of excepted benefit HRAs would provide the notice to eligible participants every year. We estimate that sponsors would provide printed copies of these notices to approximately 193,715 eligible participants annually.[136] We anticipate that the notices would be approximately 1 page long and the cost of materials and printing would be $0.05 per notice. It is assumed that these notices would be provided along with other benefits information with no additional mailing cost. We assume that approximately 54 percent of notices would be provided electronically and approximately 46 percent would be provided in print along with other benefits information. Therefore, state and local government entities providing excepted benefit HRAs to their employees would print approximately 89,109 notices at a cost of approximately $4,455 annually. We are seeking comment on whether sponsors of non-Federal governmental excepted benefit HRAs should be required to provide the notice annually after the initial notice; or whether, after providing the initial notice, they should only be required to provide the notice with respect to plan years for which the terms of the excepted benefit HRA change from the previous plan year and if so, what type or magnitude of change should trigger such a subsequent notice. If the requirement is finalized such that notice must be provided only for plan years for which there is a change from the previous years, the printing and materials costs would be lower and this estimate would represent an upper bound for the annual cost after the first year.

The total burden to prepare and send the notices in the first year would be approximately $182,000. In subsequent years, under the proposal that would require an annual notice regardless of whether there was a change from the previous years, these employers would only incur printing and materials costs of approximately $4,455 annually. The average annual burden over 3 years would be 451 hours with an equivalent annual cost of $59,190, and an average annual total cost of $63,645.

TABLE 13—ANNUAL BURDEN AND COSTS

Year	Estimated number of non-federal governmental employers offering HRAs	Estimated number of notices to all eligible participants	Total annual burden (hours)	Total estimated labor cost	Total estimated printing and materials cost
2020	901	193,715	1,352	$177,569	$4,455
2021	901	193,715	0	0	4,455
2022	901	193,715	0	0	4,455
3 year Average	901	193,715	451	59,190	4,455

C. ICRs Regarding Special Enrollment Periods (§ 155.420)

We propose to amend § 155.420(d)(1)(ii) to codify the special enrollment period available to qualified individuals and dependents who are provided a QSEHRA with a non-calendar year plan year, which is subject to pre-enrollment eligibility verification. While the FFEs make every effort to verify an individual's special enrollment period eligibility through automated electronic means, including when it is verifying eligibility on behalf of SBE–FPs, the FFEs currently cannot electronically verify whether an individual has a non-calendar year plan year QSEHRA. Therefore, qualifying individuals would be required to provide supporting documentation within 30 days of plan selection to confirm their special enrollment period triggering event, which is the end date of their QSEHRA. Acceptable documents may include a dated letter from their employer stating when their QSEHRA plan year ends or a copy of the notice that their employer provided them with to comply with section 9831(d)(4) of the Code.[137]

We estimate that this policy would result in relatively few additional consumers being required to submit documents to verify their eligibility to enroll through the proposed special enrollment period on or off-Exchange, because this group consists of a subset of consumers with a QSEHRA whose QSEHRA renews on a non-calendar year plan year basis. Within that group, only those who are not already enrolled in individual market health insurance coverage in order to meet their QSEHRA's requirement to have MEC who wish to change plans mid-calendar year would be required to submit documents to confirm SEP eligibility. Additionally, because changing plans mid-calendar year would generally result in these consumers' deductibles and other cost-sharing accumulators re-setting we anticipate that few consumers will opt to do so, which will result in a minimal increase in burden for individuals with a QSEHRA that renews on a non-calendar year basis and wish to change their plans mid-calendar year. We solicit comment on whether or not this is the case.

D. ICRs Regarding Quality Rating Information Display Standards for Exchanges (§§ 155.1400 and 155.1405)

At §§ 155.1400 and 155.1405, we propose to codify the flexibility for State

[135] HHS assumes that only 1 percent of state and local government entities will offer excepted benefit HRAs.

[136] HHS assumes that excepted benefit HRAs will be offered to all employees of state and local government entities that offer excepted benefit HRAs. This is an upper bound and actual number of eligible participants is likely to be lower if excepted benefit HRAs are offered to only some employee classes.

[137] Per IRS Notice 2017–67, this notice must include the date on which the QSEHRA is first provided to the eligible employee. Therefore, it is likely that in some cases it will also include or imply the QSEHRA end date.

Exchanges that operate their own eligibility and enrollment platforms regarding the display of quality rating information for their QHPs. The burden related to the proposed requirements was previously approved under OMB control number 0938–1312 (Establishment of an Exchange by a State and Qualified Health Plans PRA (CMS–10593)); the approval expired in August 2019. We are in the process of reinstating this information collection.

E. ICRs Regarding State Selection of EHB-Benchmark Plan for Plan Years Beginning on or After January 1, 2020 (§ 156.111)

At § 156.111, we propose to require states to annually report to HHS, in a form and manner specified by HHS and by a date determined by HHS, any state-required benefits applicable to the individual and/or small group market that are considered in addition to EHB in accordance with § 155.170. States would be required to include in their initial reports information of state benefit requirements under state mandates that were imposed on or before December 31, 2011, that are applicable to QHPs in the individual or small group market and that were not withdrawn or otherwise no longer effective before December 31, 2011, as well as any state-required benefits under mandates that were imposed any time after December 31, 2011, that are applicable to QHPs in the individual or small group market. In subsequent years, states would be required to update the content in its report to add any new state benefit requirements imposed during the applicable reporting period, and to indicate whether benefit requirements previously reported to HHS were amended, repealed, or otherwise affected by state action during the reporting period. In every report, states would be required to identify which state-required benefits it has determined is in addition to EHB and subject to defrayal. States would also be required to identify which state-required benefit it has determined not to be in addition to EHB and not subject to defrayal, and would be required to describe the basis of such determinations. If the state fails to notify HHS of its required benefits considered to be in addition to EHB by applicable annual submission deadlines, or fails to do so in the form and manner specified by HHS, we propose that HHS would determine which benefits are in addition to EHB for the state.

At § 156.111(f) we propose specifying the type of information states would be required to submit to HHS by the annual submission deadline in a form and manner specified by HHS. Specifically, § 156.111(f)(1) proposes that states annually reporting to HHS would be required to provide a document that is accurate as of the day that is at least 60 days prior to the annual reporting submission deadline set by HHS that lists state benefit requirements applicable to QHPs in the individual and/or small group markets under state mandates that were imposed on or before December 31, 2011 and that were not withdrawn or otherwise no longer effective before December 31, 2011, as well as any state benefit requirements under state mandates that were imposed any time after December 31, 2011 that are applicable to QHPs in the individual or small group market.

Section 156.111(f)(2) proposes that states annually reporting to HHS would also be required to specify which of those state-required benefits listed in accordance with § 156.111(f)(1) the state has identified as in addition to EHB and subject to state defrayal under § 155.170. Section 156.111(f)(3) proposes that states annually reporting to HHS be required to specify which of the state mandates listed in accordance with § 156.111(f)(1) the state has identified as not in addition to EHB and not subject to defrayal in accordance with § 155.170, and describe the basis for the state's determination. Section 156.111(f)(4) proposes that states submit other information about those state-required benefits listed in accordance with § 156.111(f)(1) that is necessary for HHS oversight, as specified by HHS.

In § 156.111(f)(5), we propose that this document be signed by a state official with authority to make the submission on behalf of the state, to confirm the accuracy of the submission. We solicit comment generally on these document collection requirements, specifically with regard to whether HHS should require any additional information from states on state-required benefits as part of the annual reporting submission. In § 156.111(f)(6), we propose to require states to make updates to this list of state-required benefits annually, in a form and manner and by a date specified by HHS, to include any new state benefit requirements, and to indicate whether benefit requirements previously reported to HHS under this paragraph (f) have been amended, repealed or are otherwise affected by state regulatory or legislative action.

If finalized as proposed, HHS would provide the template(s) that states would be required to use for reporting the required information proposed in § 156.111(f)(1) through (6). We would post state submission of these documents on the EHB website prior to the end of the plan year during which the reporting takes place. If the state does not notify HHS of its state-required benefits that are in addition to EHB in accordance with the proposed requirements at § 156.111(f), HHS would complete a similar document for the state and post it to the CMS website.

We anticipate that the majority of states would choose to annually notify HHS under this policy, as states are already required under § 155.170 to identify which state-required benefits are in addition to EHB and to defray the cost of QHP coverage of those benefits. Because we believe the information we are proposing that states report to HHS as part of this annual reporting should already be readily accessible to states, we estimate that approximately ten states would not report and the remaining states would annually report to HHS by the annual reporting submission deadline. Therefore, we estimate that approximately forty-one (41) states would respond to the information collection requirements associated with these proposals.

For the first year in which the annual reporting would take place, states would be required to include a comprehensive list of all state-required benefits applicable to QHPs in the individual and/or small group markets under state mandates that were imposed on or before December 31, 2011 and that were not withdrawn or otherwise no longer effective before December 31, 2011, as well as those state mandates that were imposed after December 31, 2011, regardless of whether the state believes such state-required benefits require defrayal in accordance with § 155.170. Each annual reporting cycle thereafter, the state would only need to update the content in its report to add any new state benefit requirements, and to indicate whether state benefit requirements previously reported to HHS have been amended or repealed. Information in states' initial reports must be accurate as of a day that is at least 60 days prior to the first reporting submission deadline set by HHS. As such, we estimate that the burden estimates for states in the first year of annual reporting would be higher than in each subsequent year.

Although we estimate a higher burden in the first year of annual reporting of state-required benefits, states are already expected to identify which state-required benefits are in addition to EHB and to defray the cost of QHP coverage of those benefits in accordance with § 155.170. Because we believe the information we are proposing that states report to HHS should be readily accessible to states, we estimate that it

would require a legal support worker 25 hours (at a rate of $68.68) to pull and review all mandates, transfer this information into the HHS provided template, and validate the information in the first year of annual reporting. We estimate that it would require a general and operations manager 3 hours (at a rate of $119.12) to then review the completed template and submit it to HHS in the first year of annual reporting. We estimate that it would require a state official 2 hours (at a rate of $192.44) in the first year of annual reporting to review and sign the required document(s) for submission on behalf of the state, to confirm the accuracy of the submission. The information would be submitted to HHS electronically at minimal cost. Therefore, we estimate that the burden for each state to meet this reporting requirement in the first year would be 30 hours, with an equivalent cost of approximately $2,459, with a total first year burden for all 41 states of 1,025 hours and an associated total first year cost of approximately $100,829.

Because the first year of annual reporting is intended to set the baseline list of state-required benefits which states would update as necessary in future annual reporting cycles, we believe the burden associated with each annual reporting thereafter would be lower than the first year. We estimate that for each annual reporting cycle after the first year it would require a legal support worker 10 hours (at a rate of $68.68) to transfer the information about state-required benefits into the HHS provided template and validate the information. We estimate that it would require a general and operations manager 2 hours (at a rate of $119.12) to review the completed template and submit it to HHS each year after the first annual reporting. We estimate that it would require a state official 1 hour (at a rate of $192.44) to review and sign the required document(s) for submission on behalf of the state, to confirm the accuracy of the submission. Therefore, we estimate that the burden for each state to meet the annual reporting requirement each year after the first year of annual reporting would be 13 hours with an equivalent cost of approximately $1,117, with a total annual burden for all 41 states of 533 hours and an associated total annual cost of approximately $45,817. The average annual burden over 3 years would be approximately 697 hours with an equivalent average annual cost of approximately $64,154.

We propose to amend the information collection currently approved under OMB control number: 0938–1174 (Essential Health Benefits Benchmark Plans (CMS–10448)) to include this burden.

F. ICRs Regarding Termination of Coverage or Enrollment for Qualified Individuals (§ 156.270)

The collection of information titled, ''Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers'' (OMB control number 0938–1341 (CMS–10592)) already accounts for burden estimates for QHP issuers to provide notice to an enrollee if the enrollee's coverage in a QHP is terminated. Consequently, we are not making any changes under the aforementioned control number. Subject to renewal, the control number is currently set to expire on September 30, 2020. It was last approved on September 18, 2017, and remains active. Since we are not proposing any changes to the submission process or burden, we are not making any changes under the aforementioned control number.

G. ICRs Regarding Medical Loss Ratio (§§ 158.110, 158.140, 158,150, and 158.160)

We propose to amend § 158.110(a) to clarify that issuers must report for MLR purposes expenses for functions they outsource to or services provided by other entities, consistent with how issuers must report directly incurred expenses. We also propose to amend § 158.140(b)(1)(i) to require issuers to deduct from incurred claims price concessions received by the issuer and any prescription drug rebates and other price concessions received and retained by an entity that provides pharmacy benefit management services to the issuer (including drug price negotiation services) that are associated with administering the issuer's prescription drug benefits. We propose conforming amendments to § 158.160(b)(2) to require such amounts to be reported as a non-claims cost.

Finally, we propose to amend § 158.150(b)(2)(iv)(A)(*5*) to explicitly allow issuers in the individual market to include the cost of certain wellness incentives as QIA in the MLR calculation. We do not anticipate that implementing any of these provisions would require changes to the MLR annual reporting form or significantly change the associated burden. The burden related to this information collection is currently approved under OMB control number 0938–1164 (Medical Loss Ratio Annual Reports, MLR Notices, and Recordkeeping Requirements (CMS–10418)). The control number is currently set to expire on October 31, 2020.

H. Summary of Annual Burden Estimates for Proposed Requirements

TABLE 14—PROPOSED ANNUAL RECORDKEEPING AND REPORTING REQUIREMENTS

Regulation section(s)	OMB control No.	Number of respondents	Number of responses	Burden per response (hours)	Total annual burden (hours)	Labor cost of reporting ($)	Total cost ($)
§ 146.145(b)(3)(viii)(E)	0938–1361	901	193,715	1.5	451	$59,190	$63,645
§ 156.111	0938–1174	41	41	15.3	697	64,154	64,154
Total		942	193,756		1,148	123,344	127,799

Note: There are no capital/maintenance costs associated with the information collection requirements contained in this rule; therefore, we have removed the associated column from Table 14.

I. Submission of PRA-Related Comments

We have submitted a copy of this proposed rule to OMB for its review of the rule's information collection and recordkeeping requirements. These requirements are not effective until they have been approved by the OMB.

To obtain copies of the supporting statement and any related forms for the proposed collections discussed above, please visit CMS's website at *www.cms.hhs.gov/PaperworkReductionActof1995,* or call the Reports Clearance Office at 410–786–1326.

We invite public comments on these potential information collection requirements. If you wish to comment, please submit your comments

electronically as specified in the **ADDRESSES** section of this proposed rule and identify the rule (CMS–9916–P), the ICR's CFR citation, CMS ID number, and OMB control number.

ICR-related comments are due April 6, 2020.

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this proposed rule, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Regulatory Impact Analysis

A. Statement of Need

This rule proposes standards related to the risk adjustment program for the 2021 benefit year, clarifications and improvements to the RADV program, as well as certain modifications that will promote transparency, innovation in the private sector, reduce burden on stakeholders, and improve program integrity. This rule proposes additional standards related to eligibility redetermination, special enrollment periods, state selection of EHB-benchmark plan and annual reporting of state-required benefits, premium adjustment percentage, termination of coverage, excepted benefit HRAs, the medical loss ratio (MLR) program, and FFE and SBE–FP user fees.

B. Overall Impact

We have examined the impacts 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 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. A regulatory impact analysis (RIA) must be prepared for rules with economically significant effects ($100 million or more in any 1 year).

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 RIA must be prepared for major rules with economically significant effects ($100 million or more in any 1 year), and a ''significant'' regulatory action is subject to review by OMB. HHS has concluded that this rule is likely to have economic impacts of $100 million or more in at least 1 year, and therefore is expected to be economically significant under Executive Order 12866. Therefore, HHS has provided an assessment of the potential costs, benefits, and transfers associated with this rule. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

The provisions in this proposed rule aim to ensure taxpayer money is more appropriately spent and that states have flexibility and control over their insurance markets. They would reduce regulatory burden, reduce administrative costs for issuers and states, and would lower net premiums for consumers. Through the reduction in financial uncertainty for issuers and increased affordability for consumers, these provisions are expected to increase access to affordable health coverage. Although there is still some uncertainty regarding the net effect on premiums, we anticipate that the provisions of this proposed rule would help further HHS's goal of ensuring that all consumers have access to quality and affordable health care and are able to make informed choices, that the insurance market offers choices, and that states have more control and flexibility over the operation and establishment of Exchanges.

Affected entities, such as states, would incur costs related to the EHB reporting requirement, defrayal of the cost of state-required benefits; implementation of new special enrollment period requirements; and non-Federal Government plan sponsors offering excepted benefit HRAs would incur expenses associated with providing a notice. Issuers would experience an increase in rebates paid to consumers due to proposed amendments to the MLR requirements. In accordance with Executive Order 12866, HHS believes that the benefits of this regulatory action justify the costs.

C. Impact Estimates of the Payment Notice Provisions and Accounting Table

In accordance with OMB Circular A–4, Table 15 depicts an accounting statement summarizing HHS's assessment of the benefits, costs, and transfers associated with this regulatory action.

This proposed rule implements standards for programs that will have numerous effects, including providing consumers with access to affordable health insurance coverage, reducing the impact of adverse selection, and stabilizing premiums in the individual and small group health insurance markets and in an Exchange. We are unable to quantify all benefits and costs of this proposed rule. The effects in Table 15 reflect qualitative impacts and estimated direct monetary costs and transfers resulting from the provisions of this proposed rule for health insurance issuers and consumers. The annual monetized transfers described in Table 15 include changes to costs associated with the risk adjustment user fee paid to HHS by issuers and the potential increase in rebates from issuers to consumers due to proposed amendments to MLR requirements.

We are proposing the risk adjustment user fee of $0.19 PMPM for the 2021 benefit year to operate the risk adjustment program on behalf of states,[138] which we estimate to cost approximately $50 million in benefit year 2021. We expect risk adjustment user fee transfers from issuers to the Federal Government to remain steady at $50 million, the same as estimated for

[138] As noted earlier in this proposed rule, no state has elected to operate the risk adjustment program for the 2021 benefit year; therefore, HHS will operate the program for all 50 states and the District of Columbia.

the 2020 benefit year; this is included in Table 15.

Additionally, for 2021, we are considering two alternative proposals. First, we are proposing maintaining the FFE and the SBE–FP user fee rates at current levels, 3.0 and 2.5 percent of premiums, respectively. Alternatively, we are considering and seek comment on reducing the user fee rates below the 2020 plan year levels.

TABLE 15—ACCOUNTING TABLE

Benefits				
Qualitative: • Greater market stability resulting from updates to the risk adjustment methodology. • Increase in consumers' understanding of their excepted benefit HRA offer. • Strengthened program integrity related to proposals to terminate QHP coverage for Exchange enrollees who have become deceased during a plan year and via processing voluntary terminations on behalf of Medicare, Medicaid/CHIP, if applicable, BHP, dual enrollees via PDM. • More plan options for Exchange enrollees newly ineligible for CSRs, resulting in increased continuous coverage and associated benefit to risk pools. • Streamlined Exchange operations by eliminating certain prospective coverage effective date rules and retroactive payment rules for special enrollment periods.				
Costs	Estimate million	Year dollar	Discount rate (percent)	Period covered
Annualized Monetized ($/year)	−$50.48 −$47.66	2019 2019	7 3	2020–2024 2020–2024
Quantitative: • Costs incurred by sponsors of non-Federal governmental plans and states to comply with provisions related to notice requirement for excepted benefit HRAs and reporting related to state mandated benefits, as detailed in the Collection of Information Requirements section, estimated to be approximately $283,000 in 2020 and approximately $50,000 2021 onwards. • Reduction in potential costs to Exchanges since they would not be required to conduct random sampling as a verification process for enrollment in or eligibility for employer-based insurance when the Exchange reasonably expects that it will not obtain sufficient verification data, estimated to be one-time savings of $44 million in 2020 and annual savings of $92 million in 2020 and 2021. • Regulatory familiarization costs of approximately $54,000 in 2020.				
Qualitative: • Increased costs due to increases in providing medical services (if health insurance enrollment increases). • Potentially minor costs to Exchanges and DE partners to update the application and logic to account for new plan options for Exchange enrollees newly ineligible for CSRs and enrollees covered by a non-calendar plan year QSEHRA. • Potential reduction in costs to issuers due to elimination of duplicative coverage as part of PDM. • Potential reduction in costs to consumers due to PDM noticing efforts to notify enrollees of duplicative coverage and risk for tax liability. • Potential costs to the Exchanges and consumers to comply with the new special enrollment period requirements. • Potential reduction in burden for Exchanges and issuers to comply with the proposed special enrollment period prospective coverage effective dates.				
Transfers	Estimate million	Year dollar	Discount rate (percent)	Period covered
Annualized Monetized ($/year)	$14.1 14.3	2019 2019	7 3	2020–2024 2020–2024
Quantitative: • Net increase in transfers from health insurance issuers to consumers in the form of rebates of $18.2 million per year due to proposed amendments to the MLR requirements.				
Qualitative: • Potential decreases in premiums and PTCs associated with adjustments to MLR. • Potential decrease in APTC and CSR payments due to reduction in duplicative coverage and retroactive termination of coverage to the date of death as part of PDM and more accurate defrayal of costs for state mandated benefits. • Transfer of costs from issuers to states to the extent that a state would newly defray the cost of state-required benefits it should have already been defraying.				

This RIA expands upon the impact analyses of previous rules and utilizes the Congressional Budget Office's (CBO) analysis of the PPACA's impact on Federal spending, revenue collection, and insurance enrollment. The PPACA ends the transitional reinsurance program and temporary risk corridors program after the benefit year 2016. Therefore, the costs associated with those programs are not included in Table 16 or 17. Table 16 summarizes the effects of the risk adjustment program on the Federal budget from fiscal years 2020 through 2024, with the additional, societal effects of this proposed rule discussed in this RIA. We do not expect the provisions of tZhis proposed rule to significantly alter CBO's estimates of the budget impact of the premium stabilization programs that are described in Table 16.

In addition to utilizing CBO projections, HHS conducted an internal analysis of the effects of its regulations on enrollment and premiums. Based on these internal analyses, we anticipate that the quantitative effects of the provisions proposed in this rule are consistent with our previous estimates in the 2020 Payment Notice for the impacts associated with the APTCs, the

premium stabilization programs, and FFE user fee requirements.

TABLE 16—ESTIMATED FEDERAL GOVERNMENT OUTLAYS AND RECEIPTS FOR THE RISK ADJUSTMENT AND REINSURANCE PROGRAMS FROM FISCAL YEAR 2020–2024, IN BILLIONS OF DOLLARS [139]

Year	2020	2021	2022	2023	2024	2020–2024
Risk Adjustment and Reinsurance Program Payments ..	5	6	6	6	6	29
Risk Adjustment and Reinsurance Program Collections	5	6	6	6	6	29

Note: Risk adjustment program payments and receipts lag by one quarter. Receipt will fully offset payments over time.
Source: Congressional Budget Office. *Federal Subsidies for Health Insurance Coverage for People Under Age 65: Tables From CBO's May 2019 Projections* Table 2. May 2, 2019. Available at *https://www.cbo.gov/system/files/2019-05/51298-2019-05-healthinsurance.pdf.*

1. Notice Requirement for Excepted Benefit HRAs Offered by Non-Federal Governmental Plan Sponsors (§ 146.145(b)(3)(viii)(E))

In § 146.145(b)(3)(viii)(E), we are proposing that an excepted benefit HRA offered by a non-Federal governmental plan sponsor must provide, on an annual basis, a notice that describes conditions pertaining to eligibility to receive benefits, annual or lifetime caps or other limits on benefits under the plan, and a description or summary of the benefits. This notice would provide employees with clear information regarding excepted benefit HRAs offered by their employers. Excepted benefit HRAs sponsored by non-Federal Government entities would incur costs to provide the notice as detailed previously in the Collection of Information Requirements section.

2. Early Retiree Reinsurance Program (Part 149)

Our proposal to remove the regulations at part 149 of title 45 governing the ERRP would not have any direct regulatory impact since the ERRP sunset as of January 1, 2014. However, removing the regulations would reduce the volume of Federal regulations.

3. Risk Adjustment

The risk adjustment program is a permanent program created by section 1343 of the PPACA that collects charges from issuers with lower-than-average risk populations and uses those funds to make payments to issuers with higher-than-average risk populations in the individual, small group, and merged markets (as applicable), inside and outside the Exchanges. We established standards for the administration of the risk adjustment program in subparts A, B, D, G, and H of part 153.

If a state is not approved to operate, or chooses to forgo operating its own risk adjustment program, HHS will operate risk adjustment on its behalf. For the 2021 benefit year, HHS will operate a risk adjustment program in every state and the District of Columbia. As described in the 2014 Payment Notice, HHS's operation of risk adjustment on behalf of states is funded through a risk adjustment user fee. For the 2021 benefit year, we propose to use the same methodology that we finalized in the 2020 Payment Notice to estimate our administrative expenses to operate the program. Risk adjustment user fee costs for the 2021 benefit year are expected to remain steady from the prior 2020 benefit year estimates of approximately $50 million. We estimate that the total cost for HHS to operate the risk adjustment program on behalf of states and the District of Columbia for 2021 will be approximately $50 million, and the risk adjustment user fee would be $0.19 PMPM. Because overall risk adjustment contract costs estimated for the 2021 benefit year are similar to 2020 benefit year costs, we do not expect the proposed risk adjustment user fee for the 2021 benefit year to materially impact transfers from issuers of risk adjustment covered plans to the Federal Government.

Additionally, to use risk adjustment factors that reflect more recent treatment patterns and costs, we propose to recalibrate the HHS risk adjustment models for the 2021 benefit year by using more recent claims data to develop updated risk factors, as part of our continued assessment of modifications to the HHS-operated risk adjustment program for the individual and small group (and merged) markets. We propose to discontinue our reliance on MarketScan® data to recalibrate the risk adjustment models, and to adopt and maintain an approach of using the 3 most recent years of available enrollee-level EDGE data for recalibration of the risk adjustment models beginning with the 2021 benefit year and beyond. We believe that the approach of blending (or averaging) 3 years of separately solved coefficients would provide stability within the risk adjustment program and minimize volatility in changes to risk scores from the 2020 benefit year to the 2021 benefit year due to differences in the datasets' underlying populations. We also propose to incorporate several proposed HCC changes into the 2021 benefit year risk adjustment models. We do not expect these proposals to affect the absolute value of risk adjustment transfers, or impact issuer burden beyond what we previously estimated in the 2020 Payment Notice.

4. Risk Adjustment Data Validation (§ 153.630)

Under § 153.630, we are proposing changes to the requirements for RADV. Beginning with the 2019 benefit year of RADV, we propose to consider issuers to be outliers only if they have 30 or more HCCs recorded on EDGE for any HCC group in which their failure rate appears anomalous. As only a very small number of issuers would be affected by this change, and those affected already have small total plan liability risk scores for the affected HCC groups due to their low HCC counts, we expect the total reduction of burden to issuers to be small. Projections based on 2017 benefit year RADV adjustments estimate an overall 0.7 percent reduction in absolute RADV transfer adjustments across all issuers for benefit years to which this change may apply.

We also propose that the 2019 benefit year RADV would serve as a second pilot year for the purposes of prescription drug data validation in addition to the 2018 benefit year RADV. We are proposing this second pilot year to provide HHS and issuers with 2 full years of experience with the data validation process for prescription drugs before adjusting transfers. We do not expect this proposal to affect the magnitude of RADV adjustments to risk adjustment transfers, or to impact issuer

[139] Reinsurance collections ended in FY 2018 and outlays in subsequent years reflect remaining payments, refunds, and allowable activities.

burden or administrative costs beyond what we previously estimated in the 2020 Payment Notice.

5. Verification Process Related to Eligibility for Insurance Affordability Programs (§ 155.320)

In future rulemaking, we intend to propose amendments to § 155.320(d)(4)(i) to remove the requirement that Exchanges use random sampling as part of its program to verify whether an applicant for insurance affordability programs (for example, APTC and CSRs) is enrolled in or eligible for employer-sponsored coverage. We intend to propose amendments under which Exchanges will have the flexibility to design their employer-sponsored coverage verification programs based on a fulsome assessment of the risk for inappropriate payments of APTC and CSRs, which would be based on reliable studies, research, and analyses of an Exchange's own enrollment data. We believe this flexibility would benefit employers, employees, Exchanges using the Federal platform, and State Exchanges that operate their own eligibility and enrollment platform because it would eliminate the burden of investing resources to conduct and respond to random sampling.

In the 2019 Payment Notice final rule, we discussed the burden associated with sampling based in part on the alternative process used for the Exchanges. HHS incurred approximately $750,000 in costs to design and operationalize this study and the study indicated that $353,581 of APTC was potentially incorrectly granted to individuals who inaccurately attested to their enrollment in or eligibility for a qualifying eligible employer-sponsored plan. We placed calls to employers to verify 15,125 cases but were only able to verify 1,948 cases. A large number of employers either could not be reached or were unable to verify a consumer's information, resulting in a verification rate of approximately 13 percent. The sample-size involved in the 2016 study did not represent a statistically significant sample of the target population and did not fulfill all regulatory requirements for sampling under paragraph (d)(4)(i) of § 155.320.

We estimate that the overall one-time cost of implementing sampling would be approximately $8 million for the Exchanges using the Federal platform, and between $2 million and $7 million for other Exchanges, depending on their enrollment volume and existing infrastructure. Therefore, we estimate that the average per-Exchange cost of implementing sampling that resembles the approach taken by the Exchanges using the Federal platform would be approximately $4.5 million for State Exchanges that operate their own eligibility and enrollment platform, for a total cost of $54 million for the 12 State Exchanges that operate their own eligibility and enrollment platform (operating in 11 States and the District of Columbia).

We are aware, however, that 4 State Exchanges that operate their own eligibility and enrollment platform, have already incurred costs to implement sampling and estimate that they have incurred one-time costs of approximately $4.5 million per Exchange with a total of $18 million and would only experience savings related to recurring costs. Therefore, the one-time savings for Exchanges using the Federal platform and the remaining State Exchanges that operate their own eligibility and enrollment platform would be approximately $44 million. We estimate the annual costs to conduct sampling on a statistically significant sample size of approximately 1 million cases to be approximately $6 million to $8 million for the Exchanges using the Federal platform and State Exchanges that operate their own eligibility and enrollment platform. This estimate includes operational activities such as noticing, inbound and outbound calls to the Marketplace call center, and adjudicating consumer appeals. We estimate that average recurring cost for each State Exchange that operates its own eligibility and enrollment platform to conduct sampling would be $7 million, and the total annual cost for the Exchanges using the Federal platform and the 12 State Exchanges that operate their own eligibility and enrollment platform would be $92 million. Relieving Exchanges of the requirement to conduct sampling for plan years 2020 and 2021 would therefore result in annual savings of approximately $92 million. We seek comment on this estimate.

In addition to significant cost savings, these future plans would provide more flexibility for states to design and implement a verification process for employer-sponsored coverage that is tailored to their unique populations, and would protect the integrity of states' respective individual markets. Furthermore, we believe that this future change would reduce burden on employers and employees, as the current random sampling, notification, and information gathering processes required significant time and resources to comply with, and likely would be reduced under the alternative approach we are exploring.

6. Eligibility Redetermination During a Benefit Year (§ 155.330)

We propose to amend § 155.330(e)(2)(i)(D) to clarify that the Exchanges will not redetermine eligibility for APTC/CSRs for Medicare, Medicaid/CHIP, and, if applicable, BHP for dual enrollees who provide written consent for Exchanges to end their QHP coverage prior to terminating the coverage. We anticipate that this would benefit dual enrollees, as processing a voluntary termination mitigates the risk for future tax liability for APTC/CSRs paid inappropriately during months of overlapping coverage. It would also streamline the termination process. Additionally, we believe this proposal would safeguard consumers against being enrolled in unnecessary or duplicative coverage. The proposal could reduce burden on Exchanges by allowing them to streamline their PDM operations since eligibility redeterminations for APTC/CSRs are not necessary when processing a voluntary termination of coverage for a dual enrollee who has permitted the Exchange to do so, and would provide Exchanges with more flexibility in their operations.

HHS requests comment on the impacts of this proposal.

We propose to further amend § 155.330(e)(2)(i)(D) by adding new language that clarifies when the Exchange identifies deceased enrollees via PDM, the Exchange will follow the process outlined in § 155.430(d)(7) and terminate coverage retroactively to the date of death, without the need to redetermine the eligibility of the deceased enrollee. We believe this change would reduce the amount of time a deceased enrollee remains in QHP coverage while receiving APTC/CSRs. Additionally, we believe this proposal would not increase burden on State Exchanges that operate their own eligibility and enrollment platform because we believe these changes merely clarify the operational process when conducting checks for deceased enrollees and would not impose new requirements on State Exchanges that operate their own eligibility and enrollment platform. Additionally, this proposal might help streamline Exchanges' PDM operations, as eligibility redeterminations are not necessary when termination of coverage is for a deceased enrollee, and would provide Exchanges with more flexibility in their operations.

We request comment on the impacts of this proposal.

7. Special Enrollment Periods (§ 155.420)

a. Exchange Enrollees Newly Ineligible for CSRs

We propose to amend § 155.420(a)(4) to allow enrollees who qualify for a special enrollment period due to becoming newly ineligible for CSRs to change to a QHP one metal level higher or lower. We anticipate that this would benefit applicable enrollees and dependents by providing them with additional flexibility to change to a plan better suited to their needs based on changes to their premiums and/or cost-sharing requirements. In some cases it might help impacted enrollees to maintain continuous coverage for themselves and for their dependents when they otherwise would have no longer been able to afford higher premiums or increased cost sharing requirements of their current silver-level plan. Relatedly, this proposal might also provide some benefit to the individual market risk pool by making it easier for applicable enrollees to maintain continuous coverage in spite of potentially significant changes in their out-of-pocket health care costs. Regardless, we believe that this change would not have a negative impact on the individual market risk pool, because most applicable enrollees would be seeking to change coverage based on financial rather than health needs. However, this proposal would impose a small cost to Exchanges that have implemented plan category limitations, because it would require a change to application and plan selection system logic to permit applicable enrollees and dependents to change to gold or bronze level plans after having previously restricted them to silver level plans. We solicit comments on the extent to which Exchanges would experience burden due to this proposed change.

Finally, because it represents a change to current system logic, this proposal might impose some burden on FFE Direct Enrollment and Enhanced Direct Enrollment partners. We solicit comment on this matter, as well as more generally, on the impact this proposal.

b. Special Enrollment Period Limitations for Enrollees Who Are Dependents

We believe that our proposal to add a new § 155.420(a)(4)(iii)(C) would not impose burden on Exchanges, because it would streamline the rules at § 155.420(a)(4) by ensuring that all existing enrollees are treated in the same way, and therefore might simplify implementation. We also anticipate that it would help mitigate confusion on the part of issuers, Exchanges, and consumers by clarifying that the 2017 Market Stabilization Rule's intent was to apply the same limitations to dependents who are currently enrolled in Exchange coverage that it applies to current, non-dependent Exchange enrollees.

However, we seek comment from Exchanges on whether this is the case, and if not, on the costs that this proposal would impose in terms of updates to application system logic, as well as potential consumer burden based on the number of enrollees who might be impacted by this type of plan category limitation.

c. Special Enrollment Period Prospective Coverage Effective Dates

The proposal to transition special enrollment periods currently following regular effective date rules to instead be effective on the first of the month following plan selection in Exchanges using the Federal platform would improve long-term operational efficiency through standardization for issuers and the Exchanges using the Federal platform, while reducing consumer confusion and minimizing gaps in coverage. We do not expect issuers to incur substantial new costs by aligning these effective dates, as issuers routinely effectuate coverage on the first of the month following plan selection or faster.

Additionally, because billing is tied to effective dates, transitioning to these more expedited effective dates in the Exchanges using the Federal platform would simplify issuer billing practices. Operationalizing the aligned prospective effective dates may reduce system errors and related casework, as well as confusion for consumers, issuers, and caseworker and call center staff based on different rules applying for different scenarios. Also, we believe eliminating the requirement that Exchanges demonstrate that all of their participating QHP issuers agree to effectuate coverage in a shorter timeframe would reduce burden for both issuers and Exchanges. We seek comment on these expectations.

d. Special Enrollment Period Retroactive Coverage Effective Dates

Our proposal to eliminate the special rule for retroactive effective dates after an enrollment has been pended due to special enrollment period verification and to simplify applicability of retroactive effective date and binder payment rules to clarify the ability of consumers effectuating enrollments with retroactive effective dates to select prospective coverage by paying only one month's premium would improve long-term operational efficiency for issuers and Exchanges, while reducing confusion for consumers, issuers, and caseworker and call center staff based on different rules for different scenarios. We do not expect issuers to incur new costs in streamlining applicability of the retroactive effective date rule. Under current § 155.400(e)(1)(iii), issuers already receive transactions for retroactive coverage and assign coverage effective dates either retroactively or prospectively based on consumer payments. Our proposed change would simply eliminate the complexity for an issuer to have to determine the appropriate binder payment rule to apply to an enrollment with a retroactive effective date when issuers receive only 1 month's premium. Finally, because issuers, not Exchanges using the Federal platform, are responsible for assigning effective dates based on premium payments received under this policy, Exchanges using the Federal platform would not incur costs based on this change.

We seek comment on these expectations.

e. Enrollees Covered by a Non-Calendar Year Plan Year QSEHRA

We anticipate that the proposal to amend § 155.420(d)(1)(ii) to codify the special enrollment period available to qualified individuals and dependents who are provided a QSEHRA with a non-calendar year plan year would impose some burden on Exchanges and off-Exchange individual health insurance issuers that implement pre-enrollment eligibility verification for special enrollment periods due to related updates to the application and the need to train staff that reviews documents from applicants to verify special enrollment period eligibility. However, we believe that this burden would be limited because the ''non-calendar year plan year special enrollment period'' is already subject to pre-enrollment eligibility verification, and because individuals who qualify may already be enrolled in Exchange coverage and therefore not subject to pre-enrollment eligibility verification. We also anticipate that this proposal would impose limited burden on FFE Enhanced Direct Enrollment partners, because required changes for these partners would be limited to updating application question wording.

Additionally, while this proposal would provide QSEHRA enrollees an opportunity to change their individual health insurance plan, we believe that uptake would be limited as most eligible employees would likely not want to

change to a new QHP during the QHP's plan year because such a change would result in their deductibles and other accumulators re-setting. Similarly, we believe that burden on issuers related to adverse selection would be limited due to low uptake because of the disadvantages to enrollees of changing their coverage during its plan year, and because the special enrollment period at § 155.420(d)(1)(ii) is subject to plan category limitations per § 155.420(a)(4)(iii). We solicit comments on this proposal, including from Exchanges, on implementation burden and costs.

8. Effective Dates for Terminations (§ 155.430)

As discussed earlier in the preamble to § 155.430, our proposal would align the provision for termination after an enrollee experiences a technical error that does not allow her to terminate her coverage or enrollment through the Exchange with all other enrollee-initiated termination effective date rules under § 155.430. Specifically, at the option of the Exchange, the enrollee would no longer have to provide 14-days advance notice before the termination becomes effective. Exchanges and issuers are not expected to incur new costs by aligning these termination dates, as Exchanges and issuers are both well acquainted with same-day termination transactions. Further, similar to the 2019 updates to § 155.430(d)(2), this proposal would retain State Exchange flexibility to choose whether to implement this change. Operationalizing the aligned termination dates might reduce system errors and related casework, as well as confusion for consumers, issuers, and caseworker and call center staff based on contradictory rules for different scenarios.

9. Quality Rating Information Display Standards for Exchanges (§§ 155.1400 and 155.1405)

We anticipate our proposal to amend §§ 155.1400 and 155.1405 to codify the flexibility to State Exchanges that operate their own eligibility and enrollment platforms, to customize the display of quality rating information on their websites would impose minimal burden on State Exchanges. In particular, these State Exchanges have the choice to pursue this flexibility or to display the quality rating information assigned for each QHP as provided by HHS. Further, a few State Exchanges during the display pilot have already chosen to display quality rating information with some state-specific customizations to incorporate additional state or local information or to modify the names of the QRS star ratings.

10. FFE and SBE–FP User Fees (§ 156.50)

For 2021, we are considering two alternative proposals. First, we are proposing to maintain the FFE and the SBE–FP user fee rates at current levels, 3.0 and 2.5 percent of premiums, respectively. Alternatively, we are considering and seeking comment on reducing the user fee rates below the 2020 benefit year levels. If the user fees are lowered below the 2020 plan year levels, FFE and SBE–FP user fee transfers from issuers to the Federal Government would be lower compared to those estimated for the prior benefit year.

11. State Selection of EHB-Benchmark Plan for Plan Years Beginning on or After January 1, 2020 (§ 156.111)

We are proposing to amend § 156.111(d) and add a new § 156.111(f) to explicitly require states to annually notify HHS in a form and manner specified by HHS by a date determined by HHS of any state-required benefits in addition to EHB in accordance with § 155.170 that are applicable to QHPs in the individual and/or small group markets. We are also proposing at § 156.111(d)(2) to specify that if the state does not notify HHS of its state-required benefits considered to be in addition to EHB by the annual reporting submission deadline, or does not do so in the form and manner specified by HHS, HHS will determine which benefits are in addition to EHB for the state for the applicable year. We also propose to specify at § 156.111(f)(1) through (6) the type of documentation states would be required to submit as part of the annual reporting, which among other requirements would need to be signed by a state official with authority to make the submission on behalf of the state, to confirm the accuracy of the submission. We recognize that this proposal would require states annually reporting to HHS to submit additional paperwork to HHS on an annual basis. However, because states are already required under § 155.170 to identify which state-required benefits are in addition to EHB and to defray the cost of those benefits, we believe any burden experienced by states would be minimal and that this reporting requirement would be complementary to the process the state should already have in place for tracking and analyzing state-required benefits. Additionally, states may opt not to report this information and instead let HHS make this determination for them.

We are proposing this annual reporting requirement because we are concerned that there may be states not defraying the costs of their state-required benefits in addition to EHB in accordance with Federal requirements. We therefore acknowledge that there may be states that do not currently have in place an effective process for tracking, analyzing, and identifying state-required benefits applicable to QHPs in the individual and/or small group markets for purposes of determining whether they are in addition to EHB and require defrayal. For such states, the burden might be higher to meet the annual reporting requirement. However, we believe the proposed annual reporting requirement is necessary to help states be diligent about their framework for determining which mandates are in addition to EHB in accordance with § 155.170. This proposal properly aligns with Federal requirements for defraying the cost of state-mandated benefits, would generally improve transparency with regard to the types of benefit requirements states are enacting, and would provide the necessary information to HHS for increased oversight over whether states are appropriately determining which state-required benefits require defrayal, whether states are correctly implementing the definition of EHB, and whether QHP issuers are properly allocating the portion of premiums attributable to EHB for purposes of calculating PTCs. Because we believe the information we are proposing that states report to HHS as part of this annual reporting should already be readily accessible to states, we believe any burden would be limited to the completion of the HHS templates, validation of that information, and submission of the templates to HHS. These costs have been discussed previously in the Collection of Information Requirements section.

We do not anticipate these proposals would add any new burden on states that do not notify HHS of its required benefits considered to be in addition to EHB by the annual reporting submission deadline, or does not do so in the form and manner specified by HHS, as they would be relying on HHS to make these determinations and fill out these templates for them. We acknowledge that the HHS determination of which requirements are in addition to EHB and therefore require defrayal might conflict with the opinion of a state that does not annually report to HHS. Because we are also proposing that HHS's determination of which benefits are in

addition to EHB would become part of the definition of EHB for the applicable state for the applicable year, this might require states to defray more benefits than the state currently defrays or anticipated having to defray. As such, in the former scenario, the annual reporting proposal might generate additional costs for a state that defers the task of identifying state-mandated benefits that require defrayal to HHS in order to properly align the state with Federal requirements regarding defrayal.

To the extent that this proposal would cause a state to newly defray the cost of state-required benefits it should have always been defraying in accordance with § 155.170 but was neglecting to do so, this would represent a transfer of costs from the issuer to the state, as the issuer might have been previously covering the costs of benefits for which the state should have been defraying. We again emphasize that section 36B(b)(3)(D) of the Code specifies that the portion of the premium allocable to state-required benefits in addition to EHB shall not be taken into account in determining a PTC. In the event that the annual reporting proposal causes states to newly identify state-required benefits as being in addition to EHB that were previously being incorrectly covered as part of EHB, this might decrease the amount of PTC for enrollees in the state as the percent of premium allocable to EHB would be reduced.

12. Provisions Related to Cost-Sharing (§ 156.130)

The Affordable Care Act provides for the reduction or elimination of cost sharing for certain eligible individuals enrolled in QHPs offered through the Exchanges. This assistance is intended to help many low- and moderate-income individuals and families obtain health insurance.

We set forth in this proposed rule the reductions in the maximum annual limitation on cost sharing for silver plan variations. Consistent with our analysis in previous Payment Notices, we developed three model silver level QHPs and analyzed the impact on their AVs of the reductions described in the PPACA to the estimated 2021 maximum annual limitation on cost sharing for self only coverage of $8,550. We do not believe the proposed changes to the maximum annual limitation on cost sharing or the reductions in this parameter for silver plan variations would result in a significant economic impact.

We also propose the premium adjustment percentage for the 2021 benefit year. Section 156.130(e) provides that the premium adjustment percentage is the percentage (if any) by which the average per capita premium for health insurance coverage for the preceding calendar year exceeds such average per capita premium for health insurance for 2013. The annual premium adjustment percentage sets the rate of increase for three parameters detailed in the Affordable Care Act: The annual limitation on cost sharing (defined at § 156.130(a)), the required contribution percentage used to determine eligibility for certain exemptions under section 5000A of the Code, and the assessable payments under sections 4980H(a) and 4980H(b). We believe that the premium adjustment percentage of 1.3542376277 based on average per enrollee private health insurance premiums (excluding Medigap and property and casualty insurance) is well within the parameters used in the modeling of the Affordable Care Act, and we do not expect that these proposed updated values would alter CBO's May 2018 baseline estimates of the budget impact beyond the changes described in the 2020 Payment Notice.

13. Cost-Sharing Requirements and Drug Manufacturers' Coupons (§ 156.130)

In this proposed rule, we propose to revise § 156.130(h) in its entirety to state, notwithstanding any other provision of the annual limitation on cost sharing regulation, and to the extent consistent with state law, amounts of direct support offered by drug manufacturers to enrollees for specific prescription drugs towards reducing the cost sharing incurred by an enrollee using any form are not required to be counted toward the annual limitation on cost sharing. We believe that this proposal would impose minimal burden, as it reflects the longstanding practice of health insurance issuers and group health plans determining whether drug manufacturer direct support to enrollees for specific prescription drugs counts toward the annual limitation on cost sharing.

14. Requirements for Timely Submission of Enrollment Reconciliation Data (§ 156.265)

In the Establishment of Exchanges and Qualified Health Plans; Exchange Standards interim final rule,[140] we established standards for the collection and transmission of enrollment information. At § 156.265(f), we set forth standards on the enrollment reconciliation process, specifying that issuers must reconcile enrollment with the Exchange no less than once a month. Although the regulations in § 156.265 require issuers to reconcile enrollment with the Exchange monthly, they do not specify standards for the format or quality of these data exchanges, such as the manner in which enrollment updates must be reflected in updates of previously submitted enrollment data, or the timeframe in which issuers should report data updates and data errors to the Exchange. To clarify these procedures, we propose amending § 156.265(f) to require a QHP issuer to include in its enrollment reconciliation submission to the Exchange the most recent enrollment information that is available and that has been verified to the best of its knowledge or belief. We also propose to amend § 156.265(g) to direct a QHP issuer to update its enrollment records as directed by the Exchange (or for QHP issuers in SBE–FPs, the Federal platform), and to inform the Exchange (or for QHP issuers in SBE–FPs, the Federal platform) if any such directions are in error within 30 days. In State Exchanges on the Federal platform, referenced in this section to the Exchange should be understood to mean CMS, as administrator of the Federal platform. We believe these amendments would encourage more timely reconciliation and error reporting, resulting in an improved consumer experience. However, because we believe that issuers are already routinely conducting verifications of internal enrollment data at various points in the year, we do not believe that these clarifying standards on the process for submitting enrollment and reconciliation data would materially impact issuer burden, beyond what we estimated in the Exchange Establishment rules.

15. Dispute of HHS Payment and Collections Reports (§ 156.1210)

In the 2014 Payment Notice,[141] we established provisions related to confirmation and dispute of payment and collection reports. These provisions were written under the assumption that issuers would generally be able to provide these confirmations or disputes automatically to HHS. We are proposing to amend § 156.1210 by lengthening the time to report payment errors from 15 days to 90 days to allow issuers the option of researching, reporting, and correcting errors through other channels. We do not believe that this proposal would have any impact on issuer burden, beyond what was

[140] See 77 FR 18309 at 18425.

[141] See 78 FR 65045 at 65080.

previously estimated in the 2014 Payment Notice.

16. Medical Loss Ratio (§§ 158.110, 158.140, 158.150, and 158.160)

In this proposed rule, we propose to amend § 158.110(a) to clarify that for MLR purposes, issuers must report expenses for functions outsourced to or services provided by other entities consistently with how issuers must report directly incurred expenses. We do not expect this proposal to change the impact as it does not change the existing requirements. We also propose to amend § 158.140(b)(1)(i) to require issuers to deduct from incurred claims price concessions received by the issuer, as well as prescription drug rebates and other price concessions attributable to the issuer's enrollees and received and retained by an entity providing pharmacy benefit management services (including drug price negotiation services) to the issuer, and propose conforming amendments to § 158.160(b)(2) to require such amounts to be reported as non-claims costs. While there does not exist comprehensive public data on the amount, prevalence, or retention rate for prescription drug rebates and other price concessions retained by PBMs or other entities providing pharmacy benefit management services, based on data from the 2017 MLR reporting year, including the data from issuers who receive and report prescription drug rebates, we estimate that this proposal could increase rebate payments from issuers to consumers by $18.4 million per year. Since issuers generally prefer to set premium rates at a level that avoids rebates, and consequently potential rebate increases create a downward pressure on premiums, this proposal is also likely to lead to reductions in PTC transfers (which are a function of the premium rate for the second lowest-cost silver plan applicable to a consumer, the premium rate for the plan purchased by the consumer, and the consumer's income level) from the Federal Government to certain consumers in the individual market. We additionally propose to amend § 158.150(b)(2)(iv)(A)(*5*) to allow issuers in the individual market to include the cost of certain wellness incentives as QIA in the MLR calculation. Based on data from the 2017 MLR reporting year, we estimate that this proposal could decrease rebate payments from issuers to consumers by $0.2 million per year.

17. Regulatory Review Costs

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed rule, we should 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 commenters on last year's proposed rule will be the number of reviewers of this proposed rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this rule. It is possible that not all commenters reviewed last year's rule in detail, and it is also possible that some reviewers chose not to comment on the proposed rule. For these reasons we thought that the number of past commenters would be a fair estimate of the number of reviewers of this rule. We welcome any comments on the approach in estimating the number of entities which will review this proposed rule.

We are required to issue a substantial portion of this rule each year under our regulations and we estimate that approximately half of the remaining provisions would cause additional regulatory review burden that stakeholders do not already anticipate. We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this proposed rule, and therefore, for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the rule, excluding the portion of the rule that we are required to issue each year.

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.[142] Assuming an average reading speed, we estimate that it would take approximately 1 hours for the staff to review the relevant portions of this proposed rule that causes unanticipated burden. We assume that 497 entities will review this proposed rule. For each entity that reviews the rule, the estimated cost is approximately $109.36. Therefore, we estimate that the total cost of reviewing this regulation is approximately $54,352 ($109.36 x 497 reviewers).

D. Regulatory Alternatives Considered

In developing the policies contained in this proposed rule, we considered numerous alternatives to the presented proposals. Below we discuss the key regulatory alternatives that we considered.

For the proposal to amend part 146, we considered not proposing a requirement that a notice be provided to individuals with an offer of an excepted benefit HRA from a non-Federal governmental plan. However, we believe that a notice would provide these consumers with important information about their excepted benefit HRA.

Instead of proposing to delete the regulations in part 149, governing the ERRP, we considered taking no action and leaving the regulations in place. We believe this alternative is less desirable than repealing the regulations, which would reduce the overall volume of Federal regulations.

In proposing the risk adjustment model recalibration in part 153, we considered whether to add an additional sex and age category for enrollees age 65 and over as part of our recalibration of the HHS models, due to our proposal to stop using MarketScan® data. However, upon finding different trends in the age 65 and over population, as discussed in preamble, we are not proposing to add these additional categories.

Regarding proposed changes to §§ 155.330 and 155.430, we considered taking no action to clarify Exchange operations regarding processing voluntary terminations for Exchange enrollees who provide written consent to permit the Exchange to end QHP coverage if they are later found to also be enrolled in Medicare via PDM. We ultimately determined however that these revisions were necessary to clarify that eligibility need not be redetermined as part of terminations at the request of enrollees resulting from Medicare PDM.

Additionally, we considered taking no action and proceeding with terminating coverage following an eligibility determination when the Exchange conducts periodic checks for deceased enrollees rather than retroactively terminating back to the date of death. However, we determined that the revisions would clarify that eligibility need not be redetermined prior to terminating deceased enrollee coverage retroactively to the date of death.

We considered taking no action regarding our proposal to add a new § 155.420(a)(4)(ii)(B) in order to allow enrollees and their dependents who become newly ineligible for CSRs and are enrolled in a silver-level QHP to change to a QHP one metal level higher or lower if they elect to change their QHP enrollment. However, based on questions and concerns from HHS Navigators and other enrollment assisters, as well as from agents and brokers, the current policy likely prevents some enrollees from

[142] *https://www.bls.gov/oes/current/oes_nat.htm.*

maintaining continuous coverage for themselves and for their dependents due to a potentially significant change to their out of pocket costs. Under our proposal, an enrollee impacted by an increase to his or her monthly premium payment could change to a bronze-level plan, while an enrollee who has concerns about higher copayment or coinsurance cost sharing requirements could change to a gold-level plan. HHS believes that this policy would likely have minimal impact on the individual market risk pool because most applicable enrollees would be seeking to change coverage based on changes to their financial circumstances rather than ongoing or emerging health needs.

We also considered making no changes regarding our proposal to clarify the 2017 Market Stabilization Rule's intent to apply the same limitations to dependents who are currently enrolled in Exchange coverage that it applies to current, non-dependent Exchange enrollees. As discussed above, preamble language from the 2017 Market Stabilization Proposed Rule explains that the requirement at § 155.420(a)(4)(iii) would extend to enrollees who are on an application where a new applicant is enrolling in coverage through a special enrollment period, using general terms to convey that restrictions should apply to enrollees and newly-enrolling individuals regardless of the dependent or parent or guardian status of a new enrollee. However, because this intended aspect of the limitation is not articulated in regulation, we were concerned that the rule's current wording would cause confusion among issuers, consumers, and Exchanges. Additionally, this proposed change is consistent with HHS's goal to establish equivalent treatment for all special enrollment period eligible enrollees, and with the policy goal of preventing enrollees from changing plans in the middle of the coverage year based on ongoing or newly emerging health issues.

In proposing that special enrollment periods currently following regular effective date rules would instead be effective on the first of the month following plan selection in Exchanges using the Federal platform, we considered whether we could implement this change through sub-regulatory guidance, since for many of these special enrollment periods, Exchanges have discretion under § 155.420(b)(2)(i), (iv), and (v) to provide an effective date on the first of the month following plan selection, or under § 155.420(b)(3) to ensure that coverage is effective on an appropriate date based on the circumstances of the special enrollment period. However, Exchange discretion is not available under current regulations for several special enrollment periods that use regular effective dates; that is, HHS could not apply faster effective dates in the Exchanges using the Federal platform without regulatory changes for certain special enrollment periods. These are the special enrollment periods available under § 155.420(d)(6)(i), (ii), and (v) and (d)(8) and (10). Only applying faster effective dates for some, but not all, special enrollment periods that currently use regular effective date rules would not accomplish our goals of standardization and improving long-term operational efficiency. We believe the proposed regulatory change is necessary to align all prospective special enrollment periods under one effective date rule.

In proposing to align retroactive effective date and binder payment rules under § 155.400(e)(1)(iii), we considered eliminating both § 155.400(e)(1)(v) (as we propose), but revising, rather than eliminating, § 155.420(b)(5). Section 155.420(b)(5) provides that if a consumer's enrollment is delayed until after the verification of the consumer's eligibility for a special enrollment period, and the assigned effective date would require the consumer to pay 2 or more months of retroactive premium to effectuate coverage or avoid cancellation, the consumer has the option to choose a coverage effective date that is no more than 1 month later than had previously been assigned. However, we determined that revising this provision would cause more confusion than standardizing retroactive effective date and binder payment rules under § 155.400(e)(1)(iii). Instead, we propose to amend § 155.400(e)(1)(iii) to state more explicitly that any consumer who can effectuate coverage with a retroactive effective date, including those whose enrollment is delayed until after special enrollment period verification, would also have the option to effectuate coverage with the applicable prospective coverage.

Under this proposed rule, a consumer could choose to only pay for 1 month of coverage by the applicable deadline, notwithstanding the retroactive effective date that the Exchange otherwise would be required to ensure. Even though very few consumers wait more than a few days for HHS to review their special enrollment period verification documents and provide a response (as discussed in the preamble for this proposal), we want to ensure that those few consumers whose coverage is delayed by at least 1 month due to special enrollment period verification would have the same options as any other consumers who are eligible to receive coverage with a retroactive effective date.

As described in the HRA rule,[143] HHS included consumers who are newly provided a QSEHRA in the class of persons eligible for a new special enrollment period established for qualified individuals, enrollees, and dependents who newly gain access to an individual coverage HRA. We also expressed our intent to treat a QSEHRA with a non-calendar year plan year as a group health plan for the limited purpose of the non-calendar year plan year special enrollment period, and to codify this interpretation in future rulemaking. Our goal is to ensure employees and their dependents with a non-calendar year plan year QSEHRA have the same opportunity to change individual health insurance coverage outside of the individual market open enrollment period as those who are enrolled in a non-calendar year plan year individual coverage HRA.

In developing the proposal for annual reporting of state-required benefits in addition to EHB, we considered a variety of alternatives, including making no modifications. We also considered instead issuing a toolkit or guidance for states to assist with identifying state-required benefits in addition to EHB and properly defraying the cost of those benefits in accordance with § 155.170. However, neither of these options would offer HHS direct insight into the frequency with which states require benefits in addition to EHB to be covered. Further, we believe that requiring states to annually report to HHS on their state-required benefits applicable to QHPs in the individual and/or small group market will also help states be diligent about their framework for determining which mandates are in addition to EHB in accordance with § 155.170. This proposal properly aligns with Federal requirements for defraying the cost of state-mandated benefits, would generally improve transparency with regard to the types of benefit requirements states are enacting, and would provide the necessary information to HHS for increased oversight over whether states are appropriately determining which state-required benefits require defrayal, whether states are correctly implementing the definition of EHB, and whether QHP issuers are properly allocating the portion of premiums

[143] 84 FR 28888.

attributable to EHB for purposes of calculating PTCs.

We also considered revising the policy such that Exchanges would again be the entity responsible for identifying which additional state-required benefits, if any, are in addition to EHB instead of the state. However, as noted previously in the 2017 Payment Notice, we changed the policy to make the state the entity responsible for making this determination instead of the Exchange because we believe states are generally more familiar with state-required benefits. We also considered revising § 155.170 to make HHS the entity responsible for determining which state-required benefits are in addition to EHB in every state such that HHS would always determine which mandates require defrayal, but the QHP issuers would still be responsible for quantifying the costs for these additional mandates and reporting them to the state, at which point the state would be expected to make payments directly to the enrollee or the QHP issuer. However, because we still believe states are generally most familiar with state-required benefits and, because we support state flexibility, we believe that so long as the annual reporting requirement demonstrates to HHS that states are complying with § 155.170, states should remain the entity responsible for making these determinations. We solicit comment on all aspects of the annual reporting proposal at § 156.111 and specifically whether a different approach would be preferable.

In proposing to amend § 156.270(b)(1) to require QHP issuers to send to enrollees a termination notice for all termination events, we considered whether to revert to the original language in the first iteration of § 156.270, which required a termination notice when an enrollee's coverage was terminated ''for any reason.'' However, because the termination notice requirement is triggered under this paragraph ''[i]f a QHP issuer terminates an enrollee's coverage or enrollment in a QHP through the Exchange . . ., '' we were concerned that this could be read to require termination notices for issuer-initiated terminations only. To be clear that we are proposing to require termination notices for the full range of termination events described under § 155.430(b), including those initiated by an enrollee, we are instead proposing to refer broadly to the reasons listed in § 155.430(b).

For the proposed amendments to § 158.150, we considered making no change to the current regulation that does not explicitly allow issuers in the individual market to include the cost of certain wellness incentives as QIA in the MLR calculation. However, we believe that changes to this section would ensure that it is interpreted consistently and that issuers therefore face a level playing field. We also believe that changes to this section would generally increase consumer choice and access to wellness programs, as well as ensure that there would be no obstacles to HHS implementing a demonstration project under which individual market issuers would be permitted to offer certain health-based wellness programs.

E. Regulatory Flexibility Act

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

In this proposed rule, we propose standards for the risk adjustment and RADV programs, which are intended to stabilize premiums and reduce incentives for issuers to avoid higher-risk enrollees. 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.

We believe that health insurance issuers and group health plans 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 $41.5 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 $35 million or less.[144] 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. Based on data from MLR annual report [145] submissions for the 2017 MLR reporting year, approximately 90 out of 500 issuers of health insurance coverage nationwide had total premium revenue of $41.5 million or less. This estimate may overstate the actual number of small health insurance companies that may be affected, since over 72 percent of these small companies belong to larger holding groups, and many, if not all, of these small companies are likely to have non-health lines of business that will result in their revenues exceeding $41.5 million. Only 10 of these 90 potentially small entities, three of them part of larger holding groups, are estimated to experience a change in rebates under the proposed amendments to the MLR provisions of this proposed rule in part 158. Therefore, we do not expect the proposed MLR provisions of this rule to affect a substantial number of small entities.

We believe that a small number of non-Federal Government jurisdictions with a population of less than 50,000 would offer employees an excepted benefit HRA, and would therefore be subject to the proposed notice requirement in part 146. Therefore, we do not believe that an initial regulatory flexibility analysis is required for such firms.

In addition, section 1102(b) of the Act requires us to 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 603 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 proposed rule would not affect small rural hospitals. Therefore, the Secretary has determined that this would not have a significant impact on the operations of a substantial number of small rural hospitals.

F. 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

[144] *https://www.sba.gov/document/support--table-size-standards.*

[145] Available at *https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.html.*

actions before issuing a proposed rule that includes any Federal mandate that may result in expenditures in any 1 year by a state, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. Currently, that threshold is approximately $154 million. Although we have not been able to quantify all costs, we expect the combined impact on state, local, or Tribal governments and the private sector to be below the threshold.

G. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule that imposes substantial direct costs on state and local governments, preempts state law, or otherwise has federalism implications.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have federalism implications or limit the policy making discretion of the states, we have engaged in efforts to consult with and work cooperatively with affected states, including participating in conference calls with and attending conferences of the NAIC, and consulting with state insurance officials on an individual basis.

While developing this rule, we attempted to balance the states' interests in regulating health insurance issuers with the need to ensure market stability. By doing so, we complied with the requirements of Executive Order 13132.

Because states have flexibility in designing their Exchange and Exchange-related programs, state decisions will ultimately influence both administrative expenses and overall premiums. States are not required to establish an Exchange or risk adjustment program. For states that elected previously to operate an Exchange, those states had the opportunity to use funds under Exchange Planning and Establishment Grants to fund the development of data. Accordingly, some of the initial cost of creating programs was funded by Exchange Planning and Establishment Grants. After establishment, Exchanges must be financially self-sustaining, with revenue sources at the discretion of the state. Current State Exchanges charge user fees to issuers.

In our view, while this proposed rule would not impose substantial direct requirement costs on state and local governments, this regulation has federalism implications due to potential direct effects on the distribution of power and responsibilities among the state and Federal governments relating to determining standards relating to health insurance that is offered in the individual and small group markets. We are also proposing to require non-Federal governmental plan sponsors to provide a notice when offering an excepted benefit HRA, but expect state and local governments to incur minimal costs to meet the proposed requirements in this rule.

We also believe this regulation has federalism implications due to our proposals regarding clarifications regarding the PDM process, specifically for QHP terminations resulting from Medicare, Medicaid/CHIP, BHP (if applicable) or deceased enrollee PDM. In these instances, HHS also believes that the federalism implications are substantially mitigated because the proposed requirements merely clarify that the Exchange is following termination guidelines that differ from the processes when Exchanges are terminating only APTC/CSRs as part of the standard PDM processes. Furthermore, these clarifications would not impose new requirements on State Exchanges that operate their own eligibility and enrollment platform, but rather provides guidance that State Exchanges that operate their own eligibility and enrollment platform can choose to incorporate into their current operations for PDM.

We believe there may be federalism implications to our two proposals related to plan category limitations: (1) Our proposal to add a new § 155.420(a)(4)(ii)(B) in order to allow enrollees and their dependents who become newly ineligible for CSRs and are enrolled in a silver-level QHP, to select a QHP one metal level higher or lower if they elect to change their QHP enrollment; and (2) to add a new § 155.420(a)(4)(iii)(C) to apply the same limitations to dependents who are currently enrolled in Exchange coverage that it applies to current, non-dependent Exchange enrollees. There might be operational costs to State Exchanges that have already implemented plan category limitations due to the need to update their application logic to reflect these changes. However, given the 2017 Market Stabilization Rule preamble language discussed above, it is possible that State Exchanges are already in compliance with our proposal to clarify the application of the same limitations to dependents who are currently enrolled in Exchange coverage that apply to current, non-dependent Exchange enrollees. We request comment on how many State Exchanges currently implement plan category limitations, as well as estimates related to how much time and expense would be required to update these systems to comply with these two proposals.

Additionally, we expect that our proposal to amend § 155.420(d)(1)(ii) to codify the special enrollment period for qualified individuals and dependents who are provided a QSEHRA with a non-calendar year plan year will have some federalism implications, because it would require State Exchanges to update the wording of their applications, and to update instructions for verifying a special enrollment period due to a loss of MEC to include applicants with a non-calendar year plan year QSEHRA. Additionally, State Exchanges, as well as FFE Direct Enrollment and Enhanced Direct Enrollment partners, might see a nominal increase in the number of consumers obtaining coverage through the non-calendar year plan year special enrollment period at § 155.420(d)(1)(ii). However, we expect this number to be low. We request comment on these expectations.

We also believe that there may be federalism implications related to the proposed requirement for states to annually notify HHS, in a form and manner specified by HHS, of any state-required benefits in addition to EHB in accordance with § 155.170 that are applicable to QHPs in the individual and/or small group market. States that do not notify HHS of its required benefits considered to be in addition to EHB by the annual reporting submission deadline, or does not do so in the form and manner specified by HHS, would be relying on HHS to make these determinations. We acknowledge that the HHS determination of which requirements are in addition to EHB and therefore require defrayal might conflict with the opinion of a state that does not annually report to HHS. Such concerns are mitigated however because states can avoid such a result by submitting the proposed report.

We do not anticipate any federalism implications related to our proposal that special enrollment periods currently following regular effective date rules would instead be effective on the first of the month following plan selection in the Exchanges using the Federal platform. We believe State Exchanges are best positioned to determine which effective date rules meet the needs of their issuers and consumers. As such, under our proposed changes, State Exchanges could retain their current effective date rules or implement faster ones without needing to demonstrate issuer concurrence.

We do not expect there to be federalism implications related to our proposal to remove the separate

retroactive effective date rule for enrollments pended due to special enrollment period verification under § 155.420(b)(5). Neither the retroactive binder payment rule specific to enrollments pended due to special enrollment period eligibility verification at § 155.400(e)(1)(v), nor the original retroactive binder payment rule at § 155.400(e)(1)(iii), applies outside of Exchanges using the Federal platform. Although current § 155.420(b)(5) does apply to State Exchanges, a State Exchange that has implemented special enrollment period verification would retain flexibility to apply the policy that if a consumer's enrollment is delayed until after the verification of the consumer's eligibility for a special enrollment period, and the assigned effective date would require the consumer to pay 2 or more months of retroactive premium to effectuate coverage or avoid cancellation, the consumer has the option to choose a coverage effective date that is no more than 1 month later than had previously been assigned.

We do not anticipate any federalism implications related to our proposal to require QHP issuers to send to enrollees a termination notice for all termination events described in § 155.430(b).

We do not anticipate any federalism implications related to our proposal described in § 155.430(d) to align the provision for termination after experiencing a technical error that did not allow the enrollee to terminate his or her coverage or enrollment through the Exchange with all other enrollee-initiated termination effective date rules under § 155.430 that, at the option of the Exchange, no longer require 14-days advance notice.

H. Congressional Review Act

This proposed 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 containing a copy of the rule along with other specified information, and has been transmitted to the Congress and the Comptroller for review. This proposed rule is a ''major rule'' as that term is defined in 5 U.S.C. 804(2), because it is likely to result in an annual effect on the economy of $100 million or more.

I. Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017. Section 2(a) of Executive Order 13771 requires an agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the agency publicly proposes for notice and comment, or otherwise issues, a new regulation. In furtherance of this requirement, section 2(c) of Executive Order 13771 requires that the new incremental costs associated with 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 proposed rule, if finalized as proposed, is expected to be E.O. 13771 deregulatory action. We estimate cost savings of approximately $135.66 million in 2020 and $91.95 million in 2021 and annual costs of approximately $50,000 thereafter. Thus the annualized value of cost savings, as of 2016 and calculated over a perpetual time horizon with a 7 percent discount rate, would be 10.55 million.

List of Subjects

45 CFR Part 146

Health care, Health insurance, Reporting and recordkeeping requirements.

45 CFR Part 149

Health care, Health insurance, Reporting and recordkeeping requirements.

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, 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.

45 CFR Part 158

Administrative practice and procedure, Claims, Health care, Health insurance, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, under the authority at 5 U.S.C. 301, the Department of Health and Human Services proposes to amend 45 CFR subtitle A, subchapter B, as set forth below.

PART 146—REQUIREMENTS FOR THE GROUP HEALTH INSURANCE MARKET

■ 1. The authority citation for part 146 continues to read as follows:

Authority: 42 U.S.C. 300gg–1 through 300gg–5, 300gg–11 through 300gg–23, 300gg–91, and 300–gg–92.

■ 2. Section 146.145 is amended by adding paragraph (b)(3)(viii)(E) to read as follows:

§ 146.145 Special rules relating to group health plans.

* * * * *

(b) * * *

(3) * * *

(viii) * * *

(E) *Notice requirement.* For plan years beginning on or after [DATE 30-DAYS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], the HRA or other account-based group health plan must provide a notice that describes conditions pertaining to eligibility to receive benefits, annual or lifetime caps, or other limits on benefits under the plan, and a description or summary of the benefits. This notice must be provided no later than 90 days after an employee becomes a participant and annually thereafter, in a manner reasonably calculated to ensure actual receipt by participants eligible for the HRA or other account-based group health plan.

* * * * *

PART 149—[REMOVED and RESERVED]

■ 3. Part 149 is removed and reserved.

PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT

■ 4. 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.

■ 5. Section 155.330 is amended by revising paragraph (e)(2)(i)(D) to read as follows:

§ 155.330 Eligibility redetermination during a benefit year.

* * * * *

(e) * * *

(2) * * *

(i) * * *

(D) If the enrollee does not respond contesting the updated information within the 30-day period specified in paragraph (e)(2)(i)(B) of this section, proceed in accordance with paragraphs (e)(1)(i) and (ii) of this section, provided the enrollee has not directed the Exchange to terminate his or her coverage under such circumstances, in which case the Exchange will terminate the enrollee's coverage in accordance with § 155.430(b)(1)(ii), and provided the enrollee has not been determined to be deceased, in which case the Exchange will terminate the enrollee's coverage in accordance with § 155.430(d)(7).

* * * * *

■ 6. Section 155.400 is amended by revising paragraphs (e)(1)(i) through (iii) and removing paragraph (e)(1)(iv) to read as follows:

§ 155.400 Enrollment of qualified individuals into QHPs.

* * * * *

(e) * * *

(1) * * *

(i) For prospective coverage to be effectuated under regular coverage effective dates, as provided for in § 155.410(f), the binder payment must consist of the first month's premium, and the deadline for making the binder payment must be no earlier than the coverage effective date, and no later than 30 calendar days from the coverage effective date.

(ii) For prospective coverage to be effectuated under special effective dates, as provided for in § 155.420(b)(2) and (3), the binder payment must consist of the first month's premium, and the deadline for making the binder payment must be no earlier than the coverage effective date and no later than 30 calendar days from the date the issuer receives the enrollment transaction or the coverage effective date, whichever is later.

(iii) For coverage to be effectuated under retroactive effective dates, as provided for in § 155.420(b)(2), including when retroactive effective dates are due to a delay until after special enrollment period verification, the binder payment must consist of the premium due for all months of retroactive coverage through the first prospective month of coverage, and the deadline for making the binder payment must be no earlier than 30 calendar days from the date the issuer receives the enrollment transaction. If only the premium for 1 month of coverage is paid, only prospective coverage should be effectuated, in accordance with § 155.420(b)(3).

* * * * *

■ 7. Section 155.420 is amended by —

■ a. Revising paragraphs (a)(4)(ii) and (iii), (b)(1) introductory text, and (b)(3);

■ b. Removing paragraph (b)(5); and

■ c. Revising paragraph (d)(1)(ii).

The revisions and addition read as follows:

§ 155.420 Special enrollment periods.

(a) * * *

(4) * * *

(ii)(A) If an enrollee and his or her dependents become newly eligible for cost-sharing reductions in accordance with paragraph (d)(6)(i) or (ii) of this section and are not enrolled in a silver-level QHP, the Exchange must allow the enrollee and his or her dependents to change to a silver-level QHP if they elect to change their QHP enrollment; or

(B) If an enrollee and his or her dependents become newly ineligible for cost-sharing reductions in accordance with paragraph (d)(6)(i) or (ii) of this section and are enrolled in a silver-level QHP, the Exchange must allow the enrollee and his or her dependents to change to a QHP one metal level higher or lower, if they elect to change their QHP enrollment.

(iii) For the other triggering events specified in paragraph (d) of this section, except for paragraphs (d)(2)(i), (d)(4), and (d)(6)(i) and (ii) of this section for becoming newly eligible or ineligible for CSRs and paragraphs (d)(8), (9), (10), (12), and (14) of this section:

(A) If an enrollee qualifies for a special enrollment period, the Exchange must allow the enrollee and his or her dependents, if applicable, to change to another QHP within the same level of coverage (or one metal level higher or lower, if no such QHP is available), as outlined in § 156.140(b) of this subchapter;

(B) If a dependent qualifies for a special enrollment period, and an enrollee who does not also qualify for a special enrollment period is adding the dependent to his or her QHP, the Exchange must allow the enrollee to add the dependent to his or her current QHP; or, if the QHP's business rules do not allow the dependent to enroll, the Exchange must allow the enrollee and his or her dependents to change to another QHP within the same level of coverage (or one metal level higher or lower, if no such QHP is available), as outlined in § 156.140(b) of this subchapter, or enroll the new qualified individual in a separate QHP; or

(C) If a qualified individual who is not an enrollee qualifies for a special enrollment period and has one or more dependents who are enrollees who do not also qualify for a special enrollment period, the Exchange must allow the newly enrolling qualified individual to add him or herself to a dependent's current QHP; or, if the QHP's business rules do not allow the qualified individual to enroll in the dependent's current QHP, to enroll with his or her dependent(s) in another QHP within the same level of coverage (or one metal level higher or lower, if no such QHP is available), as outlined in § 156.140(b) of this subchapter, or enroll him or herself in a separate QHP.

* * * * *

(b) * * *

(1) *Regular effective dates.* Except as specified in paragraphs (b)(2) and (3) of this section, for a QHP selection received by the Exchange from a qualified individual—

* * * * *

(3) *Option for earlier effective dates.* (i) For a QHP selection received by the Exchange under a special enrollment period for which regular effective dates specified in paragraph (b)(1) of this section would apply, the Exchange may provide a coverage effective date that is earlier than specified in such paragraph, and a federally-facilitated Exchange or a State Exchange on the Federal platform will ensure that coverage is effective on the first day of the month following plan selection.

(ii) For a QHP selection received by the Exchange under a special enrollment period for which special effective dates specified in paragraph (b)(2)(ii) of this section would apply, the Exchange may provide a coverage effective date that is earlier than specified in such paragraph.

* * * * *

(d) * * *

(1) * * *

(ii) Is enrolled in any non-calendar year group health plan, individual health insurance coverage, or qualified small employer health reimbursement arrangement (as defined in section 9831(d)(2) of the Internal Revenue Code); even if the qualified individual or his or her dependent has the option to renew or re-enroll in such coverage. The date of the loss of coverage is the last day of the plan year;

* * * * *

■ 8. Section 155.430 is amended by revising paragraphs (b)(1)(ii) and (d)(9) to read as follows:

§ 155.430 Termination of Exchange enrollment or coverage.

* * * * *

(b) * * *

(1) * * *

(ii) The Exchange must provide an opportunity at the time of plan selection for an enrollee to choose to remain enrolled in a QHP if he or she becomes eligible for other minimum essential coverage and the enrollee does not request termination in accordance with paragraph (b)(1)(i) of this section. If an enrollee does not choose to remain enrolled in a QHP in such situation, the Exchange must initiate termination of his or her enrollment in the QHP upon completion of the process specified in § 155.330(e)(2).

* * * * *

(d) * * *

(9) In case of a retroactive termination in accordance with paragraph (b)(1)(iv)(A) of this section, the termination date will be no sooner than the date that would have applied under paragraph (d)(2) of this section, based on the date that the enrollee can demonstrate he or she contacted the Exchange to terminate his or her coverage or enrollment through the Exchange, had the technical error not occurred.

* * * * *

■ 9. Section 155.1400 is revised to read as follows:

§ 155.1400 Quality rating system.

The Exchange must prominently display quality rating information for each QHP on its website, in accordance with § 155.205(b)(1)(v), in a form and manner specified by HHS.

■ 10. Section 155.1405 is revised to read as follows:

§ 155.1405 Enrollee satisfaction survey system.

The Exchange must prominently display results from the Enrollee Satisfaction Survey for each QHP on its website, in accordance with § 155.205(b)(1)(iv), in a form and manner specified by HHS.

PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

■ 11. 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, and 26 U.S.C. 36B.

§ 156.20 [Amended]

■ 12. Section 156.20 is amended by removing the definition of ''Generic''.

■ 13. Section 156.111 is amended by—

■ a. Revising the section heading and paragraph (d) introductory text; and

■ b. Adding paragraphs (d)(2) and (f).

The revisions and additions read as follows:

§ 156.111 State selection of EHB-benchmark plan for plan years beginning on or after January 1, 2020, and annual reporting of state-required benefits.

* * * * *

(d) A State must notify HHS of the selection of a new EHB-benchmark plan by a date to be determined by HHS for each applicable plan year and, in accordance with paragraph (f) of this section, of any State-required benefits that are in addition to EHB identified under § 155.170(a)(3) of this subchapter.

* * * * *

(2) If the State does not notify HHS of its State-required benefits that are in addition to EHB identified under § 155.170(a)(3) of this subchapter in accordance with paragraph (f) of this section, HHS will determine which benefits are in addition to EHB for the applicable plan year in the State, consistent with § 155.170(a)(3) of this subchapter.

* * * * *

(f) A State must submit to HHS in a form and manner and by a date specified by HHS, a document that:

(1) Is accurate as of the day that is at least 60 days prior to the annual reporting submission deadline set by HHS and that lists all State benefit requirements applicable to QHPs in the individual and/or small group market under state mandates imposed on or before December 31, 2011, and that were not withdrawn or otherwise no longer effective before December 31, 2011, and any State benefit requirements that were imposed any time after December 31, 2011;

(2) Specifies which of those State-required benefits listed in accordance with paragraph (f)(1) of this section the State has identified as in addition to EHB and subject to defrayal in accordance with § 155.170 of this subchapter;

(3) Specifies which of those State-required benefits listed in accordance with paragraph (f)(1) of this section the State has identified as not in addition to EHB and not subject to defrayal in accordance with § 155.170 of this subchapter, and describes the basis for the state's determination;

(4) Provides other information about those State-required benefits listed in accordance with paragraph (f)(1) of this section that is necessary for HHS oversight, as specified by HHS;

(5) Is signed by a state official with authority to make the submission on behalf of the state certifying the accuracy of the submission; and

(6) Is updated annually, in a form and manner and by a date specified by HHS, to include any new State benefit requirements, and to indicate whether benefit requirements previously reported to HHS under this paragraph (f) have been amended, repealed, or otherwise affected by state regulatory or legislative action.

■ 14. Section 156.130 is amended by revising paragraph (h) to read as follows:

§ 156.130 Cost-sharing requirements.

* * * * *

(h) *Use of drug manufacturer coupons.* Notwithstanding any other provision of this section, and to the extent consistent with State law, amounts paid toward reducing the cost sharing incurred by an enrollee using any form of direct support offered by drug manufacturers for specific prescription drugs may be, but are not required to be, counted toward the annual limitation on cost sharing, as defined in paragraph (a) of this section.

■ 15. Section 156.265 is amended by revising paragraphs (f) and (g) to read as follows:

§ 156.265 Enrollment process for qualified individuals.

* * * * *

(f) *Enrollment reconciliation.* A QHP issuer must reconcile enrollment files with the Exchange in a format specified by the Exchange (or, for QHP issuers in State Exchanges on the Federal Platform, the Federal Platform) no less than once a month in accordance with § 155.400(d) of this subchapter, using the most recent enrollment information that is available and that has been verified to the best of the issuer's knowledge or belief.

(g) *Timely updates to enrollment records.* A QHP issuer offering plans

through an Exchange must, in a format specified by the Exchange (or, for QHP issuers in State Exchanges on the Federal Platform, the Federal Platform), either:

(1) Confirm to the Exchange (or, for QHP issuers in State Exchanges on the Federal Platform, the Federal Platform) that the information in the enrollment reconciliation file received from the Exchange (or, for QHP issuers in State Exchanges on the Federal Platform, the Federal Platform) accurately reflects its enrollment data for the applicable benefit year in its next enrollment reconciliation file submission to the Exchange (or, for QHP issuers in State Exchanges on the Federal Platform, the Federal Platform), and update its internal enrollment records accordingly; or

(2) Describe to the Exchange (or for QHP issuers in State Exchanges on the Federal Platform, the Federal Platform) within one reconciliation cycle any discrepancy it identifies in the enrollment reconciliation files it received from the Exchange (or for QHP issuers in State Exchanges on the Federal Platform, the Federal Platform).

■ 16. Section 156.270 is amended by revising paragraph (b) introductory text to read as follows:

§ 156.270 Termination of coverage or enrollment for qualified individuals.

* * * * *

(b) *Termination of coverage or enrollment notice requirement.* If a QHP issuer terminates an enrollee's coverage or enrollment in a QHP through the Exchange in accordance with § 155.430(b) of this subchapter, the QHP issuer must, promptly and without undue delay:

* * * * *

■ 17. Section 156.1210 is revised to read as follows:

§ 156.1210 Dispute Submission.

(a) *Responses to reports.* Within 90 calendar days of the date of a payment and collections report from HHS, the issuer must, in a form and manner specified by HHS describe to HHS any inaccuracies it identifies in the report.

(b) *Confirmation of HHS payment and collections reports.* At the end of each payment year, the issuer must, in a form and manner specified by HHS, confirm to HHS that the amounts identified in the most recent payment and collections report for the coverage year accurately reflect applicable payments owed by the issuer to the Federal Government and the payments owed to the issuer by the Federal Government, or that the issuer has disputed any identified inaccuracies.

PART 158—ISSUER USE OF PREMIUM REVENUE: REPORTING AND REBATE REQUIREMENTS

■ 18. The authority citation for part 158 is revised to read as follows:

Authority: 42 U.S.C. 300gg–18.

■ 19. Section 158.110 is amended by revising paragraph (a) to read as follows:

§ 158.110 Reporting requirements related to premiums and expenditures.

(a) *General requirements.* For each MLR reporting year, an issuer must submit to the Secretary a report which complies with the requirements of this part, concerning premium revenue and expenses related to the group and individual health insurance coverage that it issued. Reporting requirements of this part that apply to expenses incurred directly by the issuer also apply to expenses for functions outsourced to or services provided by other entities retained by the issuer.

* * * * *

■ 20. Section 158.140 is amended by revising paragraph (b)(1)(i) to read as follows:

§ 158.140 Reimbursement for clinical services provided to enrollees.

* * * * *

(b) * * *

(1) * * *

(i)(A) For MLR reporting years before 2021, prescription drug rebates received by the issuer;

(B) Beginning with the 2021 MLR reporting year, prescription drug rebates and other price concessions received and retained by the issuer, or prescription drug rebates and other price concessions that are received and retained by an entity providing pharmacy benefit management services to the issuer and are associated with administering the issuer's prescription drug benefits.

* * * * *

■ 21. Section 158.150 is amended by revising paragraph (b)(2)(iv)(A)(*5*) to read as follows:

§ 158.150 Activities that improve health care quality.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(A) * * *

(*5*)(*i*) For MLR reporting years before 2021, actual rewards, incentives, bonuses, and reductions in copayments (excluding administration of such programs) that are not already reflected in premiums or claims should be allowed as a quality improvement activity for the group market to the extent permitted by section 2705 of the PHS Act;

(*ii*) Beginning with the 2021 MLR reporting year, actual rewards, incentives, bonuses, reductions in copayments (excluding administration of such programs) that are not already reflected in premiums or claims, to the extent permitted by section 2705 of the PHS Act;

* * * * *

■ 22. Section 158.160 is amended by adding paragraph (b)(2)(vii) to read as follows:

§ 158.160 Other non-claims costs.

* * * * *

(b) * * *

(2) * * *

(vii) Beginning with the 2021 MLR reporting year, prescription drug rebates and other price concessions that are received and retained by the issuer, or that are received and retained by an entity providing pharmacy benefit management services to the issuer and are associated with administering the issuer's prescription drug benefits.

Dated: October 24, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: November 7, 2019.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2020–02021 Filed 1–31–20; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL REGISTER

Vol. 85 Thursday,

No. 25 February 6, 2020

Part IV

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 192 and 195

Pipeline Safety: Valve Installation and Minimum Rupture Detection Standards; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 192 and 195

[Docket No. PHMSA–2013–0255]

RIN 2137–AF06

Pipeline Safety: Valve Installation and Minimum Rupture Detection Standards

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: PHMSA is proposing to revise the Pipeline Safety Regulations applicable to newly constructed and entirely replaced onshore natural gas transmission and hazardous liquid pipelines to mitigate ruptures. Additionally, PHMSA is revising the regulations regarding rupture detection to shorten pipeline segment isolation times. These proposals address congressional mandates, incorporate recommendations from the National Transportation Safety Board, and are necessary to reduce the consequences of large-volume, uncontrolled releases of natural gas and hazardous liquid pipeline ruptures.

DATES: Persons interested in submitting written comments on this NPRM must do so by April 6, 2020.

ADDRESSES: You may submit comments identified by the docket number PHMSA–2013–0255 by any of the following methods:

Comments should reference Docket No. PHMSA–2013–0255 and may be submitted in the following ways:

- *Federal eRulemaking Portal: http://www.regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* U.S. DOT Docket Operations Facility (M–30), West Building, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* DOT Docket Operations Facility, West Building, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the docket number, PHMSA–2013–0255, at the beginning of your comments. If you mail your comments, submit two copies. To confirm receipt of your comments, include a self-addressed, stamped postcard.

Note: All comments are posted electronically in their original form, without changes or edits, including any personal information.

Privacy Act Statement

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.*

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 CFR 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Robert Jagger at U.S. DOT, PHMSA, PHP–30, 1200 New Jersey Avenue SE, PHP–30, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT: Technical questions: Steve Nanney, Project Manager, by telephone at 713–272–2855. General information: Robert Jagger, Senior Transportation Specialist, by telephone at 202–366–4361.

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I. Executive Summary

A. Purpose of the Regulatory Action

PHMSA seeks notice and comment on proposed revisions to the Pipeline Safety Regulations for both gas transmission and hazardous liquid pipelines. PHMSA is proposing regulations to meet a congressional mandate calling for the installation of remote-control valves (RCV), automatic shutoff valves (ASV), or equivalent technology, on all newly constructed and fully replaced gas transmission and hazardous liquid lines. However, consistent with the mandate, PHMSA recognizes that there may be locations where it is not economically, technically, or operationally feasible to install RCVs, ASVs, or equivalent technology. Therefore, PHMSA is proposing to allow operators to install manual valves at these locations, provided operators have a sufficient justification for using a manual valve instead of an RCV, an ASV, or

equivalent technology, and provided that operators appropriately station personnel to ensure that a manual valve can be closed within the same 40-minute timeframe PHMSA is proposing in this rulemaking for RCVs, ASVs, and equivalent technology. This will help to ensure that a consistent level of safety is provided whether operators use manual valves, RCVs, ASVs, or equivalent technology.

This rulemaking (NPRM) is proposing to apply this installation requirement to those newly constructed or fully replaced pipelines that are greater-than-or-equal-to 6 inches in nominal diameter. PHMSA is also proposing regulations to improve pipeline operators' responses to large-volume, uncontrolled release events that may occur during the operation of certain onshore gas transmission, hazardous liquid, and carbon dioxide pipelines of particular diameters and in specific locations.[1] This NPRM would define a ''rupture'' event through certain metrics or observations, require operators of applicable lines to meet new regulatory standards to identify ruptures more quickly, respond to them more effectively, and mitigate their impacts. PHMSA's existing regulations require that operators take several steps to reduce the risk of potential leaks and failures, including testing and assessments, continuous monitoring of operations, and physical surveys and patrols of their pipelines' right-of-ways. Based on congressional direction, National Transportation Safety Board (NTSB) safety recommendations from accident investigations, recommendations from the Government Accountability Office (GAO), and PHMSA's analysis of incidents and evolving technology, this rule proposes to define large-volume, uncontrolled releases of both natural gas and hazardous liquids as pipeline ''ruptures'' and proposes standards to mitigate those ruptures.

One such rupture occurred on July 25, 2010, in Marshall, Michigan, resulting in the spill of approximately 800,000 gallons of crude oil into the Kalamazoo River and approximately $1 billion in damages. The operator took 18 hours to confirm the pipeline rupture. Following confirmation of the rupture, the failed segment of the pipeline was immediately isolated using remote-controlled valves.

Another incident occurred on September 9, 2010, in San Bruno, California, when a gas pipeline ruptured, causing a fire. This incident involved the uncontrolled release of natural gas for 95 minutes, severely hampering firefighting efforts, before the operator closed the mainline valves. The incident resulted in 8 deaths, 51 injuries requiring hospitalization, the destruction of 38 homes, damage to 70 other homes, and the evacuation of approximately 300 houses.

These two incidents are examples of release events where consequences can be significantly aggravated by some combination of missed opportunities by operators, including: (1) Identifying that a rupture has occurred; (2) failing to take appropriate and prompt action(s) once a rupture has been identified, including calling 911 following the rupture, activating emergency response protocols, and notifying first responders and public officials; and (3) failing to promptly access and close available segment isolation valves that would be most beneficial for mitigating the impact of the rupture.

Following those incidents, Congress issued the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (2011 Pipeline Safety Act), which contained several mandates to improve pipeline safety. Section 4 of the 2011 Pipeline Safety Act requires PHMSA to issue regulations, if appropriate, requiring the use of automatic or remote-controlled shut-off valves, or equivalent technology, on newly constructed or replaced natural gas or hazardous liquid pipeline facilities.

PHMSA is proposing these regulations to improve operational practices related to rupture mitigation and to shorten rupture-segment isolation times by requiring operators of applicable lines to identify a rupture quickly, implement response procedures, and fully close pipeline mainline valves to terminate the uncontrolled release of commodity as soon as practicable. PHMSA is also requiring operators to install automatic shutoff, remote-controlled, or equivalent valves on newly constructed and entirely replaced pipelines to meet the section 4 mandate. PHMSA seeks comment from the public on these proposals.

Enbridge, the pipeline operator responsible for the incident near Marshall, MI, had remote-control technology installed on the ruptured pipeline. However, a failure to identify the rupture within a short amount of time rendered the technology essentially useless. Therefore, PHMSA believes a regulation requiring the installation of rupture-mitigating valves should be paired with a standard delineating when an operator must identify a rupture and actuate those valves. PHMSA also believes that this standard will be most cost-effective when applied to onshore hazardous liquid and natural gas transmission pipelines of certain diameters in high-consequence areas (HCA), areas that could affect HCAs (for hazardous liquid pipelines), and Class 3 and 4 locations (for natural gas transmission pipelines),[2] where a release could have the most significant adverse consequences on public safety or the environment.

In developing these proposed regulations, PHMSA considered other mandates in the 2011 Pipeline Safety Act, as well as NTSB safety recommendations that followed the San Bruno incident;[3] GAO recommendations on the ability of operators to respond to commodity releases in HCAs;[4] technical reports commissioned by PHMSA on valves and leak detection from Oak Ridge National Laboratory (ORNL) and Kiefner and Associates, respectively;[5] [6] comments received on related topics through advance notices of proposed rulemaking (ANPRM); and information gathered at public meetings and workshops.

PHMSA believes this approach, as detailed in this NPRM, will help reduce the consequences of ruptures through

[1] For brevity, reference to ''hazardous liquid pipelines'' through the remainder of this NPRM will include carbon dioxide pipelines as well, unless otherwise stipulated.

[2] A gas pipeline's class location broadly indicates the level of potential consequences for a pipeline release based upon population density along the pipeline. Class locations are determined as specified at § 192.5(a) by using a ''sliding mile'' that extends 220 yards on both sides of the centerline of a pipeline. The number of buildings within this sliding mile at any point during the mile's movement determines the class location for the entire mile of pipeline contained within the sliding mile. Class 1 locations contain 10 or fewer buildings intended for human occupancy, Class 2 locations contain 11 to 45 buildings, Class 3 locations contain 46 or more buildings, and Class 4 locations have a prevalence of 4-or-more-story buildings.

[3] ''Pacific Gas and Electric Company; Natural Gas Transmission Pipeline Rupture and Fire; San Bruno, CA; September 9, 2010; NTSB Accident Report PAR–11/01; Adopted August 30, 2011. *https://www.ntsb.gov/investigations/AccidentReports/Reports/PAR1101.pdf.*

[4] ''Pipeline Safety: Better Data and Guidance Needed to Improve Pipeline Operator Incident Response,'' Government Accountability Office Report to Congressional Committees, January 2013. *https://www.gao.gov/assets/660/651408.pdf.*

[5] ''Studies for the Requirements of Automatic and Remotely Controlled Shutoff Valves and Hazardous Liquids and Natural Gas Pipelines with Respect to Public and Environmental Safety;'' Oak Ridge National Laboratory; ORNL/TM–2012/411; October 31, 2012. *https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/technical-resources/pipeline/16701/finalvalvestudy.pdf.*

[6] ''Leak Detection Study—DTPH56–11–D–000001;'' Kiefner and Associates, Inc.; Final Report No. 12–173; December 10, 2012. *https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/technical-resources/pipeline/16691/leak-detection-study.pdf.*

improving both rupture identification and rupture mitigation, including more rapid and effective isolation of failed pipeline segments.

B. Summary of the Major Provisions of the Proposed Regulatory Action

This NPRM will require the installation of automatic shutoff valves, remote-control valves, or equivalent technology, on all newly constructed or entirely replaced natural gas transmission and hazardous liquid pipelines that have nominal diameters of 6 inches or greater.[7] For the purposes of this NPRM, PHMSA considers pipelines to be ''entirely replaced'' when 2 or more contiguous miles are being replaced with new pipe. PHMSA requests comments on this definition of ''entirely replaced'' in the context of the Section 4 valve installation mandate and whether it is reasonable or should be modified in the future. Additionally, for gas transmission pipelines, when a pipeline's class location changes and results in pipe replacement to meet the maximum allowable operating pressure (MAOP) requirements of the new class location, an operator would be required to install or otherwise modify valves as necessary to comply with valve spacing requirements and the proposed rupture identification and mitigation requirements.

The NPRM also would establish Federal minimum standards for the identification of ruptures and the initiation of pipeline shutdowns, segment isolation, and other mitigative actions, which are designed to reduce the volume of commodity released due to a pipeline rupture and thereby minimize potential adverse safety and environmental consequences. This NPRM also would establish standards for improving the effectiveness of emergency response. Specifically, the proposed rupture identification and mitigation regulations include: (1) Defining the term ''rupture'' as an event that results in an uncontrolled release of a large volume of commodity that can be determined according to specific criteria or that has been observed and reported to the operator; (2) a requirement to establish procedures for responding to a rupture; (3) a requirement to declare a rupture as soon as practicable but no longer than 10 minutes after initial notification or indication; (4) a requirement to immediately and directly notify the appropriate public safety answering point (9–1–1 emergency call centers) for the jurisdiction in which the rupture is located; and (5) a requirement to respond to a rupture as soon as practicable by closing rupture-mitigation valves, with complete valve shut-off and segment isolation within 40 minutes after rupture identification.

The term ''rupture-mitigation valve,'' as it pertains to this proposal, means the specific valve(s) that the operator would use to isolate a pipeline segment that experiences a rupture—the applicable ''shut-off segment'' as those are specified in this rulemaking. These valves can be any combination of automatic shutoff valves (ASVs), remote-control valves (RCVs), or equivalent technology. A ''shut-off segment,'' for the purposes of this NPRM, is the segment of applicable pipe between the rupture-mitigation valves closest to the upstream and downstream endpoints of a high-consequence area, a Class 3 location, or a Class 4 location so that the entirety of these areas is between rupture-mitigation valves. Multiple high-consequence areas, Class 3 locations, or Class 4 locations can be contained in a single shut-off segment, and all valves installed on a shut-off segment are rupture-mitigation valves. Additionally, operators would be required to perform post-accident reviews of any ruptures or other release events involving the closure of rupture-mitigation valves to ensure these proposed performance objectives are met and to apply any lessons learned system-wide. The new rupture mitigation requirements in this NPRM would take effect 12 months after the final rule is published.

In this NPRM, PHMSA is only allowing operators to install or use manual valves if they can demonstrate to PHMSA that it would be economically, technically, or operationally infeasible to install or use an ASV, RCV, or equivalent technology. Examples of where an ASV, RCV, or equivalent technology might be infeasible include locations that may have issues with communication signals, power sources, space for actuators, or physical security.

PHMSA is not proposing additional valve requirements for smaller diameter pipelines or leaks that don't meet the proposed definition of rupture in this rulemaking. PHMSA is also not requiring leak detection equipment on gas transmission and distribution pipelines as specifically recommended by NTSB Recommendation P–11–10. Pursuant to the findings in the Kiefner Leak Detection study that is referenced later in this rulemaking, it is typically more challenging to detect smaller leaks in an operationally, technically, and economically feasible manner. However, this proposed rule, for both hazardous liquid and gas transmission pipelines, requires the installation of pressure monitoring equipment at all rupture mitigation valves on both the upstream and downstream locations of the valve, which will help operators better detect ruptures and which can be used for leak detection.

PHMSA continues to address the effectiveness of leak detection systems for other non-rupture type leaks through its rulemaking on the safety of hazardous liquid pipelines;[8] research and development projects, including work on external-based leak detection sensors and acoustic pipeline leak detection systems;[9] and engagement in new or updated standards being developed by standard developing organizations, including API recommended practices 1130 and 1175.[10] The requirements in this NPRM of adding pressure detection and communication equipment at rupture mitigation valves are expected to drive further development and installation of leak detection technology and may help drive operators to make decisions to improve the capabilities of their leak detection systems to detect non-rupture-type events.

C. Costs and Benefits

Consistent with Executive Order 12866, PHMSA has prepared an assessment of the benefits and costs of the NPRM, as well as reasonable alternatives. Per the Preliminary Regulatory Impact Analysis (PRIA), PHMSA estimates the annual costs of the rule to be approximately $3.1 million, calculated using a 7 percent discount rate. The costs reflect the installation of valves on newly constructed and entirely replaced gas transmission and hazardous liquid pipelines, as well as incremental programmatic changes that operators will need to make to incorporate the proposed rupture detection and response procedures. PHMSA elected not to quantify the benefits of this rulemaking and instead discusses them qualitatively in the PRIA.

PHMSA is posting the PRIA for this proposed rule in the public docket. In the PRIA, costs are aggregated by compliance method to estimate total

[7] ''Nominal'' pipe size is the standard size used to refer to pipe in non-specific terms and identifies the approximate inner diameter of the pipe with a non-dimensional number.

[8] *https://www.regulations.gov/docket?D=PHMSA-2010-0229.*

[9] Details on all of PHMSA's leak detection research and development projects can be found at: *https://primis.phmsa.dot.gov/matrix/PrjQuery.rdm?text1=leak&btn=Modern+Search.*

[10] Computational Pipeline Monitoring for Liquids and Pipeline Leak Detection Program Management, respectively.

costs, by year, for the baseline and NPRM. The incremental effect of this rulemaking is estimated by taking the difference in total costs relative to the baseline. Costs are then aggregated across all years in the analysis period and annualized.

II. Background

A. General Authority

Congress has authorized Federal regulation of the transportation of gas and hazardous liquids by pipeline in the Pipeline Safety Laws (49 U.S.C. 60101 *et seq.*), a series of statutes that are administered by PHMSA. Congress established the current framework for regulating pipelines transporting gas in the Natural Gas Pipeline Safety Act of 1968 (Pub. L. 90–481) and the safety of hazardous liquid pipelines in the Hazardous Liquid Pipeline Safety Act of 1979 (Pub. L. 96–129). These laws give PHMSA the authority and responsibility to develop, prescribe, and enforce minimum Federal safety standards for the transportation of gas and hazardous liquids by pipeline. PHMSA prescribes and enforces comprehensive minimum safety standards for the transportation of gas and hazardous liquids by pipeline in 49 Code of Federal Regulations (CFR) parts 190–199. Among those standards, PHMSA has codified safety standards for the design, construction, testing, operation, and maintenance of gas and hazardous liquid pipelines in 49 CFR part 192, Transportation of Natural and Other Gas by Pipeline, and 49 CFR part 195, Transportation of Hazardous Liquids by Pipeline.

Part 192 prescribes minimum safety requirements for the transportation of gas by pipeline, including ancillary facilities and within the limits of the outer continental shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331). Part 195 prescribes minimum safety requirements for pipeline facilities used in the transportation of hazardous liquids or carbon dioxide, including pipelines on the Outer Continental Shelf.

B. Major Pipeline Accidents

Although transmission pipelines are generally considered to be a very safe means of transporting natural gas and hazardous liquids,[11] they can experience large-volume, uncontrolled releases that can have severe consequences. For example, and according to PHMSA hazardous liquid pipeline accident reports from 2006 to 2016, there were 91 reported incidents on pipelines within HCAs that would have been reported as ''ruptures'' per this proposed rulemaking and would have triggered this NPRM's rupture-mitigation response provisions. Such accidents can be aggravated by some combination of: Missed opportunities by the operator to identify that a rupture has occurred; failure of operating personnel to take appropriate action(s) once a rupture is identified; delays in accessing and closing available segment isolation valves; and an inability to quickly close isolation valves that would have the most significant impact in mitigating the consequences of a rupture. Typically, these types of incidents (*i.e.,* failure events that result in rapidly occurring, large-volume releases) have been the most serious in terms of monetary and environmental damages and safety consequences—the aforementioned 91 hazardous liquid ''ruptures'' resulted in $1.21 billion dollars in damage and 88,506 bbls spilled. The Marshall, MI, and San Bruno, CA, accidents are examples of failure events that resulted in rapidly occurring, large-volume releases on high-pressure, large-diameter pipelines.

The intent of this NPRM is to improve operational practices that in turn will improve rupture mitigation and shorten rupture isolation times for certain onshore gas transmission and hazardous liquid pipelines. ''Rupture isolation time,'' as it is discussed in this NPRM, is the time it takes an operator to identify a rupture, implement response procedures, and fully close the appropriate mainline valves to terminate the uncontrolled flow of commodity from the ruptured pipeline segment.

In accident investigations, PHMSA and the NTSB have identified issues relating to the timeliness of rupture identification and the appropriateness and timeliness of operators' responses to ruptures. Typically, no single aspect contributes to the deficiencies in rupture identification and response. Instead, there were multiple contributing factors associated with the technology, equipment, procedures, and human elements that resulted in inadequate rupture identification and response efforts. In some incidents, certain aspects of an operator's rupture identification or response efforts appeared adequate, but other issues, such as delayed access to isolation valves, resulted in an inadequate response overall. For instance, in the incident near Marshall, MI, the pipeline operator had in place leak detection systems (LDS) and supervisory control and data acquisition (SCADA) systems that notified the controller of a potential rupture within minutes of the actual event, but issues related to the operator's procedures, training, and personnel response resulted in an excessive amount of time—18 hours—before the operator confirmed the rupture and initiated mitigative actions. In the incident in San Bruno, CA, the operator effectively identified there was a leak through LDS or SCADA systems but took 95 minutes to isolate the gas pipeline rupture, which caused the fire to continue to burn unabated. The NTSB noted that the operator, Pacific Gas & Electric (PG&E), lacked a detailed and comprehensive procedure for responding to large-scale emergencies such as a transmission pipeline break, and that the use of ASVs or RCVs would have reduced the amount of time taken to stop the flow of gas.

Prior to these incidents, the NTSB noted similar issues related to rupture response in its report on an incident occurring on March 23, 1994, in Edison Township, New Jersey.[12] In the Edison incident, the operator took nearly 2½ hours to stop the flow of gas. The fire that followed the rupture destroyed 8 buildings, caused the evacuation of approximately 1,500 apartment residents, and caused more than $25 million worth of property damage. The director of the operator's Gas Control division stated in the NTSB accident report that the operator could typically notify employees to close valves within 5 to 10 minutes after identifying a rupture and that the time it took to close a valve depended on the employee's travel time to the valve site. In his experience, he found that employees could usually arrive at a valve site within 15 to 20 minutes, but in some instances it took more than 1 hour for employees to arrive at certain valves after being dispatched. In its accident report, the NTSB concluded that the lack of automatic- or remote-operated valves on the ruptured line prevented the company from promptly stopping the flow of gas to the failed pipeline segment, which exacerbated damage to nearby property. Subsequently, the NTSB recommended to PHMSA's predecessor, the Research and Special Programs Administration (RSPA), that it expedite establishing requirements for installing automatic- or remote-operated mainline valves on high-pressure

[11] Energy products being shipped through the nation's 2.7 million miles of pipelines reach their destinations without incident 99.997 percent of the time. *https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/news/69671/aopl-api-speech.pdf.*

[12] National Transportation Safety Board Pipeline Accident Report; Texas Eastern Transmission Corporation Natural Gas Pipeline Explosion and Fire; Edison, New Jersey; March 23, 1994. *https://www.ntsb.gov/investigations/AccidentReports/Reports/PAR9501.pdf.*

pipelines in urban and environmentally sensitive areas to provide for rapid shutdown of failed pipeline systems (P–95–1).

As recognized by Congress and several other stakeholders, these high-consequence rupture events deserve special consideration and regulatory treatment. Accordingly, PHMSA is proposing a combination of standards that focus on achieving the congressional objective of more timely rupture detection and mitigation in important areas while also requiring a broader installation of rupture-mitigating valves on newly constructed and entirely replaced pipeline infrastructure.

C. National Transportation Safety Board Recommendations

On August 30, 2011, the NTSB issued its report on the gas transmission pipeline accident that occurred in San Bruno, CA, on September 9, 2010.[13] In its report, the NTSB issued safety recommendations P–11–8 through P–11–20 to PHMSA; safety recommendations P–11–24 through P–11–31 to PG&E, the operator of the failed line; and several recommendations to other entities, including the Governor of the State of California, the California Public Utilities Commission (CPUC), the American Gas Association (AGA), and the Interstate Natural Gas Association of America (INGAA). NTSB safety recommendations P–11–9, P–11–10, and P–11–11 recommended that PHMSA require operators to immediately and directly notify the appropriate public safety answering point (9–1–1 emergency call centers) in the communities and jurisdictions where a pipeline rupture is indicated; equip their SCADA systems with tools, including leak detection systems and appropriately spaced flow and pressure transmitters along covered transmission lines, to identify leaks (and ruptures); and require automatic shut-off valves (ASV) or remote-control valves (RCV) be installed in HCAs and Class 3 and 4 locations with the valves spaced considering risk analysis factors, respectively.[14]

PHMSA determined that, although the NTSB directed these recommendations to onshore gas transmission pipelines in response to a natural gas transmission accident, certain aspects of these recommendations are also applicable to hazardous liquid pipelines, particularly as they relate to ruptures.

D. Advance Notices of Proposed Rulemaking

PHMSA published two ANPRMs seeking comments regarding the revision of several topic areas in the Pipeline Safety Regulations that are applicable to the safety of hazardous liquid pipelines (October 18, 2010; 75 FR 63774) and gas transmission pipelines (August 25, 2011; 76 FR 53086).[15] This NPRM addresses issues that were raised in the ANPRMs related to rupture detection and mitigation, including leak detection, valve spacing, valve installation, and method of valve actuation.

In response to the questions in the ANPRMs, a variety of parties representing interests from the natural gas and hazardous liquid industries, citizen groups, regulators, and local governments, provided comments. PHMSA considered these comments as discussed in Section III of this NPRM. Separately, PHMSA is addressing several other topics considered in the hazardous liquid and gas transmission ANPRMs, specifically in NPRMs titled ''Safety of Hazardous Liquid Pipelines'' (October 13, 2015; 80 FR 61610) and ''Safety of Gas Transmission and Gathering Pipelines'' (April 8, 2016; 81 FR 20722).

E. Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 and Related Studies

Public Law 112–9, known as the ''Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011'' (2011 Pipeline Safety Act), was enacted on January 3, 2012. Several of the 2011 Pipeline Safety Act's statutory requirements relate directly to the topics addressed in the ANPRMs, which have an impact on this proposed rulemaking. This NPRM is, in part, a response to the mandates of section 4 and section 8 of the 2011 Pipeline Safety Act.

i. Section 4—Automatic and Remote-Controlled Shut-Off Valves

Section 4 of the 2011 Pipeline Safety Act directs the Secretary of Transportation (Secretary), if appropriate, to require by regulation the use of ASVs or RCVs, or equivalent technology, where it is economically, technically, and operationally feasible, on hazardous liquid and natural gas transmission pipeline facilities that are constructed or entirely replaced after the date on which the Secretary issues the final rule containing such requirements. PHMSA is proposing to address this mandate by establishing the minimum standards described in this NPRM. These standards were also developed in consideration of NTSB Recommendations P–11–10 and P–11–11, the GAO Report GAO–13–168, ''Better Data and Guidance Needed to Improve Pipeline Operator Incident Response,''[16] and ORNL Report/TM–2012/411, ''Studies for the Requirements of Automatic and Remotely Controlled Shutoff Valves on Hazardous Liquids and Natural Gas Pipelines With Respect to Public and Environmental Safety,'' which was performed in response to the 2011 Pipeline Safety Act.[17]

a. GAO Report GAO–13–168

Section 4 of the 2011 Pipeline Safety Act also required the development of a study by the Comptroller General on the ability of pipeline operators to respond to a hazardous liquid or gas release from a pipeline segment located in an HCA. This study was published by the GAO in January 2013 and recommended PHMSA take the following two actions:

1. Improve the reliability of incident response data to improve operators' incident response times, and use this data to evaluate whether to implement a performance-based framework for incident response times, and

2. Assist operators in determining whether to install automated valves by using PHMSA's existing information sharing mechanisms to alert all pipeline operators of inspection and enforcement guidance that provides additional information on how to interpret regulations on automated valves, and share approaches used by operators for making decisions on whether to install automated valves.

The GAO report noted that defined performance-based goals, established with reliable data and sound agency assessments, could result in improved operator response to incidents, with ASV and RCV installation and use being one of the determining factors. The GAO further noted that, although the current PHMSA regulations for incident response and the installation and use of ASVs and RCVs are performance-based, they are very general, currently requiring operators to respond to incidents in a ''prompt and effective

[13] NTSB/PAR–11/01, PB2011–916501, *Pacific Gas and Electric Company Natural Gas Transmission Pipeline Rupture and Fire.*

[14] NTSB Safety Recommendation addressed to PHMSA; September 26, 2011; *https://www.ntsb.gov/safety/safety-recs/recletters/P-11-008-020.pdf.*

[15] See *www.regulations.gov,* dockets PHMSA–2010–0229 and PHMSA–2011–0023, respectively, for both the ANPRMs and NPRMs.

[16] Published January 2013; *www.regulations.gov* (Docket ID PHMSA–2013–0255–0002).

[17] Published October 31, 2012; *www.regulations.gov* (Docket ID PHMSA–2013–0255–0004).

manner,'' [18] and requiring operators to install ASVs, RCVs, or emergency flow restricting devices (EFRD) if an operator determines, through risk analysis, such valves are necessary to protect HCAs.[19]

More clearly defined goals can help operators identify actions that could improve their ability to respond to certain types of incidents consistently and promptly, though identical incident response actions are not appropriate for all circumstances due to pipelines having variable locations, equipment needs, configurations, and operating conditions. PHMSA agrees with the GAO's conclusions that a more specific standard, in conjunction with carefully selected requirements, could be more effective in improving incident response times, particularly when ruptures are involved.

The GAO report also concluded that the primary advantage of installing and using automated valves is that operators can respond more quickly to isolate the affected pipeline segment and reduce the amount of commodity released. Although the report suggested that using automated valves can have certain disadvantages, including the potential for accidental closures, which makes it appropriate for operators to decide whether to install automated valves on a case-by-case basis, the report recognized that a faster incident response time could reduce the amount of property damage from secondary fires (after an initial pipeline rupture) by allowing fire departments to extinguish the fires sooner. In addition, for hazardous liquid pipelines, a faster incident response time could result in lower costs for environmental remediation efforts and less commodity loss.

PHMSA applied these principles and the GAO's findings and recommendations in developing the standards proposed in this NPRM. The proposed amendments in this NPRM would also include new, specific, post-accident review requirements in §§ 192.617(a) and 195.402(c)(5)(i) and (ii). Operators would make those post-accident reviews available for PHMSA to inspect, and PHMSA could use those reviews in disseminating lessons learned to other operators and to better inform future rulemakings. The GAO report may be reviewed at *http://www.regulations.gov* by searching for Docket No. PHMSA–2013–0023.

[18] For natural gas and hazardous liquid pipelines, §§ 192.615(a)(3) and 195.402(e)(2), respectively.

[19] Requirements for ASV and RCV installation are at § 192.935(c), and requirements for EFRD installation are at § 195.452(i)(4).

b. ORNL Report ORNL/TM–2012/411

In March 2012, PHMSA requested assistance from ORNL to perform a study to address the issues outlined in Section 4 of the 2011 Pipeline Safety Act and those raised by the NTSB in its accident report for the September 9, 2010, San Bruno natural gas pipeline incident. The ORNL study assessed the effectiveness of valve-closure swiftness in mitigating the consequences of natural gas and hazardous liquid pipeline releases on public and environmental safety. It also evaluated the technical, operational, and economic feasibility and potential benefits of installing ASVs and RCVs in newly constructed and fully replaced pipelines. The study concluded that:

1. In general, installing ASVs and RCVs on newly constructed and fully replaced natural gas transmission and hazardous liquid pipelines is technically feasible, provided sufficient space is available for the valve body, actuators, power source, sensors and related electronic equipment, and personnel required to install and maintain the valve; and is operationally feasible, provided the communication links between the RCV site and the control room are continuous and reliable.

2. There is evidence that it is economically feasible to install ASVs and RCVs on newly constructed and fully replaced natural gas transmission and hazardous liquid pipelines and the benefits would exceed the costs for the release scenarios considered in the study. However, it is necessary to consider site-specific variables in determining whether installing ASVs or RCVs on newly constructed or fully replaced pipelines is economically feasible in a particular situation.

3. Installing ASVs and RCVs on newly constructed and fully replaced natural gas and hazardous liquid pipelines can be an effective strategy for mitigating potential fire consequences resulting from a release and subsequent ignition. Adding automatic closure capability to valves on newly constructed or fully replaced hazardous liquid pipelines can also be an effective strategy for mitigating potential socioeconomic and environmental damage resulting from a release that does not ignite.

4. For hazardous liquid pipelines, installing ASVs and RCVs can be an effective strategy for mitigating potential fire damage resulting from a pipe opening-type breaks [20] and subsequent ignition, provided the leak is detected and the appropriate ASVs and RCVs close completely so that the damaged pipeline segment is isolated within 15 minutes after the break.

PHMSA used the conclusions of the ORNL Report in developing this NPRM and as a basis for proposing to implement standards for valve installation per Section 4 of the 2011 Pipeline Safety Act. The report may be reviewed at *http://www.regulations.gov* by searching for Docket No. PHMSA–2013–0255–0004.

[20] A break in the pipeline that involves the opening of the pipe in either the circumferential or longitudinal direction.

ii. Section 8—Leak Detection

Section 8 of the 2011 Pipeline Safety Act required the Secretary to submit to Congress a report on leak detection systems (LDS) utilized by operators of hazardous liquid pipeline facilities, including transportation-related flow lines, and to establish technically, operationally, and economically feasible standards for the capability of leak detection systems to detect leaks.

PHMSA responded to the 2011 Pipeline Safety Act's Section 8 mandate by contracting with Kiefner and Associates, Inc. to prepare a leak detection study. The Kiefner study examined LDS used by operators of hazardous liquid and natural gas transmission pipelines and included an analysis of the technical limitations of current LDS, the ability of the systems to detect ruptures and small leaks that are ongoing or intermittent, and what can be done to foster development of better technologies. It also reviewed the practicality of establishing technically, operationally, and economically feasible standards for LDS capabilities. The study addressed five tasks defined by PHMSA:

- Assess past incidents to determine if additional LDS may have helped to reduce the consequences of the incident;
- Review installed and currently available LDS technologies, along with their benefits, drawbacks, and their retrofit applicability to existing pipelines;
- Study current LDS operational practices used by the pipeline industry;
- Perform a cost-benefit analysis of deploying LDS on existing and new pipelines; and
- Study existing LDS standards to determine what gaps exist and if additional standards are needed to cover LDS over a larger range of pipeline categories.

The authors of the Kiefner study were tasked only to report data and technical and cost aspects of LDS. Although the Kiefner study did not provide any specific conclusions or recommendations related to leak

detection system standards, its content did inform this NRPM, acknowledging that pressure/flow monitoring (leak detection techniques) will consistently and reliably catch large volume, uncontrolled release events such as ruptures. Therefore, PHMSA has proposed that valves designated as rupture-mitigation valves for this rulemaking be outfitted with equipment or other means to monitor valve status, commodity pressures, and flow rates. Also, the report noted that operator procedures may have allowed ignoring alarms, restarting pumps, or opening valves during large releases.

The standard PHMSA is proposing in this rulemaking intends to reduce the frequency of these errors by requiring an operator to determine a rupture is occurring within 10 minutes following the first notification to the operator or following specific criteria involving throughput. PHMSA is considering alternate timeframes for rupture confirmation for this rulemaking. PHMSA notes that a 10-minute confirmation standard would be consistent with certain industry practices. For example, in its report following the incident near Marshall, MI, the NTSB noted that the operator had procedures in its operations manual that restricted the operation of a pipeline for longer than 10 minutes when the pipeline was operating under unknown circumstances. This procedure was adopted following a 1991 rupture and release by the same operator. PHMSA welcomes comments from stakeholders on the feasibility, reasonableness, and adequacy of the proposed 10-minute rupture confirmation standard.

The proposed accident review following these ruptures can also help drive operators to implement lessons learned system-wide and assist PHMSA in providing industry-wide guidance regarding overarching performance issues. The report may be reviewed at *http://www.regulations.gov* by searching for Docket No. PHMSA–2013–0018.

PHMSA is not proposing specific metrics to address smaller, non-rupture-type leaks in this rulemaking. PHMSA is also not proposing to require leak detection equipment on gas transmission and distribution pipelines as expansively as recommended by NTSB recommendation P–11–10, which recommended that all operators of natural gas transmission and distribution pipelines equip their supervisory control and data acquisition systems with tools to assist in recognizing and pinpointing the location of leaks, including line breaks. Pursuant to the findings in the Kiefner Leak Detection study, it is typically more challenging to detect smaller leaks in an operationally, technically, and economically feasible manner. Further, the report notes that LDS with the same technology, when applied to two different operating pipeline systems, can have very different results. In short, one size does not fit all, and determining a reasonable, minimum Federal standard for safety comes with several challenges. However, this NPRM, for both onshore hazardous liquid and gas transmission pipelines, would require the installation of pressure monitoring equipment at all rupture mitigation valves on both the upstream and downstream locations of the valve. This requirement incorporates an aspect of NTSB Recommendation P–11–10 that will help operators to better detect ruptures, which should drive further development and installation of leak detection technology, and may help drive operators to make decisions to improve the capabilities of their current leak detection systems to detect non-rupture type events. PHMSA continues to address the effectiveness of LDS for other non-rupture type leaks through a rulemaking,[21] engagement in new or updated standards being developed by standard developing organizations, and through the development of research and development projects.[22]

F. PHMSA 2012 R&D Forum, ''Leak Detection and Mitigation''

PHMSA sponsored a workshop on leak detection and expanded EFRD use, in Rockville, MD, on March 27–28, 2012. Additionally, a Government and Industry Pipeline Research and Development (R&D) Forum was held in Arlington, VA, on July 18–19, 2012.[23] PHMSA periodically holds 2-day R&D forums to generate a national research agenda that fosters solutions for the many challenges facing pipeline safety and environmental protection. The R&D forum allowed public, government, and industry pipeline stakeholders to develop a consensus on the technical gaps and challenges for future research. It also enabled stakeholders to discuss ways to reduce duplication of programs, consider ongoing research efforts, and leverage resources to achieve common objectives. Participants discussed the development of leak detection technology for all pipeline types (from any deployment platform) and the capabilities and limitations of current leak-detection technologies. A working group convened for the meeting for the topic of leak detection identified four gaps for future research, which were: (1) To reduce false alarms of leak detection systems; (2) leak detection technology, standards, and knowledge for new and existing systems; (3) smart system development; and (4) mobile-based leak detection system testing.

III. Proposed Rupture Identification and Mitigation Actions and Analysis of ANPRM Comments

In response to the congressional mandates contained in the 2011 Pipeline Safety Act, recommendations from the NTSB and GAO, comments received to both ANPRMs, discussions at PHMSA's public workshops, and the results of the studies and analyses described above, PHMSA is proposing standards for valve installation, rupture recognition and timely mitigation, and valve shut-off and location requirements for segment isolation. These actions are intended to minimize consequences from ruptured pipeline segments and improve the effectiveness of emergency response.

The proposed valve installation requirement applies to all newly constructed and entirely replaced gas transmission and hazardous liquid pipelines with nominal diameters of 6 inches or greater. For the purposes of this rulemaking, PHMSA proposes to define ''entirely replaced'' pipelines as those pipelines where 2 or more contiguous miles are being replaced with new pipe. Operators of these lines would be required to install automatic shutoff valves, remote-control valves, or equivalent technology at the valve spacing intervals or locations already specified in the current regulations. In the case of ''entirely replaced'' pipelines, valves that are directly associated with or are otherwise impacted by the replacement project would need to be upgraded to automatic shutoff, remote control, or equivalent valve technology. In the May 1, 1998, final order to Viking Gas Transmission,[24] PHMSA notes that § 192.13(b) states ''no person may operate a segment of pipeline [. . .] that is replaced, relocated, or otherwise

[21] Pipeline Safety: Safety of Hazardous Liquid Pipelines; 80 FR 61609; October 13, 2015.

[22] Improving Leak Detection System Design Redundancy and Accuracy, DTPH56–14–H–00007 (End: April 2017); Emissions Quantification Verification Process, DTPH5615T00012L (End: December 2017); Framework for Verifying and Validating the Performance and Viability of External Leak Detection Systems for Liquid and Natural Gas Pipelines, DTPH5615T00004L (End: March 2018)

[23] *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=77.* For details on the meeting, please see the summary report at *https://primis.phmsa.dot.gov/rd/mtgs/071812/2012_RD_ForumSummaryReport.pdf.*

[24] *In the Matter of Viking Gas Transmission,* Final Order, C.P.F. No. 32102 (May 1, 1998).

changed [. . .], unless the replacement, relocation, or change has been made according to the requirements in [part 192].'' In that final order, PHMSA stated it expected the operator to ensure that any future pipeline replacements comply with the valve spacing requirements at § 192.179. Therefore, even if a replaced segment does not have a valve, operators would need to ensure that the replaced segment meets the spacing requirements at § 192.179 and would need to ensure, per this rulemaking, that any valves installed for compliance also meet the standard of being automatic shut-off, remote-control, or equivalent technology. In the case of hazardous liquid pipelines, maximum valve spacing mileages are not specified under the current regulations, and PHMSA has proposed valve spacing for those pipelines constructed following the issuance of the final rule. The valves installed per the NPRM's provisions for both gas transmission and hazardous liquid pipelines would also be subject to the 40-minute rupture-mitigation closure requirement and the monitoring requirements of the rulemaking.

These proposed rupture identification and mitigation regulations include: (1) Defining the term ''rupture'' as a significant breach of a pipeline that results in a large-volume, uncontrolled release of commodity that can be determined according to specific criteria or that has been observed and reported to the operator; (2) a requirement to establish procedures specifically for responding to a rupture based on the definition; (3) a requirement to declare a rupture as soon as practicable but no longer than 10 minutes after initial notification or indication; (4) a requirement to immediately and directly notify the appropriate public safety answering point (9–1–1 emergency call centers) for the jurisdiction in which the rupture is located; and 5) a requirement to respond to a rupture as soon as practicable by closing rupture-mitigation valves, with complete valve shut-off and segment isolation within 40 minutes after rupture identification. Rupture identification occurs when a rupture is reported to, or observed by, pipeline operating personnel or a controller.

The term ''rupture-mitigation valve,'' as it pertains to this proposal, means the specific valve(s) that the operator would use to isolate a pipeline segment that experiences a rupture—the applicable ''shut-off segment'' as specified in this NPRM. These valves can be any combination of ASVs, RCVs, or equivalent technology upon review by PHMSA, and they would be required to comply with the proposed new rupture mitigation timing, testing, communication, maintenance, and inspection requirements of this NPRM. PHMSA is also proposing operators periodically verify, through drills, that their rupture-mitigation valves can reliably meet the standard outlined above and that any communications equipment necessary for valve actuation functions as needed. Additionally, operators would be required to perform post-accident reviews of any ruptures or other release events involving the closure of rupture-mitigation valves to ensure these proposed performance objectives are met and that any lessons learned can be applied system-wide.

Regarding the proposal for immediately and directly notifying the appropriate public safety answering point (PSAP) for the jurisdiction in which the rupture is located, per PHMSA's Advisory Bulletin published on October 11, 2012 (77 FR 61826), PHMSA believes that immediate communication should be established between pipeline facility operators and PSAP staff when there is any indication of a pipeline rupture or other emergency condition that may have a potential adverse impact on public safety or the environment. PHMSA recommends that pipeline facility operators ask their applicable PSAP(s) if there are any other reported indicators of possible pipeline emergencies such as odors, unexplained noises, product releases, explosions, fires, etc., as these reports may not have been linked to a possible pipeline incident by the callers contacting the 9–1–1 emergency call center. This early coordination will facilitate the timely and effective implementation of the pipeline facility operator's emergency response plan and coordinated response with local public safety officials.

PHMSA is not proposing specific metrics to address smaller, non-rupture-type leaks in this NPRM. PHMSA is also not proposing to require leak detection equipment on gas transmission and distribution pipelines as specifically recommended by NTSB recommendation P–11–10. Pursuant to the findings in the Kiefner Leak Detection study, it is typically more challenging to detect smaller leaks on pipelines in an operationally, technically, and economically feasible manner. However, this NPRM, for both hazardous liquid and gas transmission pipelines, requires the installation of pressure monitoring equipment at all rupture mitigation valves on both the upstream and downstream locations of the valve, which will help operators to better detect ruptures and which can be used for leak detection when leak detection technology becomes further developed. PHMSA continues to address the effectiveness of leak detection systems for other non-rupture type leaks through other rulemakings, R&D projects, and engagement in new or updated standards being developed by standard developing organizations.

The rupture-mitigation provisions of this NPRM, and the related comments to the major topic areas of this NPRM, are discussed below:

A. Definition of Rupture

Section 4 of the 2011 Pipeline Safety Act requires PHMSA to, if appropriate, issue regulations requiring the use of ASVs or RCVs, or equivalent technology, where economically, technically, and operationally feasible, on newly constructed or entirely replaced transmission pipeline facilities. PHMSA notes, though, that there may be little benefit to the installation of these valves if there is not a threshold requiring their use to mitigate the consequence of large releases.

While some individual operators have installed ASVs and RCVs in response to recent high-profile incidents, and existing regulations require operators to consider these types of valves as additional mitigative measures in HCAs, the continued occurrence of incidents with unnecessarily slow response times suggests that operators may not be fully accounting for the social costs of unmitigated large-scale release events in their risk analysis, emergency planning, and valve automation decisions. PHMSA is proposing a new definition for the term ''rupture'' for both natural gas and hazardous liquid pipelines in parts 192 and 195, respectively, that operators must properly identify and subsequently take mitigative action against as proposed in this NPRM.

The term ''rupture,'' as defined and applied in these proposed regulations, is meant to encompass any type of large-volume, rapidly occurring, and uncontrolled release or failure event. Ruptures would include events that have rupture-like characteristics in terms of pressure and flow profiles, including but not limited to failures due to mechanical punctures, line breaks and other large-scale failures, seam splits, large through-wall cracks, sheared lines due to natural or other outside force damage, and valves inadvertently left open.

A rupture, as defined in this NPRM, would include any of the following events that involve an uncontrolled release of a large volume of product over a short period of time: An unanticipated or unplanned pressure loss of 10

percent or more, occurring within a time interval of 15 minutes or less (with certain specific exceptions relevant to gas and liquid pipelines); an unexplained flow-rate change, pressure change, instrumentation indication, or equipment function; and an apparent large-volume, uncontrolled release of gas or a failure observed by operator personnel, the public, or public authorities. The term ''rupture'' as defined in this NPRM is only applicable as it would pertain to the proposed regulations in parts 192 and 195 and should not be confused with the term ''rupture'' as it is utilized in other PHMSA applications, such as in incident and accident reporting forms and other general PHMSA documents and records. For the purposes of those other applications, operators should consult the instructions for those forms to find the definition of ''rupture,'' as it will be distinct from the term's proposed use in parts 192 or 195 per this rulemaking. PHMSA welcomes comment on this proposed definition of rupture and the usages of the term as they are proposed.

Although there are key differences in the behavior of gas pipeline ruptures and hazardous liquid pipeline ruptures, prompt identification, rapid system shutdown, and segment isolation are objectives common to both. Both types of ruptures have increased risks of adverse consequences as the time lengthens for both system shutdown and segment isolation. In the case of hazardous liquid pipelines, the volume of product released increases and spreads further over the surrounding terrain or in water as response and isolation times are prolonged, which significantly increases the potential for adverse consequences. As it can take an area affected by a hazardous liquid spill months or even years to be restored to a pre-accident state, limiting the amount of product released and the size of the affected area are of great importance.

For gas pipelines, a rupture results in a sudden release of energy that is sustained for longer periods of time even after the system is shut down, as the pressurized gas expands into the atmosphere and remains in relative proximity to the failure site in most cases. When gas ruptures ignite, the length of time that the gas pipeline is not shut down and isolated leads to consequences, such as fires, that may otherwise be containable but spread outward and cause significant additional damage beyond the immediate impact zone.

In both cases, the quick isolation of a ruptured segment does not significantly alter the immediate impact of the rupture even though the extended consequences can be significantly reduced.[25] Therefore, this rulemaking is expected to drive improvement in rupture response and isolation times to reduce a rupture's extended consequences.

The rupture-mitigation requirements of any final rule that are based on the new rupture definition would take effect 12 months after the rulemaking becomes effective, and the definition itself would be incorporated with the other definitions for parts 192 and 195 in § 192.3 for onshore gas transmission pipelines and in § 195.2 for onshore hazardous liquid pipelines, respectively.

B. Accident Response and Mitigation Measures

i. Installing RCVs and ASVs

Several operators and industry trade groups, including INGAA, AGA, American Public Gas Association (APGA), Atmos, MidAmerican, Dominion East Ohio, and TransCanada, noted in the ANPRM that installing RCVs and ASVs will not prevent incidents and that existing requirements allow for safe and reliable service. Chevron commented that operators should have the flexibility to select the most effective measures based on specific locations, risks, and conditions of the pipeline segment. PHMSA notes that, following the San Bruno incident, PG&E rapidly installed ASVs where possible and stated there was sufficient basis to deploy such valves; according to a CPUC press release, the workplan it approved for PG&E would install 228 automated shut-off valves from 2012–2014.[26] [27] In comparison, in 2006, PG&E concluded that most of the damage from a rupture would take place in the first 30 seconds before shut-off valves could stop the flow of gas.[28] Gas transmission operators have previously cited a Gas Research Institute study from 1998 as the basis for concluding that the installation of RCVs is not cost-effective since, in most cases, injury or death occurs so near to the time of pipeline rupture that RCVs may not respond quickly enough. A PG&E internal memorandum from 2006 (subsequently released to the public) documenting its consideration of installing ASVs and RCVs on lines pointed to this study when concluding that the use of an ASV or RCV as a prevention and mitigation measure in an HCA would have ''little or no effect on increasing human safety or protecting properties,'' and did not recommend using either as a general mitigation measure.[29]

However, the NTSB investigation of the San Bruno incident and research by ORNL suggests there are real benefits to more rapid valve closure due to faster emergency response. As the NTSB stated, the total heat and radiant energy released by the burning gas was directly proportional to the time gas flowed freely from the ruptured pipeline. Because the operator took 95 minutes to stop the flow of gas and isolate the rupture, the natural gas-fed fire continued to ignite homes and vegetation, contributing to the extent and severity of property damage and increasing the life-threatening risks to residents and emergency responders. It wasn't until 95 minutes after the rupture that firefighters could safely approach the rupture site and begin containment efforts due to the intensity of the fire. Firefighting continued for 2 days after the flow of gas stopped, and over 900 emergency responders were deployed. The use of ASVs or RCVs would have reduced the amount of time taken to stop the flow of gas and would have shortened the time the site was inaccessible to emergency responders.

Additionally, studies have indicated that a prolonged gas-fed fire leads to increased property damage, including two separate studies from the Gas Research Institute,[30] as well as a 1999 study from RSPA stating that RCV use could reduce property damage, reduce public disruption of product supply, reduce damage to other utilities, and allow emergency responders faster access to the accident site.[31]

[25] Oak Ridge National Laboratory; ''Studies for the Requirements of Automatic and Remotely Controlled Shutoff Valves on Hazardous Liquids and Natural Gas Pipelines with Respect to Public and Environmental Safety;'' ORNL/TM–2012/411; October 31, 2012; Section 5, pgs. 175–186.

[26] Carey and Rogers. 2011. PG&E officials grilled about automatic shut off valves. Silicon Valley MercuryNews.com, *http://www.mercurynews.com/san-bruno-fire/ci_17510209?nclick_check=1,* posted 3/1/11.

[27] California Public Utilities Commission. 2012. ''CPUC Approves Pipeline Safety Plan for PG&E; Increases Whistleblower Protections.'' *http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M040/K531/40531580.PDF*

[28] Carey and Rogers. 2011. PG&E officials grilled about automatic shut off valves. Silicon Valley MercuryNews.com, *http://www.mercurynews.com/san-bruno-fire/ci_17510209?nclick_check=1,* posted 3/1/11.

[29] NTSB Accident Report; NTSB/PAR–11/01; PG&E Natural Gas Transmission Rupture and Fire; San Bruno, California; September 9, 2010; Pgs. 56–57.

[30] M. Stephens, ''A Model for Sizing High Consequence Areas Associated with Natural Gas Pipelines,'' GRI–00/0189, Gas Research Institute, October 2000; and C.R. Sparks, ''Remote and Automatic Main Line Valve Technology Assessment,'' Gas Research Institute, July 1995.

[31] Remotely Controlled Valves on Interstate Natural Gas Pipelines (Feasibility Determination Mandated by the Accountable Pipeline Safety and

PHMSA is proposing to implement the section 4 mandate from the 2011 Pipeline Safety Act by requiring newly constructed and entirely replaced natural gas transmission and hazardous liquid pipelines with nominal diameters of 6 inches and greater be equipped with remote-control valves, automatic shutoff valves, or equivalent technology, at distances specified under the valve spacing requirements per the current regulations.

For newly constructed pipelines of certain diameters and replaced pipelines of certain diameters and specific lengths, this NPRM would require rupture-mitigation valves located on both sides of a ''shut-off segment,'' which is defined in this NPRM as the applicable segment of pipe between the valves closest to the endpoints of a high consequence area or Class 3 or 4 location. For hazardous liquid pipelines, any mainline valve located within a shut-off segment would be a rupture-mitigation valve. For gas transmission pipelines, maximum valve spacing for shut-off segments would apply based on class location factors.

Comments from pipeline operators and industry organizations point to a wide disparity in the percentage of sectionalizing valves that are RCVs or ASVs. This may reflect the use of very different decision criteria by different operators for determining when RCVs or ASVs should be installed. PHMSA determined a need for clarity in the criteria for rupture mitigation and segment isolation to ensure that valve configurations are capable of adequately mitigating the potential consequences of rupture releases, as discussed below.

ii. Standards for Rupture Identification and Response Times

In this NPRM, PHMSA proposes requirements for rupture response and mitigation that would require operators of certain pipeline segments to: (1) Determine the existence of a rupture within 10 minutes of initial identification; (2) make immediate and direct notification to the appropriate public safety answering point (9–1–1 emergency call centers); (3) initiate rupture-mitigation valve closure as soon as practicable after identifying a rupture; and 4) complete rupture-mitigation valve shut-off (closure and rupture segment isolation) as soon as practicable but within a maximum time interval of 40 minutes after rupture identification.[32] Operators may meet this standard using ASVs, RCVs, or equivalent technologies upon review by PHMSA. This NPRM also proposes that operators conduct regular emergency drills and inspections to confirm the performance of operator systems, processes, procedures, and personnel to achieve this standard.

In the hazardous liquid ANPRM, the American Petroleum Institute (API), Association of Oil Pipelines (AOPL), the Texas Oil and Gas Association (TxOGA), Louisiana Midcontinent Oil & Gas Association (LMOGA), and TransCanada Keystone Pipeline commented that there is no current industry standard setting a maximum spill volume or valve activation timing due to the widespread variation in pipeline dynamics, and it therefore would be difficult to establish a one-size-fits-all requirement for these items. API and AOPL suggested PHMSA should focus on prevention and response rather than reducing spill size.

PHMSA agrees with the commenters that spill prevention and response are important to ensuring the safety of hazardous liquid pipelines and that establishing a one-size-fits-all maximum spill volume would be extremely challenging due to a variety of factors, including different pipeline diameters, terrain surrounding pipelines, commodity type, operating conditions, sensitivity of the surrounding areas, and types and nature of flow paths. However, based on previous incident history, PHMSA has determined that it is necessary to define standards to ensure operators identify ruptures when they occur and promptly shut off mainline valves and isolate the ruptured pipeline segment. As a result, PHMSA is proposing to require operators to base their decisions upon documented procedures that take into account unexplained flow rate changes, pressure changes, instrumentation indications, and equipment functions. Factoring this information into the decision-making processes, when paired with additional pressure sensors located along the pipeline and valves that can be closed quickly after rupture detection, should help mitigate the effects of pipeline ruptures. For instance, such requirements would have helped mitigate the PG&E incident at San Bruno, CA, and the Enbridge incident near Marshall, MI, because the operators would have been in a better position to identify the ruptures if they were monitoring for the required information.

The GAO report referenced in Section II of this NPRM noted that performance-based goals established with reliable data and sound agency assessments could result in improved operator response with ASV and RCV use. The report also states that although existing PHMSA regulations for operator response and ASV and RCV use are performance-based, they are ''not well-defined.'' Specifically, parts 192 and 195 currently require operators to respond to incidents and accidents in a ''prompt and effective manner'' (§§ 192.615(a)(3) and 195.402(e)(2)). As mentioned earlier, however, identical response actions are not appropriate for all circumstances due to the specific and highly variable location, equipment, and operating conditions involved on individual pipeline systems. The GAO noted some organizations in the pipeline industry believe that some form of performance-based goals can allow operators to identify actions that could improve their ability to respond to accidents, including ruptures, more consistently and in a timelier manner, and those organizations are taking steps to implement this approach. PHMSA agrees that a more precise regulation specific to ruptures would be effective in improving operator response times and mitigative actions because ruptures have recognizable operational signatures and, hence, more clearly defined triggers and actions that operators can take in response.

iii. Using RCVs or ASVs in All Cases

In the hazardous liquid and gas transmission ANPRMs, PHMSA asked stakeholders to comment on whether the Pipeline Safety Regulations should include a requirement mandating the use of RCVs in all cases. The NTSB reinforced, via a submitted comment, that PHMSA should adopt requirements consistent with its recommendations P–11–10 and P–11–11. The NTSB noted in its analysis of the San Bruno incident that if PG&E could have shut off the gas flow of its ruptured segment sooner than 95 minutes, it would have likely resulted in a smaller fire of shorter duration as well as less risk to residents, their property, and first responders. The ORNL report and the GAO report referenced in this rulemaking reached conclusions similar to the NTSB's for both gas transmission and hazardous liquid pipelines. In other comments, Metro Area Water Utility Commission (MAWUC) indicated that PHMSA should consider requiring all valves to be remotely controlled but that its decision should be based on an analysis of benefits and risks. North Slope Borough (NSB) supported the use of

Partnership Act of 1996); September 1999; *https://rosap.ntl.bts.gov/view/dot/16918/dot_16918_DS1.pdf?.*

[32] As defined in this NPRM, rupture identification occurs when a rupture is observed by or reported to pipeline operating personnel or a controller.

RCVs in all instances. A private citizen commented that PHMSA should issue regulatory language requiring RCVs for poison inhalation hazard pipelines. Conversely, comments from industry groups and pipeline operators stated that the benefits of requiring all valves to be remotely controlled would be dependent on local factors, and such additional requirements would add to pipeline system complexity and increase the probability of failure.

In consideration of the comments received, PHMSA has determined that a requirement for all valves to be automatically or remotely controlled would not be feasible due to several technical concerns, including a lack of space for actuator and communication equipment in urban areas, no communications signal in certain areas, and the potential for vandalism. The ORNL report came to a similar conclusion in that it was technically feasible to install ASVs and RCVs provided there was sufficient space for the valve body, actuators, power source, sensors, related electronic equipment, and the appropriate personnel required to install and maintain the valves.

Further, PHMSA determined that it would be most reasonable for newly constructed or entirely replaced natural gas transmission and hazardous liquid pipelines with diameters of 6 inches or greater to be subject to the valve installation requirement per the Section 4 mandate in the 2011 Pipeline Safety Act. While it is technically possible for lines as small as 2 or 4 inches to have automatic shutoff or remote-control valves, the potential impact radii and release volumes would be smaller under those scenarios, and PHMSA would not expect there to be benefits commensurate with the costs of installing the valves. However, PHMSA would like comment on whether these assumptions are reasonable.

Therefore, PHMSA is addressing the mandate in the 2011 Pipeline Safety Act by proposing a valve installation requirement on newly constructed and entirely replaced gas transmission and hazardous liquid pipelines, as well as proposing a standard for rupture identification and mitigation in areas of higher consequence. Alternatives considered by PHMSA are documented in the PRIA filed under Docket No. PHMSA–2013–0255 at *http://www.regulations.gov.*

Several commenters on the gas transmission and hazardous liquid ANPRMs, including industry trade groups and pipeline operators, opposed a requirement that all sectionalizing valves be capable of being controlled remotely. As some commenters pointed out, RCVs or ASVs may not be warranted in many situations because of specific local conditions that could limit the safety benefits of such a requirement. The ORNL report also concluded that site-specific parameters can influence risk analyses and feasibility evaluations, and they can often vary significantly from one pipeline segment to another.

Recent high-profile pipeline construction projects show a wide use of ASVs and RCVs, which demonstrates the feasibility and prevalence of these technologies. The interstate transportation of energy products, including natural gas, is subject to economic regulation by the Federal Energy Regulatory Commission (FERC). New gas transmission pipeline construction projects and significant changes to existing pipelines are therefore subject to FERC review and environmental analysis requirements under the National Environmental Policy Act. Final Environmental Impact Statements (EIS) published or approved after the 2011 Pipeline Safety Act have included some commitment to use ASVs or RCVs on new or upgraded gas transmission pipelines subject to FERC approval. The wide use of this technology demonstrates the feasibility and prevalence of the use of powered actuators or otherwise remote-controlled valves.

For instance, the Southeast Market Pipelines Project [33] intended to equip all 63 mainline block valves with ASVs or RCVs within three connected natural gas transmission pipeline projects in Florida, Alabama, and Georgia. Similarly, per the Rover Pipeline final EIS,[34] all 78 mainline block valves for the Rover Pipeline and related projects would be equipped for remote operation from the control center. The PRIA for this NPRM contains further information on this topic under Section 4.4—Valve Automation.

Further, recent high-profile hazardous liquid pipeline construction projects also show use of RCVs. The final EIS for TransCanada's proposed Keystone XL Pipeline project indicated that 71 out of 112 intermediate mainline valves along the route would be remotely operated block valves, while an additional 24 valves would be designated as check valves (U.S. Department of State, 2011). The North Dakota Public Service Commission reported that the Dakota Access Pipeline design includes remote actuators on all mainline valves in the State of North Dakota (North Dakota Public Service Commission, 2016).

However, as stated before, PHMSA understands there may be technical challenges to requiring the use of automation in certain cases. Specifically, PHMSA is aware that there might not be the space necessary for operators to install equipment needed for an ASV or an RCV, and PHMSA also realizes that in certain areas, operators might not be able to get the necessary communications signal to ASVs or RCVs so they work as intended. Therefore, a one-size-fits-all valve-type installation requirement may not be feasible. As such, PHMSA is proposing a rupture-mitigation valve standard that provides operators flexibility to install RCVs, ASVs, or an equivalent technology. Alternatively, operators may use manual valves where it is not economically, technically, and operationally feasible to use RCVs, ASVs, or an equivalent technology. This flexibility will allow operators to choose the most appropriate valve based on the unique circumstances at each location, while still ensuring that such valves will close as soon as practicable but no later than 40 minutes after a rupture is identified.

PHMSA welcomes any comments that stakeholders might have regarding the reasonability of the proposed 40-minute valve closure time based on current technologies and capabilities. When considering an appropriate valve closure time for this rulemaking, PHMSA noted that many natural gas transmission and hazardous liquid systems can have several junctions where product arrives and departs or where multiple pipelines are connected with each other in a series of looped lines. On these more complicated pipeline systems, operators implementing shutoff procedures may need to consider factors including the potential effects on pipeline systems flowing into a pipeline needing to be isolated, the restriction of downstream deliveries to vital customers, and the impacts of the complete isolation of looped common-use systems. Therefore, establishing a one-size-fits-all requirement for valve closure times on all natural gas transmission and hazardous liquid pipeline systems can be challenging.

When developing the proposed valve-closure time in this NPRM, PHMSA considered its work on the ''Alternative MAOP'' rulemaking and the requirements in that rule for operators to install RCVs and close valves within

[33] FERC, 2015. Southeast Market Pipelines Project, Final EIS, Office of Energy Projects. Volume 1, Section 2.6.1. *https://www.ferc.gov/industries/gas/enviro/eis/2015/12-18-15-eis.asp*

[34] FERC, 2016. Rover Pipeline, Panhandle Backhaul, and Trunkline Backhaul Projects, Final EIS. Volume 1, Section 2.2.2. *https://www.ferc.gov/industries/gas/enviro/eis/2016/07-29-16-rover-pipeline.asp.*

60 minutes on applicable pipeline segments.[35] PHMSA also considered its work on recent special permits and conditions in those permits for single, non-looped pipelines to have valves that can close within 30 minutes. Further, PHMSA notes that in the ANPRM stages of the Safety of Hazardous Liquid Pipelines and the Safety of Gas Transmission Pipelines rulemakings, PHMSA considered valve closure times of 30 minutes for both natural gas transmission and hazardous liquid pipelines, and certain industry commenters representing gas pipeline operators proposed times of 60 minutes.

In this NPRM, PHMSA is proposing to require operators to close the necessary valves ''as soon as practicable'' following rupture identification with a 40-minute-maximum closure time because 40 minutes represents a reasonable outer limit to provide time, if needed, for operators to get personnel on-site to close any necessary valves. However, PHMSA expects RCVs or ASVs in most instances to be shut off in a much shorter timeframe.

PHMSA determined the 40-minute closure time as follows:

Locating the rupture: Once an operator confirms a rupture is occurring, an operator needs to determine the location of the rupture. As a part of this process, control personnel would identify the location of the mainline valves needing to be shut as well as any crossover valves and other pipeline systems that flow into or out of the impacted pipeline system. Control personnel would then identify the systems needing to be isolated, if any, and the locations of the valves necessary to do so. If any of these systems are operated by a different operator, those operators must be notified so that deliveries can be re-routed and so that deliveries are not restricted to critical customers such as hospitals or power plants. Following the rupture being located, control personnel would dispatch operating personnel to the rupture site, mainline valve locations, and any other critical pipeline locations. Those operating personnel would communicate and collaborate with local emergency responders to minimize the impact to the public and environment and identify safety needs. Further, operators must notify other parties, including local distribution companies, operators of directly connected pipelines, power plants, and direct-feed manufacturing facilities to ensure that rapid valve closures do not cause emergency cascading events due to increased pressures, surges, or the lack of energy product. PHMSA has estimated these actions will be completed anywhere between 5 and 15 minutes of rupture identification.

Isolating the ruptured segment: An operator will begin closing the appropriate valves once a rupture is identified and located. This might include mainline valves, any crossover valves, and valves to other pipeline systems that flow into or out of the ruptured pipeline system. Operating personnel would continue to work with emergency responders to minimize the impact to the public and identify safety needs. If a valve fails to close, the local pipeline operating personnel would close it. PHMSA notes that RCV shutdown times will vary based on size, whether it is a ball or gate valve, the actuator type, and the operating pressure at the time of closure, which will depend on how close it is located to the rupture site. ASV shutdown times will vary based on the preceding factors as well as the minimum pressure or the rate of pressure change at the mainline valve. All pipeline system valve shutdown times require the consideration of the valve closure timing and its impact on maximum operating pressures and surge pressures from the speed of valve closure on the pipeline system and any laterals or other pipeline systems connected to the ruptured pipeline. Under emergency conditions and given operating pressures, PHMSA estimates an RCV can be closed within 5 to 15 minutes after rupture identification and location, an ASV can be closed within 10 to 25 minutes after rupture identification, and a valve needing some type of manual actuation could be closed within 15 to 25 minutes after rupture identification.

Based on this analysis, PHMSA is proposing a maximum 40-minute valve closure period; however, PHMSA welcomes comments regarding whether this timeframe could be reasonably lowered so that segments are isolated more quickly and ruptures are mitigated faster, or whether there are other reasons that would preclude an operator from confirming a rupture and closing an ASV, RCV, or equivalent valve within 40 minutes after the identification of a rupture. Similarly, PHMSA welcomes comment on the 40-minute closure limit as it applies to any manual valves that operators might need to install because installing ASVs, RCVs, or equivalent technology is not feasible.

PHMSA also notes that the ''Alternative MAOP'' final rule published on October 17, 2008, which affects gas transmission pipelines, finalized a requirement to provide remote valve control through a SCADA system, other leak detection system, or an alternative method of control. This requirement applies if personnel response time to mainline valves on either side of an HCA exceeds 1 hour (under normal driving conditions and posted speed limits) from the time an emergency event is identified in the operator's control room. PHMSA welcomes comment on whether it should revise the Alternative MAOP rule's requirements to match this rulemaking's proposed 40-minute response time, or whether this rulemaking should be made consistent with the Alternative MAOP rule and establish a 60-minute response time following rupture identification.

C. Drills To Validate Valve Closure Capability

In response to the hazardous liquid ANPRM, Texas Pipeline Association (TPA) and others commented that requiring additional valve automation could result in an increased probability of valve or system failure. PHMSA agrees that the addition of any type of engineered equipment is accompanied by a potential for mechanical or operational failure. This rule proposes inspection and maintenance provisions to minimize this possibility. These inspection and maintenance provisions would apply to procedures and equipment that should be in use to isolate pipeline segments in the event of potential incidents. More specifically, PHMSA proposes to require that operators conduct initial and periodic validation drills to ensure that valves designated for rupture mitigation will close to ensure that the response and shut-off times of this proposal can be reliably and consistently achieved. PHMSA is also proposing demonstration and verification requirements, including point-to-point verification tests for RCVs, to ensure that communications equipment works. New provisions proposed in this NPRM would also require that any deficiencies be identified and corrected within a fixed period, and that any lessons learned during these drills be applied system-wide to ensure adequate performance in future emergencies. PHMSA has proposed these requirements because any newly installed valve systems will require regular maintenance activities and emergency drills to ensure they operate as intended per the proposals in this rulemaking.

[35] ''Pipeline Safety: Standards for Increasing the Maximum Allowable Operating Pressure for Gas Transmission Pipelines; Final Rule;'' October 17, 2008; 73 FR 62148.

The ORNL report discussed in Section II of this NPRM documented the reliable operation of ASVs and the importance of operating procedures in ensuring the reliability of RCVs. The report noted that, in areas that are susceptible to electrical power outages, reliability is a potential concern, and redundant, alternative, or backup power sources may be required to ensure continuous availability of electricity for motors, solenoids, and electronic components. Proper valve maintenance involving seat and valve-body cleaning, packing and gasket replacement, and valve closure testing to ensure that ASVs actuate on command and close completely, are issues that influence operational feasibility. As PHMSA notes throughout this NPRM, rupture-mitigation valves must function properly when needed following an identified rupture to quickly mitigate the consequences of pipeline ruptures, including property and environmental damage. The drill requirements are proposed in § 192.745 for onshore gas transmission pipelines and § 195.420 for onshore hazardous liquid pipelines.

D. Maximum Valve Spacing Distance

i. Gas Transmission Pipelines

Existing regulations for gas transmission pipelines at § 192.179 already contain provisions for maximum valve spacing based on class location. This NPRM proposes supplementary requirements for rupture-mitigation valve spacing in newly defined ''shut-off segments'' on newly constructed or replaced onshore gas transmission pipelines.

These ''shut-off segments'' are segments of pipe between the upstream mainline valves closest to the upstream endpoints of the HCAs or Class 3 or 4 locations and the downstream mainline valves closest to the downstream endpoints of the HCAs or Class 3 or 4 locations so that the entirety of the applicable HCA or Class 3 or 4 location is contained between a set of rupture-mitigation valves. A shut-off segment can contain multiple HCAs or Class 3 or 4 locations—an operator of such a segment would need to ensure that the entirety of the contiguous class locations and HCAs are within a set of rupture-mitigation valves. Shut-off segments also extend to the nearest mainline valves of any crossover and lateral pipe that connects to the shut-off segment between the furthest upstream and downstream mainline valves. All valves on shut-off segments would be identified as ''rupture-mitigation valves'' for the purposes of this rulemaking and its proposed provisions so that, when closed, there is no flow path for gas to be transported to the rupture site (except for any residual gas already in the ruptured shut-off segment).

In this NPRM, PHMSA proposes that the distance between rupture-mitigation valves for each shut-off segment must not exceed 8 miles for shut-off segments containing a Class 4 location (with or without an HCA), 15 miles for a shut-off segment containing a Class 3 location (with or without an HCA), and 20 miles for a shut-off segment containing HCAs in Class 1 or 2 locations. These proposed rupture-mitigation valve spacing requirements for shut-off segments are in accordance with §§ 192.179 and 192.611 for pipeline class location segments that have had a one-class class location change (a Class 1 to a Class 2, a Class 2 to a Class 3, or a Class 3 to a Class 4 change) and meet the criteria under § 192.611(a) for a ''one class change bump.'' This allows operators to use the valve spacing required in § 192.179 for the previous class location when creating shut-off segments where the class location has recently changed. Shut-off segments containing different class locations or HCAs must have valve spacing equivalent to the spacing, as provided above, for the most stringent class location in the shut-off segment.

In response to questions in the gas transmission ANPRM related to valve spacing, INGAA contended that while valve spacing and selection are important factors in incident response, public safety requires integrated planning and implementation for detecting ruptures and closing valves, which INGAA called an ''Incident Mitigation Management'' (IMM) plan in its comments. INGAA described IMM as a holistic performance-based means of detecting and responding to pipeline failures with some similarities to the proposals in this NPRM. INGAA contends that IMM plans should cover various aspects of response, including how operators detect failures, how they place and operate valves, how they evacuate gas from pipeline segments, and how they prioritize coordination efforts with emergency responders.

Conversely, Accufacts contended that existing spacing requirements are inadequate and suggested that further regulation is required concerning the placement, selection, and choice of RCVs, ASVs, or equivalent technology. They stated that valve spacing and closure play a significant role in depressurizing a gas pipeline segment after a rupture, thereby limiting the total volume of gas released in an incident. The Pipeline Safety Trust also supported the installation of additional valves on gas transmission pipelines to reduce consequences following large-scale incidents. A private citizen suggested that valves be required at 1-mile intervals in densely populated urban areas and that they close automatically in the event of an incident.

PHMSA agrees with certain commenters that the mere installation of additional valves, including RCVs or ASVs, will not reduce the frequency of gas transmission pipeline releases. The mere presence of a valve will not prevent an incident from occurring. However, PHMSA disagrees with the same commenters who assert that additional valves do not reduce the consequences after such releases, as prompt rupture identification, response, and segment isolation through valve shut-off are key factors in limiting and reducing incident consequences. As discussed throughout this NPRM, PHMSA has determined that prompt operator rupture identification and mitigation, which includes the isolation of the rupture or failed segment as soon as practicable, are important factors that can contribute to reduced consequences.

ii. Valve Spacing in Response to Class Location Changes

In addition to the valve spacing requirements listed above related to shut-off segments, PHMSA is also proposing that operators be required to add valves if necessary to meet the applicable valve spacing requirements when changes to class location occur that require pipe replacement. PHMSA notes that a gas pipeline's class location broadly indicates the level of potential consequences for a pipeline release. Section 192.179 currently requires closer valve spacing for higher class locations. Areas of potentially higher consequences (*i.e.,* HCAs) can be in lower class locations as well. HCAs in Class 1 or Class 2 locations include pipeline segments where a release could have severe consequences similar to a release in Class 3 and Class 4 areas. In HCAs, operators are required to provide additional protection in accordance with the integrity management requirements of part 192, subpart O.

There were several comments related to new valve installations in the event of a class location change so that those valves meet the spacing requirements of § 192.179. The Gas Piping Technology Committee (GPTC), AGA, INGAA, and several of INGAA's members (MidAmerican, Paiute, and Southwest Gas) opposed applying § 192.179 requirements retroactively to class location changes. Commenters also

expressed opinions that the existing regulations are adequate. However, the Commissioners of Wyoming County, Pennsylvania and CPUC commented that regulations should require additional valves when population increases and class locations change. Additionally, Accufacts suggested that new mainline valves should be installed when a site becomes an HCA regardless of class location, but a reasonable time should be allowed for such valves to be installed and become operational.

Valve spacing requirements in § 192.179 are based upon the class location. When a pipeline class location changes because of additional development near a pipeline, this increases both the potential consequences of a release and the potential benefits of closer valve spacing for consequence mitigation. PHMSA proposes to only require that valve spacing be made to match the requirements in § 192.179 for a new class location when pipe replacement is necessary in response to a class location change, such as a Class 1 to Class 3, or a Class 2 to Class 4. Note that this requirement would be consistent with the 1998 Final Order for Viking Pipeline,[36] which required class location changes to meet the mainline valve spacing as defined in § 192.179 and the installation of a sectionalizing valve based upon the class location in a ''replaced pipeline segment.'' Under this approach, when a class location change is implemented using only a pressure test in accordance with § 192.611 but without pipe replacement, then additional valve installation would not be required.[37] This approach will better balance the potential benefits from mitigating consequences of releases because of closer valve spacing with the costs of installing new valves, costs that will be lower if operators install additional valves in the context of installing new pipe for a class location change.

iii. Hazardous Liquid Pipelines

For onshore hazardous liquid pipelines, existing regulations establish valve location requirements for certain pipeline facilities and locations, such as at pump stations, breakout storage tanks, lateral takeoffs, certain water crossings, public water reservoirs, and for other locations as appropriate, based on terrain, location of populated areas, and other factors. However, a maximum distance for valve spacing for new pipelines is not currently specified. In response to the hazardous liquid ANPRM, several industry groups and individual operators noted that ASME B31.4, a consensus industry standard published by the American Society of Mechanical Engineers (ASME), includes a maximum valve spacing requirement of 7½ miles for liquefied petroleum gas and anhydrous ammonia pipelines in populated areas. Specifically, these commenters stated that valve spacing varies, that most mainline valves are manually operated, that check valves are used in certain cases, and that some remotely controlled valves had been added because of the integrity management requirements.

PHMSA also asked for public comment on how the agency should apply any new valve location requirements developed for hazardous liquid pipelines. API and AOPL, supported by TransCanada Keystone Pipeline, LMOGA, and TxOGA, indicated that valve spacing requirements should not be changed, and that specifying valve location requirements retroactively would be difficult and confusing. Further, these commenters indicated that requiring the retrofitting of existing lines to meet any type of new requirement would be expensive for industry, create environmental impacts, lead to potential construction accidents, and may cause possible interruptions of service. MAWUC and NSB commented that any new valve locations or remote actuation regulations should be applied to new pipelines or existing pipelines that are repaired.

In this NPRM, PHMSA is proposing that newly constructed and entirely replaced hazardous liquid pipelines with nominal diameters of 6 inches or greater have automatic shutoff valves, remote-control valves, or equivalent technology spaced in accordance with the existing hazardous liquid valve location provisions and the valve spacing requirements proposed in this rulemaking, as there are no current valve spacing requirements in the regulations for hazardous liquid pipelines.

For newly constructed onshore hazardous liquid pipelines that could affect HCAs or for hazardous liquid pipelines in areas that could affect HCAs and where 2 or more contiguous miles have been replaced, PHMSA is proposing a maximum valve spacing of every 15 miles. PHMSA based this spacing mileage, in part, off of Class 2 requirements for natural gas pipelines. Additionally, PHMSA believes that, given the current guidelines operators must consider regarding local terrain and drain-down volumes, a maximum spacing of 15 miles for valves in HCAs would be reasonable.

For newly constructed onshore highly volatile liquid (HVL) pipelines in high population areas or other populated areas, as those terms are defined in § 195.450, or for HVL pipelines in those areas where 2 or more contiguous miles have been replaced, PHMSA is proposing a maximum valve spacing of every 7½ miles. PHMSA notes that the current ASME B31.4 code provides for a 7½ mile maximum valve spacing requirement on piping systems transporting liquefied petroleum gas or liquid anhydrous ammonia in industrial, commercial, and residential areas.

In an attempt to be more consistent with similar aspects of the natural gas pipeline regulations and taking into account the valve spacing requirements for Class 1 locations, PHMSA is proposing a 20-mile maximum valve spacing requirement for newly constructed and replaced hazardous liquid pipelines that could not affect HCAs.

Part 195 currently does not prescribe whether manual or remote control valves must be installed at particular locations, but it does require the consideration of check valves and remote control valves under the EFRD requirements for pipelines that could affect an HCA. Section 4 of the Act includes a new mandate for PHMSA to evaluate and issue additional regulations for the use of valves (such as remote control, automatic shut-off, or equivalent technology) for rupture mitigation. The current proposal seeks to establish a reasonable maximum distance that would apply to any type of terrain and in any area, regardless of population or environmental sensitivity. PHMSA expects that operators, in their pursuit of compliance with other valve location requirements, will locate, install, and equip valves for remote or automatic operation as needed and in accordance with the requirements of the integrity management regulations (§ 195.452(i)(4), including Appendix C). This will result in valve location profiles that meet their operational needs and are reflective of the risks and potential consequences unique to their individual pipelines, including the consideration of factors such as maximum spill volumes, terrain, and population and environmental

[36] *In the Matter of Viking Gas Transmission,* Final Order, C.P.F. No. 32102 (May 1, 1998).

[37] Valve spacing requirements are in the design and construction sections of the regulations. If a pipeline segment changes class location but can be successfully pressure tested to the MAOP standards of the next highest class location per § 192.611, PHMSA cannot retroactively impose new valve spacing on an existing segment. However, if the segment is replaced by virtue of a higher class location, the more stringent valve spacing requirements would apply.

receptors. The maximum spacing requirements would not supplant or supersede any other valve location requirement and would only apply to newly constructed and replaced pipelines of certain diameters. These proposed requirements address Section 4 of the 2011 Act and are consistent with PHMSA's efforts to address NTSB Recommendation P–11–11 for gas transmission pipelines as well.

For newly constructed and replaced segments that could affect an HCA or that are within an HCA, valves would be required at a minimum of every 15 miles. For new and replaced segments transporting highly volatile liquids (HVL) in HCAs established due to populated areas, the maximum distance between valves would be 7½ miles. This requirement mirrors the requirements that currently exist under ASME B31.4 for HVL mainline valve spacing and is necessary due to the unique safety risks these pipelines pose to populated areas. In addition, valves located on each side of a water crossing greater than or equal to 100 feet (30 meters) wide would be required to be installed outside the flood plain. The requirements of this proposed rule, specifically applying to segments of new or replaced pipelines that could potentially impact HCAs, would result in the placement of valves on each side of these HCA segments. This requirement acknowledges the sensitive nature of these specifically defined areas and requires their protection with mainline valves comparable to other sensitive locations.

The new requirements for valve spacing are proposed in §§ 192.179, 192.610 and 192.634 for gas transmission pipelines and §§ 195.260 and 195.418 for hazardous liquid pipelines.

E. Integrity Management and the Protection of HCAs

This NPRM would also strengthen integrity management requirements for both onshore gas transmission and hazardous liquid pipelines by addressing the use of ASVs or RCVs (including EFRDs) in HCAs as they apply to rupture mitigation. These existing requirements are at § 192.935(c) for gas transmission pipelines and § 195.452(i)(4) for hazardous liquid pipelines, and they specify that operators must conduct a risk analysis and add additional ASVs, RCVs, and EFRDs, as needed, to provide additional protections for HCAs. As gas transmission pipeline segments in HCAs are, by definition, near higher-population areas and developments and include areas where people assemble or have difficult-to-evacuate facilities such as schools or hospitals, releases from these segments have a higher potential for adverse consequences than releases from other segments.

i. Gas Transmission Pipelines

In the gas transmission ANPRM, commenters addressed PHMSA's consideration of additional decision criteria for operator evaluation of additional valves, remote closure, and valve automation. INGAA, AGA, GPTC, Ameren, and MidAmerican were not in support of additional decision criteria, whereas Accufacts, CPUC, and an anonymous commenter were in support of additional decision criteria. Accufacts argued that valve regulations should be required for larger-diameter gas transmission pipelines in HCAs, especially in areas where manual closure times could be long. CPUC expressed its conclusion that decision criteria may need to be added for all Method 1 HCA locations.[38]

PHMSA notes that although § 192.935 currently requires operators to consider installing additional RCVs and ASVs to mitigate potential consequences to HCAs, the regulation does not establish criteria based on consequence reduction to guide operator decisions. In developing this rulemaking, PHMSA has noted the challenges of requiring certain types of valves at specific locations. Therefore, PHMSA has determined that the most beneficial criteria for rupture mitigation are standards for rupture identification and response times paired with maximum valve spacing requirements, because limiting the consequences of a release is primarily dependent upon how quickly an operator identifies, acknowledges, and isolates a rupture. In this NPRM, the required time thresholds for operator response following rupture identification serve as the decision criteria. Because the rupture response and mitigation requirements of this rulemaking will apply to newly constructed systems and entirely replaced pipeline systems of 2 contiguous miles or greater, operators can design their valve configurations as needed to address site-specific issues while meeting the proposed rupture-mitigation requirements. Operators can determine what kinds of response and communication procedures need to be established, if arrangements need to be made for valve access by local operating personnel, if valves need to be equipped for remote or automatic operation and whether some other alternative equivalent technology can be employed to meet the standard.

ii. Hazardous Liquid Pipelines

The hazardous liquid integrity management regulations issued in 2002 require operators to assess and adjust their existing EFRD configurations to better protect HCAs. GAO's findings in GAO–13–168 support PHMSA's experience that large discrepancies still exist in how individual operators use existing valves as EFRDs, due largely to the lack of prescription in both the regulations and industry standards relating to EFRD installation. The lack of rapid closure capability has been found to have significantly exacerbated both the volume released and the adverse consequences in past accidents, even when emergency situations were quickly recognized by the operator. The ORNL report (ORNL/TM–2012/411) confirmed that ''swiftness of valve closure has a significant effect on mitigating potential socioeconomic and environmental damage to the human and natural environments.'' Similarly, the GAO study also found that ''quickly isolating the pipeline segment through automated valves can significantly reduce subsequent damage by reducing the amount of hazardous liquid released.''

PHMSA determined that there is a need to establish additional requirements related to EFRD actuation for newly constructed and replaced pipelines of 2 contiguous miles or greater in HCAs, as pairing standards for valve actuation with considerations for valve placement will help to achieve fuller safety benefits when considering rupture mitigation. This NPRM would also include annual inspection and maintenance requirements to assure that any valves installed under this rulemaking would reliably operate on-demand during emergency situations.

In response to the hazardous liquid ANPRM of October 18, 2010, PHMSA received comments on location and performance standards for EFRDs from industry and trade associations. API, AOPL, TxOGA, LMOGA, and TransCanada Keystone Pipeline reported that no industry standards currently address EFRD use. PHMSA also received several comments regarding location requirements for EFRDs, indicating that PHMSA should

[38] Method 1 is defined in § 192.903 HCA definition, paragraph (1) as a Class 3 or Class 4 location as those terms are defined under § 192.5; or any area within a Class 1 or Class 2 location where the potential impact radius is greater than 660 feet, and the area within a potential impact circle contains 20 or more buildings intended for human occupancy; or any area in a Class 1 or Class 2 location where the potential impact circle contains an identified site. Definitions for ''potential impact radius,'' ''potential impact circle,'' and ''identified site'' are at § 192.903.

not specify the location of EFRDs. More specifically, API, AOPL, TransCanada Keystone Pipeline, LMOGA, and TxOGA indicated that a requirement to place EFRDs at predetermined locations or fixed intervals in lieu of a comprehensive engineering risk analysis would be arbitrary, costly, and potentially counter-productive to pipeline safety. They noted that § 195.452 already requires EFRDs to be installed to protect an HCA if the operator determines, through a risk assessment, that an EFRD is needed, and TPA suggested that no general criteria beyond those in the existing regulations are appropriate because decisions on EFRD placement are driven by local factors. Conversely, NSB and MAWUC stated EFRDs should be required on all pipelines PHMSA regulates, with specific instruction or criteria on when and where EFRDs need to be used, especially if they can limit a spill.

As discussed above, PHMSA determined that the lack of more comprehensive and specific guidance regarding the location and performance requirements for EFRDs perpetuates the inconsistencies and large variances in operators' response times in isolating pipeline segments when failures occur, particularly when a rupture or other fast-acting, large-volume release occurs. Valves, even when located properly, are more effective in failure scenarios when they can be closed quickly to isolate the failed segment. PHMSA also notes that ASME B31.4, ''Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids'' (2009), addresses mainline valves and specifies operators install RCVs and/or check valves in certain instances.

Furthermore, PHMSA determined that, although the EFRD evaluation requirement already exists for HCA segments, additional measures are needed to specifically address rupture mitigation for new and replaced pipelines. In accident reports submitted to PHMSA by operators from 2010 to 2017, just over one-half of all HCA incidents where valve type was recorded occurred at a location where either the upstream or downstream valve was an automatic, remotely controlled, or check valve. In approximately one-third of incidents occurring in an HCA, both the upstream and down valves were actuated by some manner of automation. It is difficult to envision a case where some type of rupture-mitigation valve (which in some cases can be an EFRD) on either side of (or within) an HCA segment would not provide additional protection. In all cases where a valve cannot be quickly accessed and manually closed, remote or automatic actuation is the only way to ensure prompt and effective closure.

In the hazardous liquid pipeline regulations, EFRDs are defined as check valves or remote-control valves. Although check valves can be considered as either an ASV or an EFRD in some applications, this NPRM only considers them to be a rupture-mitigation valve if an operator can demonstrate the valve's operational and protective equivalence when the valve is used for segment shut-off and isolation in response to a rupture. The NPRM proposes that operators must annually verify check valves or EFRDs are operational if they serve as rupture-mitigation valves. Considerations for the use of check valves as alternative equivalent technology for rupture mitigation should include all of the factors identified in this proposal and all existing regulations, including those contained in part 195, appendix C, such as the nature and characteristics of the transported commodity, the physical and operating characteristics of the pipeline, the hydraulic gradient of the pipeline, the terrain surrounding the pipeline, and all other factors pertinent to rupture mitigation including valve closure sealing performance and closure times.

F. Failure Investigations

Current pipeline safety regulations (§ 192.617 for gas transmission pipelines and § 195.402(c)(5) for hazardous liquid pipelines) require operators to report all incidents (gas) and accidents (hazardous liquid) over certain reporting thresholds, and to investigate incidents and accidents involving failed pipe, failed components or other pipeline system equipment, and incorrect operations. The terms incident and accident are used interchangeably in this NPRM.

In addition to the proposed rupture response and mitigation requirements, PHMSA is proposing new specific requirements for post-accident analysis (*i.e.,* an accident investigation) of any rupture or other event involving the activation of rupture-mitigation valves. These post-accident reviews would focus on ways to ensure that the proposed performance objectives in this NPRM are met in the future and that lessons learned can be applied by the operator system-wide. PHMSA has determined this will improve the safety performance of individual operators, while also improving the industry's overall safety performance through information sharing forums.

The NTSB noted in its accident report of the PG&E incident at San Bruno, CA, that many of the organizational deficiencies causing the incident were previously known to the operator as a result of previous accidents. The NTSB further noted that, as a lesson from those accidents, PG&E should have critically examined all components of its pipeline system to identify and analyze risks as well as update emergency response procedures. Had this recommended approach been taken by PG&E following earlier incidents, the NTSB argued, the San Bruno accident may have been prevented. Similar organizational failures were found following the Enbridge incident near Marshall, MI, and the NTSB noted that Enbridge failed to adapt lessons learned into its IM program.

Consistent with the findings in the GAO Report (GAO–13–168) and recommendations as described in this section, the proposed amendments in this NPRM would include new post-accident review and implementation requirements in §§ 192.617 and 195.402(c)(5). As provided in the regulatory text, PHMSA would expect operators would analyze data points including, but not limited to, the time taken to detect a rupture, the time taken to initiate mitigative actions, emergency response communications, personnel response time, valve closure time, SCADA performance, and valve location. Operators would then use these data points to enact improvements to the operator's suite of procedures, including its training and qualification programs, pipeline system design, risk management, operations and maintenance activities, and emergency response procedures.

IV. Section-by-Section Analysis of Changes to 49 CFR Part 192 for Gas Transmission Pipelines

Sec. 192.3 Definitions

Most of the requirements of this NPRM would be triggered by the identification of a ''rupture.'' Section 192.3 would be amended to define ''rupture'' as any of the following events that involve an uncontrolled release of a large volume of gas over a short period of time: (1) An unanticipated or unplanned pressure loss of 10 percent or more, occurring within a time interval of 15 minutes or less, unless the operator has documented in advance of the pressure loss a need for a higher pressure change; (2) an unexplained flow-rate change, pressure change, instrumentation indication, or equipment function that may be representative of an event described above; or (3) an apparent large-volume, uncontrolled release of gas or a failure observed by operator personnel, the

public, or public authorities, that is reported to the operator and that may be representative of an unintentional and uncontrolled release event that is defined in the items above.

Sec. 192.179 Transmission Line Valves

PHMSA proposes adding paragraph (e) to require that all valves on newly constructed or entirely replaced onshore gas transmission pipelines that have nominal diameters greater than or equal to 6 inches be automatic shut-off valves, remote-control valves, or an equivalent technology, unless such valves are not economically, technologically, or operationally feasible. PHMSA proposes to permit the installation of manual valves as rupture-mitigation valves only when there are feasibility issues precluding the installation of automatic or remote-control valves. All valves installed per this requirement would have to meet the new rupture-mitigation standards proposed in § 192.634 and isolate a ruptured pipeline segment within 40 minutes of rupture identification. Rupture identification would be defined in § 192.3 to occur when a rupture is reported to or observed by pipeline operating personnel or a controller.

Sec. 192.610 Change in Class Location: Change in Valve Spacing

A new § 192.610 is proposed to specify rupture-mitigation valve requirements when a class location changes. In cases where pipe is replaced to meet the maximum allowable operating pressure in accordance with requirements for class location changes under §§ 192.611, 192.619(a), and 192.620, then the rupture-mitigation valve installation requirement in § 192.179 applies for the new class location, which may require the operator to install new valves, and the rupture-mitigation requirements of § 192.634 would apply as well. Such additional valves must be installed within 24 months of the class location change.

Sec. 192.615 Emergency Plans

PHMSA proposes to revise paragraphs (a)(2), (a)(6), (a)(8), (a)(11), and (c) of § 192.615 to require that emergency procedures provide for rupture mitigation in response to a rupture event, including specific timing provisions relating to the identification of ruptures. Specifically, operators must have procedures in place allowing them to identify a rupture event within 10 minutes of the initial notification to the operator. PHMSA also proposes to require that operators maintain liaison with and contact the appropriate public safety answering point (9–1–1 emergency call center) in the event an operator's pipeline ruptures.

Sec. 192.617 Investigation of Failures and Incidents

PHMSA proposes to revise § 192.617 to define the elements that an operator must incorporate when conducting a post-incident analysis of certain specifically defined incidents, namely ruptures, and other release and failure events involving the activation of rupture-mitigation valves.

The proposed revision would require the operator to identify potential preventive and mitigative measures that could be taken to reduce or limit the release volume and damage from similar events in the future. The post-incident review would address factors associated with this rulemaking, including but not limited to detection and mitigation actions, response time, valve location, valve actuation, and SCADA performance. Upon completing the post-accident analysis, the operator must develop and implement the lessons learned throughout its suite of procedures, including in pertinent operator personnel training and qualification programs, and in design, construction, testing, maintenance, operations, and emergency procedure manuals and specifications.

Sec. 192.634 Transmission Lines: Onshore Valve Shut-Off for Rupture Mitigation

Proposed new § 192.634 would establish an emergency operations standard requiring operators to isolate certain ruptured pipeline segments as soon as practicable via rupture-mitigation valves with complete segment isolation as soon as practicable but within 40 minutes of identifying a rupture. This would apply to newly constructed and entirely replaced onshore gas transmission pipeline segments in HCAs and Class 3 and Class 4 locations with nominal diameters greater than or equal to 6 inches, and it would also apply to any gas transmission pipelines where 2 or more contiguous miles of pipeline with nominal diameters greater than or equal to 6 inches are replaced in HCAs and Class 3 and Class 4 locations. This NPRM would require that operators designate shut-off segments in these areas and designate mainline valves used to isolate ruptures on those shutoff segments as rupture-mitigation valves. This rulemaking would establish maximum distances between rupture-mitigation valves from 8 to 20 miles depending on the pipeline's class location. Compliance with the standard could be achieved using ASVs, RCVs, or an equivalent technology. Operators may install manually or locally operated valves to act as rupture-mitigation valves only if the installation of ASVs, RCVs, or equivalent technology is not feasible at the location, provided the operator demonstrates that the 40-minute closure standard can be achieved under emergency conditions. Operators using manual valves or other equivalent technology must notify PHMSA in accordance with the procedure outlined in § 192.634(h). The NPRM would also require that operators monitor the position and operational status of all rupture-mitigation valves. Operators will be required to meet these provisions within 12 months after the effective date of the final rule.

Sec. 192.745 Valve Maintenance: Transmission Lines

PHMSA proposes to revise § 192.745 by adding paragraphs (c), (d), and (e) to incorporate the maintenance, inspection, and operator drills required to ensure operators can close a rupture-mitigation valve as soon as practicable, but within 40 minutes of rupture identification. Demonstration and verification requirements are proposed, including point-to-point verification tests for rupture-mitigation valves that are ASVs or RCVs and initial validation drills and periodic confirmation drills for any manually or locally operated valve identified as a rupture-mitigation valve. The operator would be required to identify corrective actions and lessons learned resulting from its validation and confirmation drills and share and implement them across its entire network of pipeline systems.

Sec. 192.935 What additional preventive and mitigative measure must an operator take?

PHMSA proposes to revise § 192.935(c) to clarify the requirements for conducting ASV and RCV evaluations for HCAs, particularly when RCVs and ASVs are installed as preventive and mitigative measures associated with improved response times for pipeline ruptures. The amendments would require that operators be able to evaluate and demonstrate that they could identify a rupture within 10 minutes in accordance with the proposed § 192.615(a)(6) and meet the standard specified in the proposed § 192.634 to isolate shut-off segments in HCAs during rupture events as soon as practicable but within 40 minutes. Operators would also be required to demonstrate, through the risk analysis required by this section, that any ASVs

or RCVs installed under this section can comply with the proposed valve maintenance requirements at § 192.745.

V. Section-by-Section Analysis for Changes to 49 CFR Part 195 for Hazardous Liquid Pipelines

Sec. 195.2 Definitions

Most of the requirements of the NPRM would be triggered by the identification of a ''rupture.'' Section 195.2 would be amended to define ''rupture'' for hazardous liquid pipelines as any of the following events that involve an uncontrolled release of a large volume of hazardous liquid over a short period of time: (1) An unanticipated or unplanned flow rate change of 10 percent or greater or a pressure loss of 10 percent or greater, occurring within a time interval of 15 minutes or less, unless the operator has documented in advance of the flow rate change or pressure loss the need for a higher flow rate change or higher pressure-change threshold due to pipeline flow dynamics and terrain elevation changes that cause fluctuations in hazardous liquid flow that are typically higher than a flow rate change or pressure loss of 10 percent or greater in a time interval of 15 minutes or less; (2) An unexpected flow rate change, pressure change, instrumentation indication, or equipment function that may be representative of an event defined above; or (3) An apparent large-volume, uncontrolled release of hazardous liquid or a failure observed by operator personnel, the public, or public authorities, that is reported to the operator and that may be representative of an unintentional and uncontrolled release event that is defined above.

Sec. 195.258 Valves: General

PHMSA proposes to require that all valves on newly constructed and entirely replaced hazardous liquid lines that have nominal diameters greater than or equal to 6 inches be RCVs, ASVs, or an equivalent technology, unless such valves are not economically, technologically, or operationally feasible. PHMSA proposes to permit operators install manually or locally operated valves only when there are feasibility issues precluding the installation of ASVs, RCVs, or equivalent technology. All valves installed under this requirement would have to meet the new rupture-mitigation standards proposed in § 195.418 and isolate a ruptured pipeline segment as soon as practicable, but within 40 minutes of rupture identification. Rupture identification would be defined in § 195.2 to occur when a rupture is reported to or observed by pipeline operating personnel or a controller.

Sec. 195.260 Valves: Location

Section 195.260 proposes the requirements for the location of valves on newly constructed hazardous liquid pipelines, entirely replaced hazardous liquid pipelines, and hazardous liquid pipelines where 2 or more contiguous miles have been replaced. PHMSA proposes to revise § 195.260 to incorporate new maximum valve spacing requirements for the general placement of valves, including a 20-mile maximum spacing requirement for valves on pipelines that could not affect high consequence areas, with more stringent maximum spacing requirements of 15 miles and 7.5 miles for pipelines that could affect HCAs and HVL pipelines in populated areas, respectively. These valve spacing requirements carry over to the rupture-mitigation valve spacing requirements at § 195.418 as well, where operators would be required to install rupture-mitigation valves at a maximum of every 15 miles but no further than 7½ miles from the HCA segment endpoints and at a maximum of every 7½ miles for HVL lines in highly populated areas. Revisions to § 195.260 would also include two miscellaneous clarifications: (1) To explicitly include carbon dioxide as a transported commodity whose consequences are to be considered, and (2) to include new requirements pertaining to valves at water crossings to ensure these valves will not be impacted by flood conditions and to allow multiple water crossings to be protected by a single pair of valves.

Sec. 195.402 Procedural Manual for Operations, Maintenance, and Emergencies

PHMSA proposes to revise § 195.402 to identify the areas requiring an immediate response by the operator to prevent hazards to the public, property, or the environment if the facilities failed or malfunctioned, including segments that could affect HCAs and segments with valves that are specified in §§ 195.418 and 195.452(i)(4).

PHMSA is also revising § 195.402 to define the elements that an operator must incorporate when conducting a post-accident analysis of ruptures and other release and failure events involving the activation of rupture-mitigation valves. The proposed revision would require the operator to identify potential preventative and mitigative measures that could be taken to reduce or limit the release volume and damage from similar events in the future. The post-accident review would address factors associated with this rulemaking, including but not limited to detection and mitigation actions, response time, valve location, valve actuation, and SCADA performance. Upon completion of this post-accident analysis, the operator would be required to develop and implement the lessons learned throughout its suite of procedures, including in pertinent operator personnel training and qualification programs, and in design, construction, testing, maintenance, operations, and emergency procedure manuals and specifications.

Further, PHMSA is revising § 195.402 to clarify that requirements to establish liaison with emergency officials must include public safety answering points (9–1–1 emergency call centers) and that requirements for notifying emergency officials when events occur must include notifications to those local public safety answering points.

Section 195.402 also require that emergency procedures provide for rupture detection and valve closure in response to a leakage or failure event, including specific timing provisions relating to ruptures. Specifically, operators must have procedures in place so that they can identify a rupture event within 10 minutes of the initial notification to the operator. This section would also be revised as a matter of minor clarification to incorporate valve shut-off as an example of an emergency action to minimize the hazards of released hazardous liquid or carbon dioxide to life, property, or the environment.

Sec. 195.418 Valves: Onshore Valve Shut-Off for Rupture Mitigation

Proposed new § 195.418 would establish an emergency operations standard requiring operators to isolate certain ruptured pipeline segments as soon as practicable via rupture-mitigation valves with complete segment isolation within 40 minutes of identifying a rupture. This standard would apply to newly constructed and entirely replaced onshore hazardous liquid pipelines in HCAs and that could affect HCAs with nominal diameters greater than or equal to 6 inches, and it would also apply to any hazardous liquid pipelines where 2 or more contiguous miles of pipeline with nominal diameters greater than or equal to 6 inches are replaced in HCAs or where they could affect HCAs. This NPRM would require that operators designate shut-off segments in these areas and designate mainline valves used to isolate ruptures on those shut-off segments as rupture-mitigation

valves. This NPRM would establish maximum distances of 15 miles between rupture-mitigation valves and 7½ miles between rupture-mitigation valves on HVL lines, which are consistent with the proposed spacing requirements of § 195.260. Operators could use ASVs, RCVs, an equivalent technology, or manually operated valves (if the operator demonstrates infeasibility of ASVs, RCVs and equivalent technology, that the standard can be achieved under emergency conditions, and provides notification to PHMSA). Operators would also be required to monitor the position and operational status of all rupture-mitigation valves. Operators will be required to meet these provisions within 12 months after the effective date of the final rule.

Sec. 195.420 Valve Maintenance

PHMSA proposes to revise § 195.420 to incorporate the maintenance, inspection, and operator drills required to ensure operators can close a rupture-mitigation valve as soon as practicable but within 40 minutes. Demonstration and verification requirements are proposed, including point-to-point verification tests for rupture-mitigation valves that are ASVs or RCVs and initial validation drills and periodic confirmation drills for any manually or locally operated valves identified as rupture-mitigation valves. This section would also require an operator to identify corrective actions and lessons learned resulting from its validation or confirmation drills and share and implement those lessons learned across its entire network of pipeline systems.

Sec. 195.452 Pipeline Integrity Management in High Consequence Areas

PHMSA proposes to revise § 195.452(i)(4) to clarify the existing requirements for the conduct of EFRD evaluations for HCAs, particularly when operators use EFRDs as rupture-mitigation valves on applicable lines. Further, the amendments would also require that operators be able to evaluate and demonstrate that they could identify a rupture within 10 minutes in accordance with the proposed § 195.402 and meet the standard specified in the proposed § 195.418 to isolate shut-off segments that could affect HCAs during rupture events, and the amendments would require that any EFRDs installed on shut-off segments also comply with the design, operation, testing, and maintenance requirements of §§ 195.258, 195.260, 195.402, and 195.420.

VI. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This NPRM is published under the authority of the Federal Pipeline Safety Law (49 U.S.C. 60101 *et seq.*). Section 60102 authorizes the Secretary of Transportation to issue regulations governing the design, installation, inspection, emergency procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities. The Secretary delegated this authority to PHMSA at 49 CFR 1.97(a).

B. Executive Orders 12866 and 13771, and DOT Regulatory Policies and Procedures

Executive Order 12866 requires agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' This NPRM has been determined to be significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. This NPRM has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866 (Regulatory Planning and Review) and is consistent with the Executive Order 12866 requirements and 49 U.S.C. 60102(b)(5)–(6).

Consistent with Executive Order 12866, PHMSA has prepared a preliminary assessment of the benefits and costs of the proposed rule as well as reasonable alternatives. PHMSA anticipates that, if promulgated, this NPRM will provide benefits to the public through more rapid valve closure resulting in better consequence mitigation.

For hazardous liquid pipelines, most damages are calculated by the cost of cleanup and long-term environmental remediation.[39] Therefore, a reduction in the amount of product released from a hazardous liquid pipeline can directly correlate to a reduction in damages. As discussed earlier in this NPRM, in the Enbridge incident near Marshall, MI, the pipeline continued to pump oil for 18 hours before valves were closed, resulting in approximately 20,000 barrels of oil being released. With faster rupture detection, pump shutdowns, and valve closures in line with this NPRM, the pipeline would have been isolated 17 hours and 20 minutes earlier, which would have resulted in a substantially lower spill size, environmental impact, and remedial costs.

Natural gas transmission pipeline incidents result predominately in fatalities, injuries, or property damages that are not linearly related to the quantity of natural gas released. For small incidents and for those incidents in remote locations, damages may be limited to pipeline repair and gas loss costs. Larger incidents, on the other hand, likely involve the ignition of gas and extensive property damage and personal injury, depending on the location of the release and its proximity to buildings, homes, or other areas. A reduction in the cumulative product release over these types of incidents would not necessarily imply avoided damages in the way that it would apply to hazardous liquid pipelines as discussed above. For example, in the PG&E incident, the homes destroyed by the initial rupture would not have been saved through a more prompt valve closure. However, as discussed earlier in this document, during the 95 minutes it took PG&E to isolate the ruptured segment, the fire resulting from the rupture was being fed by the transmission line, and firefighters could not start firefighting and containment activities until the line was isolated. Earlier valve closure, in that circumstance, could have limited the spread of fire and additional damage beyond the immediate rupture area.

PHMSA estimates that the NPRM will result in annualized costs of approximately $3.1 million per year, calculated at a 7 percent discount rate. The table below presents the annualized costs for the baseline and this NPRM, at a 3 percent and a 7 percent discount rate:

TABLE 1—ANNUALIZED COSTS OF THE PROPOSED RULE

[Millions 2015$]

System type	7% Discount rate	3% Discount rate
Gas transmission	$1.2	$1.0
Hazardous liquid	1.9	1.5
Total	3.1	2.5

The NPRM is expected to be an E.O. 13771 regulatory action. Details on the estimated costs of this NPRM can be found in the rule's economic analysis.

For more information, please see the PRIA in the docket for this rulemaking.

[39] PHMSA notes that HVL releases may have similar incident profiles to natural gas transmission pipelines, as escaping product can be ignited and cause similar damage via a rupture.

C. Executive Order 13132: Federalism

PHMSA has analyzed this rulemaking action according to Executive Order 13132 (''Federalism''). While this NPRM may preempt some State requirements, it does not impose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. The pipeline safety laws, specifically 49 U.S.C. 60104(c), prohibit State safety regulation of interstate pipelines. Under the pipeline safety laws, States have the ability to augment pipeline safety requirements for intrastate pipelines, but may not approve safety requirements less stringent than those required by Federal law. A State may also regulate an intrastate pipeline facility PHMSA does not regulate.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Flexibility Fairness Act of 1996, requires Federal regulatory agencies to prepare an Initial Regulatory Flexibility Analysis (IRFA) for any proposed rule subject to notice-and-comment rulemaking under the Administrative Procedure Act unless the agency head certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities.

PHMSA prepared an IRFA of the potential economic impact on small entities, which is available in the docket for this NPRM. For a worst-case scenario, PHMSA compared compliance costs to estimated sales for businesses. Average annualized costs could exceed 1 percent of sales for 34 (8 percent) of the estimated small gas transmission entities and 12 (19 percent) of the estimated small hazardous liquid operators for a total of 46 (10 percent) entities combined across both sectors. Average annualized costs could exceed 3% of sales for 3 (1 percent) gas transmission operators and 4 (6 percent) hazardous liquid operators, which represent 7 (1 percent) of the total estimated small business entities.

Due to various uncertainties in the screening analysis (see Table 7 in the IRFA), PHMSA seeks comments regarding the impacts of the NPRM on small entities. PHMSA will subsequently modify the IRFA and make a determination as to whether this NPRM will have a significant economic impact on a number of small entities at the final rule stage.

E. National Environmental Policy Act

PHMSA analyzed this NPRM in accordance with section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4332), the Council on Environmental Quality regulations (40 CFR parts 1500–1508), and DOT Order 5610.1C, and has preliminarily determined this action will not significantly affect the quality of the human environment. The Environmental Assessment for this NPRM is in the docket.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

PHMSA has analyzed this NPRM in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this NPRM is not expected to have Tribal implications and is not expected to impose substantial direct compliance costs on Indian Tribal governments, PHMSA does not anticipate that the funding and consultation requirements of Executive Order 13175 will apply. PHMSA seeks comment on the applicability of the executive order to this NPRM.

G. Executive Order 13211

This NPRM is not anticipated to be a ''significant energy action'' under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). It is not likely to have a significant adverse effect on supply, distribution, or energy use. Further, the Office of Information and Regulatory Affairs has not designated this proposed rule as a significant energy action.

H. Paperwork Reduction Act

Pursuant to 5 CFR 1320.8(d), PHMSA is required to provide interested members of the public and affected agencies with an opportunity to comment on information collection and recordkeeping requests. PHMSA estimates that the proposals in this NPRM will create the following Paperwork Reduction Act impacts:

PHMSA proposes to create a new information collection to cover the recordkeeping requirement for post-incident recordkeeping called: ''Rupture/Shut-off Valve: Post-Incident Records for Pipeline Operators.'' PHMSA also proposes to create a new information collection called ''Alternative Technology for Onshore Rupture Mitigation Notifications'' to cover this specific notification requirement.

PHMSA will submit information collection requests to the Office of Management and Budget (OMB) for approval based on the requirements that trigger components of the Paperwork Reduction Act in this NPRM. PHMSA will also request two new OMB Control Numbers for these collections. These information collections are contained in the pipeline safety regulations, 49 CFR parts 190–199. The following information is provided for each of these information collections: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection. The information collection burdens are estimated as follows:

1. Title: ''Rupture/Valve Shut-off: Post-Incident Records for Pipeline Operators.''

OMB Control Number: Will request one from OMB.

Current Expiration Date: New Collection—To be determined.

Abstract: This NPRM proposes to amend 49 CFR 192.617 and 195.402 to require operators who have experienced a rupture or rupture-mitigation valve shut-off to complete a post-incident summary. The post-incident summary, all investigation and analysis documents used to prepare it, and records of lessons learned must be kept for the life of the pipeline. PHMSA estimates this recordkeeping requirement will result in 50 responses annually and has allotted each respondent 8 hours per response to make and maintain the required records. PHMSA does not currently have an information collection that covers this requirement and will request the approval of this new collection, along with a new OMB Control Number, from the Office of Management and Budget.

Affected Public: Operators of PHMSA-regulated pipelines.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 50.

Total Annual Burden Hours: 400.

Frequency of Collection: On occasion.

2. Title: ''Alternative Equivalent Technology for Onshore Rupture Mitigation Notifications.''

OMB Control Number: Will request one from OMB.

Current Expiration Date: New Collection—To be determined.

Abstract: This NPRM proposes a new paragraph (d) in both 49 CFR 192.634 and 195.418 requiring operators who elect to use alternative equivalent technology to notify, in accordance with 192.949, the Office of Pipeline Safety at least 90 days in advance of use. An operator choosing this option must include a technical and safety evaluation, including design, construction, and operating procedures for the alternative equivalent technology to the Associate Administrator of Pipeline Safety with the notification. PHMSA would then have 90 days to object to the alternative equivalent technology via letter from the Associate Administrator of Pipeline Safety; otherwise, the alternative equivalent technology would be acceptable for use. PHMSA estimates this notification requirement will result in 2 responses annually and has allotted each respondent 40 hours per response to conduct this task. PHMSA does not currently have an information collection that covers this requirement and will request the approval of this new collection, along with a new OMB Control Number, from the Office of Management and Budget.

Affected Public: Operators of PHMSA-regulated pipelines.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 2.

Total Annual Burden Hours: 80.

Frequency of Collection: On occasion.

Requests for copies of these information collections should be directed to Angela Hill, Office of Pipeline Safety (PHP–30), Pipeline and Hazardous Materials Safety Administration, 2nd Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, Telephone: 202–366–1246.

Comments are invited on:

(a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the revised collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

(e) Ways the collection of this information is beneficial or not beneficial to public safety.

Send comments directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for the Department of Transportation, 725 17th Street NW, Washington, DC 20503. Comments should be submitted on or prior to April 6, 2020.

I. Unfunded Mandates Reform Act of 1995

The analysis PHMSA performed in accordance with preparing the Preliminary Regulatory Impact Assessment does not expect this NPRM to impose unfunded mandates per the Unfunded Mandates Reform Act of 1995. It is not expected to result in costs of $100 million, adjusted for inflation, or more in any one (1) year to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the proposed rulemaking. A copy of the Preliminary Regulatory Impact Assessment is available for review in the docket.

J. Privacy Act Statement

Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement, published on April 11, 2000 (65 FR 19476), in the **Federal Register** at: *https://www.govinfo.gov/content/FR-2000-04-11/pdf/00-8505.pdf.*

K. Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 192

Gas, Incorporation by reference, Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Incorporation by reference, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA proposes to amend 49 CFR parts 192 and 195 as follows:

PART 192—TRANSPORTATION OF NATURAL GAS AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 1. The authority citation for part 192 continues to read as follows:

Authority: 30 U.S.C. 185(w)(3), 49 U.S.C. 5103, 60101 et. seq., and 49 CFR 1.97.

■ 2. In § 192.3, the definition of ''rupture'' is added in alphabetical order to read as follows:

§ 192.3 Definitions.

* * * * *

Rupture means any of the following events that involve an uncontrolled release of a large volume of gas:

(1) A release of gas observed or reported to the operator by its field personnel, nearby pipeline or utility personnel, the public, local responders, or public authorities, and that may be representative of an unintentional and uncontrolled release event defined in paragraphs (2) or (3) of this definition;

(2) An unanticipated or unplanned pressure loss of 10 percent or greater, occurring within a time interval of 15 minutes or less, unless the operator has documented in advance of the pressure loss the need for a higher pressure-change threshold due to pipeline flow dynamics that cause fluctuations in gas demand that are typically higher than a pressure loss of 10 percent in a time interval of 15 minutes or less; or

(3) An unexplained flow rate change, pressure change, instrumentation indication, or equipment function that may be representative of an event defined in paragraph (2) of this definition.

Note: Rupture identification occurs when a rupture, as defined in this section, is first observed by or reported to pipeline operating personnel or a controller.

* * * * *

■ 3. In § 192.179, paragraph (e) is added to read as follows:

§ 192.179 Transmission line valves.

* * * * *

(e) All onshore transmission line segments with diameters greater than or equal to 6 inches that are constructed or entirely replaced after [DATE 12 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE] must have automatic shutoff valves, remote-control valves, or equivalent technology installed at intervals meeting the appropriate valve spacing requirements of this section. An operator may only install a manual valve under this paragraph if it can demonstrate to PHMSA that installing an automatic shutoff valve, remote-

control valve, or equivalent technology would be economically, technically, or operationally infeasible. An operator using alternative equivalent technology or manual valve must notify PHMSA in accordance with the procedure in § 192.634(h). All valves and technology installed under this paragraph must meet the requirements of § 192.634(c), (d), (f), and (g).

■ 4. Section 192.610 is added to read as follows:

§ 192.610 Change in class location: Change in valve spacing.

If a class location change on a transmission line occurs after [EFFECTIVE DATE OF FINAL RULE] and results in pipe replacement to meet the maximum allowable operating pressure requirements in §§ 192.611, 192.619, or 192.620, then the requirements in §§ 192.179 and 192.634 apply to the new class location, and the operator must install valves as necessary to comply with those sections. Such valves must be installed within 24 months of the class location change in accordance with § 192.611(d).

■ 5. In § 192.615, paragraphs (a)(2), (6), (8), and (11), and paragraph (c) introductory text are revised to read as follows:

§ 192.615 Emergency plans.

(a) * * *

(2) Establishing and maintaining adequate means of communication with the appropriate public safety answering point (9–1–1 emergency call center), as well as fire, police, and other public officials, to learn the responsibility, resources, jurisdictional area, and emergency contact telephone numbers for both local and out-of-area calls of each government organization that may respond to a pipeline emergency, and to inform the officials about the operator's ability to respond to the pipeline emergency and means of communication.

* * * * *

(6) Taking necessary actions, including but not limited to, emergency shutdown, valve shut-off, and pressure reduction, in any section of the operator's pipeline system to minimize hazards of released gas to life, property, or the environment. Each operator installing valves in accordance with § 192.179(e) or subject to the requirements in § 192.634 must also evaluate and identify a rupture as defined in § 192.3 as being an actual rupture event or non-rupture event in accordance with operating procedures as soon as practicable but within 10 minutes of the initial notification to or by the operator, regardless of how the rupture is initially detected or observed.

* * * * *

(8) Notifying the appropriate public safety answering point (9–1–1 emergency call center), as well as fire, police, and other public officials, of gas pipeline emergencies to coordinate and share information to determine the location of the release, including both planned responses and actual responses during an emergency. The operator (pipeline controller or the appropriate operator emergency response coordinator) must immediately and directly notify the appropriate public safety answering point (9–1–1 emergency call center) or other coordinating agency for the communities and jurisdictions in which the pipeline is located after the operator determines a rupture has occurred when a release is indicated and rupture-mitigation valve closure is implemented.

* * * * *

(11) Actions required to be taken by a controller during an emergency in accordance with the operator's emergency plans and §§ 192.631 and 192.634.

* * * * *

(c) Each operator must establish and maintain liaison with the appropriate public safety answering point (9–1–1 emergency call center), as well as fire, police, and other public officials to:

* * * * *

■ 6. Section 192.617 is revised to read as follows:

§ 192.617 Investigation of failures and incidents.

(a) *Post-incident procedures.* Each operator must establish and follow post-incident procedures for investigating and analyzing failures and incidents as defined in § 191.3, including sending the failed pipe, component, or equipment for laboratory testing or examination, where appropriate, to determine the causes and contributing factors of the failure or incident and minimize the possibility of a recurrence.

(b) *Post-incident lessons learned.* Each operator must develop, implement, and incorporate lessons learned from a post-incident review into its procedures, including in pertinent operator personnel training and qualification programs, and in design, construction, testing, maintenance, operations, and emergency procedure manuals and specifications.

(c) *Analysis of rupture and valve shut-offs; preventive and mitigative measures.* If a failure or incident involves a rupture as defined in § 192.3 or the closure of a rupture-mitigation valve as defined in § 192.634, the operator must also conduct a post-incident analysis of all factors impacting the release volume and the consequences of the release, and identify and implement preventive and mitigative measures to reduce or limit the release volume and damage in a future failure or incident. The analysis must include all relevant factors impacting the release volume and consequences, including, but not limited to, the following:

(1) Detection, identification, operational response, system shut-off, and emergency response communications, based on the type and volume of the release or failure event;

(2) Appropriateness and effectiveness of procedures and pipeline systems, including SCADA, communications, valve shut-off, and operator personnel;

(3) Actual response time from rupture detection to initiation of mitigative actions, and the appropriateness and effectiveness of the mitigative actions taken;

(4) Location and the timeliness of actuation of rupture-mitigation valves identified under § 192.634; and

(5) All other factors the operator deems appropriate.

(d) *Rupture post-incident summary.* If a failure or incident involves a rupture as defined in § 192.3 or the closure of a rupture-mitigation valve as defined in § 192.634, the operator must complete a summary of the post-incident review required by paragraph (c) of this section within 90 days of the failure or incident, and while the investigation is pending, conduct quarterly status reviews until completed. The post-incident summary and all other reviews and analyses produced under the requirements of this section must be reviewed, dated, and signed by the appropriate senior executive officer. The post-incident summary, all investigation and analysis documents used to prepare it, and records of lessons learned must be kept for the useful life of the pipeline.

■ 7. Section 192.634 is added to read as follows:

§ 192.634 Transmission lines: Onshore valve shut-off for rupture mitigation.

(a) *Applicability.* For onshore transmission pipeline segments with nominal diameters of 6 inches or greater in high consequence areas or Class 3 or Class 4 locations that are constructed or where 2 or more contiguous miles have been replaced after [DATE 12 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE], an operator must install rupture-mitigation valves according to the requirements of this section. Rupture-

mitigation valves must be operational within 7 days of placing the new or replaced pipeline segment in service.

(b) *Maximum spacing between valves.* Rupture-mitigation valves must be installed in accordance with the following requirements:

(1) *High Consequence Areas.* For purposes of this paragraph (b)(1), ''shut-off segment'' means the segment of pipe located between the upstream mainline valve closest to the upstream high consequence area segment endpoint and the downstream mainline valve closest to the downstream high consequence area segment endpoint so that the entirety of the high consequence area segment is between at least two rupture-mitigation valves. If any crossover or lateral pipe for gas receipts or deliveries connects to the shut-off segment between the upstream and downstream mainline valves, then the segment also extends to the nearest valve on the crossover connection(s) or lateral(s), such that, when all valves are closed, there is no flow path for gas to be transported to the rupture site (except for residual gas already in the shut-off segment). All such valves on a shut-off segment are ''rupture-mitigation valves.'' Multiple high consequence areas may be contained within a single shut-off segment. The distance between rupture-mitigation valves for each shut-off segment must not exceed:

(i) 8 miles if one or more high consequence areas in the shutoff segment is in a Class 4 location;

(ii) 15 miles if one or more high consequence areas in the shutoff segment is in a Class 3 location, and

(iii) 20 miles if all high consequence areas in the shutoff segment are located in Class 1 or 2 locations, or

(iv) The mainline valve spacing requirements of § 192.179 when mainline valve spacing does not meet § 192.634(b)(1)(i), (ii), or (iii).

(2) *Class 3 locations.* For purposes of this paragraph, ''shut-off segment'' means the segment of pipe located between the upstream mainline valve closest to the upstream endpoint of the Class 3 location and the downstream mainline valve closest to the downstream endpoint of the Class 3 location so that the entirety of the Class 3 location is between at least two rupture-mitigation valves. If any crossover or lateral pipe for gas receipts or deliveries connects to the shut-off segment between the upstream and downstream mainline valves, the shut-off segment also extends to the nearest valve on the crossover connection(s) or lateral(s), such that, when all valves are closed, there is no flow path for gas to be transported to the rupture site (except for residual gas already in the shut-off segment). All such valves on a shut-off segment are ''rupture-mitigation valves.'' Multiple Class 3 locations may be contained within a single shut-off segment. The distance between mainline valves serving as rupture-mitigation valves for each shut-off segment must not exceed 15 miles.

(3) *Class 4 locations.* For purposes of this paragraph, ''shut-off segment'' means the segment of pipe between the upstream mainline valve closest to the upstream endpoint of the Class 4 location and the downstream mainline valve closest to the downstream endpoint of the Class 4 location so that the entirety of the Class 4 location is between at least two rupture-mitigation valves. If any crossover or lateral pipe for gas receipts or deliveries connects to the shut-off segment between the upstream and downstream mainline valves, the shut-off segment also extends to the nearest valve on the crossover connection(s) or lateral(s), such that, when all valves are closed, there is no flow path for gas to be transported to the rupture site (except for residual gas already in the shut-off segment). All such valves on a shut-off segment are ''rupture-mitigation valves.'' Multiple Class 4 locations may be contained within a single shut-off segment. The distance between mainline valves serving as rupture-mitigation valves for each shut-off segment must not exceed 8 miles.

(4) *Laterals.* Laterals extending from shut-off segments that contribute less than 5 percent of the total shut-off segment volume may have rupture-mitigation valves that meet the actuation requirements of this section at locations other than mainline receipt/delivery points, as long as all of these laterals contributing gas volumes to the shut-off segment do not contribute more than 5 percent of the total shut-off segment gas volume, based upon maximum flow volume at the operating pressure.

(c) *Valve shut-off time for rupture mitigation.* Upon identifying a rupture, the operator must, as soon as practicable:

(1) Commence shut-off of the rupture-mitigation valve or valves which would have the greatest effect on minimizing the release volume and other potential safety and environmental consequences of the discharge to achieve full rupture-mitigation valve shut-off within 40 minutes of rupture identification; and

(2) Initiate other mitigative actions appropriate for the situation to minimize the release volume and potential adverse consequences.

(d) *Valve shut-off capability.* Onshore transmission line rupture-mitigation valves must have actuation capability (*i.e.,* remote-control shut-off, automatic shut-off, equivalent technology, or manual shut-off where personnel are in proximity) to ensure pipeline ruptures are promptly mitigated based upon maximum valve shut-off times, location, and spacing specified in paragraphs (b) and (c) of this section to mitigate the volume and consequence of gas released.

(e) *Valve shut-off methods.* All onshore transmission line rupture-mitigation valves must be actuated by one of the following methods to mitigate a rupture as soon as practicable but within 40 minutes of rupture identification:

(1) Remote control from a location that is continuously staffed with personnel trained in rupture response to provide immediate shut-off following identification of a rupture or other decision to close the valve;

(2) Automatic shut-off following identification of a rupture; or

(3) Alternative equivalent technology that is capable of mitigating a rupture in accordance with this section.

(4) Manual operation upon identification of a rupture. Operators using a manual valve in accordance with § 192.179(e), must appropriately station personnel to ensure valve shut-off in accordance with paragraph (c) of this section. Manual operation of valves must include time for the assembly of necessary operating personnel, the acquisition of necessary tools and equipment, driving time under heavy traffic conditions and at the posted speed limit, walking time to access the valve, and time to manually shut off all valves, not to exceed the 40-minute total response time in paragraph (c)(1) of this section.

(f) *Valve monitoring and operation capabilities.* Onshore transmission line rupture-mitigation valves actuated by methods in paragraph (e) of this section must be capable of being:

(1) Monitored or controlled by either remote or onsite personnel;

(2) Operated during normal, abnormal, and emergency operating conditions;

(3) Monitored for valve status (*i.e.,* open, closed, or partial closed/open), upstream pressure, and downstream pressure. Pipeline segments that use manual valve operation must have the capability to monitor pressures and gas flow rates on the pipeline to be able to identify and locate a rupture;

(4) Initiated to close as soon as practicable after identifying a rupture and with complete valve shut-off within

40 minutes of rupture identification as specified in paragraph (c) of this section; and

(5) Monitored and controlled by remote personnel or must have a back-up power source to maintain SCADA or other remote communications for remote control shut-off valve or automatic shut-off valve operational status.

(g) *Monitoring of valve shut-off response status.* Operating control personnel must continually monitor rupture-mitigation valve position and operational status of all rupture-mitigation valves for the affected shut-off segment during and after a rupture event until the pipeline segment is isolated. Such monitoring must be maintained through continual electronic communications with remote instrumentation or through continual verbal communication with onsite personnel stationed at each rupture-mitigation valve, via telephone, radio, or equivalent means.

(h) *Alternative equivalent technology or manual valves for onshore transmission rupture mitigation.* If an operator elects to use alternative equivalent technology or manual valves in accordance with § 192.179(e), the operator must notify PHMSA at least 90 days in advance of installation or use in accordance with § 192.949. The operator must include a technical and safety evaluation in its notice to PHMSA, including design, construction, and operating procedures for the alternative equivalent technology or manual valve. Operators installing manual valves must also demonstrate that installing an automatic shutoff valve, a remote-control valve, or equivalent technology would be economically, technically, or operationally infeasible. An operator may proceed to use the alternative equivalent technology or manual valves 91 days after submitting the notification unless it receives a letter from the Associate Administrator of Pipeline Safety informing the operator that PHMSA objects to the proposed use of the alternative equivalent technology or manual valves or that PHMSA requires additional time to conduct its review.

■ 8. In § 192.745 paragraphs (c), (d), and (e) are added to read as follows:

§ 192.745 Valve maintenance: Transmission lines.

* * * * *

(c) For each valve installed under § 192.179(e) and each rupture-mitigation valve under § 192.634 that is a remote control shut-off or automatic shut-off valve, or that is based on alternative equivalent technology, the operator must conduct a point-to-point verification between SCADA displays and the mainline valve, sensors, and communications equipment in accordance with § 192.631(c) and (e).

(d) For each rupture-mitigation valve under § 192.634 that is manually or locally operated:

(1) Operators must establish the 40-minute total response time as required by § 192.634 through an initial drill and through periodic validation as required in paragraph (d)(2) of this section. Each phase of the drill response must be reviewed and the results documented to validate the total response time, including valve shut-off, as being less than or equal to 40 minutes following rupture identification.

(2) A mainline valve serving as a rupture-mitigation valve within each pipeline system and within each operating or maintenance field work unit must be randomly selected for an annual 40-minute total response time validation drill that simulates worst-case conditions for that location to ensure compliance. The response drill must occur at least once each calendar year, with intervals not to exceed 15 months.

(3) If the 40-minute maximum response time cannot be validated or achieved in the drill, the operator must revise response efforts to achieve compliance with § 192.634 no later than 6 months after the drill. Alternative valve shut-off measures must be in place in accordance with paragraph (e) of this section within 7 days of a failed drill.

(4) Based on the results of response-time drills, the operator must include lessons learned in:

(i) Training and qualifications programs; and

(ii) Design, construction, testing, maintenance, operating, and emergency procedures manuals; and

(iii) Any other areas identified by the operator as needing improvement.

(e) Each operator must take remedial measures to correct any valve installed under § 192.179(e) or any rupture-mitigation valve identified in § 192.634 that is found to be inoperable or unable to maintain shut-off, as follows:

(1) Repair or replace the valve as soon as practicable but no later than 6 months after finding that the valve is inoperable or unable to maintain shut-off; and

(2) Designate an alternative compliant valve within 7 calendar days of the finding while repairs are being made.

■ 9. In § 192.935, paragraph (c) is revised to read as follows:

§ 192.935 What additional preventive and mitigative measures must an operator take?

* * * * *

(c) Risk analysis for gas releases and protection against ruptures. If an operator determines, based on a risk analysis, that an automatic shut-off valve (ASV) or remote-control valve (RCV) would be an efficient means of adding protection to a high consequence area in the event of a gas release, an operator must install the ASV or RCV. In making that determination, an operator must, at least, consider the following factors—swiftness of leak detection and pipe shutdown capabilities, the type of gas being transported, operating pressure, the rate of potential release, pipeline profile, the potential for ignition, and location of nearest response personnel.

(1) *Protection of onshore transmission high consequence areas from ruptures.* An operator of an onshore transmission pipeline segment that is constructed, or that has 2 or more contiguous miles replaced, after [DATE 12 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE] and is greater than or equal to 6 inches in nominal diameter and is located in a high consequence area must provide for the additional protection of those pipeline segments to assure the timely termination and mitigation of rupture events by complying with §§ 192.615(a)(6), 192.634, and 192.745. At a minimum, the analysis specified in paragraph (c) of this section must demonstrate that the operator can achieve the following standards for termination of rupture events:

(i) Operators must identify a rupture event as soon as practicable but within 10 minutes of the initial notification to or by the operator, in accordance with § 192.615(a)(6), regardless of how the rupture is initially detected or observed;

(ii) Operators must begin closing shut-off segment rupture-mitigation valves as soon as practicable after identifying a rupture in accordance with § 192.634; and

(iii) Operators must achieve complete segment shut-off and isolation as soon as practicable after rupture detection but within 40 minutes of rupture identification in accordance with § 192.634.

(2) *Compliance deadlines.* The risk analysis and assessments specified in paragraph (c) of this section must be completed prior to placing into service onshore transmission pipelines constructed or where 2 or more contiguous miles have been replaced after [DATE 12 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE]. Implementation of risk analysis and assessment findings for rupture-mitigation valves must meet § 192.634.

(3) *Periodic evaluations.* Risk analyses and assessments conducted under

paragraph (c) of this section must be reviewed by the operator for new or existing operational and integrity matters that would affect rupture mitigation on an annual basis, not to exceed a period of 15 months, or within 3 months of an incident or safety-related condition, as those terms are defined at §§ 191.3 and 191.23, respectively, and certified by the signature of a senior executive of the company.

* * * * *

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

■ 10. The authority citation for part 195 continues to read as follows:

Authority: 30 U.S.C. 185(w)(3), 49 U.S.C. 5103, 60101 *et seq.,* and 49 CFR 1.97.

■ 11. In § 195.2, the definition for ''rupture'' is added in alphabetical order to read as follows:

§ 195.2 Definitions.

* * * * *

Rupture means any of the following events that involve an uncontrolled release of a large volume of hazardous liquid or carbon dioxide:

(1) A release of hazardous liquid or carbon dioxide observed and reported to the operator by its field personnel, nearby pipeline or utility personnel, the public, local responders, or public authorities, and that may be representative of an unintentional and uncontrolled release event defined in paragraphs (2) or (3) of this definition;

(2) An unanticipated or unplanned flow rate change of 10 percent or greater or a pressure loss of 10 percent or greater, occurring within a time interval of 15 minutes or less, unless the operator has documented in advance of the flow rate change or pressure loss the need for a higher flow rate change or higher pressure-change threshold due to pipeline flow dynamics and terrain elevation changes that cause fluctuations in hazardous liquid or carbon dioxide flow that are typically higher than a flow rate change or pressure loss of 10 percent in a time interval of 15 minutes or less; or

(3) An unexplained flow rate change, pressure change, instrumentation indication or equipment function that may be representative of an event defined in paragraph (2) of this definition.

Note: Rupture identification occurs when a rupture, as defined in this section, is first observed by or reported to pipeline operating personnel or a controller.

* * * * *

■ 12. In § 195.258, paragraph (c) is added to read as follows:

§ 195.258 Valves: General.

* * * * *

(c) All onshore hazardous liquid or carbon dioxide pipeline segments with diameters greater than or equal to 6 inches that are constructed or entirely replaced after [DATE 12 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE] must have automatic shutoff valves, remote-control valves, or equivalent technology installed at intervals meeting the appropriate valve location and spacing requirements of this section and § 195.260. An operator may only install a manual valve under this paragraph if it can demonstrate to PHMSA that installing an automatic shutoff valve, remote-control valve, or equivalent technology would be economically, technically, or operationally infeasible. An operator installing alternative equivalent technology or manual valves must notify PHMSA in accordance with the procedure at § 195.418(h). Valves and technology installed under this section must meet the requirements of § 195.418(c), (d), (f), and (g).

■ 13. In § 195.260, paragraphs (c) and (e) are revised and paragraphs (g) and (h) are added to read as follows:

§ 195.260 Valves: Location.

* * * * *

(c) On each mainline at locations along the pipeline system that will minimize or prevent safety risks, property damage, or environmental harm from accidental hazardous liquid or carbon dioxide discharges, as appropriate for onshore areas, offshore areas, or high consequence areas. For onshore pipelines constructed or that have had 2 or more contiguous miles replaced after [DATE 12 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE], mainline valve spacing must not exceed 15 miles for pipeline segments that could affect high consequence areas (as defined in § 195.450) and 20 miles for pipeline segments that could not affect high consequence areas. Valves protecting high consequence areas must be located as determined by the operator's process for identifying preventive and mitigative measures established in § 195.452(i) and by using a process, such as is set forth in Section I.B of Appendix C of part 195, but with a maximum distance from the high consequence area segment endpoints that does not exceed 7½ miles.

* * * * *

(e) On each side of a water crossing that is more than 100 feet (30 meters) wide from high-water mark to high-water mark as follows, unless the Associate Administrator finds under paragraph (e)(3) of this section that valves or valve spacing is not necessary in a particular case to achieve an equivalent level of safety:

(1) Valves must either be located outside of the flood plain or have valve actuators and other control equipment installed to not be impacted by flood conditions; and

(2) For multiple water crossings, valves must be located on the pipeline upstream and downstream of the first and last water crossings so that the total distance between the first upstream valve and last downstream valve does not exceed 1 mile.

(3) An operator may notify PHMSA in accordance with paragraph (h) of this section if in a particular case the valves or valve spacing required by this paragraph is not necessary to achieve an equivalent level of safety. Unless the Associate Administrator finds in that particular case the valves or valve spacing required by this paragraph are not necessary to achieve an equivalent level of safety, the operator must comply with the valve and valve spacing requirements of this paragraph.

* * * * *

(g) On each mainline highly volatile liquid (HVL) pipeline that is located in a high population area or other populated area as defined in § 195.450 and that is constructed or that has 2 or more contiguous miles replaced after [DATE 12 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE], with a maximum valve spacing of 7½ miles, unless the Associate Administrator finds in a particular case that this valve spacing is not necessary to achieve an equivalent level of safety. An operator may notify PHMSA in accordance with paragraph (h) of this section if in a particular case the valve spacing required by this paragraph is not necessary to achieve an equivalent level of safety. If the Associate Administrator informs an operator that PHMSA objects, the operator must comply with the valve spacing requirements of this paragraph.

(h) An operator must provide any notification required by this section by:

(1) Sending the notification by electronic mail to *InformationResourcesManager@dot.gov;* or

(2) Sending the notification by mail to ATTN: Information Resources Manager, DOT/PHMSA/OPS, East Building, 2nd Floor, E22–321, 1200 New Jersey Ave. SE, Washington, DC 20590.

■ 14. In § 195.402, paragraphs (c)(4), (5), and (12), and (e)(1), (4), (7), and (10) are revised to read as follows:

§ 195.40 2 Procedural manual for operations, maintenance, and emergencies.

* * * * *

(c) * * *

(4) Determining which pipeline facilities are in areas that would require an immediate response by the operator to prevent hazards to the public, property, or the environment if the facilities failed or malfunctioned, including segments that could affect high consequence areas and valves specified in either §§ 195.418 or 195.452(i)(4).

(5) Investigating and analyzing pipeline accidents and failures, including sending the failed pipe, component, or equipment for laboratory testing or examination where appropriate, to determine the causes and contributing factors of the failure and minimize the possibility of a recurrence.

(i) *Post-incident lessons learned.* Each operator must develop, implement, and incorporate lessons learned from a post-accident review into its procedures, including in pertinent operator personnel training and qualifications programs and in design, construction, testing, maintenance, operations, and emergency procedure manuals and specifications.

(ii) *Analysis of rupture and valve shut-offs; preventive and mitigative measures.* If a failure or accident involves a rupture as defined in § 195.2 or a rupture-mitigation valve closure as defined in § 195.418, the operator must also conduct a post-accident analysis of all factors impacting the release volume and the consequences of the release, and identify and implement preventive and mitigative measures to reduce or limit the release volume and damage in a future failure or incident. The analysis must include all relevant factors impacting the release volume and consequences, including, but not limited to, the following:

(A) Detection, identification, operational response, system shut-off, and emergency-response communications, based on the type and volume of the release or failure event;

(B) Appropriateness and effectiveness of procedures and pipeline systems, including SCADA, communications, valve shut-off, and operator personnel;

(C) Actual response time from rupture identification to initiation of mitigative actions, and the appropriateness and effectiveness of the mitigative actions taken;

(D) Location and the timeliness of actuation of all rupture-mitigation valves identified under § 195.418; and

(E) All other factors the operator deems appropriate.

(iii) *Rupture post-incident summary.* If a failure or incident involves a rupture as defined in § 195.2 or the closure of a rupture-mitigation valve as defined in § 195.418, the operator must complete a summary of the post-accident review required by paragraph (c)(5)(ii) of this section within 90 days of the failure or incident, and while the investigation is pending, conduct quarterly status reviews until completed. The post-incident summary and all other reviews and analyses produced under the requirements of this section must be reviewed, dated, and signed by the appropriate senior executive officer. The post-incident summary, all investigation and analysis documents used to prepare it, and records of lessons learned must be kept for the useful life of the pipeline.

* * * * *

(12) Establishing and maintaining adequate means of communication with the appropriate public safety answering point (9–1–1 emergency call center), as well as fire, police, and other public officials, to learn the responsibility, resources, jurisdictional area, and emergency contact telephone numbers for both local and out-of-area calls of each government organization that may respond to a pipeline emergency, and to inform the officials about the operator's ability to respond to the pipeline emergency and means of communication.

* * * * *

(e) * * *

(1) Receiving, identifying, and classifying notices of events that need immediate response by the operator or notice to the appropriate public safety answering point (9–1–1 emergency call center), as well as fire, police, and other appropriate public officials, and communicating this information to appropriate operator personnel for corrective action.

* * * * *

(4) Taking necessary actions, including but not limited to, emergency shutdown, valve shut-off, and pressure reduction, in any section of the operator's pipeline system to minimize hazards of released hazardous liquid or carbon dioxide to life, property, or the environment. Each operator installing valves in accordance with § 195.258(c) or subject to the requirements in § 195.418 must also evaluate and identify a rupture as defined in § 195.2 as being an actual rupture event or non-rupture event in accordance with operating procedures as soon as practicable but within 10 minutes of the initial notification to or by the operator, regardless of how the rupture is initially detected or observed.

* * * * *

(7) Notifying the appropriate public safety answering point (9–1–1 emergency call center), as well as fire, police, and other public officials, of hazardous liquid or carbon dioxide pipeline emergencies to coordinate and share information to determine the location of the release, including both planned responses and actual responses during an emergency, and any additional precautions necessary for an emergency involving a pipeline transporting a highly volatile liquid. The operator (pipeline controller or the appropriate operator emergency response coordinator) must immediately and directly notify the appropriate public safety answering point (9–1–1 emergency call center) or other coordinating agency for the communities and jurisdictions in which the pipeline is located after the operator determines a rupture has occurred when a release is indicated and valve closure is implemented.

* * * * *

(10) Actions required to be taken by a controller during an emergency, in accordance with the operator's emergency plans and §§ 195.418 and 195.446.

* * * * *

■ 15. Section 195.418 is added to read as follows:

§ 195.418 Valves: Onshore valve shut-off for rupture mitigation.

(a) *Applicability.* For onshore pipeline segments that could affect high consequence areas with nominal diameters of 6 inches or greater, that are constructed or where 2 or more contiguous miles are replaced after [DATE 12 MONTHS AFTER THE EFFECTIVE DATE OF THE RULE], an operator must install rupture-mitigation valves according to the requirements of this section and § 195.260. Rupture-mitigation valves must be operational within 7 days of placing the new or replaced pipeline segment in service.

(b) *Maximum spacing between valves.* Rupture-mitigation valves must be installed in accordance with the following requirements:

(1) For purposes of this section, a ''shut-off segment'' means the segment of pipe located between the upstream mainline valve closest to the upstream high consequence area segment endpoint and the downstream mainline valve closest to the downstream high consequence area segment endpoint so that the entirety of the segment that could affect the high consequence area

is between at least two rupture-mitigation valves. If any crossover or lateral pipe for commodity receipts or deliveries connects to the shut-off segment between the upstream and downstream mainline valves, the segment also extends to the nearest valve on the crossover connection(s) or lateral(s), such that, when all valves are closed, there is no flow path for commodity to be transported to the rupture site (except for residual liquids already in the shut-off segment). All such valves on a shut-off segment are ''rupture-mitigation valves.'' Multiple high consequence areas may be contained within a single shut-off segment. All replacement pipeline segments that are over 2 continuous miles in length and could affect a high consequence area must include a minimum of one mainline valve that meets the requirements of this section. The distance between rupture-mitigation valves in high consequence areas for each shut-off segment must not exceed 15 miles, with a maximum distance not to exceed 7½ miles from the endpoints of a shut-off segment. Valves on lines carrying highly volatile liquids in high population areas and other populated areas, as those terms are defined in § 195.450, must have rupture-mitigation valves spaced at a maximum distance not exceeding 7½ miles.

(2) Lateral lines to shut-off segments that contribute less than 5 percent of the total shut-off segment commodity volume may have lateral rupture-mitigation valves that meet the actuation requirements of this section at locations other than mainline receipt/delivery points, as long as all of these laterals contributing hazardous liquid or carbon dioxide volumes to the shut-off segment do not contribute more than 5 percent of the total shut-off segment commodity volume based upon maximum flow gradients and terrain.

(c) *Valve shut-off time for rupture mitigation.* Upon identifying a rupture, the operator must, as soon as practicable:

(1) Commence shut-off of the rupture-mitigation valve or valves that would have the greatest effect on minimizing the release volume and other potential safety and environmental consequences of the discharge to achieve full rupture-mitigation valve shut-off within 40 minutes of rupture identification; and

(2) Initiate other mitigative actions appropriate for the situation to minimize the release volume and potential adverse consequences.

(d) *Valve shut-off capability.* Onshore rupture-mitigation valves must have actuation capability (*i.e.,* remote control shut-off, automatic shut-off, equivalent technology, or manual shut-off where personnel are in proximity) to ensure pipeline ruptures are promptly mitigated based upon maximum valve shut-off times, location, and spacing specified in paragraphs (b) and (c) of this section to mitigate the volume and consequence of hazardous liquid or carbon dioxide released.

(e) *Valve shut-off methods.* All onshore rupture-mitigation valves must be actuated by one of the following methods to mitigate a rupture as soon as practicable but within 40 minutes of rupture identification:

(1) Remote control from a location that is continuously staffed with personnel trained in rupture response to provide immediate shut-off following identification of a rupture or other decision to close the valve;

(2) Automatic shut-off following an identification of a rupture; or

(3) Alternative equivalent technology that is capable of mitigating a rupture in accordance with this section.

(4) Manual operation upon identification of a rupture. Operators using a manual valve in accordance with § 195.258 must appropriately station personnel to ensure valve shut-off in accordance with paragraph (c) of this section. Manual operation of valves must include time for the assembly of necessary operating personnel, acquisition of necessary tools and equipment, driving time under heavy traffic conditions and at the posted speed limit, walking time to access the valve, and time to manually shut off all valves, not to exceed a 40-minute total response time in paragraph (c)(1) of this section.

(f) *Valve monitoring and operation capabilities.* Onshore rupture-mitigation valves actuated by methods in paragraph (e) of this section must be capable of being:

(1) Monitored or controlled by either remote or onsite personnel;

(2) Operated during normal, abnormal, and emergency operating conditions;

(3) Monitored for valve status (*i.e.,* open, closed, or partial closed/open), upstream pressure, and downstream pressure. Pipeline segments that use manual valve operation must have the capability to monitor pressures and gas flow rates on the pipeline to be able to identify and locate a rupture;

(4) Initiated to close as soon as practicable after identifying a rupture and with complete valve shut-off within 40 minutes of rupture identification as specified in paragraph (c)(1) of this section; and

(5) Monitored and controlled by remote personnel or must have a back-up power source to maintain SCADA or other remote communications for remote control shut-off valve or automatic shut-off valve operational status.

(g) *Monitoring of valve shut-off response status.* Operating control personnel must continually monitor rupture-mitigation valve position and operational status of all rupture-mitigation valves for the affected shut-off segment during and after a rupture event until the pipeline segment is isolated. Such monitoring must be maintained through continual electronic communications with remote instrumentation or through continual verbal communication with onsite personnel stationed at each rupture-mitigation valve, via telephone, radio, or equivalent means.

(h) *Alternative equivalent technology or manual valves for onshore rupture mitigation.* If an operator elects to use alternative equivalent technology or manual valves in accordance with § 195.258(c), the operator must notify PHMSA at least 90 days in advance of installation or use in accordance with § 195.452(m). The operator must include a technical and safety evaluation in its notice to PHMSA, including design, construction, and operating procedures for the alternative equivalent technology or manual valve. Operators installing manual valves must also demonstrate that installing an automatic shutoff valve, a remote-control valve, or equivalent technology in lieu of a manual valve would be economically, technically, or operationally infeasible. An operator may proceed to use the alternative equivalent technology or manual valves 91 days after submitting the notification unless it receives a letter from the Associate Administrator of Pipeline Safety informing the operator that PHMSA objects to the proposed use of the alternative equivalent technology or manual valves or that PHMSA requires additional time to conduct its review.

16. In § 195.420, paragraph (b) is revised and paragraphs (d), (e), and (f) are added to read as follows:

§ 195.420 Valve maintenance.

* * * * *

(b) Each operator must, at intervals not exceeding 7½ months but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly. Each valve installed under § 195.258(c) or rupture-mitigation valve, as defined under § 195.418, must also be partially operated as part of the inspection.

* * * * *

(d) For each valve installed under § 195.258(c) or onshore rupture-mitigation valve identified under § 195.418 that is remote-control shut-off, automatic shut-off, or that is based on alternative equivalent technology, the operator must conduct a point-to-point verification between SCADA displays and the mainline valve, sensors, and communications equipment in accordance with § 195.446(c) and (e), or perform an equivalent verification.

(e) For each onshore rupture-mitigation valve identified under § 195.418 that is to be manually or locally operated:

(1) Operators must establish the 40-minute total response time as required by § 195.418 through an initial drill and through periodic validation as required by paragraph (e)(2) of this section. Each phase of the drill response must be reviewed and the results documented to validate the total response time, including valve shut-off, as being less than or equal to 40 minutes.

(2) A rupture-mitigation valve within each pipeline system and within each operating or maintenance field work unit must be randomly selected for an annual 40-minute total response time validation drill simulating worst-case conditions for that location to ensure compliance. The response drill must occur at least once each calendar year, with intervals not to exceed 15 months.

(3) If the 40-minute maximum response time cannot be validated or achieved in the drill, the operator must revise response efforts to achieve compliance with § 195.418 no later than 6 months after the drill. Alternative valve shut-off measures must be in accordance with paragraph (f) of this section within 7 days of the drill.

(4) Based on the results of response-time drills, the operator must include lessons learned in:

(i) Training and qualifications programs; and

(ii) Design, construction, testing, maintenance, operating, and emergency procedures manuals.

(iii) Any other areas identified by the operator as needing improvement.

(f) Each operator must take remedial measures to correct any onshore valve installed under § 195.258(c) or rupture-mitigation valve identified under § 195.418 that is found inoperable or unable to maintain shut-off as follows:

(1) Repair or replace the valve as soon as practicable but no later than 6 months after the finding; and

(2) Designate an alternative compliant valve within 7 calendar days of the finding while repairs are being made. Repairs must be completed within 6 months.

■ 17. In § 195.452, paragraph (i)(4) is revised to read as follows:

§ 195.452 Pipeline integrity management in high consequence areas.

* * * * *

(i) * * *

(4) *Emergency Flow Restricting Devices (EFRD).* If an operator determines that an EFRD is needed on a pipeline segment to protect a high consequence area in the event of a hazardous liquid pipeline release, an operator must install the EFRD. In making this determination, an operator must, at least, consider the following factors—the swiftness of leak detection and pipeline shutdown capabilities, the type of commodity carried, the rate of potential leakage, the volume that can be released, topography or pipeline profile, the potential for ignition, proximity to power sources, location of nearest response personnel, specific terrain between the pipeline segment and the high consequence area, and benefits expected by reducing the spill size.

(i) Where EFRDs are installed to protect HCAs on all onshore pipelines with diameters of 6 inches or greater and that are placed into service or that have had 2 or more contiguous miles of pipe replaced after [insert date 12 months after effective date of this rule], the location, installation, actuation, operation, and maintenance of such EFRDs (including valve actuators, personnel response, operational control centers, SCADA, communications, and procedures) must meet the design, operation, testing, maintenance, and rupture mitigation requirements of §§ 195.258, 195.260, 195.402, 195.418, and 195.420.

(ii) The EFRD analysis and assessments specified in paragraph (i)(4) of this section must be completed prior to placing into service all onshore pipelines with diameters of 6 inches or greater and that are constructed or that have had 2 or more contiguous miles of pipe replaced after [insert date 12 months after effective date of this rule]. Implementation of EFRD findings for rupture-mitigation valves must meet § 195.418.

* * * * *

Issued in Washington, DC on January 23, 2020, under authority delegated in 49 CFR part 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2020–01459 Filed 2–5–20; 8:45 am]

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